Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2012

Title
Trial and Appellate Court Procedure: Contact Information for Parties and Attorneys

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928; and revise forms APP-101-INFO, CR-131-INFO, CR-141-INFO, and MC-040

Recommended by
Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair

Court Technology Advisory Committee
Hon. Ming W. Chin, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2013

Date of Report
August 14, 2012

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Executive Summary

The Appellate Advisory Committee and the Court Technology Advisory Committee recommend amending the trial and appellate rules to require that attorneys and self-represented parties in both trial and appellate courts initially provide the same contact information, including e-mail addresses if available, and provide that changes in this information trigger a requirement that they notify the court and other parties. The rule amendments would also clarify that if multiple attorneys from the same law firm, corporation, or public law office are joining in a document filed in the Court of Appeal, the cover of the document must include the names and State Bar numbers for all of the attorneys, but the law firm, corporation, or public law office must designate only one attorney to receive notices and other communications from the court. The Judicial Council information sheets regarding appeals to the appellate division would be revised

to reflect the proposed changes in rule 8.816 and to update web addresses referenced in these forms, and *Notice of Change of Address* (form MC-040) would be revised to clarify that it can be used to provide notice of changes not only in an address, but in other contact information as well.

Recommendation

The Appellate and Court Technology Advisory Committees recommend that the Judicial Council, effective January 1, 2013:

1. Amend rule 8.40 of the California Rules of Court to:

    a. Require that contact information for attorneys or self-represented parties be provided on all documents filed in the Supreme Court and Courts of Appeal, not just those filed by attorneys;

    b. Replace the cross-reference to rule 8.204 with the content of the requirements concerning the information that must be provided on the cover of a filed document;

    c. Require that fax numbers (if available) and e-mail addresses (if available) be included on the covers of filed documents but clarify that this does not constitute consent to service by fax or e-mail unless otherwise provided by law; and

    d. Provide that if multiple attorneys from the same law firm, corporation, or public law office representing the same party are joining in the document, the cover must designate only one attorney to receive notices and other communications from the court;

2. Amend rules 8.32 and 8.204 to conform to the changes in rule 8.40 by:

    a. Adding references to fax numbers and e-mail addresses provided by parties under amended rule 8.40; and

    b. Replacing the requirements in rule 8.204 concerning the information that must be provided on the cover of a brief with a cross-reference to rule 8.40;

3. Amend rule 8.816 to require that the first page of documents filed in the appellate division include the same type of contact information for attorneys or self-represented litigants as required under the amendments to rule 8.40;

4. Amend rules 8.883 and 8.928 relating to briefs filed in the appellate division to add a cross-reference to the new requirement in rule 8.816 to provide contact information;

5. Amend rules 2.200 and further amend rules 8.816 and 8.32 to require that an attorney or self-represented party serve and file a notice whenever his or her mailing address, telephone number, fax number, or e-mail address changes;

6. Further amend rule 2.200 to clarify that only self-represented parties, rather than all parties, are required to provide notice of changes in their contact information;

7. Revise *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to reflect the changes in rule 8.816 and to update web addresses referenced in these forms;

8. Further revise form APP-101-INFO to replace the references to the statute setting the fees for filing a notice of appeal in a limited civil case with a reference to a web page that provides current fee information; and

9. Revise *Notice of Change of Address* (form MC-040) to:

    a. Clarify that it can be used to provide notice of changes not only in an address, but in other contact information as well; and

    b. Update the attached proof of service by first-class mail and include a notice about other forms for proof of service by other methods.

The text of the amended rules and revised forms are attached at pages 11–47.

Previous Council Action

The Judicial Council adopted the predecessor to rule 2.111, regarding the format of papers filed in the superior court, effective January 1, 1949. As originally adopted, this rule required that the first page of all filed papers include the name, address, and telephone number of the attorney or, if he or she was appearing in person, of the party. This rule was later amended to also require each attorney's State Bar number. Effective January 1, 2001, it was amended to provide that it was optional for attorneys and parties to provide their fax numbers and e-mail addresses. Effective January 1, 2007, this rule was amended to require attorneys and parties to provide their fax numbers and e-mail addresses (if available).

The Judicial Council adopted the predecessors to rule 8.44, regarding the general format of documents filed in the Supreme Court and Court of Appeal, and rule 8.204, regarding the format of briefs in the Court of Appeal, effective July 1, 1943. As originally adopted, the rule regarding the format of briefs required the cover of all briefs to include the name and address of the attorney filing the brief and the rule on the format of documents generally required all documents

to comply with the requirement for briefs. The rule on the format of briefs was later amended to also require the attorney or party's telephone number and each attorney's State Bar number.

The Judicial Council adopted the predecessor to rule 8.883, regarding the format of briefs in appellate division proceedings, effective September 15, 1945. As adopted, this rule required that printed briefs comply with the requirements for briefs in Supreme Court and Court of Appeal proceedings but did not establish format requirements for typewritten briefs. Effective July 1, 1971, this rule was amended to require that all briefs in the appellate division generally comply with the format requirements for briefs in Supreme Court and Court of Appeal proceedings, including the requirements relating to cover information. Effective January 1, 2009, the Judicial Council repealed all of the rules relating to the superior court appellate division and replaced them with new rules, including new rules 8.883 and 8.928 relating to the format of briefs. These new rules did not include a requirement to put the attorney's or self-represented litigant's contact information on the cover of filed documents. The council also adopted forms *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO) effective January 1, 2009.

The predecessor to rule 2.200, regarding changes of address in superior court proceedings, was adopted by the Judicial Council effective January 1, 1984. As adopted, this rule required attorneys and self-represented parties to notify the court and other parties if their address changed. The predecessor to rule 8.32, regarding addresses and telephone numbers of record in Supreme Court and Court of Appeal proceedings, was adopted by the Judicial Council effective January 1, 1994. As adopted, this rule required attorneys and self-represented parties to notify the court and other parties if their address or telephone number changed. Both of these rules have since been amended and renumbered, but the substantive requirements have not been changed.

Rationale for Recommendation

The recommendations in this report originated from suggestions submitted by a clerk of the Court of Appeal and by the California Appellate Court Clerks Association.

Providing contact information

Currently, rule 2.111 requires that the first page of any document filed in a trial court include the name, mailing address, telephone number, fax number, and e-mail address (if available) of the attorney for the party on whose behalf the paper is presented, or of the party if he or she is appearing in person. By contrast, rule 8.40, which applies in Supreme Court and Court of Appeal proceedings, requires that contact information be provided only in documents filed by an attorney[1] and (through a cross-reference to rule 8.204) requires only the name, address, and telephone number of each attorney filing or joining in the document, not the fax number or e-mail address. The rules governing appellate division proceedings do not currently require the

[1] However, rule 8.32 provides that the address and telephone number provided in the first document filed by an unrepresented party will be used as that party's address and telephone number of record.

covers of briefs or other documents filed in the appellate division to include contact information for attorneys or self-represented litigants.

The recommended amendments to rule 8.40 would require that contact information be provided on all documents filed in the Supreme Court and Courts of Appeal, not just those filed by attorneys. In addition, to make it easier for rule users to find these general format requirements, the amendments would replace the cross-reference to rule 8.204 in rule 8.40 with the content of the requirements concerning cover information.

The amendments would also make several changes to what contact information is required on the covers of these documents. First, to ensure that appellate courts and parties have available fax numbers and e-mail addresses for attorneys and self-represented parties, the proposed amendments would require that fax numbers and e-mail addresses, if available, be included on the covers of filed documents.

Second, the proposed amendments would change the information that must be provided when multiple attorneys from the same law firm, corporation, or public law office are joining in a document. Currently, rule 8.204 requires that the cover include the name and contact information for each attorney filing or joining in a document but need not include the State Bar number of any supervisor of the attorney responsible for the brief. With the new requirement to provide fax numbers and e-mail addresses, providing contact information for multiple attorneys from the same law firm, corporation, or public law office may result in a very crowded cover. Furthermore, this information is not needed by the courts and may create confusion about which attorney from the law firm, corporation, or public law office should receive notices or other communications in the case. It is the committees' understanding that the courts' current practice when multiple attorneys from the same law firm, corporation, or public law office are listed on a document is to send notices to only one of these attorneys. Sometimes, however, the attorney selected by the court may not be the one that the law firm, corporation, or public law office would prefer to receive notices or other communication about the case. The recommendations in this report would require the law firm, corporation, or public law office to designate one of the listed attorneys to receive notices or other communications from the court and would further provide that contact information need be given for only that attorney. This would allow the law firm, corporation, or public law office to determine which attorney should receive notices or other communications from the court and provide the court with clarity about to whom such communications should be sent. The designated attorney would be responsible for sharing information with other attorneys within the firm, corporation, or public law office involved in the case. To facilitate conflict checks by the courts, however, the proposed amendments would require that the cover include the names and State Bar numbers of all attorneys joining in the document.

Additionally, rule 8.816 would be amended to require that the first page of documents filed in the appellate division include the same type of contact information for attorneys or self-represented litigants as would be required under amended rule 8.40. A cross-reference to this new

requirement would be added in the rules relating to briefs filed in the appellate division (rules 8.883 and 8.928), and the information sheets about appellate division proceedings (forms APP-101-INFO, CR-131-INFO, and CR-141-INFO) would be revised to reflect the change in rule 8.816. These forms would be further revised to reflect current web addresses.

Updating contact information

Under rules 2.200, 8.32, and 8.816, an attorney or a party whose address changes while an action is pending must serve and file a written notice of that change. Rules 8.32 and 8.816 also specifically require that such a notice be served and filed if an attorney's or unrepresented party's telephone number changes. None of these three rules currently require notice when an attorney's or a party's fax number or e-mail address changes.

To ensure that trial and appellate courts and parties have the current contact information for attorneys and self-represented parties, rules 2.200, 8.32, and 8.816 would be amended to require that an attorney or self-represented party serve and file a notice whenever his or her mailing address, telephone number, fax number, or e-mail address changes. In addition, the proposed amendments would clarify that rule 2.200 requires self-represented parties, rather than all parties, to provide notice of changes in their contact information. The optional judicial council form for notifying trial courts of a change in address—*Notice of Change of Address* (form MC-040)—would be revised to reflect the rule amendments. Rules 8.32 and 8.816 would also be amended to delete as unnecessary and counterproductive the provision indicating what the clerk may do when a party fails to comply with the requirement to list the cases in which a change of contact information applies.

Eliminating references to fee statute and amounts in form APP-101-INFO

Information on Appeal Procedures for Limited Civil Cases (form APP-101-INFO) currently includes a citation to Government Code section 70621 as establishing the fee for filing a notice of appeal in a limited civil case. However, since this form was adopted by the Judicial Council, the Legislature has adopted Government Code section 70602.5 which, among other things, adds a supplemental fee to the filing fee established section 70621. Thus the statutory reference indicated on form APP-101-INFO does not provide complete and accurate information about the total fee that litigants must pay to file a notice of appeal in a limited civil case.

Having the incorrect filing fee information on this form may cause confusion for litigants and result in appellants not submitting the correct fee. Such errors cost both litigants and courts time and money. Superior courts must notify the appellant about such an error and give the appellant an opportunity to correct it. If the error is not corrected, the appeal will be dismissed, but the appellant can request that the superior court appellate division vacate the dismissal for good cause. To avoid this potential confusion and the costs associated with trying to correct these errors and to avoid the need to update form APP-101-INFO in the event of future changes to the filing fee statutes, the Appellate Advisory Committee recommends revising form APP-101-

INFO to replace the references to the statute with a reference to a web page that provides current civil fee information.[2]

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated between April 17 and June 15, 2012, as part of the regular spring 2012 comment cycle. Sixteen individuals or organizations submitted comments: four commentators agreed with the proposal, seven agreed with the proposal if modified, three disagreed with the proposal unless it was modified, and two did not indicate a position but provided comments. The full text of the comments received on the 2012 proposal and the committee responses are set out in the attached comment chart beginning at page 48. The main substantive comments and the committee's responses are also discussed below.

This proposal is a modified version of a proposal that circulated for public comment in the spring of 2011. Both the 2011 and 2012 proposals included an amendment to rule 8.40 requiring attorneys and self-represented parties to include their e-mail addresses (if available) on the cover of documents filed with the Court of Appeal or Supreme Court. Because the 2011 comments on this issue raised concerns that were considered by the committee in developing its recommendation, those comments are also discussed below.

Attorney e-mail addresses. In both 2011 and 2012, some commentators expressed concerns about the proposal to require attorneys and self-represented parties to include their e-mail addresses (if available) on the cover of documents filed with the Court of Appeal or Supreme Court.

Two comments received on the 2011 proposal suggested that some appellate attorneys—particularly those in criminal, juvenile, and family law cases—may have security and privacy concerns about having their e-mail addresses made public. These commentators pointed out that rule 9.7, relating to law practice, provides that e-mail addresses given to the State Bar by attorneys may not to be disclosed to the public without the attorneys' consent. These commentators suggested that the committees consider modifying the proposal to similarly give attorneys the option of providing their e-mail addresses to the courts and other counsel privately, without making the e-mail addresses public.

Because of concerns about potential administrative burdens for the trial and appellate courts, the committees did not agree with the suggestion that attorneys be able to give their e-mail addresses

[2] Please note that rule 8.821, like form APP-101-INFO, includes a citation to Government Code section 70621 as establishing the fee for filing a notice of appeal in a limited civil case and its accompanying advisory committee comment specifies the amount of the filing fee. Another report on the Judicial Council's agenda at this meeting recommends amendments to rule 8.821, effective October 26, 2012, similar to the revisions to form APP-01-INFO being recommended in this report. The revisions to the fee information in form APP-101-INFO are being recommended as part of this report because this report also recommends other revisions to APP-101-INFO.

to the courts privately. However, in response to these comments the committees considered the alternative of amending rule 8.40 to make providing e-mail addresses optional. The committees decided not to recommend this approach, however, because it would not ensure that the courts receive available e-mail addresses for attorneys and thus would not fully facilitate electronic communication. Instead, the committees decided not to modify this aspect of the proposal, but to recirculate the proposal in 2012 and to seek specific input on the benefits and burdens associated with requiring e-mail address to be provided on the cover of filed documents.

Of the 16 comments received on the 2012 proposal, 10 provided specific input on the proposed requirement that attorneys and self-represented litigants provide their e-mail addresses (if available) on the cover of filed documents. Most of these comments raised concerns about the consequences of making e-mail addresses publicly available on the cover of filed documents, including concerns about the following:

- The privacy and security of attorneys, particularly appointed counsel representing criminal defendants and mental health patients;
- Exposing the e-mail accounts and computer systems of attorneys to spam, phishing, and virus attacks; and
- The lack of confidentiality of material that litigants might choose to send by unsecured e-mail to the attorney's e-mail address.

The committees discussed these comments at length and considered various approaches to addressing the concerns raised. It was noted that, just as many attorneys use post office boxes for regular mailing to protect their privacy and increase security, an attorney could easily establish a separate e-mail account for purposes of communication with the court, either in general or for a particular case. In fact, some of the comments reflected that the commentators had already established such separate e-mail accounts. The committees also discussed the fact that, unlike the situation described in the comment of the Orange County Public Defender (in which the individual e-mail addresses of all attorneys in the office would have been released), this proposal would require the identification of a contact e-mail address for only a single attorney in a particular case. As noted above, this need not be the individual, personal e-mail address of the attorney but could be an e-mail address set up for purposes of communication with the court or about a particular case. In addition, this e-mail address would be in the individual case file, making it less subject to harvesting for purposes of general phishing or spam attacks. Ultimately, the committees concluded that the majority of the concerns raised by these commentators could be addressed by e-mail safety precautions, such as establishing a separate e-mail account and establishing appropriate spam filter settings on this e-mail account. As noted above, since 2007, rule 2.111 has required attorneys in trial court proceedings to provide their e-mail addresses (if available) on the first page of documents filed in the trial court, including criminal, juvenile, and family law proceedings in which emotions can often run high. The committees are not aware of concerns being raised about this requirement or of any policy reasons why the e-mail addresses of attorneys in appellate proceedings should be treated differently from those in trial court

proceedings. The committees therefore decided to recommend that, similar to the current requirement in rule 2.111, rules 8.40 and 8.816 be amended to require that attorneys provide their e-mail address (if available) on the cover of documents filed in the appellate courts.

Fax numbers. Because fax technology is used less and less frequently, several commentators on the 2012 proposal either raised concerns about requiring attorneys and self-represented litigants to provide fax numbers or suggested that, as with e-mail addresses, fax numbers should only be required "if available." Based on these comments, the committees modified the proposal to only require fax numbers if available.

Information sheets. Comments received on the 2011 proposal suggested that the committees consider revising the information sheets regarding superior court appellate proceedings to reflect the proposed rule changes. The committees agreed with this suggestion and incorporated these suggested revisions into the 2012 proposal.

Proof of service on form MC-040. Page 2 of *Notice of Change of Address* (form MC-040) is an optional proof of service.[3] Currently, this proof-of-service page addresses only proof of service by first-class mail. The 2012 invitation to comment noted that there are many other permissible methods of service, including electronic service, and there are other, more recent stand alone proof-of-service forms designed to accommodate these other methods of service (see, for example, Proof of Service—Civil (form POS-040)). The committee specifically sought input on whether the optional proof of service on page 2 of form MC-040 should be deleted.

Several commentators responded to this request for input and recommended against deleting the proof of service that is part of form MC-040. In response to these comments, the committees are not recommending that this proof of service be deleted, but are recommending that it be updated to, among other things, include a reference to other forms that can be used for proof of service by methods other than first-class mail.

Alternatives

In addition to the alternatives considered in connection with the public comments, the committees considered not recommending any changes to these rules and forms at this time. The committees concluded, however, that it is important to ensure that courts have complete, up-to-date contact information for both attorneys and self-represented litigants and therefore decided to recommend these rule amendments and form revisions for adoption by the council.

The committees did not circulate for public comment the proposed revisions to form APP-101-INFO that would replace the existing references to a statute setting the filing fees with a reference to a web page containing current fee information. Under rule 10.22, an amendment

[3] Under rule 1.41, such proofs of service included on Judicial Council forms are solely for the convenience of the parties, and a party may use an included proof of service or any other proper proof of service.

may be recommended for adoption by the council without circulating it for comment if the proposal presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy. The Appellate Advisory Committee recommends that, similar to the recent revisions to form APP-001 to reflect changes to the fee for filing a notice of appeal in an unlimited civil case, these proposed revisions to form APP-101-INFO be adopted without circulation for public comment as minor substantive changes that are unlikely to create controversy.

Implementation Requirements, Costs, and Operational Impacts

The recommended rule amendments and form revisions should not create significant implementation requirements or costs for the courts. They should improve efficiency for both trial and appellate courts by ensuring that courts have current and complete contact information, including e-mail addresses (if available), for both attorneys and self-represented litigants in matters before them. They should also improve efficiency for appellate courts by ensuring that, when multiple attorneys from the same firm, corporation, or public law office join in a document, the court knows which attorney should receive notices from the court.

Relevant Strategic Plan Goals and Operational Plan Objectives

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

Attachments

Rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 of the California Rules of Court are amended, effective January 1, 2013, to read:

Title 2. Trial Court Rules

Division 3. Filing and Service

Chapter 1. General Provisions

Rule 2.200. Service and filing of notice of change of address or other contact information

An ~~party or~~ attorney or self-represented party whose mailing address, telephone number, fax number, or e-mail address (if it was provided under rule 2.111(1)) changes while an action is pending must serve on all parties and file a written notice of the change ~~of address~~.

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 2. Service, Filing, Filing Fees, Form, and Number of Documents

Rule 8.32. Address and ~~telephone number~~ other contact information of record; notice of change

(a) Address and ~~telephone number~~ other contact information of record

In any case pending before the court, the court will use the mailing address, ~~and~~ telephone number, fax number, and e-mail address that an attorney or unrepresented party provides on the first document filed in that case as the mailing address, ~~and~~ telephone number, fax number, and e-mail address of record unless the attorney or unrepresented party files a notice under (b).

(b) Notice of change

(1) An attorney or unrepresented party whose mailing address, ~~or~~ telephone number, fax number, or e-mail address changes while a case is pending must promptly serve and file a written notice of the change in the reviewing court in which the case is pending.

(2) * * *

~~**(c) Matters affected by notice**~~

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

~~**(d)**~~**(c) Multiple addresses or other contact information**

If an attorney or an unrepresented party has more than one mailing address, telephone number, fax number, or e-mail address, only one mailing address, telephone number, fax number, or e-mail address for that attorney or unrepresented party may be used in a given case.

Rule 8.40. Form of filed documents

(a)–(b) * * *

(c) Cover information

(1) Except as provided in (2), ~~T~~the cover—or first page if there is no cover—of every document filed ~~by an attorney~~ in a reviewing court must ~~comply with rule 8.204(b)(10)(D).~~ include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number of each attorney filing or joining in the document, or of the party if he or she is unrepresented. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2) If more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and State Bar number of each attorney joining in the document must be provided on the cover. The law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communication in the case from the court by placing an asterisk before that attorney's name on the cover and must provide the contact information specified under (1) for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided.

Chapter 2. Civil Appeals

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

(1)–(9) * * *

(10) The cover, preferably of recycled stock, must be in the color prescribed by rule 8.40(b) and, in addition to providing the cover information required by rule 8.40(c), must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge; and

~~(D) The name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief, but the cover need not state the bar number of any supervisor of the attorney responsible for the brief; and~~

~~(E)~~(D) The name of the party that each attorney on the brief represents.

(11) * * *

(c)–(e) * * *

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 1. General Rules Applicable to Appellate Division Proceedings

Rule 8.816. Address and ~~telephone number~~ other contact information of record; notice of change

(a) Address and ~~telephone number~~ other contact information of record

(1) Except as provided in (2), the cover—or first page if there is no cover—of every document filed in the appellate division must include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number of each attorney filing or joining in the document, or of the party if he or she is unrepresented. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2) If more than one attorney from a law firm, corporation, or public law office is representing one party and is joining in the document, the name and State Bar number of each attorney joining in the document must be provided on the cover. The law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communication in the case from the court by placing an asterisk before that attorney's name on the cover and ~~need~~ must provide the contact information specified under (1) for that attorney. Contact information for the other attorneys from the same law firm, corporation, or public law office is not required but may be provided.

(3) In any case pending before the appellate division, the appellate division will use the mailing address, ~~and~~ telephone number, fax number, and e-mail address that an attorney or unrepresented party provides on the first document filed in that case as the mailing address, ~~and~~ telephone number, fax number, and e-mail address of record unless the attorney or unrepresented party files a notice under (b).

(b) Notice of change

(1) An attorney or unrepresented party whose mailing address, ~~and~~ telephone number, fax number, or e-mail address changes while a case is pending must promptly serve and file a written notice of the change in the appellate division in which the case is pending.

(2) * * *

~~**(c) Matters affected by notice**~~

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

~~(d)~~(c) Multiple addresses or other contact information

If an attorney or unrepresented party has more than one mailing address, telephone number, fax number, or e-mail address, only one mailing address, telephone number, fax number, and e-mail address may be used in a given case.

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

Rule 8.883. Contents and form of briefs

(a) * * *

(b) Length

(1)–(2) * * *

(3) The ~~cover~~ information listed on the cover~~in rule 8.204(b)(10)~~, any table of contents or table of authorities, the certificate under (1), and any signature block are excluded from the limits stated in (1) or (2).

(4) * * *

(c) Form

(1)–(7) * * *

(8) The cover—or first page if there is no cover—must include the information required by rule 8.816(a)(1).

~~(8)~~(9) * * *

~~(9)~~(10) * * *

~~(10)~~(11) * * *

(d) * * *

Chapter 5. Appeals in Infraction Cases

Article 3. Briefs, Hearing, and Decision in Infraction Appeals

Rule 8.928. Contents and form of briefs

(a) * * *

(b) Length

(1)–(2) * * *

(3) The ~~cover~~ information listed on the cover~~in rule 8.204(b)(10)~~, any table of contents or table of authorities, the certificate under (1), and any signature block are excluded from the limits stated in (1) or (2).

(4) * * *

(c) Form

(1)–(7) * * *

(8) The cover—or first page if there is no cover—must include the information required by rule 8.816(a)(1).

~~(8)~~(9)* * *

~~(9)~~(10) * * *

~~(10)~~(11) * * *

(d) * * *

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is $25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

- ***Prejudicial error:*** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error").

  Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm* in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at *www.leginfo.ca.gov/calaw.html*.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.

8 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the notice of appeal to the other party or parties in the way required by law.
- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail or in person), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk mails or a party serves either a document called a "Notice of Entry" of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at *www.courts.ca.gov/7646.htm* (note that the "Appeal and Writ Related Fees" section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.ca.gov.calaw.html*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court's judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov /forms.htm*.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the notice to the other party or parties in the way required by law.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail or in person), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

a. A record of the documents filed in the trial court (other than exhibits)

b. A record of what was said in the trial court (this is called the "oral proceedings")

c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

(1) A *clerk's transcript*
(2) The original *trial court file* or
(3) An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

***Cost*:** The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www courts.ca.gov /forms.htm*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov /forms.htm*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a "stipulation"), stating that you are trying to

agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

b. Record of what was said in the trial court (the "oral proceedings")

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

(1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a *"reporter's transcript."*

(2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.

(3) You can use an *agreed statement.*

(4) You can use a *statement on appeal.*

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter's transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose ("elect") to have the court reporter prepare a reporter's transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want to be included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the

respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost with the trial court clerk within 10 days after this notice is sent.

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. If you are represented by a lawyer in your appeal, a special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. However, there is no financial help available for parties who are not represented by lawyers. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. The trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.* The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's decision. It must also include a statement of the points the appellant is raising on appeal (see rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*).

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed statement to the respondent in the way required by law.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent and makes any corrections or modifications to the statement that are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If you disagree with anything in the judge's statement, you have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you

or the other party ask for that exhibit to be included in the clerk's transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

Contents: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief,

how the brief was served (by mail or in person), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument?"

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.*

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 13 above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript. To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at

www.courts.ca.gov/forms.htm. The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount with the court within 10 days after the clerk's notice was sent. The reporter will not prepare a copy of the reporter's transcript for you unless you pay this deposit.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed amendments to the appellant in the way required by law.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail or in person), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

(25) What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When

the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

The appellant serves and files the first brief, called an "appellant's opening brief." You may, but are not required to, respond by serving and filing a respondent's brief within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the

appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

CR-131-INFO Information on Appeal Procedures for Misdemeanors

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at *www.leginfo.ca.gov/calaw.html*.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made in the case:

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in a misdemeanor case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of

every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- Your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments) or
- You are likely to suffer other significant harm as a result of being convicted.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm* in the Getting Started section.

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal *any* decision that the trial court made?

No. Generally, you may appeal only the final judgment —the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal from:

- An order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- An order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at *www.leginfo.ca.gov /calaw.html*.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal (Misdemeanor)* (form CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court makes ("renders") its final judgment in your case or issues the order you are appealing. (You can get a copy

of rule 8.853 at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.) The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed ("stayed"), only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to appellate division that you first asked the trial court a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

12 What do I need to do after I file my appeal?

You must tell the trial court whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.) You must file this notice either:

(1) within 20 days after you file your notice of appeal, or, if it is later

(2) within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral

proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made.

(14) What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a local rule permitting this and you and the respondent (the prosecuting agency) agree ("stipulate") to this, you can use the *official electronic recording* itself as the record, instead of a transcript.

c. You can use a *statement on appeal.*

Read below for more information about these options.

a. Reporter's transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount with the clerk within 10 days after the clerk sends you the estimate.

If, however, you are indigent (you cannot afford to pay the cost of a reporter's transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210), to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.* The court will review this form to decide whether you are indigent.

If you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to see if your case was officially electronically recorded before you choose this option.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's decision. It must also include a statement of the points the appellant is raising on appeal. (See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form CR-135 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.

- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments and makes any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the

written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.)

- ***Exhibits submitted during trial:*** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.) Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at *www.courts.ca.gov/selfhelp-serving.htm.*

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

19 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

20 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

21 What happens after oral argument?

After the oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

22 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

CR-141-INFO Information on Appeal Procedures for Infractions

1 What does this information sheet cover?

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at *www.leginfo.ca.gov/calaw.html*.) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction case, the court hearing the appeal is the appellate division of the superior court, and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made in the case:

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

For information about appeal procedures in other cases, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm*.

If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

6 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B). You can get a copy of this law at *www.leginfo.ca.gov/calaw.html*.)

7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get form CR-142 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes ("renders") its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a "stay" of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in

your application to appellate division that you first asked the trial court a stay and that the trial court unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made.

13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

a. You can use a *statement on appeal*.

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree ("stipulate"), you can use the official electronic recording itself as the record, instead of a transcript.

c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

Read below for more information about these options.

a. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use either of these forms of the record, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include a summary of the oral proceedings that the appellant believes necessary for the appeal and a summary of

the trial court's decision. It must also include a statement of the points the appellant is raising on appeal (see rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

Serving and filing a proposed statement: You must serve and file your proposed statement within 20 days after you file your notice of appeal. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the proposed statement to the prosecuting attorney and any other party in the way required by law. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.

- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial judge then reviews both your proposed statement and any proposed amendments and makes any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the trial court proceedings.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the trial court proceedings.

Sending the statement to the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from official recording

When available: In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.* The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Reporter's transcript

When available: In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare the transcript, you must deposit this estimated amount with the clerk within 10 days after the clerk sends you the estimate.

If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.* The court will review this form to decide whether you are indigent.

If you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and

may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

Completion and delivery: Once you deposit the estimated cost of the transcript or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

14 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.)

- ***Exhibits submitted during trial:*** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*)

  Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

15 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

16 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov /rules.htm.*

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the statement on appeal (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. **If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**
"Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.

- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at *www.courts.ca.gov/selfhelp-serving.htm.*

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

18 What happens after all the briefs have been filed?

Once all the briefs have been served and filed or the time to serve and file them has passed, the court will notify you of the date for oral argument in your case.

19 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person.

You do not have to participate in oral argument, if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

20 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

21 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**DRAFT 07/26/2012 MS**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER: JUDICIAL OFFICER:
NOTICE OF CHANGE OF ADDRESS OR OTHER CONTACT INFORMATION	DEPT.:

1. **Please take notice** that, as of *(date):*
   - ☐ the following self-represented party or
   - ☐ the attorney for:
     - a. ☐ plaintiff *(name):*
     - b. ☐ defendant *(name):*
     - c. ☐ petitioner *(name):*
     - d. ☐ respondent *(name):*
     - e. ☐ other *(describe):*

   has **changed his or her address** for service of notices and documents or other contact information in the above-captioned action.

   ☐ A list of additional parties represented is provided in Attachment 1.
2. The **new address** or other contact information for *(name):*

   is as follows:
   - a. Street:
   - b. City:
   - c. Mailing address *(if different from above):*
   - d. State and zip code:
   - e. Telephone number*:*
   - f. Fax number (if available):
   - g. E-mail address (if available):
3. **All notices and documents** regarding the action should be sent to the above address.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
MC-040 [Rev. January 1, 2013]

Cal. Rules of Court, rules 2.200 and 8.816
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF CHANGE OF ADDRESS OR OTHER CONTACT INFORMATION

(NOTE: This page may be used for proof of service by first-class mail of the* Notice of Change of Address or Other Contact Information*. Please use a different proof of service, such as* Proof of Service—Civil (form POS-040)*, if you serve this notice by a method other than first class-mail, such as by fax or electronic service. You cannot serve the* Notice of Change of Address or Other Contact Information *if you are a party in the action. The person who served the notice must complete this proof of service.)

1. At the time of service, I was at least 18 years old and **not a party to this action.**
2. I am a resident of or employed in the county where the mailing took place. My residence or business address is *(specify):*
3. I served a copy of the *Notice of Change of Address or Other Contact Information* by enclosing it in a sealed envelope addressed to the persons at the addresses listed in item 5 and *(check one):*
   a. ☐ deposited the sealed envelope with the United States Postal Service with postage fully prepaid.
   b. ☐ placed the sealed envelope for collection and for mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. The *Notice of Change of Address or Other Contact Information* was placed in the mail:
   a. on *(date):*
   b. at *(city and state):*
5. The envelope was addressed and mailed as follows:

   a. Name of person served:
      Street address:
      City:
      State and zip code:

   b. Name of person served:
      Street address:
      City:
      State and zip code:

   c. Name of person served:
      Street address:
      City:
      State and zip code:

   d. Name of person served:
      Street address:
      City:
      State and zip code:

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

SPR12-09

Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)

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

	Commentator	Position	Comment	Advisory Committee Response
1.	Appellate Court Committee San Diego County Bar Association By: Kate Mayer Mangan Chair	AM	Our committee supports most of the proposed revisions to rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 (and the relevant forms). However, we reiterate our previously expressed concern with the public dissemination of appellate counsel's e-mail addresses and again put forth our suggestion that attorneys be permitted to provide them to the court and other counsel privately, instead. In a cost-benefit analysis, we agree that the ease of e-mail communication can be of significant benefit to both the court and all counsel and that disclosure of e-mail addresses should be required. However, we discern no benefit to the court in copying an e-mail address off a public document cover, as opposed to a non-public notice attached to the document or sent separately to the court. Our understanding is that court clerks do not pull physical files and look at the covers of documents to contact attorneys; instead they enter the information in a database and use that database for communications unless the attorney submits a notice of change of address under rule 8.32(b). The countervailing costs to attorneys in making an e-mail address public can be significant. In some areas of practice, such as criminal and family law, emotions can run high, and clients and their relatives or friends can be more prone than the average party to engage in threatening or vindictive behavior. Sometimes, too, the general public can become engaged in a high-	The committees carefully considered these concerns but ultimately decided to retain the proposal to require that attorneys in appellate proceedings provide their e-mail addresses on the cover of filed documents. It was noted that, just as many attorneys use post office boxes for regular mailing to protect their privacy and increase security, an attorney could easily establish a separate e-mail account for purposes of communication with the court, either in general or for a particular case. The committees also discussed the fact that this e-mail address would be in the individual case file, making it less subject to harvesting for purposes of general phishing or spam attacks. Ultimately, the committees concluded that the majority of the commentator's concerns could be addressed by e-mail safety precautions, such as establishing a separate e-mail account and establishing appropriate spam filter settings on this e-mail account. In addition, since 2007, rule 2.111 has required attorneys in trial court proceedings to provide their e-mail addresses (if available) on the first page of documents filed in the trial court, including criminal, juvenile, and family law proceedings in which emotions can often run high. The committees are not aware of concerns being raised about this requirement or of any policy reasons why the e-mail addresses of attorneys in appellate proceedings should be treated differently from those in trial court proceedings.

	Commentator	Position	Comment	Advisory Committee Response
			profile case and try to intimidate the attorney. Many attorneys in such areas are solo practitioners and, in appellate work particularly, work out of their own homes; they often do not have the benefit of technical computer expertise beyond the basic virus protection programs. E-mail is virtually free and can be used to flood an inbox repeatedly, send massive attachments, introduce viruses and other malware, and deliver untraceable threats. Public availability of one's e-mail address increases the chances that it will be stolen or hijacked and used to deliver fake messages purporting to be from the attorney or to gain access to the attorney's e-mail address book. Dealing with such incidents can be very costly in time, money, and the attorney's reputation. In addition, the chances of identity theft increase as more information is known about the attorney. For these reasons, we repeat our 2011 recommendation that attorneys be given the option of providing e-mail address information privately to the court and other counsel.	
2.	Jean Ballantine Attorney at Law Appointed Appellate Defense Counsel	N	I strongly oppose this proposed requirement. I am a criminal appellate attorney. My clients are either housed in state prison or on felony probation. I have a home office. I am very concerned that providing my e-mail address to the public can result in an invasion of privacy	See response to the comments of the Appellate Courts Committee of the San Diego County Bar Association above.

	Commentator	Position	Comment	Advisory Committee Response
			and serious security issues including possible infection of my computer with viruses. If the public and my clients have my e-mail address I will have no control over what is sent to my computer. Additionally, I believe that with my e-mail address, convicted felons may be able to acquire a vast amount of information about me including my home address and details about my family. For the safety of criminal attorneys in general, and appointed appellate defense counsel in particular, I request this proposal be abandoned.	
3.	Paul Bernstein Attorney Berkeley	N/I	I am writing to offer comment on the proposed revision to the Rules of Court that would require attorneys to provide email addresses in a way that would make them public. I am a California attorney who regularly practices by Court of Appeal appointment. I was recently excused by the Fifth District Court of Appeal from a similar pilot project in that district, after I expressed my concern about the lack of security in unecrypted email and the potential for violation of the special statutory confidentiality required to be made public. I enclose a copy of my application to be excused and of the Court order granting the application. I can call your attention to the reasons I expressed in the application, which I hope may help you with your decision. Attachment:	See response to the comments of the Appellate Courts Committee of the San Diego County Bar Association above.

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Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Advisory Committee Response
			IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE FIFTH APPELLATE DISTRICT Order Regarding Exemption from Electronic Filing Requirement (Cal. Rules of Court, rule 8.73) Good cause appearing that participation in the court's e-filing project would cause Paul Bernstein undue hardship or significant prejudice, Paul Bernstein is exempt from the requirements of the court's e-filing project for a period of two years from April 13, 2012. Nothing in this order prevents Paul Bernstein from electing to participate in the court's e-filing project during the two-year exemption period should the undue hardship or significance prejudice be resolved. Paul Bernstein must reapply to extend this exemption beyond the two-year period. Brad R. Hill, Presiding Judge Attachment: Re: Application of Counsel for Excuse E-Filing and E-Mail Requirement Dear Justice Hill:	

SPR12-09
Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Advisory Committee Response
			I am an attorney regularly appointed by this Court to represent indigent appellants. I am writing to request to be excused from the new requirements regarding provision of email addresses and e-filing. I am informed by the Central California Appellate Program that there have been some discussions with the Court about the new pilot program for e-filing and provision of e-mail addresses, and that a procedure has been developed for attorneys who wish to opt out of the requirement. According to my communication with CCAP, the Court is allowing attorneys to opt out of e-filing and e-service for undue hardship based on a reason such as "I do not want my email publicly displayed". I am therefore applying to opt out of the requirement, for the reason that I have serious concerns having to do with my specialty area of practice about having my email publicly displayed. CCAP also suggested, as this might be my only opportunity to make the request, that I provide this Court with more detail. My concern has to do with the insecurity of unencrypted email communication. I handle almost exclusively the mental health cases, which are subject to heightened confidentiality requirements, in part because they almost always involve confidential medical records. (See, e.g. Welf. & Inst. Code, § 5328, Civ. Code § 56 *et. seq.*) The Supreme	

SPR12-09
Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Advisory Committee Response
			Court has recognized heightened privacy concerns in mental health cases. (See, e.g., *Conservatorship of Susan T.* (1994) 8 Cal. 4th 1005, 1008, fn 1.) For that reason, while I am perfectly computer literate, I have resisted using unencrypted email communication in my practice. I understand that initially the program needs my email address only to confirm receipt of e-filings and for e-services of public documents, but I also understand that a list of email addresses will be made available to the public. While I can control what I say in an email and whether I encrypt it, I cannot control what others send me in unencrypted emails that I am concerned that, if I make an email publicly available, eventually there may be a confidentiality violation. For example, I have never given my email address to a mental health client, and I would not be comfortable if I saw some of the paper communications I receive, involving privileged communication and work product, expressed in a non-secure email. This Court occasionally receives such paper communications from my clients. Non-secure email is subject to such practices as Gmail's "content extraction" in which the company (Google) routinely reads, stores, and extracts information from emails, obstensibly for the purpose of targeting advertising. Yahoo, which also provides email service for AT&T users, reportedly has a similar practice. (See	

	Commentator	Position	Comment	Advisory Committee Response
			declaration.) Many reputable law firms practice encryption in client communications. That simply is not possible with my clients, especially if they can obtain my email address from a public site such as the Courts. For these reasons, I request to be excused from the requirement of providing an email address. I do not have the same concerns about filing electronic versions of public documents for the use of the Court and respondent only, but the current version of the Court's Internet page for doing so does not allow me to file a document without providing an email address. I attach a declaration in support of this application. Respectfully submitted, Paul Berstein Attorney at Law SBN 122400 Attachment: DECLARATION OF PAUL BERSTEIN 1. I am an attorney duly licensed to practice in the state of California. I am regularly appointed by the Court of Appeal, Fifth Appellate District, to represent appellants. 2. I handle almost exclusively the mental health cases, which are subject to	

	Commentator	Position	Comment	Advisory Committee Response
			heightened confidentially requirements, in party because they almost always involve confidential medical records. (See, e.g. Welf & Inst. Code § 5328, Civ. Code, § 56 et seq., Conservatorship of Susan T. (1994) 8 Cal. 4th 1005, 1008, fn 1.) 3. For this reason, while I am perfectly computer literate, I have resisted using email communication in these cases. I follow the general rule about e-mail, that if you would not put it on a postcard, you should not put it in an e-mail. (See, e.g. Simon Bennett, "Who's Reading Your Email?", http://www.artiesoft.com/legal_security_email.htm.) A corollary is that the rule for paper documents also makes sense for electronic documents: I would not store confidential client information or work product off-site at an unidentified location not under my control, whether it is a physical warehouse or a Google e-mail server. 4. According to the Electronic Privacy Information Center, Google, for example, routinely practices "content extraction" of e-mails, for the purpose of targeting advertising: in other words, they read the e-mails we regard as private. (http://epic.org/privacy/gmail/faq.html) Yahoo has a similar practice. (Sean Poulter, "Yahoo condemned over plans to snoop on emails on behalf of advertisers", U.K. Daily	

	Commentator	Position	Comment	Advisory Committee Response
			Mail, July 7, 2011, http://www.dailymail.co.uk/sciencetech/article-2012013/Yahoo-condemned-plans-snoop-email-behalf-adverisers.html.) Even institutions we would expected to be secure, such as the FBI, Scotland Yard, local police, and the Vatican, have had their Internet security breached. (http://www.bbc.co.uk/news/world-us-canada-16875921; http://www.reuters.com/article/2012/03/07/us-internet-vatican-idUSTRE82618620120307.) In another example of the ease with which emails can be accessed, hacker gained access to the private Yahoo email account of Sarah Palin when she was a candidate for Vice President of the United States, according to Time Magazine. (http://www.time.com/time/politics/article/0,8599,1842097,00.html; see also http://www.wired.com/threatlevel/2008/09/group-post-e-m/). The point is not whether hackers might target our particular communications but rather that it is possible to do so and thus that this form of communications may not be sufficiently private, especially when used for subject matter that is subject to statutory confidentiality provisions. I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th	

	Commentator	Position	Comment	Advisory Committee Response
			day of April, 2012, at Berkeley, California. Paul Bernstein Attorney at Law SBN 122400	
4.	California Appellate Court Clerks Association By: Charlene Ynson	N/I	We have the following comments on **SPR12-09.** <u>Page 7, line 10</u> – The sentence is awkward: "…number, or if it was provided under rule 2.111(1), e-mail address changes while an action is…" We suggest that the sentence be reworded: "…number, or e-mail address, if it was provided under rule 2.111(1), changes while an action is…" <u>Page 8, line 36</u> – Section (2) is all one sentence and is too long. The "but" in line 36 should be removed, and the sentence should be modified into two sentences. Current sentence: "…the document must be provided on the cover, but the law firm, corporation, or public…" We suggest: "…the document must be provided on the cover. The law firm, corporation, or public…" <u>Page 10, line 20</u> – Same comment as page 8, line 36. Responses to specific questions: • Are there legitimate reasons that concerns about attorney security and privacy are	The committees agree with this suggestion and have modified the proposal to incorporate this change. The committees agree with this suggestion and have modified the proposal to incorporate this change. The committees agree with this suggestion and have modified the proposal to incorporate this change.

	Commentator	Position	Comment	Advisory Committee Response
			heightened when comparing either: o Public access to attorney e-mail addresses and public access to attorney telephone numbers or regular mail addresses; or o Public access to attorney e-mail addresses in appellate proceedings and public access to attorney e-mail addresses in trial court proceedings? Attorneys can obtain free email addresses from various sources, i.e. hotmail, etc., and use the free email address for their electronic records transmissions, thus not allowing public access to their personal email accounts.	The committees appreciate this input.
			• Should the proof of service on page 2 of form MC-040 be deleted in favor of using the appropriate stand-alone proof of service or should the proof of service on page 2 of form MC-040 be updated to encompass other methods of service? Stay on page 2, but be updated to encompass other methods of service. We feel this method better ensures the opposing parties are properly served.	The committees appreciate this input.
			• Would the proposal provide cost savings? If so please quantify. Yes. Court appointed counsel would not need to bring as many augmentation motions before the court. In addition, providing email addresses	The committees appreciate this input.

	Commentator	Position	Comment	Advisory Committee Response
			and transmitting electronically saves paper, printing, postage, and storage costs. • What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system. At the appellate court level, any effect to docket codes, ACCMS modifications, staff training, etc. would be minimal. We believe the rule changes for record preparation will actually assist the trial courts because what is needed is spelled out. • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committees appreciate this input. The committees appreciate this input.
5.	Civil Division Managers Superior Court of Orange County By: Erin Rigby, Staff Analyst	AM	Agree with the proposed changes if updated as described below. Response to the request for specific comments: • Should the proof of service on page 2 of form MC-040 be deleted in favor of using the appropriate stand-alone proof of service or	The comittees appreciate this input.

	Commentator	Position	Comment	Advisory Committee Response
			should the proof of service on page 2 of form MC-040 be updated encompass other methods of service? -It should be updated. This is less document processing for the Court. • There would be minimal impact to the Superior Court. Implementation could begin within 2 months of approval from the Judicial Council.	
6.	Committee on Appellate Courts State Bar of California By:	AM	The Committee on Appellate Courts supports this proposal, subject to the comments below. The Committee recommends that proposed rule 8.816(a)(2) be modified to read as follows: (2) If more than one attorney from a law firm, corporation, or public law office is joining in the document is representing one party, the name and State Bar number of each attorney joining in the document must be provided on the cover, but the law firm, corporation, or public law office representing each party must designate one attorney to receive notices and other communications in from the case court by placing an asterisk before that attorney's name on the cover and the party need, at its option, provide the contact information specified under (1) for only that attorney. There are two reasons for the recommended modifications: (1) As originally written, the proposed rule would apply to any brief joined	The committees agree with these suggestions in concept and have modified the proposal to incorporate changes designed to implement these suggestions.

	Commentator	Position	Comment	Advisory Committee Response
			by multiple attorneys. Sometimes, however, multiple parties join one brief, each represented by separate attorneys. In those situations, the Committee believes that court notice should be provided to one designated attorney per party, because each party is entitled to notice. (2) As originally written, the proposed rule also applies to any "notices and other communications in the case." The Committee recommends that the phrase "in the case" be deleted and replaced with "from the court," to track the stated purpose of the rule change, which is to alleviate the burden on the courts of determining which of multiple attorneys for a party should receive notices. Without this change, the Committee is concerned that the new rule would be misinterpreted to mean that parties are only required to serve the one designated attorney with case materials, when sometimes multiple attorneys represent the same party and all are entitled to service. With respect to items for which specific comments were requested, the Committee comments as follows: (1) The Committee does not see any significant privacy concerns surrounding disclosure of e-mail addresses on the attorney contact information for court filings, and it was noted that practitioners with such concerns could easily set-up a new e-mail address to use specifically for such purposes. (2) The Committee believes that form MC-040 should not be changed and that it is probably a	The committees appreciate this input.

SPR12-09
Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
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	Commentator	Position	Comment	Advisory Committee Response
			good idea to require such notices to be sent by mail anyway.	
7.	Court of Appeal, Fourth District, Division One By: Judith D. McConnell Presiding Justice	A	We agree with the amendment to require that attorneys designated to receive notices in a case and self-represented litigants provide contact information, including e-mail addresses and fax numbers, on their briefs and that they give notice to the court and the other parties to the appeal when their contact information changes. We also support the current version of proposed rule 8.40(c) requiring counsel to include the names and State Bar numbers for all other attorneys from a firm, corporation or public office that are involved in the matter, so that the appellate court can check for conflicts that would otherwise support a justice's recusal arising from the participation of such attorneys in the matter.	The committees appreciate this input.
8.	Lori A. Fields Attorney at Law Los Angeles	AM	As an appellate attorney with 20 years of experience in the juvenile dependency area, with the majority of appeals received through Court appointment in the 2nd, 3rd, 4th & 5th appellate districts, I am strongly opposed to being required to disclose an email address on the covers of briefs and documents submitted to the court. My email address is used for my practice in general and I carefully limit the amount of email communication I have with clients on court-appointed cases (or use a different email that would not compromise my primary business email if it was hacked,	See response to the comments of the Appellate Courts Committee of the San Diego County Bar Association above.

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	Commentator	Position	Comment	Advisory Committee Response
			spammed, or overloaded with multiple communications from a mentally-ill client etc). I take pains to cautiously guard my identification and personal information from the client base in court-appointed appeals, inasmuch as a percentage of these clients are mentally unstable, gang-affiliated, incarcerated, and often angry and aggressive. I see no added benefit to requiring the disclosure of an email address on briefs & documents inasmuch as the Courts of Appeal have court-appointed counsels' emails in their system, and the lawyers in this practice area are a relatively close-knit group and can easily obtain a colleague's email address either at calbar.org or by making a simple phone call to counsel. I feel I should have some control over who is using my email address, and the proposed requirement removes this control over my personal information which is integral to my business operations. Apart from this requirement, I am in agreement with the remainder of the proposal.	
9.	First District Appellate Project, Appellate Defenders, Inc,, and California Appellate Project – San Francisco By: Mat Zwerling Executive Director, First District Appellate Project	AM	We fully support a requirement that attorneys provide their email addresses to the court and opposing counsel. We recommend, however, that the rule give attorneys the option of providing their email addresses to the court privately, rather than on the cover of filed documents. Below, we address the committee's specific questions about the benefits and burdens of mandating the inclusion of attorney email addresses on all pleadings.	See response to the comments of the Appellate Courts Committee of the San Diego County Bar Association above.

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Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
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	Commentator	Position	Comment	Advisory Committee Response
			What would be the benefits to courts and to attorneys of having e-mail addresses for attorneys on the covers of documents filed in appellate proceedings? The benefits to the courts and attorneys of having email addresses readily available is significant. Email communication is now central to legal communication and is becoming more so as the appellate courts are starting to allow, and sometimes even require, electronic filings and submissions. Having the address on the cover of every pleading would ease an attorney's search for opposing counsel's email. However, nearly the same ease of access is available if opposing counsel has provided the email address privately, such as in a letter to the court, copied to counsel. The benefit to courts of having the email address on all pleadings is even less apparent. We understand that court staff rely on non-public attorney databases for attorney contact information, rather than pleadings. If an attorney provides the email address privately, rather than on pleadings, court staff will still have ready access to that email address once it is entered into the court's attorney database. *What would be the burdens on courts if they were required to give attorneys the option of providing their e-mail addresses to the courts and other counsel privately, rather than on the cover of filed documents?*	

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Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
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	Commentator	Position	Comment	Advisory Committee Response
			The clerk's offices' practice is to enter the email address and other contact information into an attorney database. The burden of entering that data is the same, whether the clerks receive the email address from a pleading cover or from a letter. In addition, once the address is in the database, accessing the address requires the same process and effort, without regard to how the attorney provided the address to the court. *What would be the burdens on attorneys if the e-mail addresses they provided to courts in appellate proceedings were on the cover of filed documents?, [and]* *Are there legitimate reasons that concerns about attorney security and privacy are heightened when comparing either" Public access to attorney e-mail addresses and public access to attorney telephone numbers or regular mail addresses; or* *" Public access to attorney e-mail addresses in appellate proceedings and public access to attorney e-mail addresses in trial court proceedings?* Multiple email addresses are easy to come by, and attorneys concerned about privacy can have email addresses that are dedicated to their legal work and can even have an email address that is for court filings only. However, use of an email address dedicated to court filings does not provide total protection against security reaches. A public email address is accessible to a great number of people and, thus, is more susceptible	

	Commentator	Position	Comment	Advisory Committee Response
			to attempted hacking. The likelihood of such an attempt and its likelihood of success would best be addressed by information technology specialists. We suspect that strong security systems, including strong passwords, could reduce the risk of security breaches, but we also recognize that many appellate practitioners, particularly those handling court-appointed matters, are solo practitioners who may not have the technological sophistication, training, or support to know how to create strong passwords and to avoid attempted security breaches, such as phishing attacks. Another potential burden from making email addresses more public comes from a possible deluge of communications from clients, their families, or their friends and acquaintances. Although most clients will not abuse the email access, some might, and, compared to regular mail and phone calls, it is much easier for a person to generate and transmit frequent missives by email. Some safeguards are available, such as blocking the sender's email or creating a rule or filter that sends all email from that sender directly to a trash, junk or spam folder. But these efforts do require some technological sophistication on the part of the attorney, and are beyond what can be expected of solo practitioners working without I.T. support. In sum, a flexible rule providing the attorney	

	Commentator	Position	Comment	Advisory Committee Response
			with a choice of providing the email address either on the document cover or privately by letter maintains the convenience to the court and opposing counsel of ready access to the attorney's email address while allowing the attorney to avoid potential security breaches. Finally, we have one last recommendation about email addresses. Should attorneys be allowed to provide email addresses privately, the rule should allow some flexibility in how that email is communicated to the court and opposing counsel. In particularly, the appellate projects can provide email addresses en masse for attorneys in the Court Appointed Counsel program. Accordingly, we recommend that a rule allowing attorneys to provide their email addresses privately to the court expressly authorize it to be provided either in a direct communication with the Court of Appeal, or, for attorneys in the Court Appointed Counsel program, through a communication to the Court of Appeal from the relevant appellate project. *"If Available" Language.* The proposal states that email addresses must be included "if available," but other contact information, such as fax numbers, has no "if available" limitation. Many practicing appellate attorneys do not use fax machines, relying instead on a scanner and email account to transmit images of hard copies. We expect that fax machines will be used less and less in coming years. For this reason, the reference to	Based on this and other comments, the committees have modified the proposal to specify that fax numbers be provided if available.

SPR12-09
Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
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	Commentator	Position	Comment	Advisory Committee Response
			fax numbers should also include the "if available" qualifier. *Multiple Attorneys from Same Office* We agree with the proposal to add a requirement that when more than one attorney is joining the document, the document include the state bar numbers for all the attorneys, that the attorney to receive communications about the case be designated with an asterisk, and that contact information be provided only for that one attorney.	The committees appreciate this input.
10.	Los Angeles County Counsel By: James M. Owens Assistant County Counsel	A	No additional comments	The committees appreciate this input.
11.	James Moore Attorney at Law- San Francisco	N	I would be very uneasy about providing my e-mail address in a document that becomes part of the public record. My personal concern would be simple privacy. Attorneys in criminal practice or involved in highly controversial matters may have greater concern. Although rule 2.111 states e-mail addresses should be provided "if available," I have never once seen a document submitted in the trial court that actually did include an e-mail address. I suspect if attorneys considered this a mandatory requirement, they would complain more frequently.	See response to the comments of the Appellate Courts Committee of the San Diego County Bar Association above.
12.	Orange County Bar Association By: Dimetria Jackson, President	A	No additional comments	The committees appreciate this input.

SPR12-09
Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Advisory Committee Response
13.	Orange County Public Defender By: Mark S. Brown Assistant Public Defender	N	As explained in greater detail below, the disclosure of individual email addresses creates a significant security risk to the IT infrastructure of the Orange County Public Defender's office. Therefore, our office opposes the requirement that attorneys disclose their email addresses. Today's cyber environment includes many forms of malware that specifically leverage email addresses to disrupt and avoid traditional anti-malware systems. Despite targeted multi-layer security systems, processes, training, and protections, our office equipment is unable to detect or enforce against social engineering, "zero-day" viruses, botnets, social engineering exploits and Advanced Persistent Threats (APTs). For example, a member of the public with malicious intent could launch a script to automate the mass production of unsolicited emails. The mere launching of these emails on such a scale, with nothing more, can lead to "denial of service" attacks by overloading servers or, if used as part of a "spear phishing" attack, could result in an unauthorized breach of Public Defender systems. Spam can also lead to identity theft and a decline in employee productivity, while viruses and malware can harm computers, wipe disks, and destroy systems. Furthermore, due to the close, multifaceted working interactions between our office and the County of Orange as a whole, the inevitable risk to our office poses a significant security risk to the IT infrastructure	See response to the comments of the Appellate Courts Committee of the San Diego County Bar Association above.

	Commentator	Position	Comment	Advisory Committee Response
			of the entire County. The significant security risk posed by the disclosure of email addresses was recently recognized by the Fourth District Court of Appeal. In April 20 II, a suit for declaratory and injunctive relief was filed under the California Public Records Act against our office. *(Scott Nelson v. Deborah A. Kwast* in her capacity as Orange County Public Defender, Case No. 30-20 11-00467692.) Among other things, the suit sought the disclosure of the email addresses of our employees. On February 24, 2012, the trial court ordered our office to disclose the email addresses for all of our employees. On March 15, 20I2, our office filed a petition for an extraordinary writ with the Fourth District Court of Appeal. *(Frank Ospino* in his capacity as Orange County Public Defender v. *The Superior Court of Orange County,* Case No. 0046645.) In the writ petition, we pointed out the significant security risk posed by the disclosure of email addresses. On April 13, 20 I 2, the Court of Appeal issued an alternative writ of mandate directing the trial court to vacate its order insofar as it directed our office to disclose the email addresses of our employees (a copy of the Court of Appeal's docket is attached). On April 24, 2012, the trial court chose to comply with the writ of mandate and vacated its order to disclose the email addresses of our employees (a copy of the trial court's minute order is attached).	

	Commentator	Position	Comment	Advisory Committee Response
			In addition, the mandatory disclosure of email accounts will provide no added benefit to opposing counsel, the trial courts or the Court of Appeal. This is true because the deputy district attorneys and the trial courts already have access to our email accounts through the County's intranet (which has the added benefit of avoiding the security concerns discussed above). In addition, our office created a single, unique email account for the Court of Appeal to send emails to our office. For all of the reasons stated above, our office opposes the requirement that our attorneys disclose their e-mail addresses.	
14.	David Stanley Attorney at Law Ashland, OR	AM	I urge that required contact information not include FAX numbers. I have worked full-time handling court-appointed criminal appeals for many years. I do not have a FAX machine and I do not practice in districts which use FAX-filing. With the availability of e-mail file attachments, FAX technology is fast becoming obsolete. I think requiring people to bear the expense of a FAX machine and a FAX line when they neither need nor use a FAX is inappropriate. Thank you for your consideration of my views.	Based on this and other comments, the committees have modified the proposal to specify that fax numbers be provided if available.
15.	Superior Court of Orange County By: Linda Daeley	AM	The following information addresses the Request for Specific Comments contained in the	

	Commentator	Position	Comment	Advisory Committee Response
	Family Law Unit Manager		invitation to comment:	
			The proposal to clarify that if multiple attorneys from the same law firm, corporation, or public law office are joining in a document filed in the Court of Appeal must designate only one attorney to receive notices and other communication from the court appropriately addresses the state purpose. However, e-mail as a means of communication is not a preferred method of all courts and facsimile is nearly obsolete to the general public. It would be a burden to the trial court if attorneys are required to provide e-mail addresses to the court privately, i.e. additional form to process in the clerk's office and in data entry/records department.	No change is being recommended to the trial court rules with respect to how e-mail address are provided.
			Rule 8.40(c)(1) and 8.816(a)(1) state 'Except as provided in (2), the cover or first page…MUST include name, mailing address. telephone number, fax number and e-mail address (if available) is unclear and/or inconsistent: 1) Please clarify if fax number and e-mail address both fall under the "if available" category; or only e-mail address is "if available" and a fax number is a MUST. If the intent is that a fax number is required this will cause great problems among the self-represented parties. 2) Draft form MC-040 – is inconsistent with the rules. The fax no. and e-mail address are "optional" in filing party information area on top of the form and "if available in section 2(f)	Based on this and other comments, the committees have modified the proposal to specify that fax numbers be provided if available. The committees appreciate this input.

SPR12-09
Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Advisory Committee Response
			and 2(g). The proof of service page of form MC-040 should not be deleted; using a separate proof of service required additional processing in the clerk's office and the data entry-records department. The proposed change provides no cost saving and potentially a cost burden.	
16.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer	A	The proof of service on the back of the MC-040 form should be updated to include other methods of service.	The committees appreciate this input.