JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

Title
Appellate Procedure: Record in Juvenile Appeals

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.661, 8.409, 8.410, and 8.416

Recommended by
Appellate Advisory Committee
Justice Raymond J. Ikola, Committee Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2015

Date of Report
September 18, 2014

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Executive Summary

The Appellate Advisory Committee recommends that the rules relating to the record on appeal in juvenile dependency cases be amended to (1) provide that a copy of the record will only be provided to a child who is not the appellant if either the child is represented by counsel or a recommendation for appointment of counsel for the child is pending; (2) require that a copy of the record be provided to an Indian tribe that has intervened in either a case concerning termination of parental rights or other dependency proceedings in certain counties; and (3) make other nonsubstantive changes. These changes are primarily intended to reduce costs by eliminating the preparation of unnecessary copies of the record in juvenile cases.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

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1. Amend rule 5.661 to provide that if a child's trial counsel or guardian ad litem in a juvenile dependency case recommends appointment of appellate counsel for the child, he or she must serve a copy of that recommendation on the trial court.

2. Amend rules 8.409 and 8.416 to:

    - Independently specify the number of copies of the record that must be prepared in juvenile dependency appeals, rather than using a cross-reference to another rule provision for this purpose;

    - Provide that a copy of the record must be prepared for a child who is not the appellant only if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

    - Make other nonsubstantive changes.

3. Amend rule 8.410 to update a cross-reference; and

4. Further amend rule 8.416 to:

    - Require that a copy of the record be provided to an Indian tribe that has intervened in a case subject to this rule; and

    - Eliminate some cross-references to other rules by replacing them with the relevant content of the cross-referenced provisions.

The text of the amended rules is attached at pages 8–12.

Previous Council Action

The Judicial Council adopted a general rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. That rule did not specifically address sending the record to parties, but generally provided that the rules regarding felony appeals applied to appeals in juvenile proceedings. Effective January 1, 1994, the Judicial Council adopted a special rule, rule 39.1A, regarding appeals from orders or judgments terminating parental rights or freeing children from parental custody and control. That rule specifically required the clerk to transmit copies of the appellate record in these appeals "to the attorneys for appellant, respondent, the child, and the appointed counsel administrator for the district appellate project."

On January 1, 2005, all of the rules relating to juvenile appeals were repealed and replaced with new rules. Rule 37.2 adopted at that time generally addressed preparing and sending the record in juvenile appeals and specifically required that a copy of the appellate record be sent "to the

appellate counsel for the appellant, the respondent, and the minor." This rule also included a new provision, which the report indicated was reflective of practice at that time, requiring that if appellate counsel had not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project. This rule was subsequently amended and renumbered several times. Effective January 1, 2013, this rule, now numbered 8.409, was amended to require that a copy of the record be prepared for and sent to the child's Indian tribe if the tribe has intervened in the case.

Rationale for Recommendation

Copy of record for child who is not appealing the decision

Rule 8.409 generally addresses the preparation of the record on appeal in juvenile dependency cases. Rule 8.416 addresses appeals in juvenile dependency cases involving the termination of parental rights and other dependency appeals in certain counties. Subdivisions (b)–(d) of rule 8.416 address preparation of the record on appeal in these cases. Currently, these rules require that, in all cases, a copy of the record be prepared for a child, even when the child is not appealing the trial court decision or responding to an appeal filed by another party.[1] In many of these cases, the copy of the record for the child, which is prepared at public expense, is not used.

In juvenile dependency cases, it is often a parent or guardian, rather than the child, who appeals the trial court's decision. In many such cases, the child's interests are aligned with either the appellant or respondent so the child does not need to file any separate appeal or brief in the case; the child's interests are adequately articulated and protected by the filings of the party with which the child's interests are aligned. To protect against the possibility of the child's interests not being adequately protected in such an appeal, under rule 5.661, in any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal, the child's trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel. That appointed counsel can then determine whether to file a brief or take other action to protect the child's interests.

When a child appeals the trial court decision or when separate appellate counsel is appointed for the child, the child needs a copy of the record in order to participate in the appellate process. The committee's view, however, is that a child who does not appeal the decision and whose rights can be adequately protected without appointment of separate counsel derives no benefit from receiving a copy of the record. It is the committee's understanding that, in these circumstances, the child's copy of the record is simply being discarded.

[1] These rules require that copies of the record be prepared for and sent to appellate counsel for the child (see 8.409(c)(1) and (e)(1)(B) and 8.416(c)(1) and (2)), but that if counsel has not yet been retained or appointed, that the child's copy of the record be sent to the district appellate project (see 8.409(e)(2) and 8.416(c)(3)).

To save public resources, this proposal is designed to eliminate the preparation of copies of the record for the child in those cases in which such a copy will not be used. This proposal would amend both rule 8.409 and rule 8.416 to replace the current requirement that a copy of the record on appeal be prepared for a child who is not the appellant in all cases with a requirement that a copy of the record be prepared for a child who is not the appellant only if the child is represented by counsel on appeal or a recommendation has been made to the Court of Appeal for appointment of counsel for the child and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed. In both rules, the current requirement that a copy of the record be prepared for the appellant would be maintained, so any child that appealed the trial court decision would also still receive a copy of the record. Because the records in these proceedings are prepared very quickly, the proposal would require preparation of a copy of the record not only where the child already has appellate counsel, but also where the appointment of counsel has been recommended. This should minimize the cases in which an additional copy of the record must be prepared later during the appeal, which might delay the appellate proceedings and create an additional administrative burden for the trial court. These proposed amendments are intended to ensure that a copy of the record is prepared for a child whenever such a record is needed, but to eliminate the preparation of a copy of the record when it will not be needed.

Copy of record for Indian tribe that has intervened in case

As noted above, effective January 1, 2013, rule 8.409, the general rule on records on appeal in juvenile cases, was amended to require that a copy of the record be prepared for and sent to the child's Indian tribe if the tribe has intervened in the case.[2] Rule 8.416, which addresses appeals in juvenile dependency cases involving the termination of parental rights and other dependency appeals in certain counties, was not similarly amended at that time.

The committee recommends amending rule 8.416 to require that a copy of the record be prepared for and sent to an Indian tribe that has intervened in the proceeding. This amendment would ensure that a tribe that has become party to a case subject to rule 8.416 through intervention receives a copy of the record, as do other parties, and bring this rule into conformity with the general rule governing preparation of the record on appeal in juvenile cases. It is the advisory committee's understanding that very few tribes intervene in these cases and therefore providing transcripts to these tribes will not impose substantial new costs on the courts. It is also the committee's understanding that currently both courts and tribes incur additional costs, beyond the cost of providing the appellate record, if tribes that intervene and wish to participate in the appellate proceedings have to prepare, and the courts have to consider, requests that they receive the appellate record. This amendment will eliminate these additional costs for courts and tribes.

[2] Under state statutes, an Indian child's tribe has the right to intervene at any point in a custody proceeding involving that Indian child (Welf. & Inst. Code, § 224.4). This right is part of state and federal laws designed to protect the essential tribal relations and best interests of Indian children (see Welf. & Inst. Code, § 224 et seq., and the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)).

Nonsubstantive amendments

This proposal would also make several nonsubstantive changes to rules 8.409, 8.410, and 8.416 designed to make the rules easier to follow and understand:

- Adding language that independently specifies the number of copies of the record that must be prepared, rather than using a cross-reference to another subdivision or another rule for this purpose;
- Eliminating other cross-references by replacing them with the relevant content of the cross-referenced provision;
- Replacing references to the "minor" in rule 8.409 with references to the "child." This will bring rule 8.409 into conformity with the language used in the remainder of the rules relating to appellate proceedings in juvenile cases; and
- Updating cross-references to reflect the other proposed amendments to rules 8.409 and 8.416.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Ten individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, three agreed with the proposal if modified, and one did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 13–28.

Recommendations for appointment of counsel for the child

As circulated for public comment, the proposed amendments to rules 8.409 and 8.416 would have required preparation of the record on appeal for a child who is not the appellant only when a recommendation for appointment of counsel for the child under rule 5.661 was pending. Two of the district appellate projects that assist the Court of Appeal with appointment of appellate counsel submitted a joint comment expressing concern that the wording of these proposed amendments might be read as implying that only the child's trial counsel or guardian ad litem could make a recommendation to the Court of Appeal for appointment of counsel. These commentators expressed the view that Court of Appeal's power to entertain appointment recommendations is not limited to recommendations under rule 5.661.

The committee agreed with the commentators that the Court of Appeal has the power under rule 8.403 to appoint appellate counsel for the child not only on the recommendation of child's trial counsel or guardian ad litem under rule 5.661, but in other circumstances as well, including where counsel may be recommended by the district appellate project. To eliminate the potential that the proposed amendment might be read as limiting the Court of Appeal's appointment authority, the committee revised the proposal to replace the reference to recommendations under rule 5.661 for appointment of counsel with a reference to recommendations for appointment of counsel under rule 8.403.

Notice of recommendation

Two commentators expressed concerns about how the superior court would know when there was a pending recommendation for appointment of counsel that would trigger the need to prepare an additional copy of the record.

The proposal includes an amendment to rule 5.661 requiring a child's trial counsel or guardian at litem who makes a recommendation for the appointment of counsel for the child under that rule to send a copy of that recommendation to the trial court. If this proposed amendment is approved, the trial court will know if any recommnedation for appointment of counsel has been made under rule 5.661. The proposal does not include any provision requiring notice of any recommendation for appointment of counsel made by someone other than the child's trial counsel or guardian at litem. However, it is also the committee's understanding that it is current Court of Appeal practice to send the trial court a copy of any order appointing counsel, so the trial court knows when appointment of appellate counsel for the child has been ordered, regardless of the source of the recommendtion to make that appoinment. The committee view is that the proposed rule and this current practice would ensure notice to the trial court in almost all circumstances and that, if there are unusual circumstances that are not covered, it is preferable for the Court of Appeal and trial courts to determine how best to ensure timely preparation of a record in those circumstances, rather than trying to address these rare circumstances in the rules of court.

Alternatives

In addition to the alternatives considered as a result of the public comments, the committee considered a variety of alternative language in developing the proposed amendments to rules 8.409 and 8.416. Among other things, the committee considered recommending that a child who is not the appellant only receive a copy of the record if the child is represented by appellate counsel. To minimize the number of cases in which a copy of the record has to be prepared later in the appeals process when appellate counsel is appointed, however, the committee ultimately decided to recommend that a copy of the record be prepared not only when appellate counsel has been appointed for the child, but also if a recommendation for such appointment is pending.

The committee also considered not proposing these rule amendments. However, the committee concluded that eliminating the requirement to prepare copies of the record on appeal that are not used would save superior court resources and that clarifying that intervening Indian tribes must receive a copy of the record would also reduce costs associated with the tribe having to make, and the court having to consider, motions to obtain a copy of the record. Given these potential costs savings, the committee concluded that it should propose these rule amendments at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal should reduce costs for superior courts associated with preparing unnecessary records for children who are not appellants in juvenile appeals. In those courts that do not currently routinely provide copies of these records to Indian tribes that have intervened in juvenile cases under rule 8.416, there are likely to be some additional costs associated with providing copies of these records in a small number of cases, but this proposed amendment should also reduce costs associated with the tribe having to make, and the court having to consider, motions to obtain a copy of the record.

Attachments and Links

1. Cal. Rules of Court, rules 5.661, 8.409, 8.410, and 8.416, at pages 8–12
2. Chart of comments, at pages 13–28

Rules 5.661, 8.409, 8.410, and 8.416 of the California Rules of Court are amended, effective January 1, 2015, to read:

Rule 5.661. Representation of the child on appeal

(a)–(d) * * * .

(e) Service of recommendation

The child's trial counsel or guardian ad litem must serve a copy of the recommendation filed in the Court of Appeal on the district appellate project and the trial court.

(f)–(g) * * *

Rule 8.409. Preparing and sending the record

(a) Application

~~Except as provided in 8.416(c)(1),~~ This rule ~~does not apply to~~ applies to appeals in juvenile cases except cases ~~under~~ governed by rule 8.416.

(b) Form of record

The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and~~, except in cases governed by rule 8.416(b),~~ with rule 8.144.

(c) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

(1) The clerk must prepare and certify as correct an original of the clerk's transcript and ~~sufficient copies to comply with (d)~~ one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(2) * * *

(d) * * *

(e) Sending the record

(1) When the transcripts are certified as correct, the ~~superior~~ court clerk must immediately send:

(A) The original transcripts to the reviewing court, noting the sending date on each original; and

(B) One copy of each transcript to the appellate counsel for the following, if they have appellate counsel:

(i) The appellant~~,~~;

(ii) The respondent~~,~~;

(iii) The ~~minor, and the minor's~~ child's Indian tribe if the tribe has intervened~~.~~; and

(iv) The child.

(2) If appellate counsel has not yet been retained or appointed for the appellant~~,~~ or the respondent, or ~~the minor~~ if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs ~~*sending*~~ the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties. ~~Rule 8.408(b) governs *preparing and certifying* the record in those appeals. (See rule 8.416(c)(1) ["The record must be prepared and certified as provided in rule 8.409(b)"].)~~

Subdivision (b). Examples of confidential records include records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (c)(2). * * *

Subdivision (e). Subsection (1)(B) clarifies that when a ~~minor's~~ child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912 (a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409~~(d)~~(e).

(b) Augmentation or correction by the reviewing court

(1) On motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409~~(d)~~(e).

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) Application

(1) This rule governs:

(A) Appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code section 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq.; and

(B) Appeals from judgments or appealable orders in all juvenile dependency cases of:

(i) The Superior Courts of Orange, Imperial, and San Diego Counties; and

(ii) Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have

agreed and have adopted local rules providing that this rule will govern appeals from that superior court.

(2) In all respects not provided for in this rule, rules 8.403–8.412 apply.

(b) ~~Cover~~ Form of record

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.467, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144.

~~(1)~~(2) In appeals under (a)(1)(A), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.]," whichever is appropriate.

~~(2)~~(3) In appeals under (a)(1)(B), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

(c) Preparing, certifying, and sending the record

(1) ~~The record must be prepared and certified as provided in rule 8.409(b).~~ Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) One copy of each transcript to the district appellate project and to the ~~attorneys of record~~ appellate counsel for ~~the appellant, the respondent, and the child, and to the district appellate project,~~ the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail~~.~~:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(d)–(h) * * *

SPR14-04

Appellate Procedure: Record in Juvenile Appeals
Amend Cal. Rules of Court, rules 5.661, 8.409, 8.410 and 8.416
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Appellate Defenders, Inc. and the First District Appellate Project. By: Jonathan Soglin Executive Director First District Appellate Project	AM	These comments on the proposed rule change regarding the record on appeal in juvenile appeals are submitted on behalf of Appellate Defenders, Inc. and the First District Appellate Project. Introduction We strongly support the proposal, as we share the goal of eliminating the preparation of a copy of the record when it will not be needed. We do suggest a slight modification. The proposal provides that the clerk must prepare and send a copy of the record for a non-appealing minor if the minor either has appellate counsel or if a recommendation for appointment of counsel for the child has been made under rule 5.661(c). (Proposed Rule 8.409(c)(1) and (e)(2).) As drafted, the amendment could give the incorrect impression that recommendations for appointment of counsel for the child can only be made under rule 5.661(c), which provides for recommendations made by minor's trial counsel. We recommend that the amendment not limit its application to recommendations for appointment under 5.661(c). Discussion Subdivision (b)(2) of rule 8.403 states that "[t]he reviewing court may appoint counsel to	The committee notes the commentator's support for the proposal. The committee agrees with the commentator that the Court of Appeal's authority to appoint counsel for a child who is not appealing the trial court decision is not limited to circumstances in which a recommendation is made by trial counsel under rule 5.661; the court has authority to consider recommendations from others as well. To reflect this, the committee has revised its proposed amendments to the relevant portions of rules 8.409 and 8.416 to refer to recommendations to the Court of Appeal for appointment of counsel for the child under rule 8.403.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			represent an indigent child, parent, or guardian." The rule puts no limit on that authority and does not require that the appointment be made only upon a recommendation by the minor's trial counsel. Subdivision (b)(3) of rule 8.403 then states that "Rule 5.661 governs the responsibilities of trial counsel in Welfare and Institutions Code section 300 proceedings with regard to appellate representation of the child." (Emphasis added.) The Judicial Council understood rule 5.66 —and, implicitly, it's authorizing statute (Welf. & Inst. Code section 395)—to place obligations on trial counsel, nothing more. Rule 5.661, thus, does not define the sole circumstances under which the Court of Appeal can exercise its authority (inherent and under rule 8.403(b)(2)) to appoint counsel on appeal for a non-appealing minor. The history of Rule 5.661 shows that it was designed to guide trial counsel, without limiting the authority of the Court of Appeal to appoint counsel in the absence of recommendation from trial counsel. In December 2006, the Family and Juvenile Law Advisory Committee (the "committee") circulated a proposed rule change for comment in December 2006. The rule change was initially targeted not at the juvenile rules but at the appellate rules. Proposed new appellate rule 8.402 would have provided, in subdivision (a), that appointment be mandatory when the minor	

	Commentator	Position	Comment	Committee Response
			was an appellant or "[i]f the child is not an appellant and the Court of Appeal determines upon its own motion or pursuant to the recommendation by the child's trial counsel or guardian ad litem . . . that appointment of counsel would benefit the child …." (Invitations to Comment—Winter 2007 Proposals for Changes to Cal. Rules of Court and Jud. Council Forms to Became Eff. July 1, 2007 (Dec. 18, 2006) at p. 4.) The 2006 proposal also described, in subdivision (b), circumstances under which trial counsel would be required to make a recommendation for appointment of counsel. (Ibid.) Other subdivisions of proposed rule 8.402 governed the timing, the criteria, and the form of the recommendation. (Ibid.) After the comment period, the committee recommended to the Judicial Council that the rule be moved to the juvenile rules, because it guided trial counsel. (Rept. to Jud. Coun. from Family and Juv. Law Advisory Comm., Juv. Law: Proc. Re Appointments of Appellate Attorneys for Children in Juv. Dependency Appeals, Apr. 11, 2007 at p. 6.) The Judicial Council agreed and placed the rule in Title 5. During the comment cycle that preceded the committee's decision to move the new provision, Gary Seiser, Senior Deputy County Counsel in San Diego and co-author of Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2013) "recommend[ed] adding a provision stating court of appeal may appoint if	

	Commentator	Position	Comment	Committee Response
			the court finds the child would benefit or such appointment is otherwise in the child's best interest." To this, the committee responded, "[g]iven the move of the rule to section five, language directed to the court of appeal is no longer necessary." (Id. at 28.) The committee further reported in the body of its report to the Judicial Council that, "One commentator recommended amending this subdivision to reflect that the recommendation can also come from any party or amicus curiae." (Report at p. 12.) "The committee considered adding 'any party' or 'the child' to be consistent with existing law. Because this rule is directed at child's trial counsel and CAPTA GAL, the committee did not believe it was necessary." (Ibid.; see also Report at p. 31) Indeed, the comment and response chart portion of the report to the Judicial Council notes that several commenters recommended modifications to reflect that the recommendation could come from someone other than minor's trial counsel. To each of these comments, the committee responded, "The rule is intended only to implement AB 2480 by directing trial counsel or a child's CAPTA GAL." (Report at pp. 29-31, 33, 37, 40.) The history of rule 5.661 shows the Judicial Council intended it to guide trial counsel, without precluding a recommendation from others. Indeed, a recent Court of Appeal decision acknowledged that not all appointments of appellate counsel for non-appealing minors are made upon a rule 5.661	

	Commentator	Position	Comment	Committee Response
			recommendation. (In re Felicity S. (2014) 225 Cal.App.4th 1389, 1402-1403.) Recommendation Accordingly, we respectfully suggest that the amendment not limit its application to recommendations for appointment under 5.661(c). This could be done with two changes. In 8.403(c)(1), the phrase "or appointment of counsel for the child has been recommended under rule 5.661(c)" could be replaced with "or appointment of counsel for the child has been recommended by trial counsel under rule 5.661(c) or by another interested individual or entity under rule 8.403(b)(2)." (Suggested additions to proposal in bold.) In 8.403(e)(2), the phrase "or if a recommendation for appointment of counsel for the child has been made under rule 5.661(c)" could be replaced with "or if a recommendation for appointment of counsel for the child has been made by trial counsel under rule 5.661(c) or by another interested individual or entity under rule 8.403(b)(2)." (Suggested additions to proposal in bold.)	
2.	Court of Appeal, Second Appellate District Thomas Kallay Managing Attorney	A	1. We support this proposal. 2. One of the positive effects of this procedure would be to eliminate the preparation of the record for a child who will not participate in the appeal.	The committee notes the commentator's support for the proposal; no response required.

SPR14-04

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	Commentator	Position	Comment	Committee Response
3.	Family Law Section State Bar of California Saul Bercovitch, Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
4.	Los Angeles County Counsel Dawyn Harrison Assistant County Counsel	A	No additional comments	The committee notes the commentator's support for the proposal; no response required.
5.	Superior Court of Orange County Paul Aberga Administrative Analyst	AM	The proposal states that courts are to provide copies of transcripts when there is a recommendation for a child to be represented by counsel. • How will Trial Courts know that an appellate attorney is pending appointment? o We suggest clarifying the rule to show how trial courts will be notified of a pending appellate appointment for a child.	The proposal includes an amendment to rule 5.661 requiring trial counsel or guardians ad litem who make a recommendation for the appointment of appellate counsel for the child under that rule to send a copy of that recommendation to the trial court. Thus the court will receive notice of all these recommendations. It is rare for the Court of Appeal to recive a recommendation for appointment of counsel for a child from anyone other than trial counsel or the child's guardian ad litem. In addition, it is the committee's understanding that the Court of Appeal acts quickly on all recommendations for the appointment of counsel for children in these proceedings and that it is current Court of Appeal practice to send the trial court a copy of any order appointing appellate counsel. Thus the trial court will know when appointment of appellate counsel for the child has been ordered, regardless of the source of the recommendtion. The committee's view is that if there are unusual circumstances not covered by the proposed rule or current practice, it is preferable for the Court of Appeal and trial courts to determine how best to ensure timely preparation of a record in those circumstances,

	Commentator	Position	Comment	Committee Response
				rather than trying to address these rare circumstances in the rules.
			While it is understood that copies of appellate records will only be provided to children who have representation, we are concerned about the inconsistency of treatment for children without representation. We suggest adding language to the rule that discusses why unrepresented children will not have a transcript copy requirement in appellate matters.	The committee will make clear in its report to the Judicial Council that, under this proposal, the child will receive a copy of the record in all cases in which the child needs such a copy. This proposal does not alter the rule that a copy of the record on appeal is prepared and sent to the appellant. Thus the child will still receive a copy of the record if the child is appealing the trial court's decision. In addition, under this proposal, a copy of the record will also be prepared for the child even if the child is not appealing the decision if, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal. In these circumstances, the child's trial counsel or guardian ad litem is obligated under rule 5.661 to make a recommendation for appointment of appellate counsel for the child. This proposal, in turn, would require preparation of a record for the child where such a recommendation is pending or counsel has been appointed. The committee's view is that a child who does not appeal the decision and whose rights can be protected without appointment of separate counsel would derive no benefit from the preparation of a copy of the record. It is only in these circumstances, therefore, that, under this proposal, no separate copy of the record would be prepared for the child.

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	Commentator	Position	Comment	Committee Response
6.	Orange County Bar Association	A	No additional comments	The committee notes the commentator's support for the proposal; no response required.
7.	Superior Court of Riverside County	NI	No specific comment	No response required.
8.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	Our court recommends the following changes: **Rule 5.661. Representation of the child on appeal** **(e) Service of recommendation** ~~C~~The child's trial counsel or guardian ad litem must serve a copy of the recommendation filed in the Court of Appeal on the district appellate project and the trial court. **Rule 8.409. Preparing and sending the record** **(a) Application** ~~Except as provided in 8.416(c)(1),~~ This rule applies to appeals in juvenile cases except ~~does not apply to~~ cases ~~under~~ governed by rule 8.416. See, e.g., rule 8.412(c). **(b) Form of record** The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and~~, except in cases governed by rule 8.416(b),~~ with rule 8.144.	The committee has revised the proposal to include this suggested change. The committee has revised the proposal to include this suggested change. The committee has revised the proposal to include this suggested change.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			Advisory Committee Comment **Subdivision (b).** Examples of confidential records include records closed to inspection by court order under *People* v. *Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant. **Subdivision (e)**. Subsection (1)(B) clarifies that when a ~~minor's~~ child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912 (a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record. **Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule** **(b) ~~Cover~~ Form of record** (1) The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144. **(c) Preparing, certifying, and sending the**	The committee has revised the proposal to include this suggested change. The committee has revised the proposal to include this suggested change. The committee has revised the proposal to include this suggested change.

	Commentator	Position	Comment	Committee Response
			record (3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation for appointment of counsel for the child under rule 5.661(c) is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed ~~to the district appellate project~~, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe. ---------- ----------	The committee has revised the proposal to include this suggested change.
			Further revision is requested for CRC rules **8.450(*i*)** and **8454(*i*)**. The proposed revisions below are the result of a recent discussion with AOC CFCC attorney Marymichael Miatovich about the difference in clerk's duties as set forth in rules 8.416(c)(2)(B) and 8.450(*i*)(2). That discussion resulted from inquiries by our court's appeals clerk when sending the record for writ proceedings under the following circumstances: 1. The unrepresented party was not related to the child who was the subject of the writ petition and there were factual circumstances stated in the record of a particularly sensitive	The committee appreciates this suggestion. However, it is beyond the scope of the current proposal. The committee, in conjunction with the Family and Juvenile Law Advisory Committee, will consider this suggestion during a later rules cycle.

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			nature (i.e., regarding allegations of sexual abuse). 2. The unrepresented party had never been actively involved in the case and had never shown any interest in participating in the proceedings. The purpose of the proposed revisions below is consistent with one of the reasons stated for SPR 14-04, i.e., "to eliminate the preparation of a copy of the record when it will not be needed." **Rule 8.450** **(i) Sending the record** When the transcripts are certified as correct, the superior court clerk must immediately send: (1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, ~~and~~ (2) One copy of each transcript to each counsel of record ~~and any unrepresented party~~ by any means as fast as United States Postal Service express mail~~.~~, and	

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			(3) One copy of each transcript to each unrepresented party by any means as fast as United States Postal Service express mail unless: (A) the superior court has no address for that person; (B) parentage was never established for that person; (C) the subject of the writ proceeding is not that person's child; or (D) there is a clear statement in the record that the person does not wish to participate in the case. **Rule 8.454** **(i) Sending the record** When the transcripts are certified as correct, the superior court clerk must immediately send: (1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, ~~and~~ (2) One copy of each transcript to each counsel of record and any	

	Commentator	Position	Comment	Committee Response
			~~unrepresented party and~~ unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail~~.~~, and (3) One copy of each transcript to each unrepresented party by any means as fast as United States Postal Service express mail unless: (A) the superior court has no address for that person; (B) parentage was never established for that person; (C) the subject of the writ proceeding is not that person's child; or (D) there is a clear statement in the record that the person does not wish to participate in the case.	
9.	TCPJAC/CEAC Joint Rules Subcommittee	A	The proposal provides significant cost saving or efficiencies. General comments There should be significant cost savings by reducing the cost for records for children not appealing, which, to a small degree, will be impacted by providing records to Indian tribes involved in an appeal. Superior court resources	The committee notes the commentator's support for the proposal; no response required.

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			would be saved by eliminating the need for Indian tribes to make and the court to rule on, motions to obtain copies of the record. **The following is a response to the proposal's Request for Specific Comments:** Would the proposal provide cost savings? ***Yes*** If so please quantify. ***One mid-size court (16-47 judges) estimates that they would realize cost savings associated with a total of 900 pages averaged over a 3-year period.*** 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 systems, or modifying case management systems. ***It would only require revising processes and procedures. These revised procedures would clearly indicate the number of copies and distribution courts would need to provide. The JRWG recommends that trial courts arrange a staff meeting in advance of the proposal's implementation date, to inform their Appeals Unit of the changes and requirements. This is an easy change and the proposal is in precise clear language.*** Would 2 months from Judicial Council approval of this proposal until its effective date provide	

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			sufficient time for implementation? ***Yes*** How well would this proposal work in courts of different sizes? ***It would be a significant cost savings and reduce resources.***	
10.	Cynthia Wojan Juvenile Court Coordinator Superior Court of Solano County	A	We appreciate the cost savings of not having to prepare unneeded/unused copies of the clerk's transcript. A significant piece of our division budget goes to paper for appeals, and this cost savings can be directed toward other items for divisional use. This will not create additional workload or extra training for staff. It will require an adjustment to our current written procedures regarding the number of copies to produce but we will not need to modify any docketing codes or entries in our case management system. However, will the Superior Court be responsible for monitoring the appellate website regarding appointment of appellate counsel as the notifications of appellate counsel are often received after we have sent the record?	The committee notes the commentator's support for the proposal. This proposal does not place an obligation on the trial court to monitor the Court of Appeal website to determine if counsel has been appointed. It is the committee's understanding that it is current Court of Appeal practice to send the trial court a copy of any order appointing appellate counsel. This rule proposal is not intended to alter that practice. It is possible, however, that under the existing rules, such an order will be made after the trial court has already sent the record. Rule 5.661 specifically provides that recommendations for appointment of appellate counsel can be filed with the Court of Appeal by the child's trial counsel or

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				guardian ad litem anytime from the fiing of the notice of appeal until 20 calendar days after the filing of the last appellant's opening brief. If a recommendation is not made until the outer limit of this deadline, the Court of Appeal order appointing counsel based on the recommendation will come to the trial court after the record has been sent.