Invitation to Comment

Title	Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions (repeal Cal. Rules of Court rules 8.700–8.793; renumber rules 8.900–8.916 as rules 8.950–8.966; adopt new rules 8.800–8.906 and 10.1100–10.1108; repeal Judicial Council forms CR-130 and TR-150, TR-155, TR-160, and TR-165; and approve new forms APP-101-INFO, APP-102, APP-103, APP-104, and APP-105 relating to appeals in limited civil cases, APP-150-INFO and APP-151 relating to petitions for extraordinary writs, CR-131-INFO, CR-132, CR-133, CR-134, CR-135, and CR-136 relating to appeals in misdemeanor cases, and CR-141-INFO, CR-142, CR-143, and CR-144 relating to appeals in infraction cases)
	PLEASE NOTE: You can read through or print this entire proposal, or you can view individual rules, forms and tables by clicking on the links (underlined in blue) included in this document. Each rule, form and table mentioned in this summary is linked to the page where it is located. To return to previous pages, simultaneously press the ALT and the left arrow keys (ALT + ←).
Summary	This proposal would completely revise all of the rules relating to the superior court appellate divisions to place the rules in a more logical order, reflect current practices, fill in gaps in the rules, eliminate outdated language, and update the remaining language so it is similar to the recently revised rules for the Courts of Appeal. A complete package of new forms for civil and criminal appeals and writ proceedings in the appellate divisions are also proposed to assist litigants, particularly self-represented litigants, in these proceedings.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	Background The existing rules for the superior court appellate divisions were originally adopted in 1945, along with the rest of the appellate rules. Since then, while specific provisions have been amended over the years, these rules have not been comprehensively reviewed and updated. Many of the rules use language that is outdated and difficult to understand and embody procedures that do not reflect current practice. As evidenced by some of the chapter headings—such as "Appeals from Municipal and Justice Courts in Civil Cases"—the

appellate division rules also contain outdated references to the former municipal and justice courts.

Until recently, the rules relating to the Supreme Court and Courts of Appeal were similarly outdated and difficult to understand. To update and improve these rules, the Appellate Rules Project Task Force was formed. For five years, that task force, working under the direction of the Appellate Advisory Committee, reviewed these Supreme Court and Court of Appeal rules and, working in installments, developed proposals to reorganize and update them. The goals of this earlier project were to clarify the meaning of these rules and facilitate their use by practitioners, parties, and court personnel by removing the many ambiguous, inconsistent, obsolete, and redundant provisions that had accumulated in the rules since they were originally enacted. On January 1, 2005, the fourth and final installment of revisions to the California Rules of Court relating to the Supreme Court and Courts of Appeal took effect.

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

Premises Underlying the Proposal

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

There are, however, some important, substantive differences between proceedings in the appellate divisions and in the Courts of Appeal. For example, because of jurisdictional distinctions, civil matters in the appellate divisions involve smaller amounts in controversy and criminal matters involve lesser penalties than matters in the Courts of

Appeal. Unlike in Court of Appeal matters, in appellate division matters, reporter's transcripts may not be available as the record of the oral proceedings in the trial court, but an official electronic recording may be available. Also, unlike in criminal matters in the Courts of Appeal, criminal defendants in appellate division matters are not always entitled to either appointed counsel or free records. Where required to reflect such substantive differences between the appellate divisions and the Courts of Appeal, the proposal uses language that differs from that in the Court of Appeal rules.

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

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

Structure of the Proposal

Rules

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

This is followed by the proposed text of the new rules. Please note that because of the extensive revisions and rearranging of subdivisions, revisions are *not* indicated by the usual underscoring and strikethrough of the text. Instead, the committee is proposing repealing all of the

current rules and replacing them with all new rules. These new rules are divided into 7 chapters: chapters 1 through 6 in title 8, division 2, titled "Rules Relating to the Superior Court Appellate Division" and in title 10, Judicial Administration Rules, chapter 2, titled "Rules Relating to the Superior Court Appellate Division."

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

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

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

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

Forms

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

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

The proposed forms are grouped together in packets based on the type of case in which they would be used: appeals in limited civil cases (APP-101-INFO through APP-105), appeals in misdemeanor cases

(CR-131-INFO through CR-136), appeals in infraction cases (CR-141-INFO through CR-144), and writ proceedings (APP-15-INFO and APP-151). Within each packet, the proposed forms appear in the order in which they would likely be used in a typical proceeding, starting with an information sheet about each type of proceeding.

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

The Main Substantive Changes Proposed

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

Organization of the Rules

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

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

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

Chapter 2 would address filing appeals and record preparation in limited civil cases. Unlike in the current rules in which there is a single chapter addressing appeals in criminal cases, under this proposal there would be separate chapters—chapters 3 and 4—addressing filing appeals and record preparation in misdemeanor and infraction cases. These separate chapters, titled Appeals and Records in Misdemeanor Criminal Cases and Appeals and Appeals and Records in Infraction Criminal Cases and Appeals, respectively, are intended to make it easier for litigants to identify the rules applicable in their cases. The committee would particularly appreciate comments on this reorganization and on whether keeping the word "criminal" in the chapter titles is helpful.

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

Information Sheets

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

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

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

Appointment of Counsel

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

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

Notices of Appeal

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

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

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

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

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

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

Record Preparation

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

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

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

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

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

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

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

Under this proposal, if the appellant elected to use a statement on appeal, the appellant would be required to prepare a draft statement for review by the trial court judge or other judicial officer who conducted the proceedings in the trial court, as is the current practice. The proposal includes new "statement on appeal" forms designed to assist

appellants in preparing such proposed statements and facilitate the review of these statements by the trial court judicial officers:

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

Form CR-143 is designed to replace current *Proposed Statement on Appeal (Infraction)* (form TR-160*).* Similar to requirements applicable to petitions for writs of habeas corpus, the proposed rules would require that appellants who are not represented by attorneys file their proposed statements on appeal on these Judicial Council forms. The committee would particularly appreciate comments on this requirement.

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

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

Invitation to Comment

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

Abandonment of Appeals
The proposal includes new "abandonment of appeal" forms designed to assist appellants in abandoning their appeals:

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

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

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

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

Oral Argument
Under this proposal, the rules regarding sessions of the appellate

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

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

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

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

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

Attachments

Invitation to Comment

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

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REORGANIZED APPELLATE DIVISION RULES

Title 8. Appellate Rules

~~Division 2. Rules on Appeal to the Superior Court~~

~~Chapter 1. Appellate Division Rules~~

~~Rule 8.700. Appellate rules~~

~~Rule 8.701. Appellate division assignments~~

~~Rule 8.702. Sessions~~

~~Rule 8.703. Powers of presiding judge~~

~~Rule 8.704. Calendars and notice of hearing~~

~~Rule 8.705. Motions~~

~~Rule 8.706. Briefs and records~~

~~Rule 8.707. Decisions~~

~~Rule 8.708. Finality, modification, and rehearing~~

~~Rule 8.709. Consent to modification~~

~~Chapter 2. Appeals to the Appellate Division in Limited Civil Cases~~

~~Rule 8.750. Filing notice of appeal~~

~~Rule 8.751. Time of filing notice of appeal~~

~~Rule 8.752. Extension of time and cross-appeal~~

~~Rule 8.753. Reporter's transcript~~

~~Rule 8.754. Clerk's transcript and original papers~~

~~Rule 8.755. Agreed statement~~

~~Rule 8.756. Settled statement~~

~~Rule 8.757. Correction and certification of record~~

~~Rule 8.758. Form of record~~

~~Rule 8.759. Transmission and filing of record~~

~~Rule 8.760. Record on cross-appeal~~

~~Rule 8.791. Additions to record~~

~~Rule 8.792. Hearings and dismissals~~

~~Rule 8.793. Remittiturs~~

Court of Appeal Rules Without Counterparts in the Appellate Division Rules

Appellate Division Forms

LIMITED CIVIL CASES

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases
APP-102 Notice of Appeal
APP-103 Notice Designating Record on Appeal
APP-104 Statement on Appeal
APP-105 Abandonment of Appeal

MISDEMEANORS

CR-131-INFO Information on Appeal Procedures for Misdemeanors
CR-132 Notice of Appeal/Cross Appeal
CR-133 Application for Appointment of Counsel in Misdemeanor Appeal
CR-134 Record Preparation Election
CR-135 Statement on Appeal
CR-136 Abandonment of Appeal

INFRACTIONS

CR-141-INFO Information on Appeal Procedures for Infractions
CR-142 Notice of Appeal and Record Preparation Election
CR-143 Statement on Appeal
CR-144 Abandonment of Appeal

WRITS

APP-150-INFO Information on Proceedings for Writs in the Appellate Division of the Superior Court
APP-151 Petition for Writ

Division 2. Rules Relating to the Superior Court Appellate Division

Advisory Committee Comment

The rules relating to the superior court appellate divisions begin with Chapter 1, which contains general rules applicable to both civil and criminal appeals. Because the procedures relating to taking appeals and preparing the record in limited civil, misdemeanor, and infraction appeals differ, the provisions are divided into separate chapters: Chapter 2 addresses appeals in limited civil cases, Chapter 3 addresses appeals in misdemeanor cases, and Chapter 4 addresses appeals in infraction cases. Since the procedures for briefing and rendering decisions are generally the same in all appeals, Chapter 5 addresses these procedures in appeals of all three types of cases. Chapter 6 addresses writ proceedings in the appellate division.

REVISER'S NOTE:

This new comment was added to help readers understand the structure of the appellate division rules.

Chapter 1. General Rules Applicable to Civil and Criminal Appeals

Rule 8.800. Application of division

The rules in this division apply to:

(1) Appeals in the appellate division of the superior court; and

(2) Writ proceedings, motions, applications, and petitions in the appellate division of the superior court.

REVISER'S NOTE:

This rule is based on rule 8.4, which lays out the application of the rules relating to the Supreme Court and Courts of Appeal.

Rule 8.802. Construction

(a) Construction

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

(b) Terminology

As used in this division:

(1) "Must" is mandatory;

(2) "May" is permissive;

(3) "May not" means is not permitted to;

(4) "Will" expresses a future contingency or predicts action by a court or person in the ordinary course of events, but does not signify a mandatory duty; and

(5) "Should" expresses a preference or a nonbinding recommendation.

(c) Construction of additional terms

In the rules:

(1) Each tense (past, present, or future) includes the others;

(2) Each gender (masculine, feminine, or neuter) includes the others;

(3) Each number (singular or plural) includes the other; and

(4) The headings of divisions, chapters, articles, rules, and subdivisions are substantive.

REVISER'S NOTES:

This rule incorporates the rules of construction from rule 1.5. This is different from rule 8.7, applicable to the Supreme Court and Courts of Appeal, which simply cross-references rule 1.5. The rules of construction were incorporated, rather than cross-referred to make these rules easier to understand and use, particularly for self-represented litigants. In addition, the provision from rule 1.5 relating to construction of standards of judicial administration was not included in this rule.

Rule 8.804. Definitions

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

(1) "Action" includes special proceeding.

(2) "Case" includes action or proceeding.

(3) "Civil case" means a case prosecuted by one party against another for the declaration, enforcement, or protection of a right or the redress or prevention of a wrong. Civil cases include all cases except criminal cases.

(4) "Unlimited civil cases" and "limited civil cases" are defined in Code of Civil Procedure section 85 et seq.

(5) "Criminal case" means a proceeding by which a party charged with a public offense is accused and brought to trial and punishment.

(6) "Rule" means a rule of the California Rules of Court.

(7) "Local rule" means every rule, regulation, order, policy, form, or standard of general application adopted by a court to govern practice and procedure in that court or by a judge of the court to govern practice or procedure in that judge's courtroom.

(8) "Chief Justice" and "presiding justice" include the Acting Chief Justice and the acting presiding justice, respectively.

(9) "Presiding judge" includes the acting presiding judge or the judge designated by the presiding judge.

(10) "Judge" includes, as applicable, a judge of the superior court, a commissioner, or a temporary judge.

(11) "Person" includes a corporation or other legal entity as well as a natural person.

(12) "Appellant" means the appealing party.

(13) "Respondent" means the adverse party.

(14) "Party" is a person appearing in an action. A party may be self-represented or represented by an attorney of record. "Party," "applicant," "petitioner," or any other designation of a party includes the party's attorney of record.

(15) "Attorney" means a member of the State Bar of California.

(16) "Counsel" means an attorney.

(17) "Prosecuting attorney" means the city attorney, county counsel, or district attorney prosecuting an infraction or misdemeanor case.

(18) "Complaint" includes a citation.

(19) "Service" means service in the manner prescribed by a statute or rule.

(20) "Declaration" includes "affidavit."

(21) "Recycled" as applied to paper means "recycled printing and writing paper" as defined by Public Contract Code section 12209.

(22) "Trial court" means the superior court from which an appeal is taken.

(23) "Reviewing court" means the appellate division of the superior court.

(24) "Judgment" includes any judgment or order that may be appealed.

REVISER'S NOTES:

1. Items (1)–(11), (14)–(16), and (18)–(20) in this rule repeat definitions from rule 1.6. This is different from rule 8.10, applicable to the Supreme Court and Courts of Appeal, which simply cross-references rule 1.6. As with rule 8.802 above, this was done to make these rules easier to understand and use, particularly for self-represented litigants. In addition, the definitions from rule 1.6 for the following terms are not repeated here: general civil case, civil petitions, temporary judge, sheriff, memorandum, and California Courts Web-site.

2. Item (19), relating to recycled paper, incorporates revisions that will take effect on July 1, 2007.

3. Items (12)–(13) and (21)–(23) in this rule are modeled on definitions in rule 8.10.

4. Item (17) is new and is intended to reflect the fact that a variety of prosecuting agencies may be involved in these cases, particularly infraction cases.

Rule 8.806. Applications

(a) Service and filing

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

(b) Contents

The application must:

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

(2) Identify any previous applications filed by any party in the same appeal or writ proceeding.

(c) Envelopes

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

(d) Disposition

Unless the court determines otherwise, the presiding judge may rule on the application.

REVISER'S NOTES:

1. This rule (current rule 8.766, which applies to civil appeals) would be restructured so that it is similar to rule 8.50, the rule relating to applications in the Supreme Court and Courts of Appeal. It would also be moved from the chapter on civil appeals to this chapter containing general rules.

2. This rule differs from rule 8.50, however, in the following ways:

   a. Subdivision (a) specifies the court in which the application must be filed.

   b. Subdivision (b)(2) specifies that the application need identify only those previous applications that have been filed in the same appeal or writ proceeding.

Rule 8.808. Motions

(a) Motion and opposition

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

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

(3) Any opposition to the motion must be served and filed within seven days after the motion is filed.

(b) Disposition

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

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

Advisory Committee Comment

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

REVISER'S NOTE:

1. This rule (current rule 8.705) would be restructured so that it is similar to rule 8.54, the rule relating to motions in the Supreme Court and Courts of Appeal.

2. This rule differs from rule 8.54, however, in the following ways:

   a. It provides, as does current rule 8.705, that opposition to a motion must be filed within 7 days while rule 8.54 provides that any opposition must be filed within 15 days; and

   b. It does not include a provision like 8.54(c), relating to the consequence of failing to oppose a motion.

Rule 8.810. Extending time

(a) Computing time

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

(b) Extension by trial court

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

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

(3) Except under extraordinary circumstances or as these rules provide otherwise, no single extension under (1) may exceed 10 days and the total of all extensions granted to any party to prepare the record may not exceed 60 days.

(4) Notwithstanding anything in these rules to the contrary, the trial court may grant an initial extension to any party on an ex parte basis.

(c) Extension by appellate division

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

(d) Application for extension

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

(2) The application must state:

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

(B) The length of the extension requested;

(C) Whether any earlier extensions have been granted and, if so, their lengths and whether granted by stipulation or by the court; and

(D) Good cause for granting the extension, consistent with the policies and factors stated in rule 8.63.

(e) Notice to party

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

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

REVISER'S NOTES:

1. Currently there are two rules that address extensions of time in the appellate division: rule 8.767 in the rules governing civil appeals and rule 8.787 in the rules governing criminal appeals. Rule 8.787 repeats much of the language already in rule 8.767, and, therefore, under this proposal would be deleted. The different limit on the length of extensions for settled statements in criminal appeals (15 days) is preserved through a specific provision in proposed rule 8.869(i).

2. This rule (current rule 8.767) would be restructured so that it is similar to rule 8.60, the rule relating to extending time in the Supreme Court and Courts of Appeal. It would also be moved from the chapter on civil appeals to this chapter

containing general provisions. Subdivisions (d) and (e) would be added, based on rule 8.60. Similar to the recent revision to rule 8.60, the provision relating to shortening time (former subdivision (d)) has been moved to a separate rule (proposed rule 8.813).

3. This rule differs from rule 8.60, however, in the following ways:

   a. It maintains the existing authority of the trial court under rules 8.767(b) and 8.787 to extend the time to prepare the record in appellate division matters. In contrast rule 8.60(e) prohibits the trial court from extending any time for record preparation in Court of Appeal matters.

   b. It specifically provides that the presiding judge of the appellate division may authorize a designee to approve applications to extend time.

   c. The topic of relief from default is addressed in rule 8.812, rather than as part of this rule.

   d. Subdivision (e) does not include a provision addressing notice in class actions.

Rule 8.811. Policies and factors governing extensions of time

(a) Policies

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

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

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

(b) Factors considered

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

(1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.

(2) In a civil case, the positions of the client and any opponent with regard to the extension.

(3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record.

(4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.

(5) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.

(6) Whether the case is entitled to priority.

(7) Whether counsel responsible for preparing the document is new to the case.

(8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel or a self-represented party responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel that:

(A) Have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or

(B) Arise from cases entitled to priority.

(10) Illness of counsel or a self-represented party, a personal emergency, or a planned vacation that counsel or a self-represented party did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

REVISER'S NOTES:

1. This rule is based on rule 8.63, which applies in the Supreme Court and Courts of Appeal.

2. This rule differs from rule 8.63, however, in the following ways:

a. It does not contain references to demonstrating exceptional good cause, as this is only required in certain juvenile proceedings over which the Courts of Appeal have jurisdiction.

b. Specific references to self-represented litigants have been added.

c. It does not contain a description of what is considered a record of typical length.

Rule 8.812. Relief from default

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

REVISER'S NOTES:

1. Currently there are two rules that address relief from default in the appellate divisions: rule 8.772(b) in the rules governing civil cases and rule 8.787(b) in the rules governing criminal cases. Rule 8.787 repeats much of the language already in rule 8.772, and, therefore, under this proposal would be deleted.

2. This rule (current rule 8.772(b)) would be restructured so that it is similar to rule 8.60(d), the rule relating to relief from default in the Supreme Court and Courts of Appeal. It would also be moved from the chapter on civil appeals to this chapter containing general provisions.

Rule 8.813. Shortening time

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

REVISER'S NOTES:

1. This rule (current rule 8.767(d)) would be restructured so that it is similar to rule 8.68, the rule relating to shortening time in the Supreme Court and Courts of Appeal. It would also be moved from the chapter on civil appeals to this chapter containing general provisions.

2. This rule differs from rule 8.68, however, because it specifically provides that the presiding judge may authorize a designee to exercise this authority

Rule 8.814. Substituting parties; substituting or withdrawing attorneys

(a) Substituting parties

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

(b) Substituting attorneys

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

(c) Withdrawing attorney

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

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

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

REVISER'S NOTES:

1. This rule (current rule 8.768) would be restructured so that it is similar to rule 8.36, the rule relating to substituting parties and substituting and withdrawing attorneys in the Supreme Court and Court of Appeal. It would also be moved from the chapter on civil appeals to this chapter containing general provisions.

2. This rule differs from rule 8.36, however, in that it does not require the reviewing court to notify the trial court of a ruling on a motion for withdrawal of an attorney.

Rule 8.816. Address and telephone number of record; notice of change

(a) Address and telephone number of record

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

(b) Notice of change

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

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

(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 and telephone number of record in all pending and concluded cases.

(d) Multiple offices

If an attorney has more than one office, only one office address may be used in a given case.

REVISER'S NOTE:

This rule is based on rule 8.32, the rule relating to this topic in the Supreme Courts and Court of Appeal.

Chapter 2. Appeals and Records in Limited Civil Cases

Article 1. Taking Civil Appeals

Rule 8.820. Application of chapter

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

Advisory Committee Comment

Note that chapters 1 and 5 of this division also apply in appeals from limited civil cases.

REVISER'S NOTE:

This rule (current rule 8.772(a)) would be revised to eliminate outdated references to municipal and justice courts. Article VI, Section 11 of the California Constitution and Code of Civil Procedure sections 77 and 904.2 delineate the jurisdiction of the superior court appellate division in civil appeals.

Rule 8.821. Notice of appeal

(a) Notice of appeal

(1) To appeal from a judgment or appealable order in a limited civil case, except a small claims case, an appellant must serve and file a notice of appeal in the superior court that issued the judgment or order being appealed. The appellant or the appellant's attorney must sign the notice.

(2) The notice of appeal must be liberally construed and is sufficient if it identifies the particular limited civil case judgment or order being appealed.

(3) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

(b) Filing fee

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the $100 filing fee required under Government Code section 70621, an application for a waiver of court fees and costs on appeal under rules 3.50–3.63, or an order granting such an application. The filing fee is nonrefundable.

(2) The clerk must file the notice of appeal even if the appellant does not present the filing fee or an application for, or order granting, a waiver under rules 3.50–3.63.

(c) Failure to pay fee

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

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

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

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

(2) A clerk's notice under (1) must state that the appeal may be dismissed unless, within 15 days after the notice is sent, the appellant either:

(A) Pays the fee; or

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

(3) If the appellant fails to comply with a notice given under (2), the appellate division may dismiss the appeal, but may vacate the dismissal for good cause.

(d) Notification of the appeal

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

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

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

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

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

(e) Notice of cross-appeal

As used in this rule, "notice of appeal" includes a notice of cross-appeal and "appellant" includes a respondent filing a notice of cross-appeal.

REVISER'S NOTES:

1. This rule (current rule 8.750) would be restructured so that it is similar to rule 8.100, the rule relating to notices of appeal in civil cases in the Courts of Appeal.

2. This rule differs from rule 8.100, however, in the following ways:

   a. It does not include a sentence similar to the last sentence in 8.100(b)(1) regarding payment of the fee by cash, check, or money order.

   b. It does not include a provision similar to that in 8.100(b)(2), relating to the additional fee required in civil appeals in the Courts of Appeal.

   c. It does not include provisions similar to those in 8.100(d)(2)(A)–(C), requesting that the clerk's notice that a notice of appeal has been filed include specified information about the parties and attorneys, if it is available.

   d. It does not include a provision similar to that in 8.100(d)(5) regarding transmitting the filing fee to the Court of Appeal.

   e. It does not include a provision similar to 8.100(f) relating to the Civil Case Information Statement.

Rule 8.822. Time to appeal

(a) Normal time

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

(1) 60 days after the trial court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed;

(2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(3) 180 days after the entry of judgment.

(b) What constitutes entry

For purposes of this rule:

(1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5 or the date it is entered in the judgment book.

(2) The date of entry of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

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

(c) Premature notice of appeal

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

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

(d) Late notice of appeal

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

REVISER'S NOTES:

1. This rule (current rule 8.751) would be restructured so that it is similar to rule 8.104, the rule relating to the time for filing notices of appeal in civil cases in the Court of Appeal. This restructuring includes increasing the time to file the notice of appeal from 30 days to 60 days after the entry of judgment, so that the deadline is the same as for appeals in the Courts of Appeal. This policy change is recommended by the committee to eliminate a trap for the unwary. Since the time to file a notice of appeal is jurisdictional, currently, if an appellant mistakenly believes that he or she has 60 days, as is the case in the Courts of Appeal, and does not file the notice of appeal until after 30 days, his or her appeal must be dismissed. The committee understands that such errors currently occur with some frequency and believes that it is important to have a uniform period for filing the notice of appeal.

2. This rule differs from rule 8.104, however, in the following ways:

   a. It does not include a provision similar to 8.104(c) relating to periodic payment of judgments against public entities.

b. The order of the remaining subdivisions is slightly different, with the provision regarding late notices of appeal coming after the provision on premature notices of appeal, rather than before.

c. It does not include a provision similar to 8.104(d)(4) relating to probate proceedings, since these proceedings are not within the jurisdiction of the appellate division.

d. The provision regarding late notices of appeal in subdivision (d) does not include the sentence regarding a court extending the time to file the notice of appeal found in rule 8.3104(b). The committee concluded that the consequence of filing a late notice of appeal would be clearer if this sentence were omitted.

Rule 8.823. Extending the time to appeal

(a) Motion for new trial

If any party serves and files a valid notice of intention to move for a new trial and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 30 days after the trial court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 30 days after denial of the motion by operation of law; or

(3) 180 days after entry of judgment.

(b) Motion to vacate judgment

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

(1) 30 days after the trial court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 90 days after the first notice of intention to move or motion is filed; or

(3) 180 days after entry of judgment.

(c) Motion for judgment notwithstanding the verdict

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

(A) 30 days after the trial court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(B) 30 days after denial of the motion by operation of law; or

(C) 180 days after entry of judgment.

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

(d) Motion to reconsider appealable order

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

(1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 90 days after the first motion to reconsider is filed; or

(3) 180 days after entry of the appealable order.

(e) Cross-appeal

(1) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the trial court clerk mails notification of the first appeal.

(2) If an appellant timely appeals from an order granting a motion for a new trial, an order granting—within 150 days after entry of judgment—a motion to vacate the judgment, or a judgment notwithstanding the verdict, the time for any other party to appeal from the original judgment or from an order denying a motion for judgment notwithstanding the verdict is extended until 20 days after the clerk mails notification of the first appeal.

(f) Showing date of order or notice; proof of service

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

REVISER'S NOTE:

This rule (current rule 8.752) would be restructured so that it is similar to rule 8.108, the rule relating to extending the time for filing notices of appeal in civil cases in the Courts of Appeal.

Rule 8.824. Writ of supersedeas

(a) Petition

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

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

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

(4) If the record on appeal has not been filed in the appellate division, the petition must include:

(A) The judgment or order, showing its date of entry;

(B) The notice of appeal, showing its date of filing; and

(C) A statement of the case, including a summary of the material facts.

(5) The petition must be verified.

(b) Opposition

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

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

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

(c) Temporary stay

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

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

(d) Issuing the writ

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

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

REVISER'S NOTES:

1. This rule (current rule 8.769) would be restructured so that it is similar to rule 8.112, the rule relating to writs of supersedeas in the Courts of Appeal.

2. This rule differs from rule 8.112, however, in the following ways:

   a. It does not include a provision similar to that in 8.112(a)(2) requiring the petition to include the docket number of the appeal, if known.

   b. It does not include a provision similar to 8.112(d)(2) regarding child custody matters because the appellate division does not have jurisdiction in such matters.

Rule 8.825. Abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

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

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

(3) Within 45 days after filing a notice of settlement—unless the court has ordered a longer time period on a showing of good cause—the appellant who filed the notice of settlement must file either an abandonment under (b) if the record has not yet been filed in the appellate division, or a request to dismiss under (c) if the record has already been filed in the appellate division.

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

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

(b) Abandonment

(1) Before the record is filed in the appellate division, the appellant may serve and file in the court in which the case was tried an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the trial court's jurisdiction.

(2) The trial court clerk must promptly notify the appellate division of an abandonment or stipulation and promptly notify the adverse party of an abandonment.

(3) If the appeal is abandoned or dismissed before the clerk has completed preparation of the transcript, the clerk must refund any portion of a deposit exceeding the preparation cost actually incurred.

(4) If the appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the trial court clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(c) Request to dismiss

(1) After the record is filed in the appellate division, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.

(2) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

(d) Approval of compromise

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

REVISER'S NOTES:

1. This rule (current rule 8.762) would be restructured so that it is similar to rule 8.244, the rule relating to settlement and abandonment in the Courts of Appeal.

2. This rule differs from rule 8.244, however, because it includes subdivisions (b)(3) and (4) regarding the cost of the clerk's and reporter's transcripts when an abandonment is filed. Rule 8.244 does not contain equivalent provisions. Subdivision (b)(3) is based on rule 8.120(d)(2), and subdivision (b)(4) is based on rule 8.130(f)(3).

3. Subdivision (c) in current rule 8.762 was moved to proposed new rule 8.842, which addresses failure to procure the record.

Article 2. Record in Civil Appeals

Rule 8.830. Record on appeal

(a) Normal record

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

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

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

(B) The original trial court file under rule 8.833:

(C) An agreed statement under rule 8.836; or

(D) A statement on appeal under rule 8.837.

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

(A) A reporter's transcript under rule 8.834;

(B) An electronic recording of the proceedings or a transcript prepared from such an electronic recording under rule 8.835;

(C) An agreed statement under rule 8.836; or

(D) A statement on appeal under rule 8.837.

(b) Presumption from the record

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

Advisory Committee Comment

Subdivision (a). Note that the options of using the original trial court file in lieu of a clerk's transcript or an electronic recording itself, rather than a transcript, are available only if the appellate division has adopted a local rule authorizing these options.

REVISER'S NOTES:

1. Subdivision (a) is new and based in part on rule 8.320 which establishes the normal record in felony criminal matters in the Courts of Appeal. It is intended to lay out the basic options for how to create the record on appeal in limited civil cases. However, rule 8.320 presumes that a clerk and a reporter's transcript will be used. In contrast, this draft rule lists all of the ways in which a record of the documents filed in the trial court and the oral proceedings in the trial court can be provided in a limited civil case.

2. Subdivision (b) is based on current rule 8.771 and the similar rule in the Courts of Appeal rules, rule 8.163. It was incorporated here to emphasize that the record must contain all of the information that the appellate division needs to consider the issues the appellant wants to raise on appeal.

Rule 8.831. Notice designating the record on appeal

(a) Time to file

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

(b) Contents

The notice must specify:

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

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

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

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

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

(4) If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use;

(5) If the appellant elects to use a reporter's transcript, the notice must designate the proceedings to be included in the transcript as required under rule 8.834;

(6) If the appellant elects to use an official electronic recording, the appellant must attach a copy of the stipulation required under rule 8.835(c); and

(7) If the appellant elects to use an agreed statement, the appellant must attach to the notice either the agreed statement or stipulation as required under rule 8.836(c)(1).

Advisory Committee Comment

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

REVISER'S NOTES:

1. This rule is new. It brings together provisions from rules 8.753 and 8.754 regarding designating the clerk's and reporter's transcripts or alternate forms of the record so that all of the requirements that relate to designating the record are in one rule. It also makes it clearer that the appellant must notify the court about what form of the record will be used. In addition, it provides for a single notice to the trial court clerk regarding the record, rather than separate notices relating to the clerk's and reporter's transcripts.

2. Subdivision (b)(2) provides that if the appellant elects to use a clerk's transcript, the notice designating the record must include information that is typically included in the appellant's designation of the clerk's transcript. Like rule 8.120, which governs the designation of clerk's transcripts in civil appeals in the Courts of Appeal, rule 8.832(a) lists certain documents that **MUST** be included in a clerk's transcript. Unlike rule 8.120, rule 8.332 (b)(1) provides that if the appellant elects to use a clerk's transcript, the appellant must designate only those documents in addition to those required to be included in the clerk's transcript that are to be included in that transcript.

Rule 8.832. Clerk's transcript

(a) Contents of clerk's transcript

(1) The clerk's transcript must contain:

(A) The notice of appeal;

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

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

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

(E) The notices designating the record on appeal; and

(F) The register of actions, if any.

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

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

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

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

(C) Any jury instructions that any party submitted in writing, each one indicating the party requesting it and whether it was given, or requested and refused, and any written jury instructions given by the court.

(b) Notice of designation

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

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

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

(c) Deposit for cost of clerk's transcript

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

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

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

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

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

(d) Preparing the clerk's transcript

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

(A) Prepare an original and one copy of the clerk's transcript and certify the original; and

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

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

REVISER'S NOTES:

1. This rule (current rule 8.754) would be restructured so that it is similar to rule 8.120, which relates to clerk's transcripts in civil appeals in the Courts of Appeal.

2. Subdivision (a) is based on rule 8.120(b), which lists the documents that are to be included in the clerk's transcript in civil appeals in the Court of Appeal. This rule differs from rule 8.120(b), however, in the following ways:

   a. Subdivision (a)(1)(E) requires that the clerk's transcript include the notice designating the record on appeal rather than the notices or stipulations regarding clerk's transcripts, reporter's transcripts, or agreed or settled statements that are required to be included under rule 8.120(b)(1)(E).

b. This rule does not contain a provision similar to rule 8.120(b)(4), which provides that, unless the reviewing court orders or the parties stipulate otherwise, the clerk must not copy or transmit to the reviewing court the original of a deposition.

3. Subdivision (b) is based on rule 8.120(a), which addresses the designation of the documents to be included in the clerk's transcript in civil appeals in the Courts of Appeal. This rule does not contain provisions similar to rule 8.120(a)(1) and (2), regarding the appellant's designation of the clerk's transcript, however, since, under this proposal, the appellant's designation would be addressed as part of the notice designating the record on appeal under rule 8.831. Subdivisions (b)(1)–(3) are based on rule 8.120 (a)(3)–(5).

4. Subdivision (c) is based on rule 8.120(c), regarding the cost of the clerk's transcript in the Courts of Appeal. This includes requiring the clerk to provide an estimate of the cost of preparing the transcript with 30 days after the respondent files or could have filed its designation.

5. Subdivision (d) is based on rule 8.120(d), regarding preparation of the clerk's transcript in the Courts of Appeal. This includes requiring the clerk to prepare the transcript within 30 days after the appellant makes the deposit required under subdivision (c).

Rule 8.833 Trial court file instead of clerk's transcript

(a) Application

If the appellate division elects by local rule, the original trial court file may be used instead of a clerk's transcript. This rule and any supplemental provisions of the local rule then govern unless the trial court orders otherwise after notice to the parties.

(b) Cost estimate; preparation of file; transmittal

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

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

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

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

(5) If the appellant elected to proceed with a reporter's transcript, the clerk must send the prepared file to the appellate division with the reporter's transcript. If the appellant elected to proceed without a reporter's transcript, the clerk must immediately send the prepared file to the appellate division.

REVISER'S NOTES:

1. This is a new rule based on rule 8.128, which provides for using the original trial court file instead of a clerk's transcript in civil appeals in the Courts of Appeal.

2. This rule differs from rule 8.128, however, in the following ways:

   a. Rule 8.128 provides that the original file may be used only on the stipulation of the parties. This proposed rule would not require the stipulation of the parties but would allow the use of the file if the appellate division elects to adopt this procedure by local rule.

   b. Subsection (b)(2) includes a reference to the waiver of fees for preparation of the file. Rule 8.128 does not contain an equivalent provision.

Rule 8.834. Reporter's transcript

(a) Notice

(1) A notice designating a reporter's transcript under rule 8.831 must state the date the notice of appeal was filed and specify the date of each proceeding to be included in the transcript and may specify portions of the designated proceedings that are not to be included.

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

(3) If the appellant serves and files a notice under 8.831 designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a

notice in the trial court designating any additional proceedings the respondent wants included in the reporter's transcript.

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

(b) Deposit or waiver

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

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

(c) Contents of reporter's transcript

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

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

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

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

(d) Filing the reporter's transcript; copies; payment

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

(2) When the transcript is completed, the reporter must bill each designating party at the statutory rate and send a copy of the bill to the clerk. The clerk must pay the reporter from that party's deposited funds and refund any excess deposit or notify the party of any additional funds needed. In a multiple reporter case, the clerk must pay each

reporter who certifies under penalty of perjury that his or her transcript portion is completed.

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

(e) Notice when proceedings cannot be transcribed

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

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

(3) If an agreed statement or statement on appeal prepared under this subdivision contains only a portion of the oral proceedings, it will be incorporated into the reporter's transcript containing the rest of the proceedings.

(4) This remedy supplements any other available remedies.

REVISER'S NOTE:

1. This rule (current rule 8.753) would be restructured so that it is similar to rule 8.130, which relates to reporter's transcripts in civil appeals in the Courts of Appeal.

2. Subdivision (a) is based on rule 8.130(a), which addresses the designation of the proceedings to be included in the reporter's transcript in civil appeals in the Courts of Appeal. This rule differs from rule 8.130(a), however, in the following ways:

   a. This rule does not contain a provision similar to rule 8.130(a)(1), regarding the appellant's designation of the reporter's transcript, since, under this proposal, the appellant's designation would be addressed as part of the notice designating the record on appeal under rule 8.831.

b. This rule does not contain a provision similar to rule 8.130(a)(3), which provides that the respondent cannot designate a reporter's transcript if the appellant does not designate one.

c. Subdivision (a)(1), which specifies the information that must be included in the designation, is based on rule 8.130(a)(4).

d. Subdivision (a)(2), which limits the issues that can be appealed if the appellant designates less than all the testimony, is based on rule 8.130(a)(5).

e. Subdivision (a)(3), which relates to the designation of additional proceedings by the respondent, is based on rule 8.130(a)(2).

f. Subdivision (a)(4), which relates to notifying reporters of the parties' designations, covers the same topic as rule 8.130(d)(2). However, rule 8.130 requires that notices designating the reporter's transcript be sent to on the reporter(s). This rule, in contrast, requires the clerk to notify the reporter(s).

3. Subdivision (b), which addresses the cost of the reporter's transcript, is based on current rule 8.753 rather than rule 8.130. Subdivision (b)(1) is based on rule 8.753 (a). Subdivision (b)(2) is based on rule 8.75 (c). Like rule 8.130(d)(2), subdivision (b)(2) requires the clerk to notify the reporter when a party has deposited the estimated cost of the transcript.

4. Subdivision (c), which addresses the contents of the reporter's transcript, is based primarily on rule 8.130(e). Subdivision (c)(1) is based on rule 8.130(e)(1). Subdivision (c)(2) is based on current rule 8.753(a). Subdivision (c)(3) is based on rule 8.130(e)(2). Subdivision (c)(4) is based on rule 8.130(e)(3).

5. Subdivision (d), which relates to filing and payment for the reporter's transcript, is based primarily on rule 8.130(f). Subdivision (d)(1) is based on rule 8.130(f)(1), but differs from that rule in two ways. First, subdivision (d)(1) gives the reporter 20, rather than 30, days to prepare the transcript. Second, subdivision (d)(1) does not prohibit the trial court from extending the time for record preparation, as does rule 8.130(e)(1). Subdivision (d)(2) is based on rule 8.130(f)(2). Subdivision (d)(3) is based on rule 8.130(f)(3).

6. Subdivision (e), which establishes the procedures when designated proceedings were not reported or cannot be transcribed, is based primarily on rule 8.130(g). This subdivision differs from rule 8.130(g), however, in two ways: First, subdivision (e) provides for a party to indicate that he or she does not want to use any record of the missing oral proceedings. Second, rather than specifying that the party must use an agreed or settled statement, subdivision (e) provides that if the party does want a record of the missing proceedings, the party must elect the form of that record and comply with the relevant requirements relating to that form of the record.

7. This rule does not contain provisions equivalent to rule 8.130 (c), relating to the Transcript Reimbursement Fund, or (d), relating to the duties of the clerk.

Rule 8.835. Record when trial proceedings were officially electronically recorded

(a) Application

This rule applies only if:

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

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

(b) Transcripts from official electronic recording

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

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

If the appellate division has adopted a local rule permitting this, on stipulation of the parties, the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. Such an official electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

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

(1) If the appellant elects under rule 8.831 to use a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant by mail if any portion of the designated proceedings were not officially electronically recorded or cannot be transcribed. The notice must show the date it was mailed.

(2) Within 10 days after the notice under (1) is mailed, the appellant must notify the court whether the appellant elects to proceed with or without a record of the oral proceedings that were not recorded or cannot be transcribed. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) other than an electronic recording the appellant

elects to use. The appellant must comply with the requirements applicable to the form of the record elected.

(3) If an agreed statement or statement on appeal prepared under this subdivision contains only a portion of the oral proceedings, it will be incorporated into the reporter's transcript containing the rest of the proceedings.

REVISER'S NOTES:

1. This is a new rule that reflects the existing statutory and rule authority relating to official electronic recording of the proceedings in limited civil cases.

2. Subdivisions (a)–(c) of this rule are based on rule 2.952, subdivisions (g), (h), and (j), which address official electronic recordings and transcripts from those recordings as the official record of proceedings. Rule 2.952 already contains the authorization to prepare transcripts in these cases and to use the recording itself as an alternative to such a transcript. However, subdivision (c) would provide that the recording itself can be used as the record only if the appellate division has adopted a local rule authorizing this. This procedure would implement rule 2.952's provision authorizing the use of the recording itself only if the parties' stipulation has been approved by the court, thus ensuring that this procedure is used only in those appellate divisions that want to use the recording itself. In addition, this local rule approach should reduce the delay and burden on the appellate division associated with having to approve individual stipulations.

3. Subdivision (d), which establishes the procedures if proceedings were not recorded or cannot be transcribed, is based on a similar provision in rule 8.130 and rule 8.834, relating to reporter's transcripts. Like rule 8.834, this rule differs from rule 8.130 in two ways. First, it provides for a party to indicate that he or she does not want to use any record of the missing oral proceedings. Second, rather than specifying that the party must use an agreed or settled statement, it provides that if the party does want a record of the missing proceedings, the party must elect the form of that record and comply with the relevant requirements relating to that form of the record.

Rule 8.836. Agreed statement

(a) What is an agreed statement

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

(b) Contents of agreed statement

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

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

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

(c) Time to file; extension of time

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

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

(A) File the statement if the parties were able to agree on the statement; or

(B) File both a notice stating that the parties were not able to agree on the statement and a new notice designating the record under rule 8.831. In the new notice designating the record, the appellant may not elect to use an agreed statement.

REVISER'S NOTES:

1. This rule is based primarily on rule 8.134, relating to agreed statements in the Courts of Appeal.

2. Subdivision (a) is new. It is intended to help parties understand what an agreed statement is.

3. Subdivision (b) is based on rule 8.134(a).

4. Subdivision (c)(1) is based on rule 8.134(b)(1), but the time for filing the statement is keyed to the filing of the notice designating the record on appeal, rather than to the filing of the notice of appeal.

5. Subdivisions (c)(2)(A) and(B) are based on rule 8.134(b)(2) and (3), but differ from those provisions in several ways. First, as with subdivisions (b) and (c)(1),

the timing is keyed to the date the notice of designation of the record is filed rather than the date the notice of appeal is filed. Second, rather than having different timeframes if the parties are or are not able to agree on a statement, this draft rule would require the appellant to take action in either circumstance within 30 days of filing the stipulation to try to prepare an agreed statement. Finally, if the parties are unable to agree on a statement, this draft rule would simply require the appellant to file a new notice designating the record, rather than referring to the separate notices required for each form of the record in the Courts of Appeal rules.

Rule 8.837. Statement on appeal

(a) What is a statement on appeal

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. An appellant can elect under rule 8.831 to use a statement on appeal as the record of the documents filed in the trial court, replacing the clerk's transcript, and as the record of the oral proceedings in the trial court, replacing the reporter's transcript.

(b) Preparing the statement

(1) If the appellant elects in its notice designating the record under rule 8.831 to use a statement on appeal, the appellant must serve and file a proposed statement within 30 days after filing the notice under rule 8.831. If the appellant does not file a proposed statement within this time, the trial court clerk must promptly notify the appellant by mail that it must file the proposed statement within 15 days after the notice is mailed and that failure to comply will result in the appeal being dismissed.

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

(c) Contents of statement

(1) The proposed statement must contain:

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

(B) A statement of the points the appellant is raising on appeal. If the condensed narrative under (A) covers only a portion of the oral proceedings, then the

appeal is limited to the points identified in the statement unless, on motion, the appellate division permits otherwise.

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

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

(iii) If one of the grounds of appeal is insufficiency of the evidence, the statement must specify how it is insufficient.

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

(3) An appellant wanting to use a statement on appeal instead of a clerk's transcript must accompany the condensed narrative with copies of all items required by rule 8.832(a)(1), showing the dates required by rule 8.832(a)(2). The proposed statement may be also accompanied by copies of any document includable in the clerk's transcript under rule 8.832(a)(3).

(d) Review of appellant's proposed statement

(1) Within 20 days after the appellant serves and files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) No later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings.

(3) A party may request a hearing to review and correct the proposed statement, but no hearing will be held unless ordered by the judge.

(4) The judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(5) If the trial court proceedings were reported by a court reporter or officially recorded electronically under Government Code section 69957, instead of correcting a proposed statement on appeal, the judge may direct that a transcript be prepared as

the record of the proceedings. The court will pay for any transcript ordered under this subdivision.

(e) Review of corrected statement

(1) If the judge makes any corrections or modifications to the proposed statement under (d), the clerk must send copies of the corrected or modified statement to the parties.

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

(f) Certification of statement on appeal

(1) If the trial court judge does not make any corrections or modifications to the proposed statement under (d)(2) and does not direct the preparation of a transcript in lieu of correcting the proposed statement under (d)(5), the judge must promptly certify the statement.

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

(g) Transmitting certified statement to appellate division

(1) When the statement has been certified under (f), the clerk must promptly transmit it to the appellate division, along with all objections filed by the parties.

(2) If the trial court judge directs under (d)(5) that a transcript be prepared as the record of the proceedings instead of correcting a proposed statement on appeal, when the transcript has been prepared, the clerk must promptly transmit it to the appellate division along with the appellant's proposed statement and any proposed amendments submitted by the respondent.

Advisory Committee Comment

Subdivision (d). Note that, under rule 8.804, the term "judge" includes commissioners and temporary judges.

REVISER'S NOTES:

This rule is based on draft rule 8.869 from the rules on criminal appeals; please see the reviser's notes relating to that draft rule. This rule is substantively different from the current rules relating to settled statements in both the Courts of Appeal and the appellate division.

Rule 8.838. Form of the record

(a) Paper and format

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

(b) Indexes

At the beginning of the first volume of each:

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

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

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

(c) Binding and cover

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

(2) Each volume's cover, preferably of recycled stock, must state the title and trial court number of the case, the names of the trial court and each participating trial judge, the names and addresses of appellate counsel for each party, the volume number, and the inclusive page numbers of that volume.

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

REVISER'S NOTES:

1. This rule (current rule 8.758) would be restructured so that it is similar to rule 8.144, which relates to the form of the record in civil appeals in the Courts of Appeal.

2. Instead of repeating the record format requirements from rule 8.144(a) here, subdivision (a) simply cross-references 8.144(a).

3. Subdivisions (b)–(c) are based on rule 8.144(b)–(c), respectively.

4. This rule does not contain provisions similar to rule 8.144(d), (e) and (f) relating to daily transcripts, multiple reporters, and the format of agreed or settled statements.

Rule 8.839. Record in multiple appeals

(a) Single record

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

(b) Cost

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

REVISER'S NOTE:

This rule (current rule 8.760) would be restructured so that it is similar to rule 8.147(a), which relates to the form of the record in civil cases in which there are multiple appeals in the Courts of Appeal. However, this rule does not contain a provision similar to that in rule 8.147(b), relating to later appeals.

Rule 8.840. Filing the record

When the record is complete, the trial court clerk must promptly send the original to the appellate division and send to the appellant and respondent any copies that they have purchased. The appellate division clerk must promptly file the original and mail notice of the filing date to the parties.

REVISER'S NOTE:

These rules (current rules 8.757 and 8.759) would be restructured so that they are similar to rule 8.150, which relates to the filing the record in civil appeals in the Courts of Appeal.

Rule 8.841. Augmenting and correcting the record in the appellate division

(a) Augmentation

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

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

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

(2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. If the appellate division grants the motion it may augment the record with the copy.

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

(b) Correction

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

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

(c) Omissions

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

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

(d) Notice

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

REVISER'S NOTES:

1. This rule (current rule 8.761) would be restructured so that it is similar to rule 8.155, which relates to augmenting and correcting the record in civil appeals in the Courts of Appeal.

2. Subdivision (a) is based on rule 8.155(a).

3. Subdivision (b) is based on rule 8.155(c).

4. Subdivision (c) is based on rule 8.155(b).

5. Subdivision (d) is based on rule 8.155(d).

Rule 8.842. Failure to procure the record

(a) Notice of default

If a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party by mail that it must do the act specified in the notice within 15 days after the notice is mailed and that failure to comply may result in the following sanctions:

(1) If the defaulting party is the appellant, the appeal will be dismissed.

(2) If the defaulting party is the respondent, the appeal will proceed on the record designated by the appellant.

(b) Sanctions

If the party fails to comply with a notice given under (a), the trial court clerk must promptly notify the appellate division of the default, and the appellate division may:impose one of the following sanctions:

(1) If the defaulting party is the appellant, the reviewing court may dismiss the appeal but may vacate the dismissal for good cause; or

(2) If the defaulting party is the respondent, the reviewing court may order the appeal to proceed on the record designated by the appellant, but the respondent may obtain relief from default under rule 8.60(d).

REVISER'S NOTE:

This rule (current rule 8.762) would be restructured so that it is similar to rule 8.140, which relates to the failure to procure the record in civil appeals in the Courts of Appeal.

However, unlike rule 8.140, this rule does not contain a provision such as 8.140(c), addressing motions for sanctions.

Chapter 3. Appeals and Records in Misdemeanor Criminal Cases

Article 1. Taking Appeals in Misdemeanor Cases

Rule 8.850. Application of chapter

The rules in this chapter apply only to appeals in misdemeanor cases. In postconviction appeals, misdemeanor cases are cases in which the defendant was convicted of a misdemeanor and was not charged with any felony. In preconviction appeals, misdemeanor cases are in cases in which the defendant was charged with a misdemeanor but was not charged with any felony. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a.

Advisory Committee Comment

Note that Chapters 1 and 5 of this division also apply in appeals from misdemeanor cases. The rules that apply in appeals in felony cases are located in chapter 3 of division 1 of this title.

REVISER'S NOTES:

1. To help clarify the rules applicable in different cases, this chapter of the rules would be amended to apply only to appeals in misdemeanor cases. A new chapter – chapter 4 – would be adopted to address appeals in infraction cases. Having these separate sets of rules should help litigants identify the rules applicable to their cases.

2. This rule (current rule 8.780) would be amended to reflect trial court unification by eliminating outdated references to municipal and justice courts. Article VI, Section 11 of the California Constitution, Code of Civil Procedure section 77, and Penal Code section 1466 delineate the jurisdiction of the superior court appellate division in criminal appeals. Penal Code section 691(g) defines "misdemeanor and infraction cases" as excluding any case were a felony is charged. Rule 8.304(a) provides an explanation of which of when a felony is "charged". See also *People v. Nickerson* (2005) 128 Cal.App.4th 33 (a defendant is not "charged with a felony" within the meaning of section 691 until an information or indictment is filed or a complaint is certified to the superior court under to section 859a) .

3. Proposed rule 8.804 (Definitions) would apply to both the civil and the criminal rules in this division, so current rule 8.781 would be deleted as unnecessary.

Rule 8.851. Appointment of appellate counsel

(a) Standards for appointment

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

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

(B) Was represented by appointed counsel in the trial court or establishes indigency in the manner required in the Courts of Appeal.

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

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

(b) Application; duties of trial counsel and clerk

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

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

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

(c) Defendant found able to pay in trial court

(1) If a defendant was represented by appointed counsel in the trial court and was found able to pay all or part of the cost of counsel in proceedings under Penal Code section 987.8 or 987.81, the findings in those proceedings must be included in the record or, if the findings were made after the record is sent to the appellate division, must be sent as an augmentation of the record.

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

Advisory Committee Comment

Appellants must use *Application for Appointment of Counsel in Misdemeanor Appeal* (form CR-133) when requesting that appellate counsel be appointed in a misdemeanor case. If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show indigency.

REVISER'S NOTE:

1. This rule (current rule 8.786) would be revised to update the language. There is no equivalent rule for the Courts of Appeal.

2. An advisory committee comment would be added to help litigants identify the forms to use in seeking appointment of counsel.

3. Proposed rules 8.810 (Extending time) and 8.8126 (Relief from default) would apply in both civil and misdemeanor criminal proceedings, so current rule 8.787 would be deleted as unnecessary.

Rule 8.852. Notice of appeal

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the trial court in a misdemeanor case, the defendant or the People must file a notice of appeal in the trial court. The notice must specify the judgment or order—or part of it—being appealed.

(2) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(3) The notice of appeal must be liberally construed in favor of its sufficiency.

(b) Notification of the appeal

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

(2) The notification must show the date it was mailed or delivered, the number and title of the case, the date the notice of appeal was filed, and whether the defendant was represented by appointed counsel.

(3) The notification to the appellate division clerk must also include a copy of the notice of appeal.

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

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

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

Advisory Committee Comment

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

REVISER'S NOTES:

1. This rule (current rule 8.782) would be restructured so that it is similar to rule 8.304, which relates to the notice of appeal in criminal appeals in the Courts of Appeal.

2. Subdivision (a) is based on 8.304(a). Subdivision (a)(1) is based on 8.304(a)(1). Subdivision (a)(2) is based on 8.304(a)(3). Subdivision (a)(3) is based on the first sentence of 8.304(a)(4).

3. This rule does not contain a provision similar to that in rule 8.304(b), relating to appeal after a plea of guilty or nolo contendere or after admission of probation violation.

4. Subdivision (b) is based on rule 8.304(c). Subdivision (b) differs from 8.304(c), however, in the following ways:

   a. Subdivision (b)(1) is based on rule 8.304(c)(1) but, unlike that rule, it does not require that a copy of the notice of appeal be sent to the reporter(s) in all cases.

   b. Subdivision (b)(2) is based on rule 8.304(c)(2), but it does not include provisions similar to those in 8.304(c)(2)(A)–(C), requesting that the clerk's notice that a notice of appeal has been filed include specified information about the parties and attorneys, if it is available.

c. Subdivision (b)(3) is based on rule 8.304(c)(3), but it does not include provisions similar to those in 8.304(c)(3) requiring that the notice from the clerk include any certificate filed under (b), and the sequential list of reporters made under rule 2.950.

Rule 8.853. Time to appeal

(a) Normal time

A notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. If the defendant is committed before final judgment for insanity or narcotics addiction, the notice of appeal must be filed within 60 days after the commitment.

(b) Cross-appeal

If the defendant or the People timely appeal from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the trial court clerk mails notification of the first appeal, whichever is later.

(c) Premature notice of appeal

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

(d) Late notice of appeal

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

(e) Receipt by mail from custodial institution

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

REVISER'S NOTES:

1. This rule (current rule 8.782(a)) would be restructured so that it is similar to rule 8.308, which relates to the time for filing the notice of appeal in criminal appeals in the Courts of Appeal.

2. Subdivision (a) is based on 8.308(a). This restructuring includes increasing the time to file the notice of appeal for a misdemeanor from 30 days to 60 days after the rendition of judgment, so that the deadline is the same for all appeals in the Courts of Appeal and in the appellate division. This is a policy change recommendation by the committee to eliminate a trap for the unwary. Under the existing rules, it is difficult to determine what the correct deadline is for an appeal in misdemeanor as opposed to felony cases. Since the time to file a notice of appeal is jurisdictional, currently, if an appellant mistakenly believes that he or she has 60 days, as is the case in the Courts of Appeal, and does not file the notice of appeal until after 30 days, his or her appeal must be dismissed. The committee believed that such errors currently occur with some frequency and that it was important to have a uniform period for filing the notice of appeal.

3. Subdivision (a) differs from rule 8.308(a) in the following ways:

   a. Subdivision (a) retains language from current rule 8.782(a) regarding the time to file a notice of appeal when a defendant is committed before final judgment for insanity or narcotics addiction.

   b. Subdivision (a) does not include a provision similar to that in rule 8.308(a) regarding a court extending the time to file the notice of appeal.

4. Subdivision (b) is based on 8.308(b).

5. Subdivision (c) is based on 8.308(c).

6. Subdivision (d) is based on 8.308(d), but, unlike rule 8.308(d), it does not require that a copy of the notice of appeal marked as late by the clerk be sent to the district appellate project.

7. Subdivision (e) is based on 8.308(e).

Rule 8.854. Stay of execution and release on appeal

(a) Application

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

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

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

(b) Showing

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

(c) Service

The application must be served on the prosecuting attorney.

(d) Interim relief

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

Advisory Committee Comment

Subdivision (c). As defined in rule 8.804, the "prosecuting attorney" may be the city attorney, county counsel, district attorney, or State Attorney General, depending on what government agency filed the criminal charges.

REVISER'S NOTES:

1. This is a new rule based on rule 8.312, which relates to stays of execution in criminal appeals in the Courts of Appeal.

2. Subdivision (a) differs from rule 8.312 by limiting appeals regarding reconsideration of bail to bail for release from custody. The rule is intended to address requests for release from custody not requests to modify bail that is deposited to ensure payment of a fine, penalty or fee that is imposed.

3. Subdivision (c) refers to the "prosecuting attorney," which, under the definitions in rule 8.804 can include a city attorney, county counsel, district attorney, or State Attorney General rather than the "Attorney General" in subdivision (c), since some appellate division matters are prosecuted by the county district attorney or city attorney and appellants will need to determine the proper party to serve.

Rule 8.855. Abandoning the appeal

(a) How to abandon

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

(b) Where to file; effect of filing

(1) If the record has not been filed in the appellate division, the appellant must file the abandonment in the trial court. The filing effects a dismissal of the appeal and restores the trial court's jurisdiction.

(2) If the record has been filed in the appellate division, the appellant must file the abandonment in that court. The appellate division may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) The clerk of the court in which the appellant files the abandonment must immediately notify the adverse party of the filing or of the order of dismissal.

(2) If the appellant files the abandonment in the trial court, the clerk must immediately notify the appellate division.

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

REVISER'S NOTES:

This rule (current rule 8.790) would be restructured so that it is similar to rule 8.316, which relates to abandoning a criminal appeal in the Court of Appeal. The only differences between these two rules are that this rule does not contain the provision in subdivision (c)(1) requiring the clerk to notify the Attorney General, since the prior sentence already appears to require such notice, and the clerk is required to notify the court reporter only if a transcript has been requested.

Chapter 3. Appeals and Records in Misdemeanor Criminal Cases

Article 2. Record in Misdemeanor Appeals

Rule 8.860. Normal record on appeal

(a) Contents

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

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

(A) A clerk's transcript under rule 8.861 or 8.867; or

(B) The original trial court file under rule 8.863.

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

(A) A reporter's transcript under rules 8.865–8.867;

(B) An official electronic recording of the proceedings or a transcript prepared from such an official electronic recording under rule 8.868; or

(C) A statement on appeal under rule 8.869.

(b) Stipulation for limited record

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

REVISER'S NOTES:

1. This rule is based in part on rule 8.320 which establishes the normal record in criminal appeals in the Courts of Appeal It is intended to lay out the basic options for how to create the record on appeal in misdemeanor cases. However, this subdivision differs from rule 8.320 in the following ways:

a. Rule 8.320 presumes that a clerk's transcript will be used. In contrast, this proposed rule includes an option for using the original trial court file in place of the clerk's transcript.

b. Rule 8.320 provides for automatic preparation of the reporter's transcript without cost to the defendant in felony appeals. In contrast, in misdemeanor cases reporter's transcripts may not be available at all and, where available, only those defendants who are indigent are entitled to transcripts at no charge. In addition, unlike in felony proceedings, under current statutory provisions and rules of court, trial court proceedings in misdemeanor cases may be electronically recorded. This draft rule reflects these facts by identifying electronic recordings and statements on appeal (settled statements) as alternative forms of the record of the oral proceedings in the trial court.

c. Because these different options are available for records in misdemeanor matters, the contents of the clerk, and reporter's transcripts are not specified in this rule, as they are in rule 8.320, but in separate rules below.

2. Subdivision (b) of this rule is based on rule 8.320 (f).

Rule 8.861. Contents of clerk's transcript

The clerk's transcript must contain:

(1) The complaint, including any notice to appear, and any amendment;

(2) Any demurrer or other plea;

(3) All court minutes;

(4) Any jury instructions that any party submitted in writing, each one indicating the party requesting it and whether it was given, or requested and refused, and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written findings or opinion of the court;

(8) The judgment or order appealed from;

(9) Any motion or notice of motion for new trial, in arrest of judgment, or to dismiss the action, with supporting and opposing memoranda and attachments;

(10) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040; and

(11) The notice of appeal; and

(12) If the appellant is the defendant:

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

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

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

(D) The probation officer's report.

REVISER'S NOTES:

1. The current appellate division rules relating to criminal appeals do not refer to clerk's transcripts at all; the provisions relating to the elements of the record that must be prepared by the clerk are buried in the more general provisions relating to the contents of the record. This new draft rule would identify these elements as the contents of the clerk's transcript. In addition, it would separate the provisions relating to the clerk's transcript into their own rule.

2. This rule (current rule 8.783) would be restructured so that it is similar to rule 8.320(b), which relates to the contents of clerk's transcripts in criminal appeals in the Courts of Appeal. However, it differs from rule 8.320(b) in the following ways:

   a. Subdivision (1) retains the language from current appellate division rule 8.783(a) relating to records in criminal appeals in the appellate division regarding "the complaint" rather than using the "the accusatory pleading" language from rule 8.320. A reference to notices to appear has also been added to encompass certain traffic offenses in which the notice to appear functions as a complaint.

   b. Subdivision (4) retains the language from current appellate division rule 8.783(a) providing that the clerk's transcript should indicate whether jury instructions were given, requested, or refused.

REVISER'S NOTES:

1. This rule (current rule 8.783(b)) would be restructured so that it is similar to rule 8.336(c), which relates to the preparation of clerk's transcripts in criminal appeals in the Courts of Appeal. This includes incorporating rule 8.336(c)'s requirement that the clerk complete preparation of the transcript within 20 days after the notice of appeal is filed.

2. This rule differs from rule 8.336(c), however, in the following ways:

   a. Rule 8.336(c) generally requires that the clerk begin preparing the transcript when the notice of appeal is filed (in some felony cases the clerk must start preparing the transcript as soon as the verdict or finding of guilty is announced). This proposed rule provides an exception for circumstances where the original file will be used in lieu of the clerk's transcript.

   b. Under rule 8.336, a copy of the transcript is automatically prepared for the Attorney General, and the district attorney may request a copy. This proposed rule would require that a copy of the clerk's transcript be prepared for the prosecuting attorney.

   c. Subdivision (b) is based on rule 8.320(g).

Rule 8.863. Trial court file instead of clerk's transcript

(a) Application

If the appellate division elects by local rule, the original trial court file may be used instead of a clerk's transcript. This rule and any supplemental provisions of the local rule then govern unless the trial court orders otherwise after notice to the parties.

(b) When original file must be prepared

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

(c) Copies

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

c. Subdivision (7) requires the clerk's transcript to contain any written findings as well as any opinion of the court.

d. Subdivision (8) omits the requirement from rule 8.320 that the clerk's transcript contain any abstract of judgment.

e. Subdivision (9) retains the language from current appellate division rule 8.783(a) regarding including in the clerk's transcript any motions in arrest of judgment or to dismiss.

f. This rule omits the requirements from rule 8.320 that the clerk's transcript contain any certificate of probable cause, any application for additional record, and, if the defendant is the appellant, the reporter's transcript of any preliminary hearing.

Rule 8.862 Preparation of clerk's transcript

(a) When preparation begins

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

(b) Format of transcript

The clerk's transcript must comply with rule 8.144.

(c) When preparation must be completed

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

(d) Certification

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

Advisory Committee Comment

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

Advisory Committee Comment

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

REVISER'S NOTES:

1. Like proposed rule 8.833 in the rules relating to civil appeals, this is a new rule based on rule 8.128, which provides for using the original trial court file instead of a clerk's transcript in civil appeals in the Courts of Appeal where the reviewing court has a local rule permitting this.

2. This rule differs from rule 8.128, however, in because it provides that the original file may only be used on the stipulation of the parties. This proposed rule, like proposed rule 8.833, would not require the stipulation of the parties but would allow the use of the file if the appellate division elects to adopt this procedure by local rule.

Rule 8.864. Record of oral proceedings

(a) Appellant's election

The appellant, or attorney for the appellant, must notify the trial court whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1) A reporter's transcript under rules 8.865–8.867. If the appellant elects to use a reporter's transcript, the clerk must promptly mail a copy of appellant's notice making this election and the notice of appeal to each court reporter;

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

(3) A statement on appeal under rule 8.869.

(b) Time for filing election

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

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

(B) If an application for appointment of counsel is filed, either 10 days after the court appoints counsel to represent the defendant on appeal or denies the application for appointment of counsel or 20 days after the notice of appeal is filed, whichever is later.

(c) Statement on appeal when proceedings cannot be transcribed or were not recorded

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

(2) Within 15 days after this notice is mailed by the clerk, the appellant must file a notice with the court stating whether the appellant elects to use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(3) If the statement on appeal prepared under this subdivision contains only a portion of the oral proceedings, it will be incorporated into the reporter's transcript containing the rest of the proceedings.

REVISER'S NOTES:

1. Subdivision (a) of this rule is new, and there is no equivalent provision in the Court of Appeal rules. As previously noted, unlike in felony cases, in misdemeanor cases reporter's transcripts may not be available and under current statutory provisions and rules of court, trial court proceedings in misdemeanor cases may be electronically recorded. Thus there are alternative forms of the record of the oral proceedings available to appellants in misdemeanor appeals. This provision is intended to provide for clearer notice to the court about what form of the record of the oral proceedings, if any, the appellant elects to use. Subdivision (a)(1) also provides for notice to the court reporter(s) if an appellant elects to use a reporter's transcript.

2. Subdivision (b) of this rule is also new. It sets the time period for electing what form of record of the oral proceedings will be used. The proposed period in misdemeanor cases is intended to reflect the fact that defendants in these cases may have or be seeking counsel to represent them on appeal and that the defendant should have the assistance of any such counsel in making this election regarding the record.

3. Subdivision (c) of this rule is based on rules 8.346, relating to use of settled statements in criminal appeals in the Courts of Appeal and proposed rule

8.834(e) (current appellate division rule 8.784), relating to portions of the oral proceedings in civil cases in the appellate division that cannot be transcribed. This subdivision differs from rule 8.346, however, in the following ways:

a. Subdivision (c) requires the trial court clerk to notify the appellant if any proceedings were not reported or recorded or cannot be transcribed. Rule 8.346 does not contain an equivalent provision because all felony proceedings are reported.

b. Rule 8.346 requires the appellant to file an application seeking permission to use a settled statement in lieu of the reporter's transcript. Under this subdivision, the appellant would not be required to seek the court's permission to use a statement on appeal, he or she would simply notify the court about whether he or she intends to use such a statement. Again, this reflects the fact that statements on appeal are often used as the record of the oral proceedings in misdemeanor proceedings.

c. Subdivision (c) also reflects the new procedures for preparing statements on appeal proposed in rule 8.869.

Rule 8.865. Contents of reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any plea other than a not guilty plea;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) Any jury instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings at sentencing, granting or denying probation, or other dispositional hearing;

(9) If the appellant is the defendant, the reporter's transcript must also contain:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge and motions under Penal Code section 995;

(B) Any closing arguments; and

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

REVISER'S NOTES:

1. The current rules for the appellate division do not include separate provisions relating to reporter's transcripts; the provisions relating to reporter's transcripts are part of rule 8.784 relating to settled statements. This rule would separate the provisions relating to the reporter's transcript into their own rule. Separating these provisions would also eliminate the requirement reflected in current rule 8.788 that the trial court judge "settle" any reporter's transcript. As in the Court of Appeal, a reporter's transcript would be treated as the official record of the oral proceedings without the trial court judge needing to review this transcript.

2. These provisions were restructured so that they are now similar to rule 8.336(b), which relates to the contents of clerk's transcripts in criminal appeals in the Courts of Appeal.

Rule 8.866. Preparation of reporter's transcript

(a) When preparation begins

(1) The reporter must immediately begin preparing the reporter's transcript if the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates either:

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

(B) That the appellant is the People.

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

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

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

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

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

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

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

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

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

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

(b) Format of transcript

The reporter's transcript must comply with rule 8.144.

(c) Copies and certification

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

(d) When preparation must be completed

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

(e) Multi-reporter cases

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

Advisory Committee Comment

Subdivision a. If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show indigency.

REVISER'S NOTES:

1. This is a new rule that is structured to be similar to rule 8.336(d), which relates to the preparation of reporter's transcripts in criminal appeals in the Courts of Appeal. This includes incorporating rule 8.336(d)'s requirement that the reporter complete preparation of the transcript within 20 days.

2. This rule differs from rule 8.336(d), however, in the following ways:

    a. Transcripts in felony appeals in the Courts of Appeal are provided to the parties at no cost. However, non-indigent appellants in a misdemeanor appeal are not entitled to a free transcript. This rule therefore establishes procedures similar to those in civil appeals for providing appellants with an estimate of the cost of transcripts and for appellants to deposit this amount in appropriate cases. This rule also establishes procedures for the appellant to request a free transcript on the basis of indgency.

    b. Because there is a charge to non-indigent defendants for transcripts, this rule gives these appellants the option of choosing, after they have received the estimated cost of the reporter, to use a statement on appeal as the record of the oral proceedings rather than the reporter's transcript.

    c. Under rule 8.336(d), in most cases, the reporter must begin preparing the transcript in a felony proceeding as soon as the reporter is notified by the court that a notice of appeal has been filed. This rule follows rule 8.336(c)'s model if either the People are the appellant or the defendant was represented by appointed counsel at trial. When a defendant who was not represented by appointed counsel at trial is the appellant, however, this rule requires the reporter to begin preparing the transcript only when the appellant has either deposited the required fee or obtained an order providing for a free transcript.

    d. Subdivision (b) is based on rule 8.320(g).

    e. This rule does not contain a provision similar to rule 8.336(d)(4) that portions of transcript prepared during trial are not to be retyped.

Rule. 8.867. Limited normal record in certain appeals

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

(a) Record of the documents filed in the trial court

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

(1) The complaint, including any notice to appear, and any amendment;

(2) Any demurrer or other plea;

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

(4) The judgment or order appealed from and any abstract of judgment or commitment;

(5) Any court minutes relating to the judgment or order appealed from; and

(6) The notice of appeal.

(b) Record of the oral proceedings in the trial court

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

REVISER'S NOTE:

This rule (current rule 8.783(a)(12)) would be restructured so that it is similar to rule 8.320(d), which relates to the limited records in criminal appeals in the Courts of Appeal. However, unlike rule 8.320(d), this rule provides for using the original trial court file rather than a clerk's transcript and either a transcript prepared from an electronic recording or a statement on appeal in lieu of a reporter's transcript.

Rule 8.868. Record when trial proceedings were officially electronically recorded

(a) Application

This rule applies only if:

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

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

(b) Transcripts from official electronic recording

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

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

If the appellate division has adopted a local rule permitting this, on stipulation of the parties, the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. Such an electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

(d) When preparation begins

(1) If the appellant, or the attorney for the appellant, files an election under rule 8.864 to use a transcript of an official electronic recording or a copy of the official electronic recording as the record of the oral proceedings, preparation of a transcript or a copy of the recording must begin immediately if either:

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

(B) The appellant is the People.

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

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

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

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

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

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

(C) Preparation of the transcript must begin when:

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

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

Advisory Committee Comment

Subdivision d. If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show indigency.

REVISER'S NOTES:

1. Like proposed rule 8.835 in the rules relating to civil appeals in the appellate division, this is a new rule that reflects the existing statutory and rule authority relating to electronic recording of the proceedings in misdemeanor cases.

2. Subdivisions (a)–(c) of this rule are based on rule 2.952, subdivisions (g), (h), and (j), which address electronic recordings and transcripts from those recordings as the official record of proceedings. Rule 2.952 already contains the authorization to prepare transcripts in these cases and to use the recording itself as an alternative to such a transcript. However, subdivision (c) would provide that the recording itself can only be used as the record if the appellate division has adopted a local rule authorizing this. This procedure would implement rule 2.952's provision authorizing the use of the recording itself only if the parties stipulation has been approved by the court, thus ensuring that this procedure is used only in those appellate divisions that want to use the recording itself. In addition, this local rule approach should reduce the delay and burden on the appellate division associated with having to approve individual stipulations.

3. Subdivision (d) of this rule is new. It is based on the proposed provision in proposed rule 8.866 relating to preparation of reporter's transcripts.

Rule 8.869. Statement on appeal

REVISER'S NOTE:

This draft rule attempts to integrate provisions relating to settled statements from current appellate division rules 8.784, 8.785, 8.787, 8.788, and 8.789. Throughout this rule, the term "settled statement" has been replaced by the term "statement on appeal." This reflects the proposal below to clarify the rule by replacing references to "settlement" of proposed statements with references to review and correction of proposed statements.

Because this rule is so long, revisers notes follow each subdivision.

(a) What is a statement on appeal

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

REVISER'S NOTES:

Subdivision (a) is a new provision intended to help parties understand what a statement on appeal is.

(b) Preparing the statement

(1) If the appellant elects under rule 8.664 to use a statement on appeal, the appellant must prepare, serve, and file a proposed statement within 30 days after filing the record preparation election.

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

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

REVISER'S NOTES:

1. Subdivision (b) is based in part on a combination of current appellate division rules 8.787 and 8.789 and rule 8.137, which relates to settled statements in civil

appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. Similar to requirements applicable to petitions for writs of habeas corpus under rule 8.380, subdivision (b)(3) of this proposed rule would require that appellants who are not represented by attorneys file their proposed statements on appeal on the appropriate Judicial Council form.

(c) Contents of statement on appeal

A proposed statement prepared by the appellant must contain:

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

(2) A statement of the points the appellant is raising on appeal; the appeal is then limited to those points unless, on motion, the appellate division permits otherwise.

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

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

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

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

REVISER'S NOTES:

1. Subdivision (c) is based primarily on a combination of the language of current appellate division rule 8.784 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. The numbered subparts are based on rule 8.137 and the lettered subparts are based on rule 8.784.

3. Subdivision (c)(2) retains the requirement from current appellate division rule 8.784(b) that the appellant specify the grounds for appeal in every proposed statement. This is different from rule 8.137, which only requires such a specification of the grounds for appeal when less than all the testimony is summarized in the statement. However, like 8.137(b)(1), absent a motion by the appellant, this subdivision would limit the appeal to the grounds specified. This limitation is different from current appellate division rule 8.784(b), which limits the appeal to the grounds specified "unless it shall appear to the satisfaction of said Court that the record on appeal fairly and fully presents the evidence and other proceedings necessary for a decision thereon."

(d) Review of appellant's proposed statement

(1) Within 20 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) Except as provided in (5), no later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings.

(3) A party may request a hearing to review and correct the proposed statement, but no hearing will be held unless ordered by the judge.

(4) The judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement

(5) If the trial court proceedings were reported by a court reporter or officially recorded electronically under Government Code section 69957, instead of correcting a proposed statement on appeal, the judge may direct that a transcript be prepared as the record of the proceedings. The court will pay for any transcript ordered under this subdivision.

REVISER'S NOTES:

1. Subdivision (d) is based primarily on a combination of current appellate division rules 8.788 and 8.789 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. Like all of the current rules relating to settled statements, subdivision (d)(1) would provide the respondent with an opportunity to suggest changes to the proposed statement.

3. In subdivision (d)(2), the references to "settlement" of the statement in current appellate division rule 8.788 have been replaced, as discussed above, with references to review and correction of proposed statements. This replacement is based on the following language in rule 8.788 which describes what "settlement" actually means: "settle the statement or transcript, or both, and the amendments proposed, if any, correcting, altering, or rewriting the statement or transcript, or both, as may be necessary to make it set forth fairly and truly the evidence and proceedings relating to the specified grounds of appeal or the matters set forth by the appellant in support of it."

4. Subdivision (d)(3), providing that no hearing will be held on the statement unless ordered by the court, is based on current appellate division rule 8.789(g). This is different from both rule 8.137(c)(1) and rule 8.788, which provide for the setting of a hearing to settle the statement in all cases.

5. Subdivision (d)(4) is based on language from current appellate division rule 8.788.

6. The provision in current appellate division rule 8.789(g) regarding the trial judge using "available sound recordings of the proceedings to supplement the judge's memory and notes of the case" is not included in proposed subdivision (d). The Committee's view was that if an electronic recording was available, it should not be used to supplement the judge's memory in preparing a statement on appeal, but, as proposed under subdivision (5), a transcript should be prepared instead of such a statement.

8. The provision in subdivision (5) permitting the judge to order a transcript instead of correcting a proposed statement on appeal is new. The provision is meant to streamline the procedures and save both party and judicial time. It is the Committee's understanding that, in many cases, proposed statements prepared by appellants are not complete or accurate and must be completely rewritten by the trial judge. If the trial court proceedings were reported or electronically recorded, it may be quicker, simpler, and ultimately less costly to have a transcript prepared instead of having the judge take the time to review a proposed statement, make any corrections, have it sent to the appellant, have the appellant review it, and then have the judge review any objections submitted by the appellant. Note that the proposed statement prepared by the appellant, including the appellant's statement of the points the appellant is raising on appeal, will be transmitted to the appellate division under subdivision (g).

(e) Review of corrected statement

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

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

(f) Certification of statement on appeal

(1) If the trial judge does not make any corrections or modifications to the proposed statement under (d)(2) and does not direct the preparation of a transcript in lieu of correcting the proposed statement under (d)(5), the judge must promptly certify the statement.

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

(g) Transmitting certified statement or transcript to appellate division

(1) When the statement has been certified under (f), the clerk must promptly transmit it to the appellate division, along with all objections filed by the parties.

(2) If the trial judge directs under (d)(5) that a transcript be prepared as the record of the proceedings instead of correcting a proposed statement on appeal, when the transcript has been prepared, the clerk must promptly transmit it to the appellate division along with the appellant's proposed statement and any proposed amendments submitted by the respondent.

REVISER'S NOTES:

1. Subdivisions (e), (f), and (g) are based in part on a combination of current appellate division rules 8.788 and 8.789 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. Subdivisions (e)(1), (2), and (4), regarding sending proposed statements revised by the trial judge to the parties and giving the parties an opportunity to object to these statements, are new. This would permit the appellant to see and object to the statement before it becomes the record that the appellant must use for his or her appeal.

3. Subdivision (f)(1) is based in part on rules 8.137 and 8.789(h). Rule 8.137 provides that if the respondent does not object to a statement, it is deemed properly prepared and ready for certification. Similarly, rule 8.789(h) provides that the clerk must certify a statement if the respondent has not timely filed proposed corrections.

4. Subdivision (f)(2) is new. Unlike rules 8.137 and 8.788, which provide that the statement is sent back to appellant to revise based on the corrections made by the trial judge, subdivision (f)(2) provides that the trial judge prepares the final statement. It is the Committee's understanding that, in practice, the final statements in appellate division proceedings are typically prepared by the judge rather than the appellant.

5. The requirement in subdivision (g)(1) for transmitting all of the objections to the appellate division is based on rule 8.789(h)(4). It allows the appellate division to see how the trial judge resolved any disputes regarding the statement.

6. Subdivision (g)(2) is new. It insures that if the trial judge directs under (d)(5) that a transcript be prepared instead of correcting a proposed statement prepared by the appellant, the appellate division will still receive the proposed statement, including the appellant's statement of the points the appellant is raising on appeal.

(h) Extensions of time

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

Advisory Committee Comment

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

Subdivision (d). Note that, under rule 8.804, the term "judge" includes commissioners and temporary judges.

REVISER'S NOTE:

Subdivision (h) is based on current appellate division rule 8.787(a).

Rule 8.870. Exhibits

(a) Exhibits deemed part of record

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

(b) Notice of designation

(1) At the time the appellant files the record designation election under rule 8.864, if the appellant wants the appellate division to consider any original exhibits that were

admitted in evidence, refused, or lodged, the appellant must serve and file a notice in the trial court designating such exhibits.

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

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

(c) Request by appellate division

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

(d) Transmittal

Unless the appellate division orders otherwise:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order. The clerk must send the exhibits and two copies of a list of the exhibits to the appellate division when it sends the record under rule 8.872. If the appellate division clerk finds the list correct, the clerk must sign and return one copy to the trial court clerk.

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

(e) Return by appellate division

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

Advisory Committee Comment

Subdivision b. *Record Preparation Election (Misdemeanor)* (form CR-134), includes boxes that the appellant can use to provide this notice.

REVISER'S NOTE:

This is a new rule based on rule 8.224, which applies to civil appeals in the Courts of Appeal and, through a cross-reference in rule 8.320(e), to criminal appeals in the Courts of Appeal. This rule differs from rule 8.224, however, in terms of when the exhibits must be requested from the trial court and sent to the reviewing court. Under rule 8.224, the request must be made no later than the time briefs are filed and the exhibits must be sent to the reviewing court within 20 days of that request. In contrast, under this rule,

the request must be made at the time the record preparation election is made and the exhibits must be sent to the appellate division along with the record on appeal. This will insure that the appellate division has these exhibits at the time the briefs are filed.

Rule 8.871. Juror-identifying information

(a) Applicability

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

(b) Juror names, addresses, and telephone numbers

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

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

(c) Potential jurors

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

Advisory Committee Comment

This rule implements Code of Civil Procedure section 237.

REVISER'S NOTE:

This rule is based on rule 8.332, which applies in criminal appeals in the Courts of Appeal.

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

(a) When the record is complete

(1) If the appellant elected under rule 8.864 to proceed without a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or, if the original trial court file will be used instead of the clerk's

transcript, when that original file is ready for transmission as provided under rule 8.863(b).

(2) If the appellant elected under rule 8.864 to proceed with a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or the original file is ready for transmission as provided in (1) and:

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

(B) If the appellant elected to use an official electronic recording of the proceedings or a transcript prepared from such an official electronic recording, the electronic recording or transcript have been prepared under rule 8.868; or

(C) If the appellant elected to use a statement on appeal, the statement on appeal has been certified by the trial court or a transcript has been prepared under rule 8.869(h).

(b) Sending the record

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

(1) The original record to the appellate division;

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

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

(c) Filing the record

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

REVISER'S NOTES:

This rule is based mainly on a combination of rules 8.150 and 8.336(f). However, subdivision (a), which defines when the record is complete, is new. It was added to reflect both the different options for the form of the record and the fact that, unlike in felony appeals, many criminal defendants in misdemeanor proceedings may not be represented by counsel.

Rule 8.873. Augmenting or correcting the record in the appellate division

(a) Subsequent trial court orders

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

(b) Omissions

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

(c) Augmentation or correction by the appellate division

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

REVISER'S NOTES

1. This rule is based on rule 8.340, regarding augmenting and correcting records in criminal appeals in the Courts of Appeal.

2. Rule 8.789 would be deleted in its entirety but, as noted above, some provisions would be incorporated into proposed rule 8.869 on settled statements and several other rules.

Chapter 4. Appeals and Records in Infraction Criminal Cases

Article 1. Taking Appeals in Infraction Cases

Rule 8.880. Application of chapter

The rules in this chapter apply only to appeals in infraction cases. An infraction case is a case in which the defendant was convicted only of an infraction and was not charged with any felony. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a.

Advisory Committee Comment

Chapters 1 and 5 of this division also apply in appeals from infraction cases. Chapter 3 of this division applies to appeals in misdemeanor cases. The rules that apply in appeals in felony cases are located in chapter 3 of division 1 of this title.

REVISER'S NOTES:

As noted above in the reviser's notes following rule 8.850, to help clarify the rules applicable in different cases, former chapter 3 of the appellate division rules would be amended to apply only to appeals in misdemeanor cases. This new chapter 4 would be adopted to address appeals in infraction cases. Having these separate sets of rules should help litigants identify the rules applicable to their cases. With a few important exceptions, such as the eligibility for appointed counsel, the rules for both types of cases are the same.

Rule 8.881. Notice of appeal

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order in an infraction case, the defendant or the People must file a notice of appeal in the trial court that issued the judgment or order being appealed. The notice must specify the judgment or order—or part of it—being appealed.

(2) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(3) The notice of appeal must be liberally construed in favor of its sufficiency.

(b) Notification of the appeal

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

(2) The notification must show the date it was mailed or delivered, the number and title of the case, the date the notice of appeal was filed, and whether the defendant was represented by appointed counsel.

(3) The notification to the appellate division clerk must also include a copy of the notice of appeal.

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

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

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

REVISER'S NOTES:

1. The current rule relating to notices of appeal in infraction cases (rule 8.782) would be restructured so that it is similar to rule 8.304, which relates to the notice of appeal in criminal appeals in the Courts of Appeal.

2. Subdivision (a) is based on 8.304(a). Subdivision (a)(1) is based on 8.304(a)(1). Subdivision (a)(2) is based on 8.304(a)(3). Subdivision (a)(3) is based on the first sentence of 8.304(a)(4).

3. This rule does not contain a provision similar to that in rule 8.304(b), relating to appeal after a plea of guilty or nolo contendere or after admission of probation violation.

4. Subdivision (b) is based on rule 8.304(c). Subdivision (b) differs from 8.304(c), however, in the following ways:

   a. Subdivision (b)(1) is based on rule 8.304(c)(1) but, unlike that rule, it does not require that a copy of the notice of appeal be sent to the reporter(s) in all cases.

b. Subdivision (b)(2) is based on rule 8.304(c)(2), but it does not include provisions similar to those in 8.304(c)(2)(A)–(C), requesting that the clerk's notice that a notice of appeal has been filed include specified information about the parties and attorneys, if it is available.

c. Subdivision (b)(3) is based on rule 8.304(c)(3), but it does not include provisions similar to those in 8.304(c)(3) requiring that the notice from the clerk include any certificate filed under (b), and the sequential list of reporters made under rule 2.950.

Rule 8.882. Time to appeal

(a) Normal time

A notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. If the defendant is committed before final judgment for insanity or narcotics addiction, the notice of appeal must be filed within 30 days after the commitment.

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the trial court clerk mails notification of the first appeal, whichever is later.

(c) Premature notice of appeal

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

(d) Late notice of appeal

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

(e) Receipt by mail from custodial institution

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

REVISER'S NOTES:

1. The current rule relating to the time for filing notices of appeal in infraction cases (rule 8.782(a)) would be restructured so that it is similar to rule 8.308, which relates to the time for filing the notice of appeal in criminal appeals in the Courts of Appeal.

2. Subdivision (a) is based on 8.308(a). This restructuring includes increasing the time to file the notice of appeal for an infraction from 30 days to 60 days after the rendition of judgment, so that the deadline is the same for all appeals in the Courts of Appeal and in the appellate division. This is a policy change recommendation by the committee to eliminate a trap for the unwary. Under the existing rules, it is difficult to determine what the correct deadline is for an appeal in infraction as opposed to felony cases. Since the time to file a notice of appeal is jurisdictional, currently, if an appellant mistakenly believes that he or she has 60 days, as is the case in the Courts of Appeal, and does not file the notice of appeal until after 30 days, his or her appeal must be dismissed. The committee believed that such errors currently occur with some frequency and that it was important to have a uniform period for filing the notice of appeal.

3. Subdivision (a) differs from rule 8.308(a) in the following ways:

   a. Subdivision (a) retains language from current rule 8.782(a) regarding the time to file a notice of appeal when a defendant is committed before final judgment for insanity or narcotics addiction.

   b. Subdivision (a) does not include a provision similar to that in rule 8.308(a) regarding a court extending the time to file the notice of appeal.

4. Subdivision (b) is based on 8.308(b).

5. Subdivision (c) is based on 8.308(c).

6. Subdivision (d) is based on 8.308(d), but, unlike rule 8.308(d), it does not require that a copy of the notice of appeal marked as late by the clerk be sent to the district appellate project.

7. Subdivision (e) is based on 8.308(e).

Rule 8.883. Stay of execution on appeal

(a) Application

Pending appeal, the defendant may apply to the appellate division for a stay of execution after a judgment of conviction or an order granting probation.

(b) Showing

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

(c) Service

The application must be served on the prosecuting attorney.

(d) Interim relief

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

Advisory Committee Comment

Subdivision (c): Under rule 8.804, the prosecuting attorney means the city attorney, county counsel, or district attorney prosecuting the infraction.

REVISER'S NOTES:

1. This is a new rule based on rule 8.312, which relates to stays of execution in criminal appeals in the Courts of Appeal.

2. Subdivision (a) differs from rule 8.312 by omitting references to bail for release from custody as those circumstances do not apply to cases where only infractions are charged.

3. Subdivision (c) refers to the "prosecuting attorney" rather than the "Attorney General," since appellate division matters for infractions are prosecuted by the county counsel, district attorney, or city attorney and defendants will need to determine the proper party to serve.

Rule 8.884. Abandoning the appeal

(a) How to abandon

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

(b) Where to file; effect of filing

(1) If the record has not been filed in the appellate division, the appellant must file the abandonment in the trial court. The filing affects a dismissal of the appeal and restores the trial court's jurisdiction.

(2) If the record has been filed in the appellate division, the appellant must file the abandonment in that court. The appellate division may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) The clerk of the court in which the appellant files the abandonment must immediately notify the adverse party of the filing or of the order of dismissal.

(2) If the appellant files the abandonment in the trial court, the clerk must immediately notify the appellate division.

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

REVISER'S NOTES:

This rule (current rule 8.790) would be restructured so that it is similar to rule 8.316, which relates to abandoning a criminal appeal in the Court of Appeal. The only differences between these two rules are that this rule does not contain the provision in subdivision (c)(1) requiring the clerk to notify the Attorney General, since the prior sentence already appears to require such notice, and the clerk is required to notify the court reporter only if a transcript has been requested.

Chapter 4. Appeals and Records in Infraction Criminal Cases

Article 2. Record in Infraction Appeals

Rule 8.890. Normal record on appeal

(a) Contents

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

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

(A) A clerk's transcript under rule 8.891 or 8.897; or

(B) The original trial court file under rule 8.893.

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

(A) A reporter's transcript under rules 8.895–8.897;

(B) An official electronic recording of the proceedings or a transcript prepared from such an official electronic recording under rule 8.898; or

(C) A statement on appeal under rule 8.899.

(b) Stipulation for limited record

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

REVISER'S NOTES:

1. Like rule 8.860 in the proposed rules for misdemeanor appeals, this rule is based in part on rule 8.320 which establishes the normal record in criminal appeals in the Courts of Appeal It is intended to lay out the basic options for how to create the record on appeal in infraction cases. However, this subdivision differs from rule 8.320 in the following ways:

a. Rule 8.320 presumes that a clerk's transcript will be used. In contrast, this proposed rule includes an option for using the original trial court file in place of the clerk's transcript.

b. Rule 8.320 provides for automatic preparation of the reporter's transcript without cost to the defendant in felony appeals. In contrast, in infraction cases reporter's transcripts may not be available at all and, where available, only those defendants who are indigent are entitled to transcripts at no charge. In addition, unlike in felony proceedings, under current statutory provisions and rules of court, trial court proceedings in infraction cases may be electronically recorded. This draft rule reflects these facts by identifying electronic recordings and statements on appeal (settled statements) as alternative forms of the record of the oral proceedings in the trial court.

c. Because these different options are available for records in infraction matters, the contents of the clerk's and reporter's transcripts are not specified in this rule, as they are in rule 8.320, but in separate rules below.

2. Subdivision (b) of this rule is based on rule 8.320 (f).

Rule 8.891. Contents of clerk's transcript

The clerk's transcript must contain:

(1) The complaint, including any notice to appear, and any amendment;

(2) Any demurrer or other plea;

(3) All court minutes;

(4) Any written findings or opinion of the court;

(5) The judgment or order appealed from;

(6) Any motion or notice of motion for new trial, in arrest of judgment, or to dismiss the action, with supporting and opposing memoranda and attachments;

(7) Any transcript of a sound or sound-and-video recording tendered to the court under rule 2.1040; and

(8) The notice of appeal; and

(9) If the appellant is the defendant:

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

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

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

(D) The probation officer's report.

REVISER'S NOTES:

1. The current appellate division rules relating to criminal appeals do not refer to clerk's transcripts at all; the provisions relating to the elements of the record that must be prepared by the clerk are buried in the more general provisions relating to the contents of the record. This new draft rule would identify these elements as the contents of the clerk's transcript. In addition, it would separate the provisions relating to the clerk's transcript into their own rule.

2. As in rule 8.861 relating to clerk's transcripts in misdemeanor appeals, the current appellate division rule relating to the record on appeal in infraction appeals (current rule 8.783) would be restructured so that it is similar to rule 8.320(b), which relates to the contents of clerk's transcripts in criminal appeals in the Courts of Appeal. However, it differs from rule 8.320(b) in the following ways:

   a. Unlike rule 8.320 or proposed rule 8.861 relating to clerk's transcripts in misdemeanor appeals, references to jury instructions and communications with the jury are not included since there are no jury trials in infraction cases.

   b. Subdivision (1) retains the language from current appellate division rule 8.783(a) relating to records in criminal appeals in the appellate division regarding "the complaint" rather than using the "the accusatory pleading" language from rule 8.320. A reference to notices to appear has also been added to encompass certain traffic offenses in which the notice to appear functions as a complaint.

   c. Subdivision (4) requires the clerk's transcript to contain any written findings as well as any opinion of the court.

   d. Subdivision (5) omits the requirement from rule 8.320 that the clerk's transcript contain any abstract of judgment.

e. Subdivision (6) retains the language from current appellate division rule 8.783(a) regarding including in the clerk's transcript motions in arrest of judgment or to dismiss.

f. This rule omits the requirements from rule 8.320 that the clerk's transcript contain any certificate of probable cause, any application for additional record, and, if the defendant is the appellant, the reporter's transcript of any preliminary hearing.

Rule 8.892 Preparation of clerk's transcript

(a) When preparation begins

Unless the original court file will be used in place of a clerk's transcript under rule 8.893, the clerk must begin preparing the clerk's transcript immediately after the notice of appeal is filed.

(b) Format of transcript

The clerk's transcript must comply with rule 8.144.

(c) When preparation must be completed

Within 20 days after the notice of appeal is filed, the clerk must complete preparation of an original clerk's transcript for the appellate division and one copy for the appellant. If there is more than one appellant, the clerk must prepare an extra copy for each additional appellant who is represented by separate counsel or self-represented. If the defendant is the appellant, a copy must also be prepared for the prosecuting attorney if the prosecuting attorney appeared in the case. If the prosecuting attorney did not appear in the case, a copy will be prepared for him or her only on his or her request. If the People are the appellant, a copy must also be prepared for the respondent.

(d) Certification

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

Advisory Committee Comment

Rule 8.901 addresses when the clerk's transcript is sent to the appellate division in infraction appeals.

REVISER'S NOTES:

1. As in rule 8.862 relating to preparation of clerk's transcripts in misdemeanor appeals, the current appellate division rule relating to preparation of the documents from the trial court file in infraction appeals (rule 8.783(b)) would be

restructured so that it is similar to rule 8.336(c), which relates to the preparation of clerk's transcripts in criminal appeals in the Courts of Appeal. This includes incorporating rule 8.336(c)'s requirement that the clerk complete preparation of the transcript within 20 days after the notice of appeal is filed.

2. This rule differs from rule 8.336(c), however, in the following ways:

   a. Rule 8.336(c) generally requires that the clerk begin preparing the transcript when the notice of appeal is filed (in some felony cases the clerk must start preparing the transcript as soon as the verdict or finding of guilty is announced). This proposed rule provides an exception for circumstances where the original file will be used in lieu of the clerk's transcript.

   b. Under rule 8.336, a copy of the transcript is automatically prepared for the Attorney General, and the district attorney may request a copy. This proposed rule would only require that a copy of the clerk's transcript be prepared for the prosecuting attorney if that prosecuting attorney appeared in the case or requests a copy. This is intended to reflect the fact that the prosecuting attorney does not appear at the trial or appeal in some infraction proceedings.

   c. Subdivision (b) is based on rule 8.320(g).

Rule 8.893. Trial court file instead of clerk's transcript

(a) Application

If the appellate division elects by local rule, the original trial court file may be used instead of a clerk's transcript. This rule and any supplemental provisions of the local rule then govern unless the trial court orders otherwise after notice to the parties.

(b) When original file must be prepared

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

(c) Copies

The clerk must send a copy of the index to the appellant for use in paginating his or her copy of the file to conform to the index. If there is more than one appellant, the clerk must prepare an extra copy of the index for each additional appellant who is represented by separate counsel or self-represented. If the defendant is the appellant and the prosecuting attorney appeared in the case, a copy must also be prepared for the prosecuting attorney. If the prosecuting attorney did not appear in the case, a copy will be prepared for him or her

only on his or her request. If the People are the appellant, a copy must also be prepared for the respondent.

Advisory Committee Comment

Rule 8.901 addresses when the original file sent to the appellate division in infraction appeals.

REVISER'S NOTES:

1. Like proposed rules 8.833 in the rules relating to civil appeals and rule 8.863 in the rules relating misdemeanor appeals, this is a new rule based on rule 8.128, which provides for using the original trial court file instead of a clerk's transcript in civil appeals in the Courts of Appeal.

2. This rule differs from rule 8.128, however, in the following ways:

   a. Rule 8.128 provides that the original file may only be used on the stipulation of the parties. This proposed rule, like proposed rule 8.833, would not require the stipulation of the parties but would allow the use of the file if the appellate division elects to adopt this procedure by local rule.

   b. As with the clerk's transcript under rule 8.892, this rule only requires that a copy of the index to the trial court file be provided to the prosecuting attorney if that attorney appeared in the case or requests a copy. This is intended to reflect the fact that the prosecuting attorney does not appear at the trial or appeal in some infraction proceedings.

Rule 8.894. Record of oral proceedings

(a) Appellant's election

The appellant, or attorney for the appellant, must notify the trial court whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1) A reporter's transcript under rules 8.895–8.897. If the appellant elects to use a reporter's transcript, the clerk must promptly mail a copy of appellant's notice making this election and the notice of appeal to each court reporter;

(2) An official electronic recording of the proceedings or a transcript prepared from such an official electronic recording under rule 8.898. If the appellant elects to use the electronic recording itself, rather than a transcript prepared from that recording, the appellant must attach a copy of the stipulation required under rule 8.868(c); or

(3) A statement on appeal under rule 8.899.

(b) Time for filing election

The notice of election required under (a) must be filed at the time the notice of appeal is filed.

(c) Statement on appeal when proceedings cannot be transcribed or were not recorded

(1) If the appellant elects under (a) to use a reporter's transcript or a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant within 10 days after the appellant files this election if any portion of the oral proceedings listed in rule 8.895 was not reported or officially recorded electronically or cannot be transcribed. The notice must indicate that the appellant may use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(2) Within 15 days after this notice is mailed by the clerk, the appellant must file a notice with the court stating whether the appellant elects to use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed.

(3) If the statement on appeal prepared under this subdivision contains only a portion of the oral proceedings, it will be incorporated into the reporter's transcript containing the rest of the proceedings.

REVISER'S NOTES:

1. As in rule 8.864 relating to the record of the oral proceedings in misdemeanor appeals, subdivision (a) of this rule is new, and there is no equivalent provision in the Court of Appeal rules. As previously noted, unlike in felony cases, in infraction cases reporter's transcripts may not be available and under current statutory provisions and rules of court, trial court proceedings in misdemeanor and infraction cases may be electronically recorded. Thus there are alternative forms of the record of the oral proceedings available to appellants in infraction appeals. This provision is intended to provide for clearer notice to the court about what form of the record of the oral proceedings, if any, the appellant elects to use. Subdivision (a)(1) also provides for notice to the court reporter(s) if an appellant elects to use a reporter's transcript.

2. Subdivision (b) of this rule is also new. It sets the time period for electing what form of record of the oral proceedings will be used. .

3. Subdivision (c) of this rule is based on rules 8.346, relating to use of settled statements in criminal appeals in the Courts of Appeal and proposed rule 8.834(e) (current appellate division rule 8.784), relating to portions of the oral

proceedings in civil cases in the appellate division that cannot be transcribed. This subdivision differs from rule 8.346, however, in the following ways:

a. Subdivision (c) requires the trial court clerk to notify the appellant if any proceedings were not reported or recorded or cannot be transcribed. Rule 8.346 does not contain an equivalent provision because all felony proceedings are reported.

b. Rule 8.346 requires the appellant to file an application seeking permission to use a settled statement in lieu of the reporter's transcript. Under this subdivision, the appellant would not be required to seek the court's permission to use a statement on appeal, he or she would simply notify the court about whether he or she intends to use such a statement. Again, this reflects the fact that statements on appeal are often used as the record of the oral proceedings in infraction proceedings.

c. Subdivision (c) also reflects the new procedures for preparing statements on appeal proposed in rule 8.899.

Rule 8.895. Contents of reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any plea other than a not guilty plea;

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding any opening statement;

(4) Any oral opinion of the court;

(5) The oral proceedings on any motion for new trial;

(6) The oral proceedings at sentencing, granting or denying probation, or other dispositional hearing;

(7) If the appellant is the defendant, the reporter's transcript must also contain:

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge and motions under Penal Code section 995; and

(B) The closing arguments.

REVISER'S NOTES:

1. The current rules for the appellate division do not include separate provisions relating to reporter's transcripts; the provisions relating to reporter's transcripts are part of rule 8.784 relating to settled statements. This rule would separate the provisions relating to the reporter's transcript into their own rule.

2. As in proposed rule 8.865 relating to reporter's transcripts in misdemeanor appeals, these provisions were restructured so that they are now similar to rule 8.336(b), which relates to the contents of clerk's transcripts in criminal appeals in the Courts of Appeal. These provisions differ from rule 8.336(b) and from proposed rule 8.865, however, because references to instructions and communications with the jury are not included since there are no jury trials in infraction cases.

Rule 8.896. Preparation of reporter's transcript

(a) When preparation begins

(1) The reporter must immediately begin preparing the reporter's transcript if the notice sent to the reporter by the clerk under rule 8.894(a)(1) indicates that the appellant is the People.

(2) If the notice sent to the reporter by the clerk under rule 8.894(a)(1) indicates that the appellant is the defendant:

(A) Within 10 days after the date the clerk mailed the notice under rule 8.894(a)(1), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript; and

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

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

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

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

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

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

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

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

(b) Format of transcript

The reporter's transcript must comply with rule 8.144.

(c) Copies and certification

The reporter must prepare an original and the same number of copies of the reporter's transcript as rule 8.892 requires of the clerk's transcript and must certify each as correct.

(d) When preparation must be completed

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

(e) Multi-reporter cases

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

Advisory Committee Comment

Subdivision a. The appellant must use *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show indigency.

REVISER'S NOTES:

1. This is a new rule that, like proposed rule 8.866 relating to appeals of misdemeanor cases, is structured to be similar to rule 8.336(d), which relates to the preparation of reporter's transcripts in criminal appeals in the Courts of Appeal. This includes incorporating rule 8.336(d)'s requirement that the reporter complete preparation of the transcript within 20 days.

2. This rule differs from rule 8.336(d), however, in the following ways:

(4) The judgment or order appealed from and any abstract of judgment;

(5) Any court minutes relating to the judgment or order appealed from; and

(6) The notice of appeal.

(b) Record of the oral proceedings in the trial court

If an appellant wants to raise any issue which requires consideration of the oral proceedings in the trial court, a reporter's transcript, transcript prepared under rule 8.896 or a settled statement under rule 8.899 summarizing any oral proceedings incident to the judgment or order being appealed.

REVISER'S NOTE:

As in proposed rule 8.867 in the rules for misdemeanor appeals, the rule addressing limited records in infraction appeals (current appellate division rule 8.783(a)(12)) would be restructured so that it is similar to rule 8.320(d), which relates to the limited records in criminal appeals in the Courts of Appeal. However, unlike rule 8.320(d), this rule provides for using the original trial court file rather than a clerk's transcript and either a transcript prepared from an electronic recording or a statement on appeal in lieu of a reporter's transcript.

Rule 8.898. Record when trial proceedings were officially electronically recorded

(a) Application

This rule applies only if:

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

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

(b) Transcripts from official electronic recording

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

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

If the appellate division has adopted a local rule permitting this, on stipulation of the parties, the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted as the record of these oral proceedings without being transcribed. This official electronic recording satisfies any requirement in these rules or in any statute for a reporter's transcript of these proceedings.

(d) When preparation begins

(1) If the appellant, or the attorney for the appellant, files an election under rule 8.894 to use a transcript of an official electronic recording or a copy of the official electronic recording as the record of the oral proceedings, preparation of a transcript or a copy of the recording must begin immediately if the appellant is the People.

(2) If the appellant is the defendant:

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

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

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

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

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

(C) Preparation of the transcript must begin when:

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

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

Advisory Committee Comment

Subdivision d. The appellant must use *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show indigency.

REVISER'S NOTES:

1. Like proposed rule 8.835 in the rules relating to appeals in limited civil cases and proposed rule 8.868 relating to appeals in misdemeanor cases in the appellate division, this is a new rule that reflects the existing statutory and rule authority relating to electronic recording of the proceedings in infraction cases.

2. Subdivisions (a)–(c) of this rule are based on rule 2.952, subdivisions (g), (h), and (j), which address electronic recordings and transcripts from those recordings as the official record of proceedings. Rule 2.952 already contains the authorization to prepare transcripts in these cases and to use the recording itself as an alternative to such a transcript. However, subdivision (c) would provide that the recording itself can only be used as the record if the appellate division has adopted a local rule authorizing this. This procedure would implement rule 2.952's provision authorizing the use of the recording itself only if the parties stipulation has been approved by the court, thus ensuring that this procedure is used only in those appellate divisions that want to use the recording itself. In addition, this local rule approach should reduce the delay and burden on the appellate division associated with having to approve individual stipulations.

3. Subdivision (d) of this rule is new. It is based on the proposed provision in proposed rule 8.896 relating to preparation of reporter's transcripts.

Rule 8.899. Statement on appeal

REVISER'S NOTE:

As in rule 8.869 relating to statements on appeal in misdemeanor appeals, this draft rule attempts to integrate provisions relating to settled statements from current appellate division rules 8.784, 8.785, 8.787, 8.788, and 8.789. Throughout this rule, the term "settled statement" has been replaced by the term "statement on appeal." This reflects the proposal below to clarify the rule by replacing references to "settlement" of proposed statements with references to review and correction of proposed statements.

Because this rule is so long, revisers notes follow each subdivision.

(a) What is a statement on appeal

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. An appellant can elect under rule 8.894 to use a statement on appeal as the record of the oral proceedings in the trial court, replacing the reporter's transcript.

a. Transcripts in felony appeals in the Courts of Appeal are provided to the parties at no cost. However, non-indigent appellants in an infraction appeal are not entitled to a free transcript. This rule therefore establishes procedures similar to those in civil appeals for providing appellants with an estimate of the cost of transcripts and for appellants to deposit this amount in appropriate cases. This rule also establishes procedures for the appellant to request a free transcript on the basis of indigency. In addition, unlike in proposed rule 8.866 for misdemeanor appeals, this rule does not include provisions concerning entitlement to transcripts where the appellant was represented by appointed counsel since counsel is not appointed in infraction cases.

b. Because there is a charge to non-indigent defendants for transcripts, this rule gives these appellants the option of choosing, after they have received the estimated cost of the reporter, to use a statement on appeal as the record of the oral proceedings rather than the reporter's transcript.

c. Under rule 8.336(d), in most cases, the reporter must begin preparing the transcript in a felony proceeding as soon as the reporter is notified by the court that a notice of appeal has been filed. This rule follows rule 8.336(c)'s model if the People are the appellant. When a defendant is the appellant, however, this rule requires the reporter to begin preparing the transcript only when the appellant has either deposited the required fee or obtained an order providing for a free transcript.

d. Subdivision (b) is based on rule 8.320(g).

e. This rule does not contain a provision similar to rule 8.336(d)(4) that portions of transcript prepared during trial are not to be retyped.

Rule. 8.897. Limited normal record in certain appeals

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

(a) Record of the documents filed in the trial court

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

(1) The complaint, including any notice to appear, and any amendment;

(2) Any demurrer or other plea;

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

REVISER'S NOTES:

Subdivision (a) is a new provision intended to help parties understand what a statement on appeal is.

(b) Preparing the statement

(1) If the appellant elects under rule 8.694 to use a statement on appeal, the appellant must prepare and file a proposed statement within 30 days after filing the record preparation election. If the defendant is the appellant and prosecuting attorney appeared in the case, the defendant must serve a copy of the proposed statement on the prosecuting attorney. If the People are the appellant, the prosecuting attorney must serve a copy of the proposed statement on the respondent.

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

(3) Appellants who are not represented by an attorney must file their proposed statement on *Statement on Appeal (Infraction)* (form CR-143). For good cause, the court may permit the filing of a statement that is not on form CR-143.

REVISER'S NOTES:

1. Subdivision (b) is based in part on a combination of current appellate division rules 8.787 and 8.789 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. Similar to requirements applicable to petitions for writs of habeas corpus under rule 8.380, subdivision (b)(3) of this proposed rule would require that appellants who are not represented by attorneys file their proposed statements on appeal on the appropriate Judicial Council form.

(c) Contents of statement on appeal

A proposed statement prepared by the appellant must contain:

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

(2) A statement of the points the appellant is raising on appeal; the appeal is then limited to those points unless, on motion, the appellate division permits otherwise.

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

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

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

REVISER'S NOTES:

1. Subdivision (c) is based primarily on a combination of the language of current appellate division rule 8.784 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. The numbered subparts are based on rule 8.137 and the lettered subparts are based on rule 8.784.

3. Subdivision (c)(2) retains the requirement from current appellate division rule 8.784(b) that the appellant specify the grounds for appeal in every proposed statement. This is different from rule 8.137, which only requires such a specification of the grounds for appeal when less than all the testimony is summarized in the statement. However, like 8.137(b)(1), absent a motion by the appellant, this subdivision would limit the appeal to the grounds specified. This limitation is different from current appellate division rule 8.784(b), which limits the appeal to the grounds specified "unless it shall appear to the satisfaction of said Court that the record on appeal fairly and fully presents the evidence and other proceedings necessary for a decision thereon."

4. Unlike proposed rule 8.869 relating to statements on appeal in misdemeanor cases, this proposed rule does not refer to grounds for appeal based jury instructions since there are no jury trials in infraction cases.

(d) Review of appellant's proposed statement

(1) Within 20 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments to that statement.

(2) Except as provided in (d)(5), no later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, the trial judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings.

(3) A party may request a hearing to review and correct the proposed statement, but no hearing will be held unless ordered by the judge.

(4) The judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(5) If the trial court proceedings were reported by a court reporter or officially recorded electronically under Government Code section 69957, instead of correcting a proposed statement on appeal, the judge may direct that a transcript be prepared as the record of the proceedings. The court will pay for any transcript ordered under this subdivision.

REVISER'S NOTES:

1. Subdivision (d) is based primarily on a combination of current appellate division rules 8.788 and 8.789 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. Like all of the current rules relating to settled statements, subdivision (d)(1) would provide the respondent with an opportunity to suggest changes to the proposed statement.

3. In subdivision (d)(2), the references to "settlement" of the statement in current appellate division rule 8.788 have been replaced, as discussed above, with references to review and correction of proposed statements. This replacement is based on the following language in rule 8.788 which describes what "settlement" actually means: "settle the statement or transcript, or both, and the amendments proposed, if any, correcting, altering, or rewriting the statement or transcript, or both, as may be necessary to make it set forth fairly and truly the evidence and proceedings relating to the specified grounds of appeal or the matters set forth by the appellant in support of it."

4. Subdivision (d)(3), providing that no hearing will be held on the statement unless ordered by the court, is based on current appellate division rule 8.789(g). This is different from both rule 8.137(c)(1) and rule 8.788, which provide for the setting of a hearing to settle the statement in all cases.

5. Subdivision (d)(4) is based on language from current appellate division rule 8.788.

6. The provision in current appellate division rule 8.789(g) regarding the trial judge using "available sound recordings of the proceedings to supplement the judge's memory and notes of the case" is not included in proposed subdivision (d). The Committee's view was that if an electronic recording was available, it should not be used to supplement the judge's memory in preparing a statement on appeal, but, as proposed under subdivision (5), a transcript should be prepared instead of such a statement.

8. The provision in subdivision (5) permitting the judge to order a transcript instead of correcting a proposed statement on appeal is new. The provision is meant to streamline the procedures and save both party and judicial time. It is the Committee's understanding that, in many cases, proposed statements prepared by appellants are not complete or accurate and must be completely rewritten by the trial judge. If the trial court proceedings were reported or electronically recorded, it may be quicker, simpler, and ultimately less costly to have a transcript prepared instead of having the judge take the time to review a proposed statement, make any corrections, have it sent to the appellant, have the appellant review it, and then have the judge review any objections submitted by the appellant. Note that the proposed statement prepared by the appellant, including the appellant's statement of the points the appellant is raising on appeal, will be transmitted to the appellate division under subdivision (g).

(e) Review of corrected statement

(1) If the trial court judge makes any corrections or modifications to the statement under (d), the clerk must send copies of the corrected or modified statement to the parties. If the prosecuting attorney did not appear at the trial, the clerk will not send a copy of the statement to the prosecuting attorney.

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

(f) Certification of statement on appeal

(1) If the trial judge does not make any corrections or modifications to the proposed statement under (d)(2) and does not direct the preparation of a transcript in lieu of correcting the proposed statement under (d)(5), the judge must promptly certify the statement.

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

(g) Transmitting certified statement or transcript to appellate division

(1) When the statement has been certified under (f), the clerk must promptly transmit it to the appellate division, along with all objections filed by the parties.

(2) If the trial judge directs under (d)(5) that a transcript be prepared as the record of the proceedings instead of correcting a proposed statement on appeal, when the transcript has been prepared, the clerk must promptly transmit it to the appellate division along with the appellant's proposed statement and any proposed amendments submitted by the respondent.

REVISER'S NOTES:

1. Subdivisions (e), (f), and (g) are based in part on a combination of current appellate division rules 8.788 and 8.789 and rule 8.137, which relates to settled statements in civil appeals in the Courts of Appeal and is made applicable to criminal appeals in the Courts of Appeal by rule 8.346.

2. Subdivisions (e)(1), (2), and (4), regarding sending proposed statements revised by the trial judge to the parties and giving the parties an opportunity to object to these statements, are new. This would permit the appellant to see and object to the statement before it becomes the record that the appellant must use for his or her appeal.

3. Subdivision (e)(3), regarding not sending copies of statements to prosecuting attorneys who did not appear at trial, is new. As with several similar provisions discussed above, this is intended to reflect the fact that prosecuting attorneys sometimes do not appear in the trial or appeal of infractions.

4. Subdivision (f)(1) is based in part on rules 8.137 and 8.789(h). Rule 8.137 provides that if the respondent does not object to a statement, it is deemed properly prepared and ready for certification. Similarly, rule 8.789(h) provides that the clerk must certify a statement if the respondent has not timely filed proposed corrections.

5. Subdivision (f)(2) is new. Unlike rules 8.137 and 8.788, which provide that the statement is sent back to appellant to revise based on the corrections made by the trial judge, subdivision (f)(2) provides that the trial judge prepares the final statement. It is the Committee's understanding that, in practice, the final statements in appellate division proceedings are typically prepared by the judge rather than the appellant.

6. The requirement in subdivision (g)(1) for transmitting all of the objections to the appellate division is based on rule 8.789(h)(4). It allows the appellate division to see how the trial judge resolved any disputes regarding the statement.

7. Subdivision (g)(2) is new. It insures that if the trial judge directs under (d)(5) that a transcript be prepared instead of correcting a proposed statement prepared by the appellant, the appellate division will still receive the proposed statement, including the appellant's statement of the points the appellant is raising on appeal.

(h) Extensions of time

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

Advisory Committee Comment

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

Subdivision (d). Note that, under rule 8.804, the term "judge" includes commissioners and temporary judges.

REVISER'S NOTE:

Subdivision (h) is based on current appellate division rule 8.787(a).

Rule 8.900. Exhibits

(a) Exhibits deemed part of record

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

(b) Notice of designation

(1) At the time the appellant files the record designation election under rule 8.894, if the appellant wants the appellate division to consider any original exhibits that were admitted in evidence, refused, or lodged, the appellant must serve and file a notice in the trial court designating such exhibits.

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

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

(c) Request by appellate division

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

(d) Transmittal

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

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

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

(e) Return by appellate division

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

Advisory Committee Comment

Subdivision b. *Notice of Appeal and Record Election (Infraction Case)* (form CR-142), includes boxes that the appellant can use to provide this notice.

REVISER'S NOTE:

Like rule 8.870 in the rules relating to misdemeanor appeals, this rule is based on rule 8.224, which applies to civil appeals in the Courts of Appeal and, through a cross-reference in rule 8.320(e), to criminal appeals in the Courts of Appeal. This rule differs from rule 8.224, however, in terms of when the exhibits must be requested from the trial court and sent to the reviewing court. Under rule 8.224, the request must be made no later than the time briefs are filed and the exhibits must be sent to the reviewing court within 20 days of that request. In contrast, under this rule, the request must be made at the time the record preparation election is made and the exhibits must be sent to the appellate division along with the record on appeal. This will insure that the appellate division has these exhibits at the time the briefs are filed.

Rule 8.901. Sending and filing the record in the appellate division

(a) When the record is complete

(1) If the appellant elected under rule 8.894 to proceed without a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is

certified as correct or, if the original trial court file will be used instead of the clerk's transcript, when that original file is ready for transmission as provided under rule 8.893(b).

(2) If the appellant elected under rule 8.894 to proceed with a record of the oral proceedings in the trial court, the record is complete when the clerk's transcript is certified as correct or the original file is ready for transmission as provided in (1) and:

(A) If the appellant elected to use a reporter's transcript, the certified reporter's transcript is delivered to the court under rule 8.896;

(B) If the appellant elected to use an official electronic recording of the proceedings or a transcript prepared from such an official electronic recording, the electronic recording or transcript have been prepared under rule 8.898; or

(C) If the appellant elected to use a statement on appeal, the statement on appeal has been certified by the trial court or a transcript has been prepared under rule 8.899(h).

(b) Sending the record

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

(1) The original record to the appellate division;

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

(3) If the defendant is the appellant, one copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to the prosecuting attorney if the prosecuting attorney appeared in the case. If the prosecuting attorney did not appear in the case, a copy will be sent him or her only on his or her request; and

(4) If the People are the appellant, a copy of the clerk's transcript or index to the original court file and one copy of any record of the oral proceedings to the respondent.

(c) Filing the record

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

REVISER'S NOTES:

This rule is based mainly on a combination of rules 8.150 and 8.336(f). However, subdivision (a), which defines when the record is complete, is new. It was added to reflect both the different options for the form of the record and the fact that, unlike in felony appeals, many criminal defendants in infraction proceedings may not be represented by counsel.

Rule 8.902. Augmenting or correcting the record in the appellate division

(a) Subsequent trial court orders

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

(b) Omissions

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

(c) Augmentation or correction by the appellate division

At any time, on motion of a party or on its own motion, the appellate division may order the record augmented or corrected as provided in rule 8.873.

REVISER'S NOTES

1. This rule is based on rule 8.340, regarding augmenting and correcting records in criminal appeals in the Courts of Appeal.

2. Rule 8.789 would be deleted in its entirety but, as noted above, some provisions would be incorporated into proposed rule 8.899 on settled statements and several other rules.

Chapter 5. Briefs, Hearing, and Decision in Civil and Criminal Appeals

Rule 8.910. Application

Except as otherwise provided, the rules in this chapter apply to both civil and criminal appeals in the appellate division.

REVISER'S NOTE:

This is a new rule for which there is no equivalent in either the current appellate division rules or the Court of Appeal rules. This rule is intended to clarify that, unlike the rules in the previous chapters, these rules apply to both civil and criminal cases.

Rule 8.911. Notice of briefing schedule

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

REVISER'S NOTES:

1. This rule is based on current appellate division rule 8.704(b). This rule differs from rule 8.150, relating to filing of the record in the Courts of Appeal, which requires that when the record is filed, the clerk must send notice of its filing date to the parties. Neither rule 8.150 nor any other Court of Appeal rule requires the clerk to notify parties of the dates the briefs are due.

2. Currently, rule 8.704(b) also requires that, on the filing of the record, the appellate division clerk must send the parties notice of the hearing. Under this proposal, this requirement would be eliminated. Under proposed rule 8.885 below, the court would not set an appeal for oral argument until after the briefs were filed or the time to file the briefs had expired. This is intended to reduce the number of oral arguments that need to be reset.

Rule 8.912. Briefs by parties and amici curiae

(a) Briefs by parties

(1) The appellant must serve and file an appellant's opening brief within 30 days after the record is filed in the appellate division.

(2) Any respondent's brief must be served and filed within 30 days after the appellant files its opening brief.

(3) Any appellant's reply brief must be served and filed within 20 days after the respondent files its brief.

(4) No other brief may be filed except with the permission of the presiding judge.

(5) Instead of filing a brief, or as part of its brief, a party may join in a brief or adopt by reference all or part of a brief in the same or a related appeal.

(b) Failure to file a brief

(1) If a party in a civil appeal fails to timely file an appellant's opening brief or a respondent's brief, the appellate division clerk must promptly notify the party by mail that the brief must be filed within 15 days after the notice is mailed and that failure to comply may result in one of the following sanctions:

(A) If the brief is an appellant's opening brief, the court will dismiss the appeal;

(B) If the brief is a respondent's brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(2) If a party in a criminal appeal fails to timely file an appellant's opening brief or a respondent's brief, the appellate division clerk must promptly notify the party by mail that the brief must be filed within 30 days after the notice is mailed and that failure to comply may result in one of the following sanctions:

(A) If the brief is an appellant's opening brief:

(i) If the appellant is the defendant and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel;

(ii) In all other cases, the court will dismiss the appeal;

(B) If the brief is a respondent's brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

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

(c) Amicus curiae briefs-

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

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

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

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

(d) Service and filing

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

(2) Unless the appellate division provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.

(3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.

(4) A copy of each brief must be served on a public officer or agency when required by rule 8.29.

REVISER'S NOTES:

1. This rule is based primarily on a combination of the following: current appellate division rule 8.706; rule 8.200, which relates to briefs in civil appeals in the Courts of Appeal; rule 8.212, which establishes the time for filing briefs in civil appeals in the Courts of Appeal; rule 8.220, which addresses failure to file a brief in a civil appeal in the Courts of Appeal; and rule 8.360, which relates to briefs in criminal appeals in the Courts of Appeal.

2. Subdivision (a) of this rule was amended to lengthen the period for filing each brief in appellate division by 10 days. The new time periods are taken from rule 8.212(a), which establishes the time for filing briefs in civil appeals in the Courts of Appeal. The timeframes for the respondent's and reply briefs are also the same as those in rule 8.360(c), relating to briefs in felony appeals in the Courts of Appeal, but the time for the appellant's opening brief under rule 8.360(c) is longer—40 days after the filing of the record instead of 30.

3. To reflect current practice in the appellate division, subdivision (a)(2) of this rule would be amended to indicate that a respondent may, but is not required to, file a respondent's brief.

4. This rule does not contain a provision similar to rule 8.212(b), which provides for extensions of time to file briefs in civil appeals in the Courts of Appeal, both by the stipulation of the parties and on application to the court.

5. Subdivision (b)(1) is based on rule 8.220, which addresses failure to file a brief in a civil appeal in the Courts of Appeal. This provision is designed to give parties notice when their brief is late so that both the parties and the court can avoid unnecessary defaults and the attendant procedures to cure those defaults.

6. Subdivision (b)(2) is based on rule 8.360(c)(5), which relates to failure to file a brief in a criminal appeal in the Courts of Appeal.

7. Subdivision (c)(1)–(3) and the changes to (4) are based on rule 8.200(c), which relates to amicus briefs in civil appeals in the Courts of Appeal.

8. Subdivision (d)(1) is based on the first sentence of current appellate division rule 8.706(e). The current language regarding service on the parties would be replaced with a cross reference to rule 8.25, which generally addresses service of documents in the appellate division. There is no equivalent provision in the rules relating to briefs in the Courts of Appeal.

9. Subdivision (d)(2) is based on the second sentence of current appellate division rule 8.706(e). This provision clarifies that only the original of a brief need be filed unless the appellate division provides otherwise by either local rule or order. There is no equivalent provision in the rules relating to briefs in the Courts of Appeal.

10. Subdivision (d)(3) is modeled on rule 8.212(c)(1) and 8.360(d)(4), relating to briefs in civil and criminal appeals, respectively, in the Courts of Appeal.

11. Subdivision (d)(4) is taken from rule 8.212(c)(3), relating to briefs in civil appeals in the Courts of Appeal. The cross-referenced rule—rule 8.29—addresses both the circumstances under which a nonparty public officer or agency must be served and the requirements relating to such service and therefore covers both the requirements previously addressed in the last sentence of former subdivision (e) and in former subdivision (h).

12. Former subdivision (g), relating to use of recycled paper, would be deleted because it is superseded by rule 1.22, which establishes requirements regarding use of recycled paper in all court proceedings.

Rule 8.913. Contents and form of briefs

(a) Contents

(1) Each brief must:

(A) State each point under a separate heading or subheading summarizing the point and support each point by argument and, if possible, by citation of authority; and

(B) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.

(2) An appellant's opening brief must:

(A) State the nature of the action, the relief sought in the trial court, and the judgment or order appealed from;

(B) State that the judgment appealed from is final or explain why the order appealed from is appealable; and

(C) Provide a summary of the significant facts limited to matters in the record.

(b) Length

(1) A brief produced on a computer must not exceed 6,800 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

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

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

(4) On application, the presiding judge may permit a longer brief for good cause. A lengthy record or numerous or complex issues on appeal will ordinarily constitute good cause.

(c) Form

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

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

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

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

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

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

(7) The pages must be consecutively numbered.

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

(9) The brief need not be signed.

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

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

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

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

(d) Noncomplying briefs

If a brief does not comply with this rule:

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

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

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

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

(C) Disregard the noncompliance.

REVISER'S NOTES:

1. This rule is based primarily on a combination of current appellate division rule 8.706 and rule 8.204, which relates to the contents of briefs in civil appeals in the Courts of Appeal and also, through a cross-reference in rule 8.360, to criminal appeals in the Courts of Appeal.

2. Subdivision (a) is based on rule 8.204(a) and also applies to briefs in criminal appeals in the Courts of Appeal under rule 8.360(a). This provision differs from rule 8.204(a), however, in the following ways:

   a. It does not contain a provision similar to 8.204(a)(1)(A), requiring that briefs begin with a table of contents and authorities.

   b. It does not contain a provision similar to that in 8.204(a)(1)(C) regarding citations to portions of the record submitted in electronic format.

3. Subdivision (b) is based on rules 8.204(c) and 8.360(b). This provision differs from these provisions, however, in the following ways:

   a. The length of the briefs authorized in the rule is much shorter than in 8.204 or 8.360—only 20 pages (6,800 words) compared to 50 pages (14,000 words) in civil appeals in the Courts of Appeal and 75 pages (25,500 words) in criminal appeals in the Courts of Appeal. The 20-page length is slightly longer than the current 15-page length permitted by subdivision (c) of rule 8.706.

   b. This subdivision does not contain a provision similar to 8.204(c)(4) and 8.360(b)(4), regarding the length of combined briefs when there is a cross-appeal.

4. Subdivision (c) is based on rule 8.204(b), relating to the format of briefs in civil appeals in the Courts of Appeal and also applies to briefs in criminal appeals in the Courts of Appeal under rule 8.360(a). This subdivision differs from rule 8.204(b), however, in the following ways:

   a. This subdivision does not contain a provision similar to rule 8.204(b)(10), relating to covers of briefs.

b. This subdivision permits briefs to be bound at the top if a local rule of the appellate division so provides. This provision is based on current appellate division rule 8.706(d) and the practice in some appellate divisions.

5. Subdivision (d) is based on rule 8.204(e)(2).

Rule 8.914. Appeals in which a party is both appellant and respondent

(a) Briefing sequence and time to file briefs

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

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

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

(b) Contents of briefs

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

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

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

REVISER'S NOTE:

This is a new rule based on rule 8.216, which relates to cross-appeals in the Courts of Appeal and which is made applicable to cross-appeals in criminal cases under rule 8.360(e). However, this rule does not contain a provision similar to 8.216(a)(3), relating to extension of time to file briefs.

Rule 8.915. Oral argument

(a) Calendaring and sessions

Unless otherwise ordered, all appeals in which the appellant's and respondent's briefs were filed or the time for filing these briefs expired 30 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate

division clerk. By order of the presiding judge or the division, any appeal may be placed on the calendar for oral argument at any session.

(b) Notice of argument

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

(c) Waiver of argument

Parties may waive oral argument.

(d) Conduct of argument

Unless the court provides otherwise:

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

(2) Each side is allowed 15 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

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

Advisory Committee Comment

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

REVISER'S NOTES:

1. There are currently three different rules concerning hearings in the appellate division: rule 8.704, which is in the general chapter on the appellate divisions, rule 8.763 in the rules for civil appeals, and rule 8.792 in the rules for criminal appeals. Both rule 8.763 and rule 8.792 simply cross-reference rule 8.704. Under this proposal, there would only be a single rule relating to the hearings in both civil and criminal appeals.

2. This rule would be restructured so that it is similar to rule 8.256, which relates to oral argument in civil appeals in the Courts of Appeal, and, under rule 8.366, to criminal appeals in the Courts of Appeal.

3. Subdivision (a) is based on current appellate division rule 8.704(a). Rule 8.704 now provides that cases must be calendared for oral argument based on when the record was filed. Since, under proposed new subdivision (b) a case would not be set for oral argument until the time for briefing has expired, this new rule would set cases for oral argument based on when the time for briefing expired. There is no equivalent provision in the rules for the Courts of Appeal.

4. This rule does not contain provisions similar to rule 8.256(a)(2) and (3), which relate to holding sessions in locations other than the court's permanent location or district.

5. Currently, rule 8.704 also requires that, on the filing of the record, the appellate division clerk must send the parties notice of the hearing. Under this proposal, this requirement would be eliminated and instead, subdivision (b) would require that the notice of oral argument be sent after the briefs are filed or the time to file the briefs had expired. The remainder of subdivision (b) is based on rule 8.256(b).

6. Subdivision (c) is new. It is intended to clarify that parties can waive oral argument. There is no equivalent provision in the Court of Appeal rules.

7. Subdivision (d) is based on rule 8.256(c). Like 8.256(c), this provision would set the normal length of oral argument. However, the time specified in this rule would be much shorter than the 30-minutes per side provided in rule 8.256.

Rule. 8.916. Submission of the cause

(a) When the cause is submitted

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

(b) Vacating submission

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

REVISER'S NOTES:

1. This rule is based on rule 8.256, relating to submission of decisions in civil appeals in the Courts of Appeal. Through a cross-reference in rule 8.366, rule 8.256 also applies in criminal appeals in the Courts of Appeal.

2. Subdivision (a) is based on 8.256(d)(1). However, subdivision (a) permits the court to order earlier submission if the parties so stipulate. Rule 8.256(d) does not contain a similar provision.

3. Subdivision (b) is based on 8.256(e)(1).

4. This rule does not contain provisions similar to 8.256(d)(2) and (e)(2) regarding submission after the Supreme Court has transferred a case to the Court of Appeal.

Rule 8.917. Decisions

(a) Written opinions

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

(b) Filing the decision

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

(c) Opinions certified for publication

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

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

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

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

REVISER'S NOTES:

1. This rule is based on a combination of current appellate division rule 8.707 and rule 8.264(a), relating to filing of decisions in civil appeals in the Courts of

Appeal. Through a cross-reference in rule 8.366, rule 8.264 also applies in criminal appeals in the Courts of Appeal.

2. The first sentence of subdivision (a), which provides that appellate division judges are not required to prepare written decisions, is based on subdivision (b) of current rule 8.707.

3. The second sentence of subdivision (a), which requires that an opinion identify the participating judges, is based on rule 8.264(a)(2). The content is new to the appellate division rules.

4. Subdivision (b), relating to filing the decision, is based on rule 8.264(a)(1). The content is new to the appellate division rules.

5. Subdivision (c), regarding opinions certified for publication, is based on subdivisions (a) and (c) of current rule 8.707. There is no equivalent provision in the Courts of Appeal rules.

Rule 8.918. Finality and modification of decision

(a) Finality of decision

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

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

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

(A) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause;

(B) The denial of a petition for writ of supersedeas;

(C) The denial of an application for bail or to reduce bail pending appeal; and

(D) The dismissal of an appeal on request or stipulation.

(4) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, an appellate division may order early finality in that court of a decision granting a petition for a writ within its original jurisdiction or denying such a petition after issuing an alternative writ or order to show cause. The

decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(b) Modification of judgment

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

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

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

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

REVISER'S NOTES:

1. This rule is based primarily on a combination of current appellate division rule 8.708, subdivisions (a) and (b), and rule 8.264(b), relating to finality of decisions in civil appeals in the Courts of Appeal. Through a cross-reference in rule 8.366, rule 8.264 also applies in criminal appeals in the Courts of Appeal.

2. As in the rules for the Courts of Appeal, the procedures for petitions for rehearing would be addressed in a separate rule—proposed new rule 8.889—so the provisions of rule 8.708(c) that currently relate to petitions for rehearing would be separated out from the rule.

3. The language of subdivision (a)(1), setting the basic finality period, is based on rule 8.264(b)(1). Under current rule 8.708(a), the finality period is 15 days from pronouncement of the decision. Under this proposal, the finality period would be lengthened to 30 days from the filing of the decision.

4. The text of current rule 8.708(a)(2), which extends the time for finality if a petition for rehearing is filed, would be deleted. Because the basic finality period under (a)(1) would be extended from 15 to 30 days, as in the Courts of Appeal, a petition for rehearing could be filed before the appellate division decision becomes final, and thus the extension provided under 8.708 (a)(2) would not be necessary.

5. Subdivision (a)(2), extending the finality period if an appellate division opinion is certified for publication, is based on rule 8.264(b)(5). The content is new to the appellate division rules.

6. Subdivision (a)(3), identifying decisions that are final immediately, is based on rule 8.264(b)(2). The content is new to the appellate division rules.

7. Subdivision (a)(4), allowing the appellate division to order early finality, is based on rule 8.264(b)(3). The content is new to the appellate division rules.

8. The language of subdivision (b), regarding modification of judgments, is based on rule 8.264(c). No substantive change in the content of current rule 8.708(b) is intended.

9. The language of proposed new subdivision (c), regarding consent to increase or decrease the amount of a judgment, is based on rule 8.264(d). No substantive change in the content of current rule 8.709 is intended.

10. Current subdivision (d) of rule 8.708, which addresses extensions of time, would be deleted from this rule for several reasons. First, effective January 1, 2007, new rule 1.10 in the reorganized rules of court will address the general extension of time in all proceedings under CCP 12(a) when a date falls on a holiday. Second, the procedures when the deadline for modifying a decision falls on a court holiday would be addressed by proposed subdivision (b)(1). Finally, the deadline for filing a petition for rehearing, and extensions of this deadline, would be addressed in proposed rule 8.889 regarding petitions for rehearing and so does not need to be addressed here.

Rule 8.919. Rehearing

(a) Power to order rehearing

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

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

(b) Petition and answer

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

(A) The decision is filed;

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

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

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

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

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

(c) No extensions of time

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

(d) Effect of granting rehearing

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

REVISER'S NOTES:

1. This rule is based primarily on a combination of current appellate division rule 8.708, subdivisions (c) and (d), and rule 8.268, relating to rehearing in civil appeals in the Courts of Appeal. Through a cross-reference in rule 8.366, rule 8.268 also applies in criminal appeals in the Courts of Appeal.

2. Subdivision (a) would be restructured so that it is similar to rule 8.268(a). Provisions that would be new to the appellate division rules would make clear, as in rule 8.268(a), that the appellate division could order rehearing only of matters that are not final immediately and that, if finality falls on a day the clerk's office is closed, a petition for rehearing can be filed on the next day that the clerk's office is open.

3. Subdivision (b) would be restructured so that it is similar to rule 8.268(b). However, it does not contain a provision similar to 8.268(b)(4), specifically

allowing the presiding justice to relieve a party from failure to file a timely petition or answer.

4. Subdivision (c) would be restructured so that it is similar to rule 8.268(c). The language in current subdivision (d) of rule 8.708 regarding extensions of time under Code of Civil Procedure section 12a would be deleted form this rule. Rule 1.10 addresses the general extension of time under Code of Civil Procedure section 12(a) in all proceedings when a date falls on a holiday. In addition, proposed subdivision (a)(2) in the above draft would clarify that if the clerk's office is closed on the date of finality, the court may file an order granting rehearing on the next day the clerk's office is open.

5. Subdivision (d) is based on a combination of rule 8.268(d) and current rule 8.708(c)(5). The new language from rule 8.268(d) would clarify that the granting of rehearing vacates the court's previous decision.

Rule 8.920. Remittitur

(a) Proceedings requiring issuance of remittitur

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

(b) Clerk's duties

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

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

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

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

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

(c) Immediate issuance, stay, and recall

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

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

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

(d) Notice

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

REVISER'S NOTES:

1. There are currently two different rules concerning remittitur in the appellate division: rule 8.773, which is in the chapter on civil appeals, and rule 8.793, in the chapter on criminal appeals. Under this proposal, there would be only a single rule relating to remittitur in both civil and criminal matters.

2. This rule would be restructured so that it is similar to rule 8.272, relating to remittitur in civil appeals in the Courts of Appeal. Through a cross-reference in rule 8.366, rule 8.272 also applies in criminal appeals in the Courts of Appeal.

3. The language of subdivision (a), relating to proceedings requiring issuance of a remittitur, is based on rule 8.272(a)(1); the content is new to the appellate division rules. Unlike 8.272(a)(2), however, this provision does not address issuance of a remittitur in writ proceedings; this topic is covered in Chapter 5 of these proposed appellate division rules, which addresses writ proceedings.

4. The language of subdivision (b) is based on a combination of rule 8.272 (b), rule 8.1018 (relating to remittitur after transfer to the Court of Appeal), and current rule 8.773(a). Similar in concept to rule 8.272 (b), which addresses the clerk's duties relating to remittitur when a case is and is not reviewed by the Supreme Court, the proposed revisions to this rule would clarify the clerk's duties relating to remittitur when an appellate division case is and is not transferred to a Court of Appeal. Unlike rule 8.272, however, this rule would continue to address the return of documents to the trial court; the language of this provision is modeled in part on rule 8.1018. The current language of rule 8.773(a) relating to the power of the courts on issuance of remittitur would be deleted.

5. The language of subdivisions (c)(1) and (2) is based on a combination of rule 8.272(c) and current rule 8.773(b), (c), and (d). No substantive change in the content of rule 8.773 is intended.

6. The language of subdivision (c)(3), which addresses the effect of an order recalling the remittitur, is based on rule 8.272(c)(3). The content is new to the appellate division rules. However, this provision reflects the law on the effect of recall of the remittitur and is not intended to be a substantive change.

7. The language of subdivision (d), which addresses notice of the issuance of the remittitur, is based on rule 8.272(d)(1). The content is new to the appellate division rules. This rule does not contain a provision similar to 8.272(d)(2), which addresses notice when there is a change in the length of a state prison sentence, since misdemeanor sentences cannot include prison time.

Rule 8.921. Costs and sanctions in civil appeals

(a) Right to costs

(1) Except as provided in this rule, the prevailing party in a civil appeal is entitled to costs on appeal.

(2) The appellate division must identify the prevailing party and specify the award or denial of costs in its decision.

(b) Judgment for costs

(1) The appellate division clerk must enter on the record and insert in the remittitur judgment awarding costs to the prevailing party under (a)(2).

(2) If the clerk fails to enter judgment for costs, the appellate division may recall the remittitur for correction on its own motion or on a party's motion made not later than 30 days after the remittitur issues.

(c) Recoverable costs

(1) A party may recover only the reasonable costs of the following:

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

(B) The cost to produce additional evidence on appeal;

(C) The costs to notarize, serve, mail, and file the record, briefs, and other papers;

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

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

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

(d) Procedure for claiming or opposing costs

(1) Within 30 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by the appellate division must serve and file-in the trial court a verified memorandum of costs under rule 3.1702(a)(1).

(2) A party may serve and file a motion in the trial court to strike or tax costs claimed under (1) in the manner required by rule 3.1700.

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

(e) Sanctions

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

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

(B) Committing any unreasonable violation of these rules.

(2) A party's motion under (1) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due. If a party moves to dismiss the appeal, with or without a sanctions motion, and the motion to dismiss is not granted, the party may move for sanctions within 10 days after the appellant's reply brief is due.

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

(4) Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

REVISER'S NOTES:

1. This rule would be restructured so that it is similar to rule 8.276(a), relating to costs in civil appeals in the Courts of Appeal.

2. The language of subdivision (a) is partially based on a combination of rule 8.276(a) and current appellate division rule 8.764. Unlike these rules, however, to reflect current appellate division practice, this provision would require that the court identify the prevailing party and specify any award of costs in its decision in all cases. Rule 8.276(a) provides that the appellant is the prevailing party only if the court reverses the judgment in its entirety and the respondent is the prevailing party only if the court dismisses the appeal in its entirety, but requires the court to specify the award or denial of costs in its opinion if it reverses the judgment in part or modifies it, or if there is more than one notice of appeal. Rule 8.764 currently provides that the appellant is also the prevailing party if the judgment is reversed in part or modified. These automatic designations of the prevailing party would not be included in this rule. It was the committee's understanding that current appellate division practice was generally to identify the prevailing party in the decision.

3. The language in current rule 8.764(a) regarding the grounds for sanctions has been moved to proposed subdivision (e)(1).

4. The language of subdivision (b) is based on rule 8.276(b). Rather than repeating the circumstances in which the respondent and appellant are considered prevailing parties and therefore entitled to costs, as in current rule 8.764, like rule 8.276(b), this subdivision refers back to subdivision (a) to identify the circumstances in which the clerk can enter a judgment for costs.

5. The language of subdivision (c) is based on rule 8.276(c). New provisions, based on 8.276(c)(1)(D) and (E), would be added authorizing the recovery of costs for printing and reproducing any brief, including any petition for rehearing or review, answer, or reply and for procuring a surety bond. In addition, a new provision based on 8.276(c)(2), would be added to clarify that an award of costs neither includes attorney fees on appeal nor precludes a party from seeking them under rule 3.1702.

6. The language of subdivision (d), establishing the timing for claiming costs, is based on rule 8.276(d). However, the 30-day period from current rule 8.764 would be retained, rather than incorporating the 40-day period in 8.276(d).

7. The language of subdivision (e) is based on rule 8.276(e). Subdivision (e)(3), which is modeled on 8.276(e)(3), would prohibit a party from filing an opposition to a motion for sanctions unless the court issued a notice indicating it was considering imposing sanctions. This is slightly different from current rule

8.764(e)(5), which currently provides that opposition to a motion for sanctions should not ordinarily be filed unless the court issues such a notice.

Chapter 6. Writ Proceedings

REVISER'S NOTES:

1. Article VI, section 10 of the California Constitution establishes the original jurisdiction of the courts. With regard to proceedings for extraordinary relief (writ proceedings), it provides that:

> The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. These courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certioriari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certioriari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

This provision distinguishes between the jurisdiction of the superior court and the jurisdiction of the superior court appellate division. The superior court has jurisdiction in habeas corpus proceedings, but the appellate division does not. The appellate division has jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certioriari, and prohibition in such proceedings that are "directed to the superior court in causes subject to its appellate jurisdiction."

2. There are currently no rules covering writ proceedings in the appellate divisions. These proposed new rules are based primarily on rule 8.490, which governs writ proceedings in the Supreme Court and Courts of Appeal. However, this rule does not contain provisions equivalent to 8.490 subdivisions (i) relating to Certificates of Interested Entities or Persons, (j) relating to Attorney General's amicus curiae brief, or (l) relating to responsive pleadings under Code of Civil Procedure section 418.10, as these requirements do not apply in the superior court appellate divisions.

Rule 8.930. Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern proceedings in the appellate division for writs of mandate, certiorari, or prohibition, or other writs within the original jurisdiction of the appellate division. In all respects not provided for in this chapter, rule 8.883 regarding the form and content of briefs applies.

(b) Writ proceedings not governed

The rules in this chapter do not apply to petitions for writs of supersedeas under rule 8.824 or writs not within the original jurisdiction of the appellate division.

Advisory Committee Comment

Please see *Information on Proceedings for Writs in the Appellate Division of the Superior Court* (form APP-150—INFO) for additional information about proceedings for writs in the appellate division of the superior court.

Subdivision (b). The superior courts, not the appellate divisions, have original jurisdiction in habeas corpus proceedings (see Cal. Const., art. VI, §10). Habeas corpus proceedings in the superior courts are governed by rules 4.550 et. seq.

REVISER'S NOTE:

This rule is based on rule 8.490(a).

Rule 8.931. Petitions filed by persons not represented by an attorney

(a) Petitions

A person who is not represented by an attorney and who petitions the appellate division for a writ under this chapter must file the petition on, *Petition for Writ* (form APP-151). For good cause the court may permit an unrepresented party to file a petition that is not on form APP-151.

(b) Contents of supporting documents

(1) The petition must be accompanied by an adequate record, including copies of:

(A) The ruling from which the petition seeks relief;

(B) All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position;

(C) Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review; and

(D) A reporter's transcript or electronic recording of the oral proceedings that resulted in the ruling under review.

(2) If a transcript or electronic recording under (1)(D) is unavailable, the record must include a declaration by counsel or, if the petitioner is unrepresented, by the petitioner:

(A) Explaining why the transcript or electronic recording is unavailable and fairly summarizing the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling; or

(B) Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action requested of the appellate division other than issuance of a temporary stay supported by other parts of the record.

(3) A declaration under (2) may omit a full summary of the proceedings if part of the relief sought is an order to prepare a transcript for use by an indigent criminal defendant in support of the petition and if the declaration demonstrates the petitioner's need for and entitlement to the transcript.

(4) In extraordinary circumstances, the petition may be filed without the documents required by (1)(A)–(C) if counsel or, if the petitioner is unrepresented, the petitioner files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.

(5) If the petitioner does not submit the required record or explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny a stay request, the petition, or both.

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) They must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the

petition if the documents are not brought into compliance within a stated reasonable time of not less than five days.

(3) Unless the court orders otherwise by local rule or in the specific case, only one set of any separately bound supporting documents needs to be filed in support of a petition, answer, opposition, or reply.

(d) Service

(1) The petition and one set of supporting documents must be served on any named real party in interest, but only the petition must be served on the respondent.

(2) The proof of service must give the telephone number of each attorney or unrepresented party served.

(4) The petition must be served on a public officer or agency when required by statute or rule 8.29.

(5) The clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(6) The court may allow the petition to be filed without proof of service.

Advisory Committee Comment

Subdivision (d). Rule 8.25, which generally governs service and filing in appellate divisions, also applies to the original proceedings covered by this rule.

REVISER'S NOTES:

1. Subdivision (a) is modeled on rule 8.380, which relates to petitions for writs of habeas corpus filed by unrepresented persons in the Courts of Appeal. Like rule 8.380, this rule requires that unrepresented persons use the accompanying form to file their petitions.

2. Subdivisions (b), (c), and (d) are based on rule 8.490(c), (d) and (f), respectively, except that subdivision (b) includes references to electronic recordings, which can be used as the official record for limited civil, misdemeanor, and infraction proceedings under specified circumstances.

Rule 8.932. Petitions filed by an attorney for a party

(a) General application of rule 8.901

Except as provided in this rule, rule 8.901 applies to any petition for an extraordinary writ filed by an attorney.

(b) Form and content of petition

(1) A petition for an extraordinary writ filed by an attorney may, but is not required to be, filed on *Petition for Extraordinary Writ* (form APP-151).

(2) The petition must disclose the name of any real party in interest.

(3) If the petition seeks review of trial court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition, and the first paragraph of the petition must state the appeal's title and any appellate division docket number.

(4) The petition must be verified.

(5) The petition must be accompanied by a memorandum, which need not repeat facts alleged in the petition.

(6) Rule 8.883(b) governs the length of the petition and points and authorities, but the verification and any supporting documents are excluded from the limits stated in rule 8.883(b)(1) and (2).

(7) If the petition requests a temporary stay, it must explain the urgency.

REVISER'S NOTES:

1. Subdivisions (a) and (b)(1) are modeled on rule 8.384, which relates to petitions for writs of habeas corpus filed by an attorney for a party in the Courts of Appeal.

2. Subdivisions (b)(2)–(7) are based on rule 8.490(b), except that references to writs directed to a board have been deleted since, under Article VI, section 10 of the California Constitution, the appellate division of the superior court only has jurisdiction in proceedings for extraordinary relief that are "directed to the superior court."

Rule 8.933. Opposition

(a) Preliminary opposition

(1) Within 10 days after the petition is filed, the respondent or any real party in interest, separately or jointly, may serve and file a preliminary opposition.

(2) An opposition must contain a memorandum and a statement of any material fact not included in the petition.

(3) Within 10 days after an opposition is filed, the petitioner may serve and file a reply.

(4) Without requesting opposition or waiting for a reply, the court may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance.

(b) Return or opposition; reply

(1) If the court issues an alternative writ or order to show cause, the respondent or any real party in interest, separately or jointly, may serve and file a return by demurrer, verified answer, or both. If the court notifies the parties that it is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the court orders otherwise, the return or opposition must be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the court orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the court may issue the peremptory writ without granting leave to answer.

REVISER'S NOTE:

Subdivisions (a) and (b) are based on rule 8.490(g) and (h), respectively.

Rule 8.934. Notice to trial court

(a) Notice if writ issues

If a writ or order issues directed to any judge, court, or other officer, the appellate division clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is directed.

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the appellate division clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(2) The clerk need not give notice by telephone of the summary denial of a writ, whether or not a stay previously issued.

REVISER'S NOTE:

This rule is based on rule 8.490(k), except that references to writs directed to a board have been deleted since, under article VI, section 10 of the California Constitution, the appellate division of the superior court only has jurisdiction in proceedings for extraordinary relief that are "directed to the superior court."

Rule 8.935. Remittitur

The appellate division must issue a remittitur after a decision in a writ proceeding, except when the court denies a writ petition without issuing an alternative writ or order to show cause. Rule 8.890 governs issuance of a remittitur in these proceedings.

REVISER'S NOTES:

1. This rule is based primarily on rule 8.272(a), which provides for the remittitur in civil appeals and writ proceedings in the Courts of Appeal.

2. The last sentence is new. It is intended to direct readers to the rule on remittitur in civil appeals, which lays out the procedures for remittitur.

Rule 8.936. Costs

(a) Entitlement to costs

Except in a criminal proceeding or other proceeding in which a party is entitled to court-appointed counsel, the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(b) Award of costs

(1) In the interests of justice, the court may award or deny costs as it deems proper.

(2) The opinion or order resolving the proceeding must specify the award or denial of costs.

(3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.

REVISER'S NOTE:

This rule is based on rule 8.490(m).

Title 10. Judicial Administration Rules

Division 5. Appellate Court Administration

Chapter 2. Rules Relating to the Superior Court Appellate Division

Rule 10.1100. Assignments to the appellate division

(a) Goal

In making assignments to the appellate division, the Chief Justice will consider the goal of promoting the independence and the quality of the appellate division.

(b) Factors considered-

Factors considered in making the assignments may include:

(1) Length of service as a judge;

(2) Reputation in the judicial community;

(3) Degree of separateness of the appellate division work from the judge's regular assignments; and

(4) Any recommendation of the presiding judge.

(c) Who may be assigned

Judges assigned may include judges from another county, judges retired from the superior court or a court of higher jurisdiction, or a panel of judges from different superior courts who sit in turn in each of those superior courts.

(d) Terms of service

In specifying terms of service to the appellate division, the Chief Justice will consider the needs of the court.

Advisory Committee Comment

The Chief Justice is responsible for assigning judges to the appellate division as provided in article VI, section 4 of the California Constitution and by statute.

REVISER'S NOTE

The Advisory Committee Comment was added to provide information about the basis for appellate division appointments. Article VI, section 4 of the Constitution provides in relevant part: "In each superior court there is an appellate division. The Chief Justice

shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division."

Rule 10.1104. Presiding judge

(a) Designation of acting presiding judge

(1) The presiding judge of the appellate division must designate another member of the appellate division to serve as acting presiding judge in the absence of the presiding judge. If the presiding judge does not make that designation, the appellate division judge among those present who has the greatest seniority in the appellate division must act as presiding judge. When the judges are of equal seniority in the appellate division, the judge who is also senior in service in the superior court must act as presiding judge.

(2) As used in these rules, "presiding judge" includes acting presiding judge.

(b) Responsibilities

The presiding judge of the appellate division may convene the appellate division at any time and must supervise the business of the division.

Advisory Committee Comment

Under Code of Civil Procedure section 77(a), the Chief Justice is responsible for designating one of the judges of each appellate division as the presiding judge.

REVISER'S NOTES

1. This rule would be restructured so that it is similar to rule 10.1004(a), which relates to the appointment of an administrative presiding justice in Courts of Appeal with more than one division.

2. Subdivision (a) would be revised to incorporate language from rule 10.1004(a) regarding the presiding appellate division judge designating an acting presiding judge.

3. The Advisory Committee Comment was added to provide information about the basis for the appointment of the appellate division presiding judge. The substance is taken from Code of Civil Procedure section 77(a), which provides in relevant part: "The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division."

Rule 10.1108. Sessions

The appellate division of each superior court must hold a session at least once each quarter unless there are no matters set for oral argument that quarter. The time and place of any session is determined by the presiding judge of the appellate division.

REVISER'S NOTES

1. This rule is based on a combination of current appellate division rule 8.702 and rule 8.256(a)(1), which relates to oral argument in civil appeals in the Courts of Appeal, and, under rule 8.366, to criminal appeals in the Courts of Appeal.

2. Rule 8.702 currently requires that the appellate division hold oral argument at least one each month. This would be changed to require oral argument at least once each quarter, which is the same as is required under rule 8.256(a)(1) and reflects current practice in some appellate divisions. The appellate division would, of course, be free to hold sessions more frequently if it so chose. In addition, this rule would be modified to provide that the appellate division need not hold a session if no matters are scheduled for oral argument that quarter.

Disposition Table
Appellate Rules 8.800–8.936 and 10.1100–10.1108
Numerically by Revised Rule Number

Revised Rule	Current Rule
8.800.	8.772(a)
8.802(a)	NEW
8.802(b)	NEW
8.802(c)	NEW
8.802(d)	8.700
8.804.	8.765
8.806.	8.766
8.808(a)	8.705(a)
8.808(b)	8.705(b)
8.810(a)	8.767(a)
8.810(b)	8.767(b)
8.810(c)	8.767(c) and 8.787(a)
8.810(d)	NEW
8.811.	NEW
8.812.	8.722(b)
8.813.	8.767(d)
8.814(a)	8.768(a)
8.814(b)	8.768(a)
8.814(c)	8.768(a)
8.816.	NEW
8.820.	8.772(a)
8.821(a)	8.750(a)
8.821(b)	8.750(c)
8.821(c)	NEW
8.821(d)	8.750(b)
8.821(e)	8.750(e)
8.822(a)	8.751(a)
8.822(b)	8.751(b)
8.822(c)	8.751(c)
8.822(d)	NEW
8.822(e)	NEW
8.823(a)	8.752(a)
8.823(b)	8.752(b)
8.823(c)	NEW
8.823(d)	NEW
8.823(e)	8.752(c)
8.823(f)	NEW
8.824	8.769
8.825(a)	NEW
8.825(b)	8.762(a)
8.825(c)	8.762(b)
8.825(d)	NEW
8.830(a)	NEW
8.830(b)	8.771
8.831.	NEW
8.832(a)	8.754(d)
8.832(b)(1)	8.754(b)
8.832(b)(2)	NEW
8.832(b)(3)	NEW

Revised Rule	Current Rule
8.832(c)	8.754(c)
8.832(d)	NEW
8.833.	NEW
8.834(a)(1)	NEW
8.834(a)(2)	8.753(b)
8.834(a)(3)	8.753(b)
8.834. (a)(4)	NEW
8.834(b)(1)	8.753(a)
8.834(b) 2)	8.753(c)
8.834(c)(1)	8.753(d)
8.834(c)(2)	8.753(a)
8.834(c)(3)	8.753(b)
8.834(c)(4)	8.753(d)
8.834(d)(1)	8.753(d)
8.834(d)(2)	8.753(d)
8.834(d)(3)	NEW
8.834.(e)	8.753(e)
8.835.	NEW
8.836(a)	NEW
8.836(b)	8.755(a)
8.836(c)	8.755(b)
8.837(a)	NEW
8.837(b)	8.756(a)
8.837(c)	8.756(a)
8.837(d)	8.756(c)
8.837(e)	8.756(c)
8.837(f)	8.756(c)
8.837(g)	8.756(c)
8.838(a)	8.758(a)
8.838(b)	8.758(b)
8.838(c)	8.758(c)
8.839.	8.760
8.840.	8.759
8.841(a)	8.761(a)
8.841(b)	8.761(b)
8.841(c)	8.761(c)
8.841(d)	NEW
8.842.	8.762(c)
8.850.	8.780(b)
8.851(a)	8.786(a)
8.851(b)	8.786(b)
8.851(c)	8.786(c)
8.852(a)	8.782(a) paragraph 1
8.852(b)	8.782(b)
8.853(a)	8.782(a) paragraph 2
8.853(b)	NEW
8.853(c)	8.782(a) paragraph 4
8.853(d)	8.782(a) paragraph 3
8.853(e)	NEW
8.854.	NEW
8.855(a)	8.790
8.855(b)	8.790

Revised Rule	Current Rule
8.855(c)	NEW
8.860(a)	8.783(a)
8.860(b)	NEW
8.861.	8.783(a)
8.862(a)	8.783(b)
8.862(b)	8.783(b)
8.862(c)	NEW
8.862(d)	8.783(b)
8.863.	8.789(j)
8.864.	NEW
8.865.	NEW
8.866.	NEW
8.867.	8.783(a)(12)
8.868.	NEW
8.869(a)	NEW
8.869(b)(1)	8.784(d) and 8.789(d)
8.869(b)(2) and (3)	NEW
8.869(c)	8.784(b) and 8.789(d)
8.869(d)(1)	8.785 and 8.789(f) paragraph 1
8.869(d)(2)	8.788 paragraph 1 and 8.789(g) paragraph 3
8.869(d)(3)	8.789(g) paragraph 2
8.869(d)(4)	8.788 paragraph 2
8.869(d)(5)	NEW
8.869(e)	NEW
8.869(f)	8.788 paragraph 2 and 8.789(h)
8.869(g)(1)	8.788 paragraph 3
8.869(g)	NEW
8.869(h)	8.787(a)
8.870.	NEW
8.871	NEW
8.872	NEW
8.873(a)	NEW
8.873(b)	NEW
8.873(c)	8.789(k) and 8.791
8.880.	8.780(b)
8.881(a)	8.782(a) paragraph 1
8.881(b)	8.782(b)
8.882(a)	8.782(a) paragraph 2
8.882(b)	NEW
8.882(c)	8.782(a) paragraph 4
8.882(d)	8.782(a) paragraph 3
8.882(e)	NEW
8.883.	NEW
8.884(a)	8.790
8.884(b)	8.790
8.884(c)	NEW
8.890(a)	8.783(a)
8.890(b)	NEW
8.891.	8.783(a)
8.892(a)	8.783(b)

Revised Rule	Current Rule
8.892(b)	8.783(b)
8.892(c)	NEW
8.892(d)	8.783(b)
8.893.	8.789(j)
8.894.	NEW
8.895.	NEW
8.896.	NEW
8.897.	8.783(a)(12)
8.898.	NEW
8.899(a)	NEW
8.899(b)(1)	8.784(d) and 8.789(d)
8.899(b)(2) and (3)	NEW
8.899(c)	8.784(b) and 8.789(d)
8.899(d)(1)	8.785 and 8.789(f) paragraph 1
8.899(d)(2)	8.788 paragraph 1 and 8.789(g) paragraph 3
8.899(d)(3)	8.789(g) paragraph 2
8.899(d)(4)	8.788 paragraph 2
8.899(d)(5)	NEW
8.899(e)	NEW
8.899(f)	8.788 paragraph 2 and 8.789(h)
8.899(g)(1)	8.788 paragraph 3
8.899(g)(2)	NEW
8.899(h)	8.787(a)
8.900.	NEW
8.901.	NEW
8.902(a)	NEW
8.902(b)	NEW
8.902(c)	8.789(k) and 8.791
8.910.	8.792 and 8.793
8.911.	8.704(b) and 8.792
8.912(a)	8.706(a)
8.912(b)	NEW
8.912(c)	8.706(b) and 8.786(c)
8.912(d)(1) and (2)	8.706(c)
8.912(d)(3)	8.706(f)
8.912.d)(4)	8.706(e)
8.913(a)	8.706(c)
8.913(b)	8.706(c)
8.913(c)	8.706(d)
8.913(d)	8.706(e)
8.914.	
8.915(a)	8.704(a)
8.915(b)	8.704(b)
8.915(c)	NEW
8.915(d)	NEW
8.916(a)	8.707(a)
8.916(b)	NEW
8.917(a)	8.707(b)
8.917(b)	NEW
8.917(c)	8.707(c)

Revised Rule	Current Rule
8.918(a)	8.708(a)
8.918(a)	8.708(b)
8.918(c)	8.709
8.919(a)	8.708(c)(5)
8.919(b)	8.708(c)(2), (3), and (4)
8.919(c)	8.708(d)
8.919(d)	8.708(c)(5)
8.920(a)	NEW
8.920(b)	8.773(a)
8.920(c)(1)	8.773(b)
8.920(c)(2)	8.773(c)
8.920(c)(3)	8.773(d)
8.920(d)	NEW
8.921(a)	8.764(a)
8.921(b)	8.764(b)
8.921(c)	8.764(c)
8.921(d)	8.764(d)
8.921(e)	8.764(e)
8.930.	NEW
8.931.	NEW
8.932.	NEW
8.933.	NEW
8.934.	NEW
8.935.	NEW
8.936.	NEW
10.1100(a)	8.701(a)
10.1100(b)	8.701(b)
10.1100(c)	8.701(c)
10.1100(d)	8.701(d)
10.1104(a)	8.703 paragraph 2
10.1104(b)	8.703 paragraph 1
10.1108.	8.702

Disposition Table
Appellate Rules 8.700 – 8.793
Numerically by Old Rule Numbers

Current Rule	Revised Rule
8.700	8.802(d)
8.701(a)	10.1100(a)
8.701(b)	10.1100(b)
8.701(c)	10.1100(c)
8.701(d)	10.1100(d)
8.702	10.1108.
8.703, paragraph 1	10.1104(b)
8.703, paragraph 2	10.1104(a)
8.704 (a)	8.915(a)
8.704 (b)	8.911. and 8.915(b)
8.705 (a)	8.808(a)
8.705 (b)	8.808(b)
8.706 (a)	8.912(a)
8.706 (b)	8.912(c)
8.706 (c)	8.912(d)(1) and (2); 8913(a); and 8.913(b)
8.706 (d)	8.913(c)
8.706 (e)	8.912(d) 4) and 8.913(e)
8.706 (f)	8.912(d)(3)
8.706 (g)	DELETED
8.706 (h)	DELETED
8.707 (a)	8916(a)
8.707 (b)	8.917 (a)
8.707 (c)	8.917(c)
8.708 (a)	8.918(a)
8.708 (b)	8.918(b)
8.708 (c)(1)	8.919(a)
8.708 (c)(2)	8.919(b)
8.708 (c)(3)	8.919(b)
8.708 (c)(4)	8.919(b)
8.708 (c)(5)	8.919(d)
8.708 (d)	8.919(c)
8.709	8.918(c)
8.750 (a)	8.821(a)
8.750 (b)	8.821(d) and 8.880
8.750 (c)	8.821(b)
8.750(d)	DELETED
8.750 (e)	8.821(e)
8.751 (a)	8.821(a)
8.751 (b)	8.821(b)
8.751 (c)	8.821(c)
8.752 (a)	8.823(a)
8.752 (b)	8.823(b)
8.752 (c)	8.823(e)
8.752 (d)	DELETED
8.753 (a)	8.834(b)(1) and 8.834(c)(2)
8.753 (b)	8.834(a)(2) and (3)
8.753 (c)	8.834(b)(2)
8.753 (d)	8.834(c)(1) and (4); 8.834(d)(1) and (2)

Current Rule	Revised Rule
8.753 (e)	8.834. (e)
8.754 (a)	DELETED, see 8.831
8.754 (b)	8.832. (b)(1)
8.754 (c)	8.832. (c)
8.754 (d)	8.832. (a)
8.754 (e)	DELETED
8.754 (f)	DELETED
8.755 (a)	8.836. (b)
8.755 (b)	8.836. (c)
8.756 (a)	8.837. (b) and (c)
8.756 (b)	DELETED
8.756 (c)	8.837. (d), (e),(f), and (g)
8.757	8.841
8.758 (a)	8.838(a)
8.758 (b)	8.838(b)
8.758 (c)	8.838(c)
8.759	8.840.
8.760	8.839.
8.761 (a)	8.841(a)
8.761 (b)	8.841(b)
8.761 (c)	8.841(b)
8.762 (a)	8.825(b)
8.762 (b)	8.825(c)
8.762 (c)	8.842
8.762 (d)	DELETED
8.762 (e)	8.825(d)
8.763	DELETED
8.764 (a)	8.921(a)
8.764 (b)	8.921(b)
8.764 (c)	8.921(c)
8.764 (d)	8.921(d)
8.764 (e)	8.921(e)
8.765	8.804.
8.766	8.806.
8.767 (a)	8.810(a)
8.767 (b)	8.810(b)
8.767 (c)	8.810(c)
8.767 (d)	8.813.
8.768 (a)	8.814(a)
8.768 (a)	8.814(b) and (c)
8.769	8.824
8.770	DELETED
8.771	8.830(b)
8.772 (a)	8.800. and 8.820.
8.772 (b)	8.812.
8.773 (a)	8.920(b)
8.773 (b)	8. 920(c) (1)
8.773 (c)	8. 920(c) (2)
8.773 (d)	8. 920(c) (3)
8.780 (a)	DELETED
8.780 (b)	8.850. and 8.880
8.781	DELETED, see 8.804

Current Rule	Revised Rule
8.782 (a) Paragraph 1	8.852(a) and 8.881(a)
8.782 (a) Paragraph 2	8.853(a) and 8.882(a)
8.782 (a) Paragraph 3	8.853(d) and 8.882(d)
8.782 (a) Paragraph 4	8.853(c) and 8.882(c)
8.782 (b)	8.852(b) and 8.881(b)
8.783 (a)	8.860(a); 8.861; 8.890(a); and 8.891.
8.783 (a)(12)	8.867 and 8.897
8.783 (b)	8.862(a), (b) and (d) and 8.892(a), (b), and (d)
8.784 (a)	DELETED, see 8.860
8.784 (b)	8.869(c) and 8.899(c)
8.784 (c)	DELETED
8.784 (d)	8.869(b)(1) and 8.899(b)(1)
8.785	8.869 (d)(1) and 8.899(d)(1)
8.786 (a)	8.869(a)
8.786 (b)	8.869(b)
8.786 (c)	8.882(c)
8.787 (a)	8.810(c); 8.869 (h); and 8.899(h)
8.786 (b)	8.866.
8.788 paragraph 1	8.869(d)(2) and 8.899(d)(2)
8.788 paragraph 2	8.869(d)(4) and (f); and 8.899(d)(4) and (f)
8.788 paragraph 3	8.869 (g)(1) and 8.899(g)(1)
8.789 (a)	DELETED
8.789 (b)	DELETED
8.789 (c)	DELETED
8.789 (d)	8.869(b)(4) and (5); (c)(2)
8.789 (e)	DELETED
8.789 (f) paragraph 1	8.869(d)(1) and 8.899(d)(1)
8.789 (f) paragraph 2	DELETED
8.789 (g) paragraph 1	DELETED
8.789 (g) paragraph 2	8.869(d)(3) and 8.899(d)(3)
8.789 (g) paragraph 3	8.869(d)(2) and 8.899(d)(2)
8.789 (h)	8.869(f) and 8.899(f)
8.789 (i)	DELETED
8.789 (j)	8.863 and 8.893
8.789 (k)	8.873(c) and 8.902(c)
8.789 (l)	DELETED
8.789 (m)	DELETED
8.790	8.855(a) and (b) and 8.884(a) and (b)
8.791	8.873(c) and 8.902(c)
8.792	8.810 and 8.911
8.793	8.910 and 8.920

Division 2. Rules on Appeal to the Superior Court
Chapter 1. Appellate Division Rules

Rule 8.700. Appellate rules

All references in the California Rules of Court to "appellate department" mean "appellate division." Rules that apply to an appeal taken from a municipal court judgment to the appellate division of the superior court apply to an appeal taken from a unified superior court (trial court) judgment to the appellate division of the unified superior court (reviewing court).

Rule 8.700 renumbered effective January 1, 2007; adopted as rule 100 effective June 3, 1998.

Rule 8.701. Appellate division assignments

(a) Goal

The Chief Justice, in making appointments to the appellate division of the superior or unified court, will consider the goal of promoting the independence and the quality of the appellate division.

(b) Factors considered

Factors to be used in making the appointments may include:

(1) Length of service as a judge;

(2) Reputation within the judicial community;

(3) Degree of separateness of the appellate division work from the judge's regular assignments; and

(4) Any recommendation of the presiding judge.

(Subd (b) amended effective January 1, 2007.)

(c) Judges assigned

Judges assigned may include judges from another county; judges retired from the superior or unified court, or court of higher jurisdiction; or a panel of judges from different superior or unified courts who sit in turn in each of those superior or unified courts.

(d) Terms of service

In specifying terms of service to the appellate division, the Chief Justice will consider the needs of the court.

Rule 8.701 amended and renumbered effective January 1, 2007; adopted as rule 100.5 effective June 3, 1998.

Rule 8.702. Sessions

The appellate department of a superior court shall hold one or more regular sessions each month at a time or times and at a place to be determined by the judges of the department by order entered in the minutes. The department may hold sessions at any other time and place found necessary or convenient.

Rule 8.702 renumbered effective January 1, 2007; adopted as rule 101.

Rule 8.703. Powers of presiding judge

The presiding judge of the appellate department may convene the court at any time and shall supervise the business of the department. Except as otherwise provided in these rules, applications to extend time for filing briefs, applications to extend or shorten time for opposing a motion, and applications relating to other matters of routine shall be served and filed; but the presiding judge of the reviewing court may require an additional showing to be made and for good cause may excuse advance service. The application may be granted or denied by the presiding judge, unless the court otherwise determines.

In the absence of the presiding judge, the regular judge of the department among those present who is senior in service thereon shall act as presiding judge, and in the case of equal seniority then the judge who is also senior in service in the

superior court shall act as presiding judge. The words "presiding judge," wherever used in these rules, include the acting presiding judge.

Rule 8.703 renumbered effective January 1, 2007; adopted as rule 102; previously amended effective July 1, 1972, January 1, 1977, and July 1, 1996.

Rule 8.704. Calendars and notice of hearing

(a) Calendar

The clerk of the court, unless otherwise ordered, shall place upon the calendar for hearing at each regular session all appeals of which such department has jurisdiction, wherein the records on appeal were filed not less than 50 days prior to the date of the session. Any appeal may, by order of the presiding judge or the department, be placed on the calendar for hearing at any session of the department.

(Subd (a) amended effective July 1, 1980; previously amended effective January 1, 1967, and July 1, 1976.)

(b) Notice of hearing

As soon as the record on appeal in any case is filed, the clerk shall mail to the attorney appearing of record for each party, or if any party has appeared without attorney, then to such party personally, at the address of such attorney, or party appearing in the record, a notice stating that said record has been filed and giving the date at which the appeal will be heard and the dates when each party must file briefs, as provided in these rules. Failure of the clerk to mail any such notice shall not affect the jurisdiction of the appellate department.

Rule 8.704 renumbered effective January 1, 2007; adopted as rule 103.

Rule 8.705. Motions

(a) Motions and opposition

Except as otherwise provided in these rules all motions in the reviewing court shall be made by the filing of a typewritten motion, with proof of service on all other parties, stating the grounds of the motion, the papers, if any, on which it is based, and the order or other relief requested. Each copy of the motion shall be accompanied by a memorandum of points and authorities, and if the motion is based on matters not appearing of record by affidavits or other evidence in support thereof. Any showing in opposition to

the motion shall be served and filed within 7 days after the filing of the motion.

(Subd (a) amended effective January 1, 1977.)

(b) Disposition of motion

Motions may be disposed of after opposition has been filed or the time for filing opposition has expired. The reviewing court may place any motion on the calendar for hearing or may otherwise dispose of the motion as it may determine. When a motion has been placed on the calendar for hearing, the clerk shall mail to each party a notice showing the date and time designated for the hearing.

(Subd (b) adopted effective January 1, 1977.)

Rule 8.705 renumbered effective January 1, 2007; adopted as rule 104.

Rule 8.706. Briefs and records

(a) Time for filing

In civil and criminal cases the appellant shall file an opening brief within 20 days after the filing of record on appeal; the respondent shall file a brief within 20 days after the filing of appellant's opening brief, and the appellant may file a reply brief within 10 days after the filing of respondent's brief, but not later than the time of the hearing. Any party may join another party or other parties in a brief or may adopt by reference any brief in the same or a companion case.

(Subd (a) amended effective July 1, 1980; previously amended effective January 1, 1967, and July 1, 1976.)

(b) Brief of amicus curiae

A brief of amicus curiae may be filed on permission first obtained from the presiding judge, subject to conditions he or she may prescribe. If the brief is in support of the position of one of the parties, that fact shall be noted in the brief's heading.

The Attorney General may file an amicus curiae brief without obtaining the presiding judge's permission, unless the Attorney General is presenting the brief on behalf of another state officer or agency; but the presiding judge may prescribe reasonable conditions for filing and answering the brief.

(Subd (b) amended effective July 1, 2000.)

(c) Contents of briefs

Each brief shall state concisely the propositions of both law and fact relied on by the party filing it, with reference (by line and page, if possible) to the parts of the record supporting such propositions of fact and citations of the authorities for such propositions of law. Each point to be made, with the argument in support thereof, shall be presented separately under an appropriate heading with subheadings if desired, showing its nature. No quotation or extract from the record or from any legal authority shall exceed 15 full lines of typewriting, and no brief shall exceed 15 pages in length, except by permission of the presiding judge.

(d) Format

All briefs shall be prepared as provided in rule 8.204(b), except that such briefs shall be bound at the top.

(Subd (d) amended effective January 1, 2007; previously amended effective July 1, 1969, July 1, 1971, January 1, 1976, and July 1, 1996.)

(e) Service and filing

Every brief shall, before filing, be served by the party filing it on each adverse party who has appeared separately, and every brief of amicus curiae shall, before filing, be served on all parties to the appeal. The original brief, with proof of service thereof, shall be filed with the clerk. The clerk shall not file any brief which does not conform to these rules or which is tendered to him for filing after the time fixed by these rules or by any order extending or fixing the time therefor, unless by order of the presiding judge. The presiding judge may make such order, in his discretion, where the infraction of the rules is of minor character and will not affect the rights of the parties or seriously hamper the court in its examination of the appeal. Service in unfair competition cases under Business and Professions Code section 17209 must also comply with rule 8.212(c).

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 2000.)

(f) Copy for trial judge

No brief shall be filed without proof of the deposit of one copy with the clerk of the trial court for delivery to the judge who presided at the trial of the case. The clerk shall deliver the brief to the judge and need not maintain a copy in the court file.

(Subd (f) amended effective July 1, 1977; adopted effective July 1, 1972.)

(g) Use of recycled paper for records on appeal from limited civil cases and for briefs filed in the appellate divisions

The use of recycled paper is required for the original record on appeal from a limited civil case and for any brief filed with the court in a matter to be heard in the appellate division. The use of recycled paper is required for all copies of these documents filed with the court or served on other parties.

(Subd (g) adopted effective July 1, 1999.)

(h) Unfair competition cases

In an unfair competition proceeding under Business and Professions Code section 17200 et seq., each brief and each petition shall contain the following statement on the front cover: "Unfair competition case. (See Bus. & Prof. Code, § 17209 and Cal. Rules of Court, rule 8.212(c).)"

(Subd (h) amended effective January 1, 2007; adopted effective July 1, 2000.)

Rule 8.706 amended and renumbered effective January 1, 2007; adopted as rule 105; previously amended effective January 1, 1967, July 1, 1969, July 1, 1971, July 1, 1972, January 1, 1976, July 1, 1976, July 1, 1977, July 1, 1980, July 1, 1996, July 1, 1997, July 1, 1999, and July 1, 2000.

Rule 8.707. Decisions

(a) Time to decide

The appellate division must hear and decide, or take under submission, each appeal at the session in which it was set for hearing unless, for good cause entered in the minutes, the court continues the case to another date or orders it submitted on briefs to be filed.

(b) Written opinions

Appellate division judges are not required to prepare a written opinion in any case but may do so when they deem it advisable or in the public interest.

Appellate division opinions certified for publication must comply to the extent practicable with the *California Style Manual*.

(c) Transmitting opinions

When the judgment is final as to the appellate division in a case in which the opinion is certified for publication, the clerk must immediately send to the Reporter of Decisions two paper copies and one electronic copy in a format approved by the Reporter, and to the Court of Appeal for the district another copy bearing the notation "To be published in the Official Reports." The Court of Appeal clerk must promptly file that copy or make a docket entry showing its receipt.

Rule 8.707 renumbered effective January 1, 2007; repealed and adopted as rule 106 effective January 1, 2003.

Rule 8.708. Finality, modification, and rehearing

(a) When judgment is final

An appellate division judgment is final:

(1) 15 days after judgment is pronounced; or

(2) If a party timely files a petition for rehearing or application for certification, 30 days after judgment is pronounced or when all such petitions or applications are denied, whichever is earlier.

(Subd (a) amended effective January 1, 2007.)

(b) Modification of judgment

The appellate division may modify its judgment until the judgment is final in that court. An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the time for the judgment's finality. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(c) Rehearing

(1) On petition of a party or on its own motion, the appellate division may order rehearing at any time before its judgment is final.

(2) A party may serve and file a petition for rehearing within 15 days after judgment is pronounced or a modification order changing the appellate judgment is filed.

(3) Any answer to the petition must be served and filed within 8 days after the petition is filed.

(4) The petition and answer must comply as nearly as possible with rules 8.500 and 8.504.

(5) If the appellate division orders rehearing, it may place the case on calendar for further argument or submit it for decision.

(Subd (c) amended effective January 1, 2007.)

(d) Extensions of time

The periods specified in this rule may not be extended except as provided in Code of Civil Procedure section 12a.

Rule 8.708 amended and renumbered effective January 1, 2007; repealed and adopted as rule 107 effective January 1, 2003.

Rule 8.709. Consent to modification

If the appellate department orders that a judgment be reversed and a new trial granted or that, in the alternative, the judgment be affirmed on condition that the party in whose favor judgment has been rendered consent to a remission of a portion thereof, or on condition that the party against whom the judgment has been rendered consent to an addition thereto, then, unless otherwise ordered, the judgment of reversal and granting of a new trial shall become effective unless within 15 days after the filing of the decision two copies of a written consent by such party to the remission or addition is filed in the appellate department, and becomes final as provided in rule 8.708. The filing of written consent is not a modification of the judgment, within the meaning of rule 8.708. A copy of the consent shall be transmitted with the remittitur to the trial court.

Rule 8.709 amended and renumbered effective January 1, 2007; adopted as rule 108; previously amended effective July 1, 1980.

Chapter 2. Appeals to the Appellate Division in Limited Civil Cases

Rule 8.750. Filing notice of appeal

(a) Form of notice

An appeal in a civil case, except a small claims case, from a judgment of a municipal or justice court or from a particular part thereof is taken by filing with the clerk of that court a notice of appeal therefrom. The notice shall be signed by the appellant or by his attorney and shall be sufficient if it states in substance that the appellant appeals from a specified judgment or a particular part thereof. A notice of appeal shall be liberally construed in favor of its sufficiency.

(Subd (a) amended effective January 1, 1977; previously amended effective July 1, 1964.)

(b) Notification by clerk

The clerk of the trial court shall forthwith mail a notification of the filing of the notice of appeal to the attorney of record of each party other than the appellant, or if the party is not represented by an attorney, then to the party at his last known address. The notification shall state the number and title of the action or proceeding and the date the notice of appeal was filed. Such mailing is a sufficient performance of the clerk's duty notwithstanding the death of the party or the death, discharge, suspension, disbarment or disqualification of his attorney prior to the giving of the notification. The failure of the clerk to give such notification shall not affect the validity of the appeal.

(c) Payment of filing fee in civil appeals

At the time of filing the notice of appeal or within 10 days thereafter the appellant shall pay to the clerk of the municipal or justice court the filing fee prescribed by section 26824 of the Government Code. The filing fee shall be nonrefundable.

(Subd (c) adopted effective January 1, 1980.)

(d) Excuse from payment of filing fee

If the appellant is indigent, payment of the filing fee may be excused on the same basis as payment of a filing fee in the trial court is excused.

(Subd (d) adopted effective January 1, 1980.)

(e) Notice of cross appeal

As used in this rule, "notice of appeal" includes notice of cross appeal, and "appellant" includes any party who files a cross appeal.

(Subd (e) adopted effective January 1, 1980.)

Rule 8.750 renumbered effective January 1, 2007; adopted as rule 121; previously amended effective July 1, 1964, January 1, 1977, and January 1, 1980.

Rule 8.751. Time of filing notice of appeal

(a) Normal time

Except as otherwise provided by statute or rule 8.752, a notice of appeal shall be filed on or before the earliest of the following dates:

(1) 30 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment or appealable order;

(2) 30 days after the date of service of a document entitled "notice of entry" of judgment or appealable order by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or

(3) 90 days after the date of entry of the judgment.

For the purposes of this subdivision, a file-stamped copy of the judgment or appealable order may be used in place of the document entitled "notice of entry."

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1964, September 17, 1965, July 1, 1978, January 1, 1982, September 22, 1982, and January 1, 1991.)

(b) What constitutes entry

For the purposes of this rule:

(1) The date of entry of a judgment shall be the date of its entry in the minute book or docket unless the entry expressly directs that a written order be prepared, signed and filed, in which case the date of entry shall be the date of filing of the signed order.

(2) The date of entry of an order which is not entered in the minutes or docket shall be the date of filing of the order signed by the court.

(Subd (b) amended effective July 1, 1964.)

(c) Premature notice

A notice of appeal filed prior to entry of the judgment, but after its rendition, shall be valid and shall be deemed to have been filed immediately after entry. A notice of appeal filed prior to rendition of the judgment, but after the judge has announced his intended ruling, may, in the discretion of the reviewing court for good cause, be treated as filed immediately after entry of the judgment.

(Subd (c) amended effective January 5, 1953.)

Rule 8.751 amended and renumbered effective January 1, 2007; adopted as rule 122; previously amended effective January 5, 1953, July 1, 1964, September 17, 1965, July 1, 1978, January 1, 1982, September 22, 1982, and January 1, 1991.

Rule 8.752. Extension of time and cross-appeal

(a) New trial proceeding

When a valid notice of intention to move for a new trial is served and filed by any party within the time in which, under rule 8.751, a notice of appeal may be filed, and the motion is denied, the time for filing the notice of appeal from the judgment is extended for all parties until 15 days after either entry of the order denying the motion or denial thereof by operation of law, but in no event may such notice of appeal be filed later than 90 days after the date of entry of the judgment whether or not the motion for new trial has been determined.

(Subd (a) amended effective January 1, 2007; previously amended effective January 5, 1953, January 2, 1962, September 17, 1965, and January 1971.)

(b) Motion to vacate

When a valid notice of intention to move to vacate a judgment or to vacate a judgment and enter another and different judgment is served and filed by any party on any ground within the time in which, under rule 8.751, a notice of appeal from the judgment may be filed, or such shorter time as may be prescribed by statute, and the motion is denied or not decided by the trial court within 75 days after entry of the judgment, the time for filing the notice of appeal from the judgment is extended for all parties until 15 days after entry of the order denying the motion to vacate or until 90 days after entry of the judgment, whichever shall be less.

(Subd (b) amended effective January 1, 2007; previously amended effective January 5, 1953, January 2, 1962, July 1, 1964, September 17, 1965, and January 1, 1971.)

(c) Cross-appeal

When a timely notice of appeal is filed under subdivision (a) of rule 8.751 or under subdivision (a) or (b) of this rule, any other party may file a notice of appeal within 10 days after mailing of notification by the trial court clerk of such first appeal or within the time otherwise prescribed by the applicable subdivision, whichever period last expires. If a timely notice of appeal is filed from an order granting a motion for a new trial or granting, within 75 days after entry of judgment, a motion to vacate the judgment or to vacate

judgment and enter another and different judgment, any party other than the appellant, within 10 days after mailing of notification by the trial court clerk of such appeal, may file a notice of appeal from the judgment or from an order denying a motion for judgment notwithstanding the verdict, and on that appeal may present any question which he might have presented on an appeal from the judgment as originally entered or from the order denying a motion for judgment notwithstanding the verdict.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1971; previously amended effective January 1, 1976.)

(d) Notification of cross-appeal

On the filing by a party of a notice of cross-appeal, the trial court clerk shall mail a notification thereof as provided in subdivision (b) of rule 8.750.

(Subd (d) amended effective January 1, 2007; adopted as subd (c); previously amended and renumbered effective January 1, 1971.)

Rule 8.752 amended and renumbered effective January 1, 2007; adopted as rule 123; previously amended effective January 5, 1953, January 2, 1962, July 1, 1964, September 17, 1965, January 1, 1971, and January 1, 1976.)

Rule 8.753. Reporter's transcript

(a) Notice to prepare transcript

When an appellant desires to present any point which requires a consideration of the oral proceedings, including oral instructions given or refused by the court, he shall serve on the respondent and file with the clerk of the trial court, within 10 days after filing of the notice of appeal, a notice to prepare a reporter's transcript of the oral proceedings and such oral instructions given or refused as he shall desire transcribed. A copy of this notice shall be transmitted by the clerk without delay to the reporter who shall within 10 days thereafter file his estimate with the clerk or notify the clerk in writing of the date that he notified the appellant directly of the estimated cost of preparing the reporter's transcript on appeal. The voir dire examination of jurors, the opening statements, the arguments to the jury, and the proceedings on a motion for new trial shall not be transcribed as part of the oral proceedings unless they are specified in the notice to the clerk. The oral proceedings shall include such portions of depositions as have been received in evidence and such portions thereof as shall have been offered and rejected. The portions rejected and the objections thereto shall be clearly indicated.

(Subd (a) amended effective July 1, 1964; previously amended effective January 5, 1953.)

(b) Partial transcript by stipulation or designation

The parties, by stipulation filed with the clerk of the trial court within the time prescribed for filing the notice to prepare a reporter's transcript, may direct that any part of the oral proceedings be not transcribed. If the appellant, in his notice to the clerk, states the points to be raised by him on the appeal, he may designate the portions of the oral proceedings to be transcribed, or direct the omission of any portions which he deems unnecessary, and in such event shall be precluded from presenting any grounds for reversal not embraced within the points stated by him, unless the reviewing court on motion shall permit the appellant to present additional errors or grounds of appeal on such terms as it may prescribe. Within 10 days after the service of the appellant's notice to prepare the reporter's transcript pursuant to this rule, or to prepare the clerk's transcript pursuant to subdivision (a) of rule 8.754, the respondent may serve and file a notice designating the oral proceedings, including oral instructions given or refused not designated in the appellant's notice, which he desires transcribed. Only those portions of the oral proceedings and instructions designated in the notices of the parties shall be transcribed; provided, however, that if any portion of the testimony of a witness is designated by either party for inclusion in the reporter's transcript, the whole of his testimony shall be included unless the parties otherwise stipulate.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964.)

(c) Deposit or waiver of reporter's charges

The notice given by the appellant under the foregoing provisions of this rule shall not be effective for any purpose unless, within 10 days after notification from the clerk of his estimate of the cost of preparing the reporter's transcript as designated by the notices of the parties, or within 10 days after being notified directly by the reporter, the appellant shall either deposit with the clerk an amount of cash equal to the estimated cost with directions to apply the same to the fees of the reporter or file with the clerk a waiver of such deposit signed by the reporter. When the appellant has complied with the provisions hereof, the clerk shall forthwith direct the reporter to prepare the reporter's transcript in accordance with the notices of the parties.

(Subd (c) amended effective January 5, 1953.)

~~(d) Preparation of transcript~~

~~Within 20 days after direction from the clerk or the receipt of the fees from the appellant the reporter shall complete and file with the clerk an original reporter's transcript as directed, and certify the same as correct. One week after the deadline for filing the transcript, the clerk shall accept completed portions of the transcript from the lead reporter in a multi-reporter case even if not all portions of the transcript are complete. The clerk shall pay promptly each reporter who certifies under penalty of perjury that all of his or her portions of the transcript are completed. The reporter shall note in the transcript all places where omissions of any oral proceedings occur (and the nature of the omitted matter) and shall also indicate the place where exhibits were received in evidence or were offered and marked for identification, and shall identify the exhibits so received or so offered. The reporter shall not transcribe or copy in the reporter's transcript any documents which, under the provisions of rule 8.754, may be included in the clerk's transcript on appeal.~~

~~(Subd (d) amended effective January 1, 2007; previously amended effective January 5, 1953, and January 1, 1992.)~~

~~(e) Settled statement where transcript unavailable~~

~~If, without fault of the appellant, the reporter refuses or becomes unable or fails to transcribe all or any portion of the oral proceedings designated by the parties, any party may, within 15 days after the expiration of the time allowed by this rule for such transcription, or of any lawful extension thereof, and on 5 days' written notice, make a motion for leave to prepare a statement of the portions of the oral proceedings which the reporter refuses, is unable, or fails to transcribe. If the trial court grants the motion, proceedings for the settlement of the statement shall be had as provided in rule 8.756, except that the party making the motion shall serve and file his proposed statement within 20 days after the making of the order granting leave therefor and the adverse party shall serve and file his proposed amendments to such statement within 10 days after service of the statement. If the settled statement contains all the oral proceedings, it shall become a part of the record on appeal in lieu of the reporter's transcript, but if it contains only a portion of the oral proceedings, it shall be incorporated in the reporter's transcript. This remedy is in addition to any remedy given by law.~~

~~(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 1964.)~~

~~Rule 8.753 amended and renumbered effective January 1, 2007; adopted as rule 124; previously amended effective January 5, 1953, July 21, 1964, and January 1, 1992.~~

~~Rule 8.754. Clerk's transcript and original papers~~

~~(a) Appellant's designation of papers or records~~

~~Within 10 days after filing the notice of appeal, the appellant shall serve on the respondent and file with the clerk of the trial court a notice designating the papers or records on file or lodged with the clerk, including the clerk's minutes and any written opinion of the trial court and exhibits either admitted in evidence or rejected, and any notices, affidavits, orders, and written instructions given or refused, which he desires incorporated in the record on appeal. The notice designating papers and records and the notice to prepare the reporter's transcript may be included in the same document, and both notices may be included in the document containing the notice of appeal.~~

~~*(Subd (a) amended effective July 1, 1964.)*~~

~~(b) Designation by respondent or by stipulation~~

~~Within 10 days after service of the appellant's notice, the respondent may serve on the appellant and file with the clerk a notice designating additional papers or records, including the clerk's minutes, any written opinion of the trial court, and exhibits either admitted in evidence or rejected, and any notices, affidavits, orders, and written instructions given or refused, to be included in the record on appeal. In lieu of such individual notices the parties, within 10 days after the filing of the notice of appeal, may file a written stipulation designating the papers or records to be included in the record on appeal.~~

~~*(Subd (b) amended effective July 1, 1964.)*~~

~~(c) Clerk's charges~~

~~The notice given by the appellant under the foregoing provisions of this Rule shall not be effective for any purpose unless, within 10 days after notification from the clerk of his estimate of the cost of preparing the transcript, the appellant shall make arrangements with the clerk for the payment thereof.~~

~~(d) Preparation of clerk's transcript~~

~~Within 10 days after the appellant has arranged for payment of the cost of the transcript, as provided in (c), the clerk shall prepare and certify a transcript consisting of either copies or originals, as specified in (e), of:~~

~~The following whether designated in the notices or stipulations or referred to in the statements of the parties or not:~~

~~(1) The notice of appeal;~~

~~(2) The notices or stipulations to prepare the clerk's transcript and the reporter's transcript, if any, and the notices or stipulations for the preparation of a settled statement or agreed statement, if any;~~

~~(3) The judgment appealed from with an endorsement by the clerk showing the date notice of entry thereof was mailed by the clerk or served by a party; and~~

~~(4) Any notice of intention to move for a new trial or motion to vacate the judgment, and the ruling thereon, if any; and~~

~~The following, if they have been designated by any of the parties:~~

~~(5) The judgment roll, or such parts thereof as have been designated by the parties; and~~

~~(6) Any other papers or records, including exhibits admitted in evidence or rejected, notices, affidavits, orders, and written instructions given or refused, on file or lodged with the clerk.~~

~~*(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 1953, July 1, 1968, and July 1, 1971.)*~~

~~(e) Matters not to be copied~~

~~Except when the record on appeal is prepared by a photocopying process as provided in subdivision (a) of rule 8.144, captions and formal parts of papers and verifications and proofs of service of such papers shall be omitted unless one of the parties expressly requests their inclusion, but the clerk shall state in his transcript the nature of such omitted matters. No exhibit admitted in evidence or rejected, notice, affidavit, pleading, order, written instructions given or refused, or other paper on file or lodged with the clerk (except the notice of appeal) shall be copied if it is possible for the clerk to transmit the original to the reviewing court, but where such matters are properly~~

designated by the parties in either notice or stipulation, or referred to in the list accompanying an agreed statement, or are otherwise required by these rules, the clerk shall include the originals thereof in the record on appeal, and transmit them to the reviewing court. The notice of appeal, matters appearing only in the minutes or other records of the trial court, and anything properly designated or referred to, the original of which it is not possible to transmit, shall be copied by the clerk, and the copies made part of the record on appeal. In no event shall the clerk copy in his transcript or transmit to the reviewing court (except by order of that court or stipulation of the parties) the original of any deposition.

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 1964, and July 1, 1971.)

(f) Appeal on judgment roll

Where the appellant has designated only a clerk's transcript consisting of part or all of the matters specified in (a) and (b) and has not given notice to prepare a reporter's transcript, the respondent may not require the preparation of a reporter's transcript but he may counterdesignate any exhibits, affidavits, papers or records which may properly be included in a clerk's transcript. Where the appellant has designated only the papers and records constituting the judgment roll and has not given notice to prepare a reporter's transcript, the judgment roll shall constitute the record on appeal, and the respondent may not require any addition thereto: In either case, however, on motion of the respondent the reviewing court may allow augmentation of the record whenever it is necessary to prevent a miscarriage of justice.

(Subd (f) amended effective January 1, 2007; previously amended effective January 5, 1953.)

Rule 8.754 amended and renumbered effective January 1, 2007; adopted as rule 125; previously amended effective January 1, 1953, January 5, 1953, July 1, 1964, July 1, 1968, and July 1, 1971.

Rule 8.755. Agreed statement

(a) Contents of agreed statement

An appeal may be presented on a record consisting in whole or in part of an agreed statement. Within 30 days after filing the notice of appeal, the appellant shall file with the clerk of the trial court the original statement signed by the parties. The statement shall show the nature of the controversy, the basis on which it is claimed that the reviewing court has jurisdiction and

how the questions arose in and were decided by the trial court, and should set forth only such facts alleged and proved, or sought to be proved, as are necessary to a determination of the questions on appeal. The statement shall contain a copy of the judgment and a copy of the notice of appeal with its filing date, together with any notice of intention to move for a new trial or motion to vacate the judgment, the ruling thereon, if any, and a recital or resumé of any oral proceedings thereon. The statement shall be accompanied by a list of such exhibits admitted in evidence or rejected, notices, affidavits, orders, instructions given or refused, or other papers on file or lodged with the clerk, as the parties desire to have transmitted to the reviewing court, with the statement.

(Subd (a) amended effective July 1, 1964; previously amended effective January 5, 1953.)

(b) Extension of time

Within 10 days after filing the notice of appeal, the parties may file with the clerk of the trial court a preliminary stipulation stating that they are attempting to prepare an agreed statement. This stipulation shall have the effect of extending for a period of 40 days from the date of filing of the notice of appeal the time for service and filing of the notices of the appellant provided for in rules 8.753, 8.754, and 8.756 in the event that the parties are unable to agree on a statement.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964.)

Rule 8.755 amended and renumbered effective January 1, 2007; adopted as rule 126; previously amended effective January 5, 1953, and July 1, 1964.

Rule 8.756. Settled statement

(a) Proposal of narrative statement

If, in lieu of a reporter's transcript, the appellant desires to set forth the oral proceedings by a settled statement, he shall serve and file a notice so stating within 10 days after filing the notice of appeal. Within 20 days thereafter the appellant shall serve and file a condensed statement in narrative form of all or such portions of the oral proceedings as he deems material to the determination of the points on appeal. Where necessary for the purposes of accuracy, clarity or convenience, portions of the evidence may be set forth by question and answer, subject to the approval of the court in settling the statement. If the condensed statement purports to cover only a portion of the oral proceedings, the appellant shall state the points to be raised by him on

appeal, and in such event shall be precluded from presenting any grounds for reversal not embraced within the points stated by him unless the reviewing court, on motion, shall permit him to present additional errors or grounds of appeal on such terms as it may prescribe. Within 10 days after service of said narrative statement the respondent may serve and file his proposed amendments thereto. The appellant in his condensed statement and the respondent in his proposed amendments may incorporate any oral instructions given or refused which such party deems material.

(b) Appellant's transcript available to respondent

If the appellant has prepared his proposed statement from an entire or partial transcript of the oral proceedings, and after service of his proposed statement declines to make such transcript available to the respondent, the municipal court, on such terms and conditions as it deems just, may direct the appellant to make his copy of the transcript available to the respondent. If the appellant fails to comply with such direction, the court on motion of the respondent shall strike the proposed statement from the files.

(c) Settlement and engrossment

On the filing by the respondent of his proposed amendments or on the expiration of the time therefor (whichever shall first occur), the clerk shall set a time not more than 10 days thereafter for settlement of the statement by the judge who tried the case, and shall give not less than 5 days' notice by mail to all parties of the time set. At the time set, or at the time to which the judge may continue the hearing, he shall settle the statement and fix the time within which the appellant shall engross it as settled. Within the time so fixed the appellant shall engross the statement in accordance with the order of the judge and shall serve and file the engrossed statement. If the respondent does not serve and file objections to the engrossed statement within five days thereafter, it shall be presumed that it is engrossed in accordance with the order of the judge and shall be presented by the clerk to the judge for certification. If the parties stipulate that the statement as originally served or as engrossed is correct, such stipulation shall have the same effect as certification thereof by the judge.

Rule 8.756 renumbered effective January 1, 2007; adopted as rule 127.

Rule 8.757. Correction and certification of record

(a) Request for correction of record

Immediately on the completion of the clerk's and reporter's transcripts the clerk shall mail notice thereof to all parties, and within 10 days after mailing of such notice, any party may file a request for correction of such transcripts. If no request for correction is filed within such time, the clerk shall certify the record as correct.

(b) Hearing and certification

If any party files a request for correction of the transcripts within such time, the clerk shall set a time not more than 10 days thereafter for certification of the transcripts by the judge who tried the case, and shall give not less than 5 days' notice thereof by mail to all parties. At the time set or at the time to which the judge may continue the hearing, he shall determine the request for correction, and if none is allowed, shall certify the transcripts as correct. If corrections are allowed by the judge, he shall fix the time within which they shall be made by the clerk or reporter, and on the transcripts being corrected as directed, shall certify them as correct. If no time for correction is fixed by the trial judge, the corrections shall be made by the clerk or reporter within 30 days after their allowance. The parties at any time may stipulate that the whole or any portion of the record is correct, and such stipulation shall render unnecessary the certification by either the clerk or judge of the record or the portion stipulated to by the parties.

Rule 8.757 renumbered effective January 1, 2007; adopted as rule 128; previously amended effective January 5, 1953.

Rule 8.758. Form of record

(a) Size of paper, etc.

The reporter's transcript shall be prepared as provided in subdivision (b) of rule 8.144. All papers copied by the clerk for the record shall be prepared as provided in subdivision (a) of rule 8.144.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1968, July 1, 1969, and July 1, 1971.)

(b) Indexes

The clerk shall include at the beginning of each volume of his transcript an alphabetical and a chronological index referring to each paper or record therein, and he shall also include a list of original exhibits, notices, affidavits, orders, written instructions given or refused, and other papers included in the

record with a brief description of each of them. The reporter shall include at the beginning of each volume of his transcript an alphabetical and a chronological index referring to the page at which the direct examination, the cross-examination, the redirect examination, and the recall of each witness begins. He shall also indicate in a separate table in the first volume of the reporter's transcript the page at which any exhibit or other document copied therein appears, and the page at which he has noted the omission of any exhibit or other document. The contents of each transcript shall be arranged chronologically. So far as practicable the arrangement and indexing of an agreed or settled statement shall conform to the foregoing requirements.

(Subd (b) amended effective July 1, 1971.)

(c) Binding and cover

The reporter's transcript shall be bound in volumes of not more than 300 pages. The cover of each volume shall be of the same size as the pages therein, and there shall be endorsed thereon the title of the case, the name of the trial judge and judicial district, and the names and addresses of the attorneys representing the parties on the appeal.

(Subd (c) amended effective January 5, 1953.)

Rule 8.758 amended and renumbered effective January 1, 2007; adopted as rule 129; previously amended effective January 5, 1953, January 1, 1968, July 1, 1969, and July 1, 1971.

Rule 8.759. Transmission and filing of record

When the appellant has paid or been excused from paying the filing fee and the record on appeal has been completed in accordance with these rules, the clerk of the trial court shall forthwith transmit the record to the county clerk for filing, and may be compelled to do so by order of the reviewing court, made on motion.

Rule 8.759 renumbered effective January 1, 2007; adopted as rule 130; previously amended effective July 1, 1964, July 1, 1970, January 1, 1977, and January 1, 1980.

Rule 8.760. Record on cross-appeal

Where several parties appeal from the same judgment or any part or parts thereof, or where there is a cross-appeal pursuant to rule 8.752, a single record on appeal shall be prepared and filed within the time prescribed for filing the record in the latest appeal. Such record shall be prepared in accordance with rules 8.753 and 8.754 unless all appellants give notice of intention to proceed under rule 8.756, or unless the parties stipulate to proceed under rule 8.755. Unless the trial court

orders otherwise, the initial expense of preparing the record shall be borne equally by the parties appealing.

Rule 8.760 amended and renumbered effective January 1, 2007; adopted as rule 131; previously amended effective January 5, 1953, and July 1, 1964.

Rule 8.761. Augmentation and correction of record

(a) Augmentation

On suggestion of any party or on its own motion, the reviewing court, on such terms as it deems proper, may order that the original or a copy of a paper, record or exhibit offered at or used on the trial or hearing below and on file in or lodged with the trial court be transmitted to it, or that portions of the oral proceeding be transcribed, certified and transmitted to it, or that an agreed or settled statement of portions of the oral proceedings be prepared and transmitted to it; and when so transmitted they shall be deemed part of the record on appeal.

(Subd (a) amended effective July 1, 1964; previously amended effective January 5, 1953.)

(b) Correction

If any material part of the record is incorrect in any respect, or lacks proper certification, the reviewing court, on suggestion of any party or on its own motion, may direct that it be corrected or certified.

(c) Correction by trial court or parties

The reviewing court may submit to the trial court for settlement any differences of the parties with respect to alleged omissions or errors in the record, and the trial court shall make the record conform to the truth. The reviewing court may also direct that omissions or errors be corrected pursuant to the stipulation of the parties filed with the clerk of that court.

(Subd (c) amended effective July 1, 1964.)

Rule 8.761 renumbered effective January 1, 2007; adopted as rule 132; previously amended effective January 5, 1953, and July 1, 1964.

Rule 8.762. Abandonment and dismissal

(a) Before record filed

At any time before the filing of the record in the reviewing court, the appellant may file in the office of the clerk of the trial court a written abandonment of the appeal; or the parties may file in said office a stipulation for abandonment. The filing of either document shall operate to dismiss the appeal and to restore the jurisdiction of the trial court. Upon such a dismissal, the appellant shall be entitled to the return of that portion of any deposit in excess of the actual cost of preparation of the record on appeal up to that time.

(Subd (a) amended effective July 1, 1964.)

(b) After record filed

After the filing of the record in the reviewing court an appeal may be dismissed by that court on written request of the appellant or stipulation of the parties filed with the clerk of the reviewing court.

(c) Dismissal by court

If the appellant shall fail to perform any act necessary to procure the preparation or filing of the record on appeal or shall otherwise fail to prosecute his appeal with diligence, and such failure is the fault of the appellant and not of any court officer or any other party, the appeal may be dismissed by the reviewing court on motion of the respondent or on its own motion.

(Subd (c) adopted effective January 6, 1947.)

(d) Notification by clerk

The clerk of the court in which an abandonment is filed shall immediately notify the adverse party of the filing thereof. The clerk of the reviewing court shall immediately notify the parties of any order of dismissal made by that court.

(Subd (d) amended effective January 6, 1947.)

(e) Approval of compromise

Whenever the guardian of a minor or of an insane or incompetent person seeks approval of a proposed compromise of a case pending on appeal, the reviewing court may, by order, refer the matter to the trial court with instructions to hear the same and determine whether the proposed

compromise is for the best interests of the ward, and to report its findings. On receipt of the report, the reviewing court shall make its order approving or disapproving the compromise.

(Subd (e) adopted effective January 5, 1953.)

Rule 8.762 renumbered effective January 1, 2007; adopted as rule 133; previously amended effective January 6, 1947, January 5, 1953, and July 1, 1964.

Rule 8.763. Hearing

Appeals in civil cases shall be calendared, argued and determined, notice of hearings shall be given, and petitions for rehearing and answers thereto shall be filed and acted upon as prescribed in chapter 1 of this division (commencing with rule 8.700).

Rule 8.763 amended and renumbered effective January 1, 2007; adopted as rule 134 effective January 5, 1953; previously amended effective July 1, 1964, and January 1, 1977.

Rule 8.764. Costs on appeal

(a) Rights to costs

Except as provided in this rule, the prevailing party shall be entitled to costs on appeal from a municipal or justice court as an incident to the judgment on appeal. In the case of a general and unqualified affirmance of the judgment, or the dismissal of an appeal, the respondent shall be deemed the prevailing party; in the case of a reversal, in whole or in part, or of a modification of the judgment, the appellant shall be deemed the prevailing party. In any case in which the interests of justice require it, the reviewing court may make any award or apportionment of costs which it deems proper. If the appeal is frivolous or taken solely for the purpose of delay or if any party has required in the record on appeal the inclusion of any matter not reasonably material to the determination of the appeal, or has been guilty of any other unreasonable infraction of the rules governing appeals, the reviewing court may impose upon offending attorneys or parties those penalties, including the withholding or imposing of costs, that the circumstances of the case and the discouragement of like conduct may require.

(Subd (a) amended effective January 1, 1987; previously amended effective July 1, 1964.)

(b) Entry of judgment for costs

In any case on appeal from a municipal or justice court in which the reviewing court directs the manner in which costs shall be awarded or denied, the clerk shall enter on the record and insert in the remittitur a judgment in accordance with those directions. In the absence of those directions by the reviewing court, the clerk shall enter on the record and insert in the remittitur to the municipal or justice court a judgment for costs as follows:

(1) In the case of a general and unqualified affirmance of the judgment, for the respondent;

(2) In the case of a dismissal of the appeal, for the respondent;

(3) In the case of a modification of the judgment, for the appellant; and

(4) In the case of a reversal of the judgment, in whole or in part, with or without directions, for the appellant.

If the clerk fails to enter judgment for costs as provided in this subdivision, the reviewing court, on motion made not later than 30 days after issuance of the remittitur, or on its own motion, may recall it for correction.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964, and January 1, 1987.)

(c) Items recoverable as costs

The party to whom costs are awarded may recover only the following, if actually incurred:

(1) The cost of preparation of an original and one copy of any type of record on appeal authorized by these rules if that party is the appellant, or one copy of the record if the party is the respondent, subject to reduction by order of the reviewing court pursuant to subdivision (a) of this rule; but the expense of any method of preparation in excess of the cost of preparing the record in typewriting shall not be recoverable as costs, unless the parties so stipulate;

(2) The cost of production of additional evidence; and

(3) Filing and notary fees and expense of service, transmission, and filing of the record, briefs, and other papers.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1987, and July 1, 1991.)

(d) Procedure for claiming costs

If costs are awarded to a party by a reviewing court and the party claims those costs, the party shall, within 30 days after the remittitur is filed with the trial court, serve on all parties and file with the clerk of the trial court a memorandum of costs, verified as prescribed by rule 3.1700(a)(1).

A party may move to have costs taxed in the same manner and within a like time after service of a copy of the memorandum of costs, as prescribed by rule 3.1700(b). After the costs have been taxed, or after the time for taxing the costs has expired, the award of costs may be enforced in the same manner as a money judgment.

(Subd (d) amended effective January 1, 2007; adopted effective January 1, 1987.)

(e) Procedure for imposing sanctions

(1) A party seeking monetary sanctions on the ground that the appeal is frivolous or taken solely for purposes of delay or that there has been an unreasonable infraction of the rules governing appeals shall serve and file a motion under rule 8.705 no later than 10 days after the time the appellant's reply brief is due or at the time of filing a motion to dismiss the appeal.

(2) A party who filed a motion to dismiss the appeal before filing a brief may make or renew the motion for sanctions up to 10 days after the time the appellant's reply brief is due.

(3) A motion under (1) or (2) shall include a declaration supporting the amount of sanctions being sought.

(4) The court shall notify a party or an attorney if it is considering imposing sanctions on its own motion or on motion of a party.

(5) The party or attorney against whom sanctions are sought may serve and file a written opposition within 10 days after notice from the court that it is considering imposing sanctions; failure to do so shall not be deemed consent to the award of sanctions. An opposition should not ordinarily be filed unless the court has sent notice that it is considering imposing sanctions or requests the party's or attorney's views.

(6) Unless otherwise ordered, the issue of sanctions and their amount will be argued at the time of oral argument on the merits of the appeal.

(Subd (e) amended effective January 1, 2007; adopted effective July 1, 2000.)

Rule 8.764 amended and renumbered effective January 1, 2007; adopted as rule 135; previously amended effective July 1, 1964, January 1, 1987, July 1, 1991, and July 1, 2000.

Rule 8.765. Definitions

In this chapter, unless the context or subject matter otherwise requires:

(1) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(2) "Trial court" means the municipal or justice court from which an appeal is taken pursuant to these rules; "reviewing court" applies to the court in which an appeal is pending, and means the appellate department of the superior court.

(3) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(4) "Shall" is mandatory and "may" is permissive.

(5) "Party," "appellant," "respondent," "petitioner," or other designation of a party include such party's attorney of record. Whenever under these rules a notice is required to be given to or served on a party, such notice or service shall be made on his attorney of record, if he has one.

(6) "Serve and file" mean that a document filed in a court is to be accompanied by proof of prior service in a manner permitted by law of one copy of the document on counsel for each adverse party who is represented by separate counsel.

(7) "Judgment" includes any judgment, order or decree from which an appeal lies.

(8) "Judgment roll" with respect to a justice court consists of the same papers as in the municipal court.

(9) "Presiding judge" includes the acting presiding judge.

(10) "Clerk" with respect to a justice court means the judge if there be no clerk.

(11)"Written," "writing," "typewriting" and "typewritten" include other methods of duplication equivalent in legibility to typewriting.

(12) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.

Rule 8.765 amended and renumbered effective January 1, 2007; adopted as rule 136; previously amended effective January 5, 1953, July 1, 1964, and January 1, 1977.

Rule 8.766. Applications on routine matters

Except as otherwise provided in these rules, applications to extend time for filing briefs, applications to shorten time, and applications relating to other matters of routine shall be served and filed; but the presiding judge of the reviewing court may require an additional showing to be made and for good cause may excuse advance service. The application shall set forth facts showing:

(1) Good cause for granting the application; and

(2) Any previous applications granted or denied to any party after filing of the notice of appeal.

The application may be granted or denied by the presiding judge, unless the court otherwise determines. The applicant shall provide to the clerk addressed, postage-prepaid envelopes and sufficient additional copies of the application for later mailing by the clerk to all other parties of a copy of the order granting or denying the application, together with a copy of the application.

Rule 8.766 amended and renumbered effective January 1, 2007; adopted as rule 137; previously amended effective January 1, 1974, January 1, 1975, and July 1, 1996.

Rule 8.767. Extension and shortening of time

(a) Computation of time

The time for doing any act required or permitted under these rules shall be computed and extended in the manner provided by the Code of Civil Procedure.

(b) Extension by trial court

The presiding judge of the trial court, or a judge designated by him, for good cause shown on application made as provided in rule 8.766, may extend the time for doing any act involved in the preparation of the record on appeal in a civil case, prior to the expiration of such time or any valid extension thereof; provided, however, that the time specified for payment of the fee for filing the record in the reviewing court may not be extended by the trial court. Such extensions granted to any party shall not exceed 60 days in the aggregate for any and all acts in preparation of the record, and no single extension shall be for a period in excess of 10 days. Anything in these rules to the contrary notwithstanding, the initial extension granted to any party by the trial court may be granted ex parte.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964, and January 1, 1974.)

(c) Extension by presiding judge

The presiding judge of the reviewing court, for good cause shown, may extend the time for doing any act required or permitted under these rules, except the time for filing a notice of appeal. An application for extension of time shall be made as provided in rule 8.766.

(Subd (c) amended effective January 1, 2007.)

(d) Shortening time

The presiding judge of the reviewing court, for good cause shown, may shorten the time for serving or filing a paper incident to an appeal. An application to shorten time shall be made as provided in rule 8.766.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 1977.)

Rule 8.767 amended and renumbered effective January 1, 2007; adopted as rule 138; previously amended effective July 1, 1964, January 1, 1974, and January 1, 1977.

Rule 8.768. Substitution of parties and attorneys

(a) Parties

Whenever a substitution of parties to a pending appeal is necessary, it shall be made by proper proceedings instituted for that purpose in the trial court.

On suggestion thereof and the presentation of a certified copy of the order of substitution made by the trial court, a like order of substitution shall be made in the reviewing court.

(Subd (a) amended effective July 1, 1964.)

(b) Attorneys

Withdrawal or substitution of attorneys may be effected by serving and filing a stipulation in the reviewing court, signed by the party, the retiring attorney and any substituted attorney. In the absence of stipulation, withdrawal or substitution may be effected only by an order made pursuant to a motion in the reviewing court; except that unless otherwise ordered by the court, service of the motion need be made only on the party and the attorneys directly affected thereby. A notification of any withdrawal or substitution shall be given by the clerk of the reviewing court to the clerk of the trial court, and substituted counsel shall forthwith give notice thereof to all parties.

(Subd (b) amended effective January 1, 1977; previously amended effective July 1, 1964.)

Rule 8.768 renumbered effective January 1, 2007; adopted as rule 139; previously amended effective July 1, 1964, and January 1, 1977.

Rule 8.769. Writ of supersedeas

A petition for a writ of supersedeas shall bear the same title as the appeal, and shall be served and filed in the reviewing court in which the appeal is pending. The petition shall be verified, and shall contain a statement of the necessity for the writ, and supporting points and authorities. If the record on appeal has not been filed with the reviewing court, the petition shall contain a description of the judgment, the date of its entry, the fact and date of filing of the notice of appeal, and a statement of the subject matter of the appeal sufficient to advise the reviewing court of the question involved. A request for a temporary stay pending the granting or denial of the writ may be included in the petition, or may be made separately and without service on the respondent. The writ may be issued on any conditions which the reviewing court deems just.

If the writ or stay issues, the reviewing court shall notify the trial court pursuant to rule 8.490(k).

Rule 8.769 amended and renumbered effective January 1, 2007; adopted as rule 140; previously amended effective January 1, 1984.

Rule 8.770. Substitute judge where trial judge unavailable

Whenever by these rules any act is required to be done by the judge who tried the case, and such judge is unavailable or unable to act at the time fixed therefor, the act shall be done by another judge of the same court, to be designated by the presiding judge thereof, or if there is no judge of the court available to act, then the act shall be done by a judge designated by the Chairman of the Judicial Council.

Rule 8.770 renumbered effective January 1, 2007; adopted as rule 141.

Rule 8.771. Presumption where record not complete

If a record on appeal does not contain all of the papers, records and oral proceedings, but is certified by the judge or the clerk, or stipulated to by the parties, in accordance with these rules, it shall be presumed in the absence of proceedings for augmentation that it includes all matters material to a determination of the points on appeal. On an appeal on the judgment roll alone, or on a partial or complete clerk's transcript, the foregoing presumption shall not apply unless the error claimed by appellant appears on the face of the record.

Rule 8.771 renumbered effective January 1, 2007; adopted as rule 142; previously amended effective January 5, 1953.

Rule 8.772. Scope and construction

(a) Courts and proceedings covered

This chapter applies to appeals from municipal and justice courts in civil cases, except small claims cases. The rules shall be liberally construed to secure the just and speedy determination of appeals.

(Subd (a) amended effective January 1, 1977; previously amended effective July 1, 1964.)

(b) Relief from default

The reviewing court for good cause may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal.

Rule 8.772 renumbered effective January 1, 2007; adopted as rule 143; previously amended effective July 1, 1964, and January 1, 1977.

Rule 8.773. Remittitur

(a) Issuance and transmission

Upon the expiration of the period during which a transfer may be ordered, the clerk of the superior court shall remit to the court from which the appeal was taken a certified copy of the judgment of the superior court and of its opinion, if any, and also all the original exhibits, orders, affidavits, papers, and documents which were sent to the superior court in connection with the appeal, except the statement or transcript on appeal and the notice of appeal. After the certified copy of the judgment has been remitted to the court below, the superior court has no further jurisdiction of the appeal or of the proceedings thereon, and the lower court shall make all orders necessary to carry its judgment or order into effect or otherwise proceed in conformity to the decision on appeal.

(Subd (a) amended effective January 1, 1977; adopted effective July 1, 1964.)

(b) Issuance forthwith

The court may direct the immediate issuance of the remittitur on stipulation of the parties.

(Subd (b) adopted effective July 1, 1964.)

(c) Stay of issuance

The court, for good cause, may stay the issuance of the remittitur for a reasonable period.

(Subd (c) adopted effective July 1, 1964.)

(d) Recall of remittitur

A remittitur may be recalled by order of the court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth the facts which would justify the granting of a motion.

(Subd (d) adopted effective July 1, 1964.)

Rule 8.773 renumbered effective January 1, 2007; adopted as rule 144; previously amended effective July 1, 1964, and January 1, 1977.

Chapter 3. Appeals to the Appellate Division in Criminal Cases

Rule 8.780. Applicability to felonies, misdemeanors, infractions

(a) Rules applicable to felonies and superior courts

Rule 8.300 et seq. applies to appeals from the judgments and appealable orders of all courts in felony cases, and to appeals from the judgments and appealable orders of superior courts in all criminal cases. References in those rules to "superior court" mean "the court that pronounced judgment or issued the appealable order," and include a municipal or justice court that pronounced judgment or issued an appealable order in a felony case.

(Subd (a) amended effective January 1, 2007.)

(b) Rules applicable to misdemeanors and infractions

Rule 8.781 et seq. applies to appeals from the judgments and appealable orders of municipal and justice courts in misdemeanor and infraction cases.

(Subd (b) amended effective January 1, 2007.)

Rule 8.780 amended and renumbered effective January 1, 2007; adopted as rule 180 effective January 1, 1994.

Rule 8.781. Definitions

The definitions in rules 1.5, 1.6, and 8.10 apply to this chapter unless the context otherwise requires.

Rule 8.781 amended and renumbered effective January 1, 2007; adopted as rule 181 effective January 1, 1983.

Rule 8.782. Notice of appeal

(a) Time for filing

An appeal in a criminal case from a judgment or appealable order of a municipal or justice court is taken by filing with the clerk of that court a written notice of appeal signed by the appellant or appellant's attorney. The notice shall specify the judgment or order or part thereof from which the appeal is taken. The notice shall be liberally construed in favor of its sufficiency.

The notice of appeal shall be filed within 30 days after the rendition of the judgment or the making of the order; but if the defendant is committed before final judgment for insanity or narcotics addiction or indeterminately as a mentally disordered sex offender, the notice of appeal shall be filed within 30 days after the commitment.

If the notice of appeal is not filed within the time prescribed, the appeal shall be void and of no effect. A notice received after the expiration of the time prescribed shall be marked by the clerk "Received (date) but not filed", and the clerk shall advise the party seeking to file the notice that it was received but not filed because the period for filing had elapsed.

A notice of appeal filed prior to the time prescribed is premature but may, in the discretion of the reviewing court for good cause, be treated as filed immediately after the rendition of the judgment or the making of the order.

References in this subdivision to the clerk apply to the judge of a justice court, in the absence of a clerk.

(Subd (a) amended effective January 1, 1982; previously amended September 15, 1961, July 1, 1964, November 13, 1968, and January 1, 1972.)

(b) Notification by clerk

The clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith mail a notification of the filing of the notice of appeal to each party

~~other than the appellant. The notification shall state the number and title of the case and the date the notice of appeal was filed. The failure of the clerk or judge to give such notification shall not affect the validity of the appeal.~~

~~*(Subd (b) adopted effective July 1, 1964.)*~~

~~*Rule 8.782 renumbered effective January 1, 2007; adopted as rule 182; previously amended September 15, 1961, July 1, 1964, November 13, 1968, January 1, 1972, and January 1, 1982.*~~

~~Rule 8.783. Record on appeal~~

~~(a) The record on an appeal to a Superior Court from a municipal or an inferior court in a criminal case shall consist of the following items, or so many thereof as may exist in the particular case:~~

~~(1) The complaint;~~

~~(2) The plea or pleas of the defendant;~~

~~(3) All written instructions given, or requested and refused;~~

~~(4) The verdict, or if a jury was waived, the entry of such waiver in the minutes or docket, and the finding of the court upon the issues;~~

~~(5) Any written motion or notice of motion for new trial, in arrest of judgment or to dismiss or otherwise terminate the action, or the entry in the minutes or docket of any oral motion to the same effect, and the order of the court thereon;~~

~~(6) Any demurrer to the complaint, and the order of the court thereon;~~

~~(7) All other minutes of the court relating to the action;~~

~~(8) The judgment, and the order appealed from, if the appeal is from an order;~~

~~(9) The notice of appeal;~~

~~(10) Any statement or transcript on appeal, or both, settled and certified by the trial judge as hereinafter provided for in rules 8.784 and 8.788;~~

~~(11) All exhibits, instructions, orders, affidavits, papers and documents properly referred to and identified in such statement or transcript, as provided in rule 8.784;~~

~~(12) If the appeal is from an order made after judgment, items 2, 3, 4, 5, 6 and 7 may be omitted, and the record shall include any written motion and any written notice of motion, the denial or granting of which is the order appealed from, or the entry in the minutes or docket of any such oral motion, and all minutes of the court relating to such motion.~~

~~*(Subd (a) amended effective January 1, 2007.)*~~

(b) ~~The matters included in the foregoing item 1 to 9 inclusive, 11 and 12 of subdivision (a), or so many of them as may be pertinent to the appeal taken, shall be prepared by the clerk of the trial court, or by the judge thereof if there is no clerk. The notice of appeal, matters appearing in the minutes or docket of the trial court and any other part of the record, the original of which it is not possible to transmit to the superior court, shall be copied as provided in subdivision (a) of rule 8.144 and the copies made part of the record on appeal; but the originals of all other matters shall be included in the record. As soon as the statement on appeal, including the transcript, if any, has been settled and certified, or the right of the appellant to have a statement settled and certified shall have terminated, as elsewhere provided in these rules, the clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith transmit the record on appeal, with his certificate that the parts thereof are originals or copies, as the case may be, to the clerk of the superior court to which the appeal is taken.~~

~~*(Subd (b) amended effective January 1, 2007; previously amended effective January 6, 1947, and July 1, 1971.)*~~

~~*Rule 8.783 amended and renumbered effective January 1, 2007; adopted as rule 183; previously amended effective January 6, 1947, and July 1, 1971.)*~~

~~Rule 8.784. Statement or transcript~~

~~(a) Where a consideration of the evidence or any part thereof, or of any proceedings which do not otherwise constitute a part of the record on appeal as defined in rule 8.783, is necessary to a determination of the appeal, the same must be set forth in a statement on appeal settled and certified as provided in these rules, and if not so set forth, it shall be presumed that they were such as to support the judgment or order appealed from. If all or any part of such evidence or other proceedings was reported by an official reporter, the appellant may give notice in his~~

proposed statement that he intends to file a reporter's transcript of the evidence and proceedings so reported, and to make the same a part of the statement, and if he gives such notice he may omit any other statement of the evidence and proceedings so reported from his proposed statement.

(Subd (a) amended effective January 1, 2007.)

(b) In every such statement the appellant shall specify the grounds on which he intends to rely upon appeal and set forth so much of the evidence and other proceedings as are necessary for a decision upon said grounds. Said grounds of appeal shall be stated with sufficient particularity to apprise the court and the opposing party of the rulings or other matters of which the appellant intends to complain, but this may be done by any general description calling attention to the points to be made, without specifying each separate ruling or other matter to be complained of. If one of said grounds of appeal is insufficiency of the evidence, the particulars in which it is insufficient shall also be stated, unless a reporter's transcript containing the whole thereof is to be made a part of the statement. No ground of appeal not so specified shall be considered by the superior court unless it shall appear to the satisfaction of said Court that the record on appeal fairly and fully presents the evidence and other proceedings necessary for a decision thereon.

(c) It shall not be necessary in any such statement or transcript to copy any exhibit, instruction, order, affidavit, paper or document on file with the trial court, but the same may be merely referred to by any designation sufficient to identify it. If any point is to be made on appeal as to the giving, refusal or modification of instructions, it shall be necessary to show by said statement or transcript whether any oral instructions were given and, if so, what they were, and by whom requested, and if the written instructions included in the record under rule 8.783 do not show by whom requested, or what modifications were made in instructions given as modified, these facts shall be set forth in the statement.

(Subd (c) amended effective January 1, 2007.)

(d) An appellant who desires to have a statement settled shall, within 15 days after filing notice of appeal, serve on the respondent and file with the trial court a proposed statement on appeal. If in such proposed statement appellant gives notice that a reporter's transcript is to be filed and made a part thereof, as provided in subdivision (a) of this rule, appellant may file, within 15 days after the filing of the proposed

statement, a transcript of the evidence or other proceedings reported by an official reporter, certified by that reporter to be correct, and shall within five days after such filing, notify the respondent thereof. Any such transcript, when settled and certified as provided in rule 8.788, shall become a part of the statement. If the transcript is not filed or notice is not given of its filing within the time limited by these rules or any lawful extension thereof, the appellant's right to have the transcript settled and certified as a part of the statement shall terminate and the trial court shall proceed upon the other parts of the proposed statement as provided in rule 8.788. If the failure to file such transcript in time results from the refusal, failure or inability of the reporter to make all or any part of the transcript, the appellant may, within five days after expiration of the time for filing such transcript, move the trial court for leave to file amendments to the statement to cover the matters originally proposed to be in the transcript. If the trial court grants the motion, the appellant shall serve and file amendments within 15 days after the making of the order and such amendments and the original statement shall be settled and certified as provided in rule 8.788. If the appellant fails to serve and file a proposed statement on appeal within the time limited by these rules, or any lawful extension thereof, the right to have a statement settled and certified shall forthwith terminate.

(Subd (d) amended effective January 1, 2007.)

Rule 8.784 amended and renumbered effective January 1, 2007; adopted as rule 184; previously amended effective July 31, 1938, January 6, 1947, and July 1, 1980.

Rule 8.785. Amendments to statement or transcript

The respondent may within 15 days after such statement is filed, or notice is given of the filing of such transcript, serve on the appellant and file proposed amendments to the statement or transcript, or both.

Rule 8.785 renumbered effective January 1, 2007; adopted as rule 185; previously amended effective January 1, 1973, and July 1, 1980.

Rule 8.786. Counsel on appeal

(a) Standards for appointment

On application of defendant-appellant, the appellate department shall appoint counsel on appeal for any defendant-appellant convicted of a misdemeanor who is subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is likely to suffer significant adverse

collateral consequences as a result of the conviction, if the defendant-appellant was represented by appointed counsel in the trial court. On application, the appellate department shall appoint counsel for any other such defendant-appellants who establish their indigency as in the Courts of Appeal. A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, or is a condition of probation, or may be ordered if the defendant violates probation. The appellate department may appoint counsel for any other indigent defendant-appellant.

(b) Application; duty of trial counsel

If defense trial counsel believes that the client is indigent and will file an appeal, counsel shall prepare and file in the trial court an application to the appellate department for appointment of counsel. If the defendant-appellant was represented by appointed counsel in the trial court, the application shall include counsel's declaration to that effect. If the defendant-appellant was not represented by appointed counsel in the trial court, the application shall include a declaration of indigency supported by evidence in the form required by the Court of Appeal for the district where the court is located. The trial court shall transmit the application to the appellate department along with the record on appeal. A defendant-appellant may, however, apply directly to the appellate department for appointment of counsel at any time after the notice of appeal is filed.

The appellate department may take a reasonable time to confirm that the defendant-appellant still seeks the appointment of counsel. In the case of a defendant-appellant not represented by appointed counsel in the trial court, the appellate department may take a reasonable time to confirm the facts stated in the declaration of indigency.

(c) Defendant found able to pay in trial court

If a defendant was represented by appointed counsel in the trial court and was found able to pay all or part of the cost of the trial counsel in proceedings under Penal Code section 987.8 or 987.81, the findings in those proceedings shall be included in the record of any appeal by the defendant or, if made after the record on appeal is transmitted to the appellate department, shall be transmitted to the appellate department as an augmentation of the record. In those cases, the appellate department shall conduct appropriate proceedings to determine the defendant's ability to pay or contribute to the expense of counsel on appeal, and if it finds that the defendant is able, shall order the defendant to pay all or part of the cost.

Rule 8.786 renumbered effective January 1, 2007; adopted as rule 185.5 effective January 1, 1994.

Rule 8.787. Extensions of time and relief from default

(a) Extensions of time

The court from which the appeal is taken, or a judge thereof, may for good cause shown by affidavit make an order granting not more than a total of 15 days additional to the time limited in these rules for serving and filing the statement, or for filing the transcript and giving notice thereof, or for proposing amendments thereto, or for engrossing the statement or transcript, or both, and presenting the same for certification. The superior court to which an appeal is taken, or if the appeal is to be heard in an appellate department, the presiding judge thereof, may, for good cause shown by affidavit, further extend the time for doing any act required by these rules, except the time for filing the notice of appeal. Every such extension shall be made upon application as provided in rule 8.766 before the time extended, including any previous extensions thereof, has expired.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1974.)

(b) Relief from default

The superior court may for good cause relieve a party from a default occasioned by any failure to comply with these rules, except failure to give timely notice of appeal.

(Subd (b) amended effective July 1, 1971; previously amended effective January 6, 1947.)

Rule 8.787 amended and renumbered effective January 1, 2007; adopted as rule 186; previously amended effective January 6, 1947, and July 1, 1971.

Rule 8.788. Settlement of statement or transcript

Upon the filing of such proposed amendments or the expiration of the time for filing them, the trial judge shall forthwith fix a time for settlement of the statement or transcript, or both, which time shall be as early as the business of the court will permit, either in chambers or in open court, and cause notice to be mailed, at least five days before the time fixed, to each party, or, if any party appears by attorney, then to the attorney, if the mailing address of the party or attorney appears in the files of the case in which the appeal is taken. The trial judge shall at the time fixed, or any other time to which the matter may be continued, settle the statement or

~~transcript, or both, and the amendments proposed, if any, correcting, altering, or rewriting the statement or transcript, or both, as may be necessary to make it set forth fairly and truly the evidence and proceedings relating to the specified grounds of appeal or the matters set forth by the appellant in support of it.~~

~~The appellant's specifications of grounds of appeal shall not in any case be eliminated from the settled statement. At the time of settlement the judge may direct the appellant to engross the statement or transcript, or both, as settled. Thereupon the appellant shall engross the statement or transcript, or both, as corrected and settled and present it to the judge for certification within five days from the date of settlement, and if the appellant fails to do so within that period or any lawful extension, the right to have the statement or transcript settled or certified shall terminate. If a statement or transcript is settled and engrossed, if engrossment is ordered, the trial judge shall certify to its correctness. A judge may settle and certify the statement or transcript after or before ceasing to be the trial judge. If the trial judge dies, is removed from office, becomes disqualified, or is absent from the state at the time for settling or certifying a statement or transcript, it may be settled or certified by any other judge of the court qualified to act.~~

~~The clerk of the trial court shall promptly mail copies of the statement, as settled and certified by the judge, to counsel for the parties and to unrepresented parties, unless the judge certifies that the statement proposed and filed by the appellant was settled without significant change.~~

~~Rule 8.788 renumbered effective January 1, 2007; adopted as rule 187; previously amended effective July 1, 1989.~~

~~Rule 8.789. Experimental rule on use of recordings to facilitate settlement of statements~~

~~(a) Scope of experiment~~

~~Notwithstanding any other rule, a municipal of justice court may provide by local rule that this rule applies to every appeal in a misdemeanor case in which all or part of the proceedings were officially recorded electronically.~~

~~(Subd (a) amended effective January 1, 2007.)~~

~~(b) Appellate counsel~~

~~Counsel retained for the appeal shall file notice of his or her appearance in the trial court. The clerk of the reviewing court shall send the trial court~~

notice of the appointment of counsel on appeal, which shall be filed as an appearance by the trial court.

(c) Trial court clerk's duties

(1) The clerk of the trial court shall retain custody of the original sound recording, unless ordered to deliver it to the reviewing court.

(2) To the extent feasible, the clerk shall make the original sound recording available to the parties and counsel for listening in court facilities during normal business hours.

(3) Within ten days after the notice of appeal is filed, the clerk of the trial court shall prepare and label one copy of the original sound recording for each party and a copy for the court's file; the copies shall be on standard audio cassette tapes or on CD-ROM.

(4) The clerk shall promptly mail a copy of the sound recording to counsel on appeal, if known to the clerk, for each party to the appeal. If the clerk has not received notice of the appointment or retention of counsel on appeal, the copy shall be mailed to trial counsel and to each party unrepresented at trial and on appeal. Each copy shall be accompanied by a copy of this rule and an information leaflet published by the Administrative Office of the Courts.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(d) Proposed statement

Counsel for the appellant (or the appellant, if unrepresented at trial and on the appeal) shall prepare a proposed statement of the case which shall include:

(1) A summary of the grounds of the appeal complying with rule 8.784(b).

(2) A narrative statement summarizing the basic events in the case, and as much of the evidence and rulings of the court as are relevant to the appeal. Any portion of the statement may be in the form of a verbatim transcription of the sound recording. The proposed statement shall, within 30 days after the mailing of the copy of the sound recording, be served on the opposing counsel of record or on the opposing party if unrepresented and filed in the trial court. If the proposed statement is

not served and filed within that time, or any extension, the appellant may not proceed with the appeal unless relieved from the default.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(e) Obligation of counsel

Unless counsel on appeal has been appointed or retained, the preparation, service and filing of the proposed statement as set forth in subdivision (e), and the other obligations imposed on counsel by this rule, are part of the obligation of representing a party at trial.

If counsel on appeal has been appointed or retained, that counsel has the primary responsibility for complying with subdivision (d) and fulfilling the other obligations imposed on counsel by this rule; and trial counsel has the duty to cooperate fully with appellate counsel to facilitate compliance.

(f) Proposed corrections and additions

Within 20 days after service of the proposed statement, counsel for the respondent (or the respondent, if unrepresented) shall serve on the person who served the proposed statement and file either a written acceptance of the proposed statement as accurate or proposed corrections and additions to the proposed statement. Unless good cause is shown in a motion for an order permitting late filing, failure to timely serve and file proposed corrections and additions is deemed an acceptance.

If proposed corrections and additions are served and filed, counsel for the parties have an obligation to confer in person or by telephone and seek to arrive at a stipulated final statement or to narrow the area of disagreement. This obligation is not applicable when a party is unrepresented.

A stipulated final statement, or stipulated summary of remaining points of disagreement, shall be prepared and filed in the trial court by the appellant within 10 days after service of proposed corrections and additions.

(g) Resolution of disputes

If the respondent files proposed corrections and additions, the clerk shall refer the file to the judge who tried the case or, in the judge's absence, to another judge of the court:

(1) Forthwith after a stipulated summary of points of disagreement is filed; or

(2) Forthwith after the respondent files proposed corrections and additions, if one of the parties was unrepresented at trial and remains unrepresented; or

(3) Twenty days after the respondent files proposed corrections and additions, if no stipulated final statement nor stipulated summary of points of disagreement has been filed.

The judge shall resolve all disputed issues of fact, using the available sound recordings of the proceedings to supplement the judge's memory and notes of the case. No hearing or conference shall be held unless ordered by the judge. A party may suggest that a hearing be ordered.

Within 20 days from the date the file is referred by the clerk, the judge shall certify in writing the resolution of the disputed issues. The clerk shall promptly file the judge's certificate and mail copies to counsel for the parties and to unrepresented parties

(h) Certification and transmittal

The clerk of the trial court shall certify and transmit to the reviewing court as part of the trial court file, pursuant to subdivision (j), either:

(1) A proposed statement which has been expressly accepted and the respondent's acceptance forthwith upon filing of the acceptance; or

(2) A proposed statement as to which no proposed correction and additions have been timely filed promptly after expiration of time within which to file proposed corrections and additions, along with the clerk's certificate that corrections and additions were not proposed. If the respondent has moved for an order permitting late filing of proposed corrections and additions, the clerk shall defer certification and transmittal until the motion is decided; and if it is denied, the clerk shall thereupon certify and transmit the file, including the proposed statement and all papers pertaining to the motion; or

(3) A stipulated final statement forthwith upon its filing; or

(4) The judge's certificate resolving disputed issues pursuant to subdivision (g) and all proposed statements, proposed corrections and

additions, and stipulations of the parties forthwith upon filing the judge's certificate resolving disputed issues.

(i) Returning of copy of the sound recording

Upon signing a stipulated final statement, or upon receiving a copy of the judge's certificate resolving disputed issues, or upon receiving notice of the filing of the record in the reviewing court, or at the request of the reviewing court, trial counsel and any unrepresented party without counsel on appeal shall deliver the copy of the sound recording to the clerk of the superior court appellate division for the use of any counsel on appeal; or, if trial counsel is in the same law office as counsel on appeal, shall deliver the copy to counsel on appeal and promptly file a notice with the appellate division stating that it has been delivered or will be delivered to counsel on appeal when the appeal is assigned.

(Subd (i) amended effective January 1, 2003.)

(j) In lieu of the clerk's record on appeal specified in rule 8.783, the clerk shall transmit to the reviewing court the complete trial court file on the case with a copy of all docket entries in the trial court. The original or a copy of the docket entries shall be retained in the trial court. The file copy of the sound recording shall be transmitted as part of the file.

(Subd (j) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(k) The provisions of rule 8.761 concerning augmentation and correction of the record apply. The reviewing court may order from the trial court the original sound recording to clarify any question concerning the trial court proceedings. The clerk of the reviewing court shall return the original sound recording to the trial court as soon as possible but no later than the time when the decision of the reviewing court is final.

(Subd (k) amended effective January 1, 2007.)

(l) The provisions of rule 8.787 concerning extensions of time and relief from default apply to this rule.

(Subd (l) amended effective January 1, 2007.)

(m) This rule does not limit a court's power to order a full verbatim transcript of the proceedings. If a transcript is ordered, this rule is inapplicable to the case.

Rule 8.789 amended and renumbered effective January 1, 2007; adopted as rule 187.5 effective January 1, 1983; previously amended effective January 1, 2003.

Rule 8.790. Abandonment of appeal

An appellant may at any time abandon his appeal by filing a written abandonment thereof. Such abandonment shall be filed in the trial court if the record has not yet been filed in the superior court, or in the superior court if the record has been filed in that court. Upon the filing of a written abandonment in the trial court the jurisdiction of that court shall thereby be restored and it shall at once take such proceedings as may be necessary to enforce its judgment or order as if no such appeal had been taken. Upon the filing of such abandonment in the superior court, that court shall dismiss the appeal and issue its remittitur forthwith.

Rule 8.790 renumbered effective January 1, 2007; adopted as rule 188; previously amended effective January 6, 1947.

Rule 8.791. Additions to record

On a sufficient showing by affidavit, or otherwise, that evidence was taken or proceedings were had in the trial court or that papers are there on file which are material to a disposition of the appeal and are not included in the record on appeal, and a showing of good cause why the same have not been included in said record, the superior court may authorize the trial judge to make a further certificate as to such evidence or other proceedings or papers, and direct the same, when so certified, to be added to the record.

Rule 8.791 renumbered effective January 1, 2007; adopted as rule 189.

Rule 8.792. Hearings and dismissals

Appeals to the superior court in criminal cases shall be calendared, argued and determined, notice of hearings shall be given, and petitions for rehearing and answers thereto shall be filed and acted upon as prescribed in the rules adopted by the Judicial Council for appellate departments of the superior court.

If the appeal is not brought to a hearing within the time limited, or the appellant otherwise fails to prosecute it with diligence, or if the appeal is irregular in any substantial respect, the superior court may, on motion of the respondent or on its own motion, after written notice to the appellant, order it dismissed.

Rule 8.792 renumbered effective January 1, 2007; adopted as rule 190; previously effective January 1, 1977.

~~Rule 8.793. Remittiturs~~

~~(a) Issuance and transmission~~

~~Upon the expiration of the period during which a transfer may be ordered, unless a new trial is to be had in the superior court, the clerk of the superior court shall remit to the court from which the appeal was taken a certified copy of the judgment of the superior court and of its opinion, if any, and also all the original exhibits, orders, affidavits, papers and documents which were sent to said superior court in connection with said appeal, except the statement or transcript on appeal and the notice of appeal. After such certified copy of the judgment has been remitted to the court below, the superior court has no further jurisdiction of the appeal or of the proceedings thereon, and the lower court shall make all orders necessary to carry its judgment or order into effect or otherwise proceed in conformity to the decision on appeal.~~

~~(Subd (a) amended effective July 1, 1964; previously amended effective January 2, 1962.)~~

~~(b) Issuance forthwith~~

~~The court may direct the immediate issuance of the remittitur on stipulation of the parties.~~

~~(Subd (b) adopted effective July 1, 1964.)~~

~~(c) Stay of issuance~~

~~The court, for good cause, may stay the issuance of the remittitur for a reasonable period.~~

~~(Subd (c) adopted effective July 1, 1964.)~~

~~(d) Recall of remittitur~~

~~A remittitur may be recalled by order of the court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth the facts which would justify the granting of a motion.~~

~~(Subd (d) adopted effective July 1, 1964.)~~

~~Rule 8.793 renumbered effective January 1, 2007; adopted as rule 191; previously amended effective January 2, 1962, and July 1, 1964.~~

COURT OF APPEAL RULES WITHOUT COUNTERPARTS IN THE APPELLATE DIVISION RULES

General Provisions

Rule 8.1 Title

Rule 8.13. Amendments to rules

Rule 8.16. Amendments to statutes

Rule 8.18. Documents violating rules not to be filed

Rule 8.20. California Rules of Court prevail

Rule 8.23. Sanctions to compel compliance

Rule 8.25. Service and filing

Rule 8.29. Service on a non-party public officer or agency

Rule 8.40. Form of filed documents

Rule 8.44. Number of copies of filed documents

Rule 8.57. Motions before the record is filed

Rule 8.66. Extending time because of public emergency

Civil Appeals

Rule 8.208. Certificate of Interested Entities or Persons

Rule 8.124. Appendixes instead of clerk's transcript

Rule 8.153. Lending the record

Rule 8.160. Sealed records

Rule 8.240. Calendar preference

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Criminal Appeals

Rule 8.316. Abandoning the appeal

Rule 8.424. Application in superior court for addition to normal record

Rule 8.428. Confidential records

Rule 8.444. Agreed statement

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

General Information

This pamphlet provides general information about the procedures for appeals in limited civil cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see Code Civ. Proc., §§ 85 and 88). This pamphlet does not provide information about appeals in other types of cases, such as criminal cases or unlimited civil cases (civil cases in which the amount claimed is over $25,000). For information about appeal procedures in criminal cases, please see, *Information on Appeal Procedures for Infractions* (form CR-141-INFO) or, *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO). For information about appeal procedures in unlimited civil cases, please see, *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001). You can get these forms at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

The information in this pamphlet is not intended to cover everything that you may need to know about appeals in limited civil cases. It is meant only to give an overview to help guide you through the appeal process. You should thoroughly read rules 8.800–8.842 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 go to *www.courtinfo.ca.gov/rules*.

You are allowed to represent yourself in an appeal in a limited civil case. If you have any questions about the appeal procedures, however, you should consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Web Site Center at *www.courtinfo.ca.gov/selfhelp/lowcost*. If you are representing yourself, you must inform the court if your address or telephone number changes so that the court can contact you when necessary.

1 What Is an Appeal?

An appeal is a request to a court to review a ruling or decision made by another court. The ruling or decision being appealed can be one made either in a jury trial or in a proceeding where there is only a judge. **In a limited civil case, the court hearing the appeal — the appellate court — is the appellate division of the superior court and the trial court is the superior court.**

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. Instead, the role of the appellate division is to review a record of what happened in the trial court and to review the trial court's ruling or decision. The party that appeals may ask the appellate division to determine if the trial court made an error about either the law or court procedures that caused substantial harm to the party that is appealing (this is called "prejudicial error"). When it conducts this review, the appellate division presumes that the trial court's decision is correct; the party that files the appeal must show the appellate division that the trial court made an error and that the error was prejudicial. The party that appeals may also ask the appellate division to determine if it there was substantial evidence supporting the trial court's decision. "Substantial" evidence means some reasonable, believable evidence that supports the decision. In conducting this review, the appellate division generally will not reconsider the trial court's judgment about which side had more or stronger evidence or whether witnesses in the trial court were telling the truth or lying. No matter how much evidence there may have been on the other side, the appellate division generally only looks to see whether there was substantial evidence supporting the trial court's decision. In other words, the appellate division generally will not overturn the trial court's decision unless the record clearly shows that the trial court made a prejudicial error or there was not substantial evidence supporting that decision.

2 Who Are the Parties in an Appeal?

The party that files the appeal is called the APPELLANT. The other party is called the RESPONDENT.

Information for the Appellant

This section is written for the appellant — the party filing an appeal. It explains some of the rules and procedures relating to appealing a ruling or 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 8 of this form.

3 Who Can File an Appeal?

Only a person or entity that was a party in the trial court proceeding can appeal a decision in that proceeding. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed guardian for that person.

4 What Decisions Can Be Appealed?

Generally, a party may appeal the final judgment in a case. A party may also appeal certain orders of the trial court. Code of Civil Procedure section 904.2 identifies the types of orders in a limited civil case that can be appealed immediately. These include orders that:

- Are made after final judgment in the case;
- 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; or
- Appoint a receiver.

Other interim rulings of the trial court generally cannot be appealed.

5 How Do I Start the Appeal Process?

The first step in appealing a decision is filing 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 (Limited Civil Case)* (form APP-102), to prepare and file a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

6 When Do I File the Notice of Appeal?

In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **60 calendar days** after the trial court 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. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, your appeal will be dismissed.**

7 How Do I File the Notice of Appeal?

To file the notice of appeal in a limited civil case, you must bring or mail the original notice of appeal to the clerk of the trial court that issued the judgment or order you are appealing.

8 Is There a Fee to File an Appeal?

Yes. Unless the court waives this fee, the notice of appeal must be accompanied by a $100 filing fee (Gov. Code, § 70621). If you think you cannot afford to pay this filing fee because of your financial condition, you can request that the court waive this filing fee. To do this, you must file an application for a waiver of court fees and costs on appeal under rules 3.50 et seq. You must use *Application for Waiver of Court Fees and Costs* (form FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. You can file this application either before you file your notice of appeal or with your notice of appeal.

9 Do I Need to Do Anything Else After I File My Notice of Appeal?

Yes. No later than 10 days after you file your notice of appeal, you must tell the trial court the form in which you want the record of the trial court proceedings to be provided to the appellate division. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to provide this notice. You can get form APP-103 at any courthouse or county law library, or go to *www.courtinfo.ca.gov/forms*. In most cases, you must also pay for the cost of preparing this record.

Since the appellate division judges were not present for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate division for its review. There are three parts of this official record: (A) a record of the documents filed in the trial court (other than exhibits); (B) a record of the oral proceedings in the trial court; and (C) the exhibits that were admitted in evidence, refused, or lodged in the trial court.

A. Record of the documents filed in the trial court

There are several ways in which a record of the documents filed in the trial court can be prepared for the appellate division: (1) the trial court clerk can prepare a record of the documents, called a "clerk's transcript"; (2) if the appellate division permits it, the trial court clerk can send the appellate division the original trial court file; (3) you and the other party or parties can agree on a summary of the trial court proceedings, called an "agreed statement," that includes copies of the documents; or (4) the trial court can approve a summary of the trial court proceedings, called a "statement on appeal," that includes copies of the documents.

(1) Clerk's transcript

A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court. Rule 8.832(a) of the California Rules of Court requires that certain documents, such as the notice of appeal and the trial court judgment or order being appealed, be included in the clerk's transcript. 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 this in your notice designating the record on appeal. You can use the same form you used to tell the court you wanted to use a clerk's transcript— *Notice Designating Record on Appeal (Limited Civil Case)* (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, within 10 days after you serve the notice designating the record, the respondent may serve and file a notice designating additional documents to be included in the clerk's transcript.

The appellant is responsible for paying for the cost of 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 pay this bill within 10 days. If you think you cannot afford to pay this cost because of your financial condition, you can request that the court waive this cost (as well as other court fees and costs). To do this, you must file an application for a waiver of court fees and costs on appeal under rules 3.50 et seq. You must use *Application for Waiver of Court Fees and Costs* (form FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. If you do not pay the bill for the clerk's transcript on time or submit an application for a waiver of this fee or a court order granting such a waiver, the appellate division may dismiss your appeal.

After all the fees have 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 has purchased a copy, the clerk will also mail a copy of the transcript to the respondent.

(2) Trial court file

Under rule 8.833, if the appellate division has a rule permitting it, the clerk can send the appellate division the original trial court file instead of a clerk's transcript.

As with a clerk's transcript, the appellant is responsible for paying the cost of preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must pay this bill within 10 days. If you think you cannot afford to pay this cost because of your financial condition, you can request that the court waive this cost (as well as other court fees and costs). To do this, you must file an application for a waiver of court fees and costs on appeal under rules 3.50 et seq. You must use *Application for Waiver of Court Fees and Costs* (form FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

After all the fees have 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

An agreed statement is a summary of the trial court proceedings agreed to by the parties. Rule 8.836 identifies what must be included in an agreed statement. Under this rule, you can use an agreed statement instead of a clerk's transcript if you attach to your agreed statement all of the documents that are required to be included in a clerk's transcript. If you elect to use this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the other party (a "stipulation") stating that you are attempting 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.

(4) Statement on appeal

A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. Rule 8.837 sets out the procedures for preparing a statement on appeal and what must be included in such a statement; these requirements are also described in more detail below in the section on the record of the oral proceedings. Under rule 8.837, you can use a statement on appeal instead of a clerk's transcript if you attach to your statement all of the documents that are required to be included in a clerk's transcript.

B. Record of the oral proceedings in the trial court

If you want to raise any issue in your appeal that would require the appellate division to consider what was said during the proceedings in the trial court, the record on appeal must include a record of the oral proceedings in the trial court. 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 the cost of preparing this record or for preparing an initial draft of this 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 happened during the oral proceedings, so you are not likely to succeed in your appeal.**

There are several ways in which a record of the oral proceedings in the trial court can be prepared for the appellate division: (1) if you or the other party arranged to have a court reporter present during the trial court proceedings, the reporter can prepare a record, called the "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 appellate division permits, you can use the electronic recording instead of a transcript; (3) you can use an agreed statement; or (4) you can use a statement on appeal.

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 go to *www.courtinfo.ca .gov/forms*.

(1) Reporter's transcript

If a court reporter was present during the trial court proceedings and made a record of the oral proceedings, you can elect to have the court reporter prepare a transcript of those oral proceedings, called a reporter's transcript, for the appellate division. In limited civil cases, a court reporter generally will not have been present during the trial court proceedings unless you or another party in your case made specific arrangements to have a court reporter present.

A reporter's transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. Rule 8.834 establishes the requirements relating to reporter's transcripts. If you elect in your notice designating the record to use a reporter's transcript, you must also identify by date (designate) 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, within 10 days after you file your notice designating the record, the respondent may serve and file a notice designating 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 obtaining an order from the appellate division.

The appellant is responsible for paying for the cost of 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 this cost with the trial court clerk within 10 days. After all the fees have 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.

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the fee for preparing a reporter's transcript is not a court cost or fee and therefore it cannot be waived by the court. If you are represented by an attorney in your appeal, some financial assistance for paying for reporter's transcripts is available through the Transcript Reimbursement Fund established by Business and Professions Code sections 8030.2–8030.8. However, no financial assistance is currently available for parties who are not represented by attorneys. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings in the trial court can be prepared for the appellate division in other ways, by using an electronic recording, agreed statement, or statement on appeal, all of which are described below.

(2) Official electronic recording or transcript

In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. In these cases, you can elect to have a transcript prepared for the appellate division from the official electronic recording of these proceedings. Alternatively, if the appellate division has a local rule permitting this and all the parties and the appellate division agree (stipulate), a copy of the official electronic recording itself can be used as the record of such oral proceedings. You must attach a copy of this stipulation to your record preparation election.

The appellant is responsible for paying for the cost of preparing this transcript or making a copy of the official electronic recording. If you think you cannot afford to pay this cost because of your financial condition, you can request that the court waive this cost (as well as other court fees and costs). To do this, you must file an application for a waiver of court fees and costs on appeal under rules 3.50 et seq. You must use A*pplication for Waiver of Court Fees and Costs* (form FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

Once you either deposit the estimated cost of the transcript or official electronic recording with the clerk or this cost has been 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 the transcript to the appellate division.

(3) Agreed statement

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 elect to use an agreed statement or 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 an agreed statement or a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

As indicated above, an agreed statement is a summary of the trial court proceedings agreed to by the parties. Rule 8.836 identifies what must be included in an agreed statement. If you elect to use this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the other party (stipulation) stating that you are attempting 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.

(4) Statement on appeal

As indicated above, a statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted the trial court proceedings (note that the term "judge" includes commissioners and temporary judges). Rule 8.837 sets out the procedures for preparing a statement on appeal and what must be included in such a statement.

If you elect to use a statement on appeal, you must prepare a proposed statement and file that statement with the trial court within 30 days after you file your notice designating the record. If you are not represented by an attorney, you must file your proposed statement on appeal on *Statement on Appeal (Limited Civil Case)* (form APP-104). You can get form APP-104 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. You must also serve a copy of the statement on the other party in the case. "Serve" means that the other side must receive a copy of the paper you file with the court. You can get information about how to serve court papers on the California Courts Self-Help Web Site Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

The respondent has 20 days from the date you serve and file your proposed statement to file proposed amendments to this statement. The trial court judge then reviews the proposed statement and any proposed amendments and makes any corrections or modifications that are needed to ensure that the statement provides a complete and accurate summary of the trial court proceedings. If the judge makes any corrections or modifications, the corrected or modified statement will be sent to you and the respondent for your review. You will have 10 days from the date the statement is sent to you to file objections to this statement. The judge then reviews the any objections, makes any additional corrections to the statement, and then certifies the statement as a complete and accurate summary of the trial court proceedings.

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

C. Exhibits

Exhibits, such as photographs or documents, that were admitted in evidence, refused, or lodged in the trial court are considered part of the record on appeal. However, the clerk's transcript will not include any exhibits unless you ask that they be included (designate them) in your notice designating the record on appeal. The *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make such a request. You can get APP-103 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

You can also attach up to 10 pages of exhibits from the trial court to the brief that you file in the appellate division (see rule 8.883(d)).

10 What Happens After I File My Notice of Appeal and Take Care of My Responsibilities Relating to Providing the Record to the Appellate Division?

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. If you are represented by an attorney in your appeal, your attorney will prepare your brief. If you are not represented by an attorney, you will have to prepare your brief yourself. You should read rule 8.883 of the California Rules of Court, which sets 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 this rule at any courthouse or, county law library or go to *www.courtinfo.ca.gov/rules*.

If you are the appellant, your brief, called an appellant's opening brief, must clearly explain, using references to the clerk's transcript and the reporter's transcript (or the alternative forms of the record that you are using), what you claim are the legal or procedural errors made by the trial court. 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 you should not try to include any new evidence in your brief.

You must serve and file your brief by the deadline the court set in the notice it sent you. "Serve" means that the other side must receive a copy of the brief you file with the court. You can get information about how to serve court papers at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*. If you do not file your brief by the deadline set by the court, the court may dismiss your appeal.

When you file your brief, the respondent then has an opportunity, but is not required, to respond by filing a respondent's brief. The appellant does not automatically win the appeal if the respondent does not file a brief, but if the respondent chooses not to file a brief, the court can decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, you can also file another brief replying to the respondent's brief if you wish. This is called a "reply" brief.

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date it has set your case for oral argument. "Oral argument" is the parties' chance to explain to the judges of the appellate division in person the arguments that were made in the briefs. 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 you waive oral argument, the judges will consider your appeal based on the briefs and the record that were submitted. If you do choose to participate in oral argument, unless the court orders otherwise, you will have up to 15 minutes to present your argument. Remember that the judges will have already read the briefs, so it is not necessary to read your brief to the judges. It is more helpful to the judges to simply highlight what you think is important or ask the judges if they have any questions you could answer.

After oral argument is held or the time at which it would have been held passes, the judges of the appellate division will make a decision about your appeal. The clerk of the court will mail you a notice of that decision.

(11) What If I Decide I No Longer Want to Appeal?

If you decide you do not want to proceed with the appeal, you must file a written document with the court notifying it that you are abandoning your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-105) to file this notice in a limited civil case. You can get form APP-105 at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms*.

Information for the Respondent

This section 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.

(12) I Have Received a Notice of Appeal From the Other Party. Do I Need to Do Anything?

You do not have to submit a response to a notice of appeal. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be an appropriate time to seek legal advice, if you want it. You are allowed to represent yourself in an appeal in a limited civil case. If you have any questions about the appeal procedures, however, you should consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca. gov/selfhelp/lowcost/*.

(13) If the Other Party Has Already Filed a Notice of Appeal, Can I Still Appeal?

If a notice of appeal has already been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a cross-appeal. To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal described in the answer to question (6) above or within 20 days after the clerk of the trial court mails notice of the first appeal, whichever is later. You can use *Notice of Appeal (Limited Civil Case)* (form APP-102), to file this notice in a limited civil case. Please read the information for appellants, starting on page 2 of this form, if you are considering filing a cross-appeal.

(14) I Have Received a *Notice Designating Record on Appeal (Limited Civil Case)* (Form APP-103) From the Other Party. Do I Need to Do Anything?

You are not required to submit any response to a notice designating the record on appeal, but, depending on the form of the record chosen by the appellant, you may have the option of expanding what is included in the record or otherwise participating in preparing the record of the trial court proceedings.

Since the appellate division judges were not present for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate division for its review. There are several forms in which this record can be provided to the appellate division. The appellant is responsible for telling the trial court which form of the record will be used. The *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) can be used by the appellant to provide this notice. Your role in this record preparation process will vary depending on the form of the record the appellant elects to use (clerk's transcript, reporter's transcript, official electronic recording, agreed statement, or statement on appeal). You should read the response to question (9) above for general information about the record preparation process.

A. Clerk's transcript

If the appellant elects to use a clerk's transcript, within 10 days after the appellant serves the notice designating the record you may serve and file a notice designating additional documents to be included in the clerk's transcript. After you have filed such a notice or the time for filing it has passed, the trial court clerk will send you a notice indicating the cost of preparing 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 think you cannot afford to pay this cost because of your financial condition, you can request that the court waive this cost (as well as other court fees and costs). To do this, you must file an application for a waiver of court fees and costs on appeal under rules 3.50 et seq. You must use *Application for Waiver of Court Fees and Costs* (FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms*. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit the cost or obtain a waiver of this cost.

B. Reporter's transcript

If the appellant elects to use a reporter's transcript, within 10 days after the appellant files the notice designating the record you may serve and file a notice designating additional proceedings to be included in the reporter's transcript. After you have filed such a notice or the time for filing it has passed, 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 clerk's transcript for you unless you deposit the cost or obtain a waiver of this cost.

If the appellant elects to proceed without a reporter's transcript, you may not designate a reporter's transcript without first obtaining 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 the 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 draft of this statement to review. You will have a chance to suggest changes in this draft statement that you think are needed to ensure that the statement provides a complete and accurate summary of the trial court proceedings.

15 What Happens After the Record Has Been Sent to the Appellate Division?

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. If you are represented by an attorney, your attorney will prepare your brief. If you are not represented by an attorney in your appeal, you will have to prepare your brief yourself. You should read rules 8.910–8.914 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 this rule at any courthouse or, county law library or go to *www.courtinfo.ca.gov/rules*. "Serve" means that the other side must receive a copy of the brief you file with the court. You can get information about how to serve court papers on the California Courts Self-Help Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

The appellant files the first brief, called an appellant's opening brief. The respondent then has an opportunity to respond by filing a respondent's brief. You are not required to file a brief, and the appellant does not automatically win the appeal if you choose not file a brief. If you do not file a brief, however, the court can 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 you should not try to include any new evidence in your brief.

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

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date it has set your case for oral argument. "Oral argument" is the parties' chance to explain to the judges of the appellate division in person the arguments that were made in the briefs. 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. The judges will then consider the appeal based on the briefs and the record that were submitted. If you do choose to participate in oral argument, unless the court orders otherwise, you will have up to 15 minutes to present your argument. Remember that the judges will have already read the briefs, so it is not necessary to read your brief to the judges. It is more helpful to the judges to simply highlight what you think is important or ask the judges if they have any questions you could answer.

After oral argument is held or the time at which it would have been held passes, the judges of the appellate division will make a decision about the appeal. The clerk of the court will mail you a notice of that decision.

APP-102 Notice of Appeal/Cross-Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights. You can get form APP-101-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is for appealing a judgment or an order only in a limited civil case (see form APP-101-INFO for a definition of a limited civil case). Do not use this form to appeal a judgment or an order in an unlimited civil case; use *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002).
- You must file this form **no later than 60 days after the trial court issued the judgment or order you are appealing in this case** except in the very limited circumstances listed in rule 8.823 of the California Rules of Court. I**f your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same court that issued the judgment or order you are appealing; do not send this form to the Court of Appeal.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in this number.

Appellate Division Case Number:

1 Your Information

I am (*check a. or b.*):

a. ☐ the appellant ☐ cross-appellant

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney ☐ cross-appellant's attorney

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

2 Judgment or Order You Are Appealing

I am /My client is appealing *(check a. or b.):*

a. ☐ The final judgment in the trial court case identified in the box on page 1 of this form.

(1) ☐ The date the trial court issued this judgment was *(fill in the date):* _____

(2) ☐ This judgment was: *(check a., b., or c.)*

(a) ☐ after a jury trial.

(b) ☐ after a trial without a jury.

(c) ☐ a default judgment.

b. Other *(please describe the trial court order you are appealing and indicate the date the trial court issued this order):*

(1) ☐ an order made after final judgment in the case
The date the trial court issued this order was *(fill in the date):* _____

(2) ☐ an order changing or refusing to change the place of trial (venue)
The date the trial court issued this order was *(fill in the date):* _____

(3) ☐ an order granting a motion to quash service of summons
The date the trial court issued this order was *(fill in the date):* _____

(4) ☐ an order granting a motion to stay or dismiss the action on the ground of inconvenient forum
The date the trial court issued this order was *(fill in the date):* _____

(5) ☐ an order granting a new trial
The date the trial court issued this order was *(fill in the date):* _____

(6) ☐ an order denying a motion for judgment notwithstanding the verdict
The date the trial court issued this order was *(fill in the date):* _____

(7) ☐ an order granting or dissolving an injunction or refusing to grant or dissolve an injunction
The date the trial court issued this order was *(fill in the date):* _____

(8) ☐ an order appointing a receiver
The date the trial court issued this order was *(fill in the date):* _____

(9) ☐ other action *(please describe and indicate the date the trial court took the action you are appealing):*

_____
_____
_____
_____

Case name: _____

Case Number:

3 Cross-Appeals

Complete this section only if you are filing a cross-appeal. If you are not filing a cross-appeal, skip this section and go to section 4.

a. ☐ The notice of appeal in the original appeal was filed on *(fill in the date that the other party filed its notice of appeal in this case):* _____

b. ☐ The trial court clerk mailed notice of the original appeal on *(fill in the date that the clerk mailed the notice of the other party's appeal in this case):* _____

c. ☐ The appellate division case number for the original appeal is *(fill in the appellate division case number of the other party's appeal, if you know it):* _____

4 Record Preparation Election *(check a. or b.):*

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to signature line.

a. ☐ I have/My client has completed *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), and attached it to this notice of appeal.

b. ☐ I/My client will complete *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this election in the trial court within 10 days of the date I file this notice of appeal.

REMINDER: Except in the very limited circumstances listed in rule 8.823, you must file this form no later than 60 days after the trial court issued the judgment or order you are appealing in this case. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____

(Type or print your name) *(Signature of appellant/cross-appellant or attorney)*

APP-103 Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), to know your rights. You can get form APP-101-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is for designating the record on appeal only in a limited civil case (see form APP-101-INFO for a definition of a limited civil case). Do not use this form to designate the record in an unlimited civil case; use *Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003).
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same court that issued the judgment or order you are appealing; **do not send this form to the Court of Appeal**.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the trial court case in which you are appealing the judgment or order.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

1 Your Information

I am *(check a. or b.):*

a. ☐ the appellant

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

2 Record of the Documents Filed in the Trial Court

I elect /My client elects to use the following method of providing the appellate division with a record of the documents filed in the trial court *(check a., b. or c., and fill in any required information):*

a. ☐ **A clerk's transcript.** (*You must check (1) or (2) and fill out section* 5 *on page 4 of this form) (Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript*):

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the checked document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50 et seq.; or

(b) ☐ An application for a waiver of court fees and costs under rules 3.50 et seq. (use *Application for Waiver of Court Fees and Costs* (form FW-001)).

OR

b. ☐ **An agreed statement.** *(You must complete item* 4 *c. below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in item* 5 *on page 4 of this form and in rule 8.820 of the California Rules of Court.)*

OR

c. ☐ **A statement on appeal.** *(You must complete item* 4 *d. below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in item* 5 *on page 4 of this form and in rule 8.820 of the California Rules of Court.)*

Record of Oral Proceedings in the Trial Court

3 I elect /My client elects to proceed *(check either a. or b.):*

a. ☐ WITH a record of the oral proceedings in the trial court *(you must complete item* 4 *below).*

b. ☐ WITHOUT a record of the oral proceedings in the trial court. I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether the trial court made an error. *(Write your initials here):*

_____

4 I understand that, if I elect to proceed with a record of the oral proceeding in the trial court, it is my responsibility to take one of the actions below to make sure that a record of what was said in the trial court proceedings in my case is provided to the appellate division that will be considering my appeal. I understand that if I do not take one of the actions below and the appellate division does not receive this record, I am not likely to succeed in my appeal. *(Write your initials here):* _____

I plan to make sure that a record of what was said in the trial court proceedings in my case is provided to the appellate division in the following way *(check and complete a., b., c., or d. below):*

a. ☐ **Reporter's Transcript.** I believe there was a court reporter in the trial court who made a record of what was said in court in my case and I want to use a transcript prepared by that court reporter as the record of what was said in my case. I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division. *(You must fill out section* 6 *on page 5 of this form);*

OR

b. ☐ **Official Electronic Recording.** I believe that an official electronic recording was made of what was said in the trial court in my case and *(check (1) or (2)):*

(1) ☐ I want to use a transcript of this recording as the record of what was said in my case *(check (a) or (b)).*

(a) ☐ I will pay the trial court clerk's for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document):*

(i) ☐ An order granting a waiver of the cost under rules 3.50 et seq.; or

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50 et seq. *(use Application for Waiver of Court Fees and Costs* (form FW-001)).

(2) ☐ This court has a local rule authorizing parties to use the actual official electronic recording as the record of the court proceedings and all of the parties have agreed (stipulated) that we want to use the actual recording that was made as the record of what was said in my case. A copy of the stipulation is attached to this notice. *(Check (a) or (b).)*

(a) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that the copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (i) or (ii) and attach the checked document):*

(i) ☐ An order granting a waiver of the cost under rules 3.50 et seq.; or

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50 et seq. *(Application for Waiver of Court Fees and Costs* (form FW-001)*).*

OR

c. ☐ **An agreed statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case *(check either (1) or (2) below)*.

(1) ☐ I have attached an agreed statement to this notice.

(2) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of the stipulation to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

d. ☐ **Statement on appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case *(check either (1) or (2) below)*.

(1) ☐ I have attached my proposed statement on appeal to this notice of appeal.

If you are not represented by an attorney in this appeal, you must use Statement on Appeal (Limited Civil Case) (form APP-104) *to prepare and file this proposed statement. You can go to* www.courtinfo.ca.gov/forms *to get a copy of form APP-104 or you can get a copy at any courthouse or county law library.)*

(2) ☐ I will file my proposed statement later. I understand that I must file this proposed statement in the trial court within 30 days of the date I file this notice designating the record on appeal and that if I do not file the proposed statement on time the court may dismiss my appeal.

Case name: _____ | **Case Number:**

5 Clerk's Transcript

You must complete this section if you checked item 2 a. on page 2 indicating that you elect to use a clerk's transcript as the record of the documents filed in the trial court.

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript:
   (1) Notice of appeal
   (2) Notice designating record on appeal (this document)
   (3) Judgment or order appealed from
   (4) Notice of entry of judgment (if any)
   (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)
   (6) Ruling on item 5
   (7) Register of actions or docket

b. **Additional documents.** If you want any documents in addition to the required documents listed in item 5a above to be included in the clerk's transcript, you must identify those documents here.

☐ I would like the clerk to include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed, if you know it.)*

Document Title and Description	Date of Filing
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	

☐ See additional pages *(at the top of each page, write App-103, item 5b).*

c. **Exhibits**

☐ I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff''s #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence.)*

Exhibit Number	Description	Admitted / Not Admitted

☐ See additional pages *(at the top of each page, write App-103, item 5b).*

Case name: _____ **Case Number:**

6 Reporter's Transcript

You must complete this section if you checked item 4 a. on page 2 indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the trial court. Please remember that you must pay for the cost of preparing the reporter's transcript.

☐ I would like following proceedings in the trial court to be included in the reporter's transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), and, if you know it, the name of the court reporter who recorded the proceedings.*)

Date	Department	Description of Proceeding	Court Reporter's Name
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			

☐ See additional pages *(at the top of each page, write APP-103, item 6).*

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

APP-104 Statement on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), to know your rights. You can get form APP-101-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is only for preparing a statement on appeal in a limited civil case (see form APP-101 for a definition of a limited civil case). Do not use this form to prepare a statement on appeal in a criminal case; use form CR-143 if it is an infraction case, such as a case about a traffic ticket, or form CR-135 if it is a misdemeanor case.
- This form can be attached to your *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to your notice designating the record, this form must be filed **no later than 30 days after you file your notice designating the record on appeal.**
- **If you have chosen to prepare a statement on appeal and do not file this form on time, the court will not be able to review any issues that are based on what happened during the oral proceedings, so you are not likely to succeed in your appeal.**
- Fill out parts (1) through (8) of this form and make a copy of the completed form for your records.
- You must serve a copy of the completed form on the other party or parties in the case. You can get information about how to serve court papers on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov /selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. **Do not send this form to the Court of Appeal.**

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the trial court case in which you are appealing the judgment or order.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

(1) Your Information

I am (*check a. or b.*)

a. ☐ the appellant

Name: _____ Phone: (___) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: (___) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

Information About Your Appeal

2 On *(fill in the date):* _____
I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 On *(fill in the date):* _____
I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

Proposed Statement on Appeal

4 The Dispute

a. In the trial court, I/my client was *(check one):*
☐ the plaintiff (the party who filed the complaint in the case).
☐ the defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about *(briefly describe what was claimed in the complaint filed with the trial court):* _____

c. The defendant's response to this complaint was *(briefly describe how the defendant responded to the complaint filed with the trial court):* _____

5 Summary of Any Motions

In the spaces below, please describe any requests (motions) that were made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions, and indicate how the trial court ruled on these motions.

a. Motions you made

(1) I/My client made the following request (motion) in the trial court *(describe any request you/your client made in the trial court):* _____

(2) There ☐ was ☐ was not a hearing on this motion.

(3) If there was a hearing on this motion, the following was said at that hearing *(write a complete and accurate summary of what was said at this hearing):* _____

(4) The trial court ☐ granted this motion ☐ did not grant this motion
☐ other *(describe any other action the trial court took concerning this motion):* _____

Please attach separate pages identifying any other motions that you/your client made, indicating whether there was a hearing on the motion, summarizing at the hearing on this motion, and indicating whether the trial court granted or denied the motion. Please label these pages as "Attachment 5a-2," " Attachment 5a-3," etc.

b. Motions the other party (parties) made

(1) The other party (parties) made the following request (motion) in the trial court *(describe any request the other party (parties) made in the trial court):* _____

(2) There ☐ was ☐ was not a hearing on this motion.

(3) If there was a hearing on this motion, the following was said at that hearing *(write a complete and accurate summary of what was said at this hearing):* _____

(4) The trial court ☐ granted this motion ☐ did not grant this motion
☐ other *(describe any other action the trial court took concerning this motion):* _____

Please attach separate pages identifying any other motions that you/your client made, indicating whether there was a hearing on the motion, summarizing at the hearing on this motion, and indicating whether the trial court granted or denied the motion. Please label these pages as "Attachment 5a-2," " Attachment 5a-3," etc.

6 Summary of Trial

If you are appealing an order before you have had a trial, skip items 6 and 7 and go to item 8. If you are appealing the final judgment in your case, fill out items 6 and 7. If you had a trial, in item 6, you must write a complete and accurate summary of what the witnesses said in the testimony that they gave during the trial. Include only what the witnesses actually said; do not comment on or give your opinion about what the witnesses said.

a. I/my client *(check one):*

☐ had a trial (*please complete items b, c, and d*)
☐ did not have a trial (*please skip items b, c, and d and go to item 7*)

b. I/My client *(check one):*

☐ did not testify at the trial.
☐ did testify at the trial.

(1) I/My client testified that *(if you/your client did testify, write a complete and accurate summary of the testimony you/your client gave):* _____

c. There were *(check one):*
- ☐ no other witnesses at the trial.
- ☐ other witnesses at the trial *(for each witness, write the witness' name, whether the witness testified on your/your client's behalf or the other party's behalf, and a complete and accurate summary of the witness's testimony below).*

(1) The witness' name is *(fill in the witness' name):* _____

(2) The witness testified on behalf of *(check one):*
- ☐ me/my client.
- ☐ the other party.

(3) This witness testified that: _____

Please attach separate pages identifying each witness that testified at your trial other than the one above, and summarizing what that witness said in his or her testimony. Please label these pages as "Attachment 6c-2)," "Attachment 6c-3)," etc.

d. The trial court made the following findings *(describe any findings made by the trial court):*

7 The Trial Court's Judgment or Order

The trial court issued the following judgment or order *(check all that apply and fill in any required information):*

a. I/My client was required to:
- ☐ pay the other party damages of *(fill in the amount of the damages):* $ _____
- ☐ do the following *(describe what you were ordered to do):* _____

b. The other party was required to:
- ☐ pay me/my client damages of *(fill in the amount of the damages):* $ _____
- ☐ do the following *(describe what the other party was ordered to do):* _____

c. Other *(describe):* _____

Case name: _____

Case Number:

8 Grounds for Appeal

In the space below, please describe in detail the errors you believe the trial court made that are the reasons for this appeal.

a. ☐ There was not substantial evidence that supported the trial court's judgment or order in this case. *Remember that the appellate division:*
- *Cannot retry your case or take new evidence;*
- *Cannot consider whether witnesses were telling the truth or lying; and*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision; the court generally only looks to see whether there was some reasonable, believable evidence supporting the trial court's decision.*

b. ☐ The trial court judge committed the following error about either the law or court procedure, and that error caused substantial harm to me/my client (called "prejudicial error"). *(Please describe each error and how you/your client were harmed by that error. You can attach more pages if you need more space to describe these errors):*

(1) _____

(2) _____

(3) _____

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

Case name: _____

Case Number:

Trial Judge's Review of Proposed Statement

I have reviewed this proposed statement on appeal prepared by the appellant.

a. ☐ I certify that parts ④ through ⑦ of the above statement as proposed by the appellant are a complete and accurate summary of the trial court proceedings. I direct the clerk to file this statement and to send copies to the parties.

b. ☐ The following corrections are needed in order for parts ④ through ⑦ of the above statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings.

(1) _____

_____

_____

(2) _____

_____

_____

(3) _____

_____

_____

I direct the clerk to send copies of this corrected statement to the parties for their review.

c. ☐ More corrections than could be listed above were needed in order for parts ④ through ⑦ of the above statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings. I have attached a corrected statement to this form. I direct the clerk to send copies of this corrected statement to the parties for their review.

d. ☐ The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, I direct that a transcript be prepared as the record of these proceedings.

Date: _____

_____

(*Signature of trial court judicial officer*)

APP-105 Abandonment of Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), to know your rights. You can get form APP-101-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is only for abandoning (giving up) an appeal in a limited civil case (see form APP-101-INFO for a definition of a limited civil case). Do not use this form to abandon an appeal in a criminal case; use form CR-144 if it is an infraction case, such as a case about a traffic ticket, or form CR-136 if it is a misdemeanor case.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form and your proof of service on the other party or parties to the clerk's office for the same trial court where you filed your notice of appeal if the record has not yet been filed in the appellate division. If the record has been filed in the appellate division, take or mail the completed form and your proof of service to the appellate division clerk's office. **Do not send this form to the Court of Appeal.**

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the trial court case in which you are appealing the judgment or order.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

1 Your Information

I am *(check a. or b. and provide the requested information):*

a. ☐ the appellant

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

2 On *(fill in the date):* _____

I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

CR-131-INFO Information on Appeal Procedures for Misdemeanors

General Information

This pamphlet provides general information about the procedures for appeals in misdemeanor cases. Misdemeanors are criminal offenses for which the punishment can include jail time of up to one year but cannot include a sentence to state prison (see Penal Code sections 17 and 19.6). For purposes of an appeal that is filed by a defendant after conviction, a case is considered a misdemeanor case if the defendant was convicted of a misdemeanor and was neither charged with nor convicted of any felony in the case. For purposes of an appeal that is filed by a defendant before conviction, a case is considered a misdemeanor case if the defendant was charged with a misdemeanor and was not charged with any felony in the case. This pamphlet does not provide information about appeals in other types of cases, such as infractions or civil cases. For information about appeal procedures in infraction cases, please see *Information on Appeal Procedures for Infractions* (form CR-141), and for information about appeal procedures in limited civil cases, please see *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 go to *www.courtinfo.ca. gov/forms*.

The information in this pamphlet is not intended to cover everything you may need to know about appeals in misdemeanor cases. It is only meant to give you an overview to help guide you through the appeal process. You should thoroughly read rules 8.800–8.889 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 go to *www.courtinfo.ca.gov/rules*.

You are allowed to represent yourself in an appeal in a misdemeanor case. If you have any questions about the appeal procedures, however, you should consult an attorney. If you are indigent (you cannot afford to pay for a lawyer), you can request that the court appoint an attorney to represent you for your appeal (see response to question (8) below). If you want an attorney and you are not indigent or if the court turns down your request to appoint counsel, you must retain your own attorney. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost*. If you are representing yourself, you must inform the court if your address or telephone number changes so that the court can contact you when necessary.

(1) What Is an Appeal?

An appeal is a request to a court to review a decision made by another court. The decision being appealed can be one made either in a jury trial or in a proceeding where there is only a judicial officer. **In a misdemeanor case, the court hearing the appeal—the appellate court—is the appellate division of the superior court and the trial court is the superior court.**

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. Instead, the role of the appellate division is to review a record of what happened in the trial court and to review the trial court's ruling or decision. The party that appeals may ask the appellate division to determine if the trial court made an error about either the law or court procedures that caused substantial harm to the person who is appealing (called "prejudicial error"). When it conducts this review, the appellate division presumes that the trial court's decision is correct; the party that files the appeal must show the appellate division that the trial court made an error and that the error was prejudicial. The party that appeals may also ask the appellate division to determine if it there was substantial evidence supporting the trial court's decision. "Substantial" evidence means some reasonable, believable evidence that supports the decision. In conducting this review, the appellate division generally will not reconsider the trial court's judgment about which side had more or stronger evidence or whether witnesses in the trial court were telling the truth or lying. No matter how much evidence there may have been on the other side, the appellate division generally only looks to see whether there was substantial evidence supporting the trial court's decision. In other words, the appellate division generally will not overturn the trial court's decision unless the record clearly shows that the trial court made a prejudicial error or there was not substantial evidence supporting that decision.

2 Who Can Appeal?

Only a party in the trial court proceeding can appeal a decision in that proceeding. You may not appeal on behalf of a friend, a spouse, a child, or another relative. The party that files the appeal 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 prosecuting attorney for the government agency that charged the person with the misdemeanor (on court papers, this party is referred to as the People of the State of California).

3 What Decisions Can Be Appealed?

Generally, a party may appeal a final judgment of the trial court that is not in that party's favor; a party cannot appeal interim rulings of the trial court. In a misdemeanor case, the party convicted of committing a misdemeanor typically appeals the conviction or the sentence (punishment) imposed by the trial court. In a misdemeanor case, a party can also appeal from:

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

4 How Do I Start the Appeal Process?

The first step in appealing a decision is filing 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 go to *www.courtinfo.ca.gov/forms*.

5 When Do I File the Notice of Appeal?

In a misdemeanor case, except in the very limited circumstances listed in rule 8.853(b) of the California Rules of Court, you must file your notice of appeal within **60 Calendar days** after the trial court renders its final judgment in your case or issues the order you are appealing. The date the trial court renders its judgment is normally the date the trial court imposed the punishment on you (sentenced you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, your appeal will be dismissed.**

6 How Do I File the 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 rendered the judgment or issued the order you are appealing. 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).

7 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 other than time in jail. If you have been sentenced to jail in a misdemeanor case, you are entitled to be released on bail or on your own recognizance while your appeal is pending. If the trial court denies you bail or release on your own recognizance, you can apply to the appellate division for bail or release on your own recognizance. Other parts of your

punishment, such as fines or probation conditions, will only be postponed, or "stayed," only if you request a stay and the court grants your request. 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 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.

8 I Need Help With My Appeal; How Do I Get an Attorney to Represent Me in This Appeal?

The court is required to appoint counsel to represent you if you are indigent (your income and assets are below a specified level) and the punishment imposed on you 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 harmful consequences as a result of being convicted. The court may, but is not required to, appoint counsel 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 appointed counsel in the trial court. You will also be considered indigent if you can show that your income and assets are sufficiently low. If you think you are indigent, you can request that the appellate division appoint an attorney to represent you for your appeal. You may use *Application for Appointment of Counsel in Misdemeanor Appeal* (form CR-133), to ask the appellate division to appoint counsel to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms.*

If you want an attorney and you are not indigent or if the court turns down your request to appoint counsel, you must retain your own attorney. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost*.

9 Is There Anything Else I Need to Do After I File My Notice of Appeal?

Yes. You must tell the trial court whether you elect to have the appellate division receive a record of the oral proceedings in your case—what was said in the trial court—and, if so, what form of that record you want to use. You may use *Record Preparation Election (Misdemeanor)* (form CR-134), to make this election. You can get form CR-134, at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms.* If you have not filed an application for appointment of counsel, you must file this election within 20 days after you file your notice of appeal. If you have filed an application for appointment of counsel, you or your attorney must file this election within 10 days after the court either appoints counsel to represent you or denies your application or 20 days after you file your notice of appeal, whichever is later.

Since the appellate division judges were not present for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate division for its review. The official record has three parts: (A) a record of the documents filed in the trial court (other than exhibits); (B) a record of the oral proceedings in the trial court; and (C) the exhibits that were admitted in evidence, refused, or lodged in the trial court.

A. Record of the 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. The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. The clerk's transcript does not include exhibits filed in the trial.

B. Record of the Oral Proceedings in the Trial Court

If you (the appellant) want to raise any issue in your appeal that would require the appellate division to consider what happened during the proceedings in the trial court, the record on appeal must include a record of the oral proceedings in the trial court. 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 the cost of preparing the 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 happened during the oral proceedings, so you are not likely to succeed in your appeal.**

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

(1) Reporter's transcript

In some misdemeanor cases, a court reporter was present during the trial court proceedings and made a record of the oral proceedings. In these cases, you can elect to have the court reporter prepare a transcript of those oral proceedings, called a reporter's transcript, for the appellate division. Ordinarily, the appellant is responsible for paying the cost of preparing this transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and, if you want the reporter to prepare the transcript, you must deposit this estimated amount with the clerk. If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you can obtain a free transcript. If you were represented by the public defender or other appointed counsel at your trial, you are considered indigent and a reporter's transcript will be prepared for you at no cost if you request it. If you were not represented by appointed counsel at trial, you can complete and file *Defendant's Financial Statement and Notice to Defendant (*form MC-210*)*, to show that you are indigent and therefore entitled to a free transcript. You can get form MC-210 at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms*.

Once you deposit the estimated cost of the transcript or show the court you are indigent, 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.

(2) Official Electronic recording or transcript

In some misdemeanor cases, the trial court proceedings were officially recorded on approved electronic recording equipment. In these cases, you can elect to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. Alternatively, if the appellate division has a local rule permitting this and all the parties agree (stipulate), a copy of the official electronic recording itself can be used as the record of such oral proceedings. You must attach a copy of this stipulation to your record preparation election.

Ordinarily, the appellant is responsible for paying the cost of preparing this transcript or making a copy of the official electronic recording. If, however, you are indigent, you can obtain a free transcript or recording. If you were represented by the public defender or other appointed counsel at your trial, you are considered indigent and a transcript or copy of the official electronic recording will be prepared for you at no cost if you request it. If you were not represented by appointed counsel at trial, you can complete and file *Defendant's Financial Statement and Notice to Defendant* (form MC-210), to show that you are indigent and therefore entitled to a free transcript or official electronic recording. You can get form MC-210 at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms*.

Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent, 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 along with the clerk's transcript to the appellate division.

(3) Statement on appeal

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

If you elect to use a statement on appeal, you must prepare a proposed statement and file that statement with the trial court within 30 days after you file your record preparation election. If you are not represented by an attorney, you must file this proposed statement on *Statement on Appeal (Misdemeanor)* (form CR-135). You can get form CR-135 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. You must also serve a copy of the statement on the respondent in the case (if the prosecuting attorney did not appear at your trial, you do not need to serve the prosecuting attorney). "Serve" means that the other side must get a copy of the paper you file with the court. You can get information about how to serve court papers on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

The respondent has 20 days from the date you serve and file your proposed statement to file proposed amendments to this statement. The trial court judge then reviews the proposed statement and any proposed amendments and makes any corrections or modifications needed to ensure that the statement provides a complete and accurate summary of the trial court proceedings. If the judge makes any corrections or modifications, the corrected or modified statement will be sent to you and the respondent for your review. You will have 10 days from the date the statement is sent to you to file objections to this statement. The judge then reviews any objections, makes any additional corrections to the statement, and then certifies the statement as a complete and accurate summary of the trial court proceedings.

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

C. Exhibits

Exhibits, such as photographs or weapons, that were admitted in evidence, refused, or lodged in the trial court are considered part of the record on appeal. However, as noted above, the clerk's transcript does not include such exhibits. If you want the appellate division to consider such an exhibit, you must ask the trial court clerk to send the original exhibit to the appellate division. This request must be filed with the trial court when you make your record preparation election. *Record Preparation Election (Misdemeanor)* (form CR-134), includes a space for you to make such a request. You can get form CR-134 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms.*

(10) What Happens After I File My Notice of Appeal and Take Care of My Responsibilities Relating to Providing a Record of the Oral Proceedings to the Appellate Division?

As soon as the record of the oral proceedings is prepared in one of the ways described above, 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.

A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument. If you are represented by an attorney in your appeal, your attorney will prepare your brief. If you are not represented by an attorney in your appeal, you will have to prepare your brief yourself. You should read rules 8.910–8.914 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 these briefs. You can get these rules at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules*.

The appellant's brief, called an appellant's opening brief, must clearly explain, using references to the clerk's transcript and the reporter's transcript or other record of the oral proceedings in the trial court, what the appellant claims are the legal or procedural errors made by the trial court. 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 you should not try to include any new evidence in your brief. If you (the appellant) do not file your brief, the court may dismiss your appeal.

When you file your brief, the respondent then has an opportunity, but is not required, to respond by filing a respondent's brief. The appellant does not automatically win the appeal if the respondent does not file a brief, but if the respondent chooses not to file a brief, the court can decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, you can also file another brief replying to the respondent's brief if you wish. This is called a reply brief.

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. "Oral argument" is the parties' chance to explain to the judges of the appellate division in person the arguments that were made in the briefs. 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 you waive oral argument, the judges will consider your appeal based on the briefs and the record that were submitted. If you do choose to participate in oral argument, unless the court orders otherwise, you will have up to 15 minutes to present your argument. Remember that the judges will already have read the briefs, so it is not necessary to reread your brief to the judges. It is more helpful to the judges to simply highlight what you think is important or ask the judges if they have any questions you could answer.

After the oral argument date passes, the judges of the appellate division will make a decision about your appeal. The clerk of the court will mail you a notice of that decision.

(11) What If I Decide I No Longer Want to Appeal?

If you (the appellant) decide you do not want to proceed with your appeal, you must file a written document with the court notifying it that you are abandoning the appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-136), to file this notice in a misdemeanor case. You can get form CR-136 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

CR-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanor Cases*, (form CR-131) to know your rights. You can get form CR-131-INFO at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms.*
- This form is only for appealing the judgment or an order in a misdemeanor case (see form CR-131 for a definition of a misdemeanor). Do not use this form to appeal a judgment or order in either a felony or infraction case, such as a case about a traffic ticket; use *Notice of Appeal—Felony (Defendant) (Criminal)* (form CR-120), in a felony case or *Notice of Appeal and Record Preparation Election (Infraction)* (form CR-142), in an infraction case. You can get forms CR-120 and CR-142 at any courthouse or, county law library or go to *www.courtinfo.ca.gov/forms.*
- You must file this form **no later than 60 days after the trial court issued the judgment or order you are appealing in this case, except in the very limited circumstances listed in rule 8.853(b) of the California Rules of Court. If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in this number.

Appellate Division Case Number:

1 Your Information

I am *(check a., b., or c. and provide the requested information):*

a. ☐ the appellant

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's trial attorney c. ☐ appellant's appellate attorney

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____ **Case Number:**

2 Notice of Appeal

I am/My client is appealing after:

a. ☐ the final judgment of conviction in this case (Penal Code section 1466(2)(A)).
The date the trial court imposed (rendered) this judgment was *(fill in the date):* _____

b. ☐ the denial of a motion to suppress evidence in this case (Penal Code section 1538.5(j)).
The date the trial court issued this order was *(fill in the date):* _____

c. ☐ an order made after judgment in this case that affects a substantial right of mine/my client, for example an order after a probation violation (Penal Code section 1466(2)(B)).
The date the trial court issued this order was *(fill in the date):* _____

d. ☐ other action *(please describe and indicate the date the trial court took the action you are appealing):*

_____
_____
_____
_____

3 Application for Appointment of Counsel

I am/My client is *(check either a. or b.):*

a. ☐ asking the court to appoint an attorney (counsel) to represent me/my client in this appeal. I have completed *Application for Appointment of Counsel in Misdemeanor Appeal* (form CR-133), and attached it to this notice of appeal.

b. ☐ not asking the court to appoint counsel to represent me/my client in this appeal.

4 Record Preparation Election

I *(check either a. or b.)*:

a. ☐ have completed *Record Preparation Election (Misdemeanor)* (form CR-134), and attached it to this notice of appeal.

b. ☐ will complete and file *Record Preparation Election (Misdemeanor)* (form CR-134), later. I understand that I must file this election in the trial court within 20 days of the date I file this notice of appeal if I do not file an *Application for Appointment of Counsel in Misdemeanor Appeal* or within 10 days after the court either appoints counsel or denies the application if I do file an *Application for Appointment of Counsel in Misdemeanor Appeal*. I also understand that if I do not file the election on time, the court will not be able to review any issues that are based on what happened during the oral proceedings, so I am not likely to succeed in my appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.853(b), you must file this form no later than 60 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____
(Type or print your name) *(Signature of appellant or attorney)*

CR-133 Application for Appointment of Counsel in Misdemeanor Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), to know your rights. You can get form CR-131-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms.*
- This form is only for requesting that the court appoint an attorney to represent you on appeal in a misdemeanor case (see form CR-131-INFO for a definition of a misdemeanor). Do not use this form in an infraction case, such as a case about a traffic ticket.
- This form can be attached to your notice of appeal.
- Fill out pages 1 and 2 of this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same court that issued the judgment on order you are appealing.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the trial court case in which you are appealing the judgment or order.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

1 Your Information

I am *(check a. or b.):*

a. ☐ the appellant

Name: _____ Phone: ( ) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's trial attorney

Name: _____ Phone: ( ) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____ **Case Number:**

Application for Appointment of Counsel

2 I understand that the court is required to appoint an attorney to represent me/my client on appeal only if I am/my client is indigent and the punishment imposed on me/my client includes going to jail or paying a fine of more than $500 (including penalty and other assessments) or I am/my client is likely to suffer other significant harmful consequences as a result of being convicted, but that the court may appoint an attorney to represent me/my client on appeal in other circumstances if I am/my client is indigent *(write your initials here):* _____

3 I/My client *(check either a. or b.):*

a. ☐ was represented by the public defender or other appointed counsel in the trial court.

b. ☐ was not represented by the public defender or other appointed counsel in the trial court, but I have/my client has completed and attached, *Defendant's Financial Statement on Eligibility and Notice to Defendant* (form MC-210) showing that I am/my client is indigent. (*You can get form MC-210 at any courthouse or, county law library or go to* www.courtinfo.ca.gov/forms.*)*

4 The trial court imposed the following punishment on me/my client in this case *(check all that apply and fill in any required information):*

a. ☐ I/My client was required to go to jail.

b. ☐ I/My client was required to pay a fine (including penalty and other assessments) of *(fill in the amount of the fine):* $_____

c. ☐ I/My client was required to pay restitution of *(fill in the amount of the restitution):* $ _____

d. ☐ I/My client was put on probation for *(fill in the amount of time required for probation):*
_____

e. ☐ I/My client was required to *(describe any other punishment that the trial court imposed in this case):*
_____
_____
_____

5 I am/My client is likely to suffer the following significant harmful consequences as a result of being convicted of this misdemeanor *(describe the significant harmful consequences that you are/your client is likely to suffer because of this conviction):* _____
_____
_____
_____
_____

Date: _____

_____ ▶ _____
(Type or print your name) *(Signature of appellant or attorney)*

CR-134 Record Preparation Election (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (Form CR-131-INFO), to know your rights. You can get form CR-131 at any courthouse or county law library or go to ww*w.courtinfo .ca.gov/forms.*
- This form is only for making elections about the record of the oral proceedings in a misdemeanor case (see form CR-131-INFO for a definition of a misdemeanor). Do not use this form in an appeal in an infraction case, such as a case about a traffic ticket; use *Notice of Appeal and Record Preparation Election (Infraction)* (form CR-142).
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must file this form within 20 days after you file your notice of appeal if you have not filed an application for appointment of counsel. If you have filed an application for appointment of counsel, you or your attorney must file this election within 10 days after the court either appoints counsel to represent you or denies your application or 20 days after you file your notice of appeal, whichever is later. **If you do not file this form on time, the court will not be able to review any issues that are based on what happened during the oral proceedings, so you are not likely to succeed in your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the trial court case in which you are appealing the judgment or order.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

1 Your Information

I am *(check a. or b.):*

a. ☐ the appellant

Name: _____ Phone: ( ) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: ( ) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____ **Case Number:**

(2) Your Appeal

On *(fill in the date):* _____

I/My client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Record of the Oral Proceedings in the Court

(3) I elect/My client elects to proceed:

a. ☐ WITH a record of the oral proceedings in the trial court *(You must complete items (4) and (5) below).*

b. ☐ WITHOUT a record of the oral proceedings in the trial court. I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether the trial court made an error. *(Write your initials here):* _____

(4) I understand that, if I elect to proceed WITH a record of the oral proceeding in the trial court, it is my responsibility to take one of the actions below to make sure that a record of what was said in the trial court proceedings in my case is provided to the appellate division that will be considering my appeal. I understand that if I do not take one of the actions below and the appellate division does not receive this record, I am not likely to succeed in my appeal. *(Write your initials here):* _____

(5) I plan to make sure that a record of what was said in the trial court proceedings in my case is provided to the appellate division in the following way *(check and complete a., b., or c.):*

a. ☐ **Reporter's transcript:** I believe there was a court reporter in the trial court who made a record of what was said in court in my case and I want to use a transcript prepared by that court reporter as the record of what was said in my case *(check either (1) or (2)).*

(1) ☐ I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or other appointed counsel at my trial.

(b) ☐ I was not represented by the public defender or other appointed counsel at my trial, but I have completed and attached *Defendant's Financial Statement and Notice to Defendant* (Form MC-210). *(You can get form MC-210 at any courthouse or county law library or go to* www.courtinfo.ca.gov/forms.*)*

OR

b. ☐ **Official electronic recording:** I believe that an official electronic recording was made of what was said in the trial court in my case and *(check and complete either (1) or (2)):*

(1) ☐ I want to use a transcript of this official electronic recording as the record of what was said in my case. *(check either (a) or (b)).*

(a) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.

(i) ☐ I was represented by the public defender or other appointed counsel at trial.

(ii) ☐ I was not represented by the public defender or other appointed counsel at my trial, but I have completed and attached *Defendant's Financial Statement and Notice to Defendant* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or go to* www.courtinfo.ca.gov/forms.*)*

(2) ☐ This court has a local rule permitting the use of the official electronic recording itself as the record of the proceedings and the attorney that represented the government agency that filed charges against me and I have agreed (stipulated) that we want to use the actual official electronic recording that was made as the record of what was said in my cases. A copy of the stipulation is attached to this notice *(check either (a) or (b)).*

(a) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.

(i) ☐ I was represented by the public defender or other appointed counsel at my trial.

(ii) ☐ I was not represented by the public defender or other appointed counsel at my trial, but I have completed and attached *Defendant's Financial Statement and Notice to Defendant* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or go to* www.courtinfo.ca.gov/forms.*)*

OR

c. ☐ **Statement on appeal:** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case *(check and complete(1) or (2)).*

(1) ☐ I have attached my proposed statement on appeal to this notice of appeal.

(2) ☐ I will file my proposed statement later. I understand that I must file this proposed statement in the trial court within 30 days of the date I file my record preparation election and that if I do not file the proposed statement on time, the court can dismiss my appeal.

Case name: _____ **Case Number:**

6 Record of Documents Filed in the Trial Court

I understand that the clerk of the trial court will prepare a record of the documents filed in the trial court that contains all of the documents listed in rule 8.861 of the California Rules of Court. In addition to this record, I would like the clerk to send the appellate division the following exhibits that were filed in the trial court *(for each exhibit, give the exhibit number (such as People's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence):*

Exhibit Number	Description	Admitted (Y / N)

Date: _____

_____ ▶ _____

(Type or print your name) *(Signature of appellant or attorney)*

CR-135 Statement on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read form *Information on Appeal Procedures for Misdemeanors* (CR-131-INFO), to know your rights. You can get form CR-131-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is only for preparing a statement on appeal in a misdemeanor case (see form CR-131-INFO for a definition of a misdemeanor). Do not use this form to prepare a statement on appeal in an infraction case, such as a case about a traffic ticket; use *Statement on Appeal (Infraction)* (form CR-143).
- This form can be attached to *Record Preparation Election (Misdemeanor)* (form CR-134)). If it is not attached to your record preparation election form, this form must be filed **no later than 30 days after you file your record preparation election.**
- **If you have chosen to prepare a statement on appeal and do not file this form on time, the court will not be able to review any issues that are based on what happened during the oral proceedings, so you are not likely to succeed in your appeal.**
- Fill out parts (1) through (8) of this form and make a copy of the completed form for your records.
- You must serve a copy of the completed form on the other party or parties in the case. You can get information about how to serve court papers on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form, along with your proof of service on the other party or parties, to the clerk's office for the same trial court where you filed your notice of appeal.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

(1) Your Information

I am *(check a., b., or c. and provide the requested information):*

a. ☐ the appellant

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's trial attorney c. ☐ appellant's appellate attorney

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

Information About Your Appeal

2 On *(fill in the date):* _____
I/My client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 I understand that it is my responsibility to make sure that a record of what was said in the trial court proceedings in this case is provided to the appellate division that will be considering this appeal. I have/My client has chosen to use a statement on appeal as the record of what was said in this case. *(Write your initials here):* _____

Proposed Statement on Appeal

4 The Charges Against Me/My Client

a. The charges against me/my client were *(list all of the charges indicated on the complaint filed by the prosecutor with the court):* _____

_____

_____

_____

_____

b. I/My client *(check either (1), (2), or (3))*

(1) ☐ pleaded guilty to all of these charges.

(2) ☐ pleaded guilty to only the following charges: _____

_____

(3) ☐ pleaded not guilty to all the charges.

5 Summary of Any Motions

In the spaces below, please describe any requests (motions) that were made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions, and indicate how the trial court ruled on these motions.

a. Motions you made

(1) I/My client made the following request (motion) in the trial court *(describe any request you/your client made in the trial court):* _____

_____

_____

(2) There ☐ was ☐ was not a hearing on this motion.

(3) If there was a hearing on this motion, the following was said at that hearing *(write a complete and accurate summary of what was said at this hearing):* _____

_____

_____

_____

_____

_____

(4) The trial court ☐ granted this motion ☐ did not grant this motion
☐ other *(describe any other action the trial court took concerning this motion):* _____

Please attach separate pages identifying any other motions that you/your client made, indicating whether there was a hearing on the motion, summarizing at the hearing on this motion, and indicating whether the trial court granted or denied the motion. Please label these pages as "Attachment 5a-2," " Attachment 5a-3," etc.

b. Motions the prosecuting attorney made

(1) The prosecuting attorney made the following requests (motions) in the trial court *(describe any request the prosecuting attorney made in the trial court):* _____

(2) There ☐ was ☐ was not a hearing on this motion.

(3) If there was a hearing on this motion, the following was said at that hearing *(write a complete and accurate summary of what was said at this hearing):* _____

(4) The trial court ☐ granted this motion ☐ did not grant this motion
☐ other *(describe any other action the trial court took concerning this motion):* _____

Please attach separate pages identifying any other motions that you/your client made, indicating whether there was a hearing on the motion, summarizing at the hearing on this motion, and indicating whether the trial court granted or denied the motion. Please label these pages as "Attachment 5a-2," " Attachment 5a-3," etc.

6 Summary of Trial

If you are appealing an order before you have had a trial, skip items 6, 7 and 8 and go to item 9. If you are appealing the final judgment in your case, fill out items 6, 7 and 8. If you had a trial, in item 6, you must write a complete and accurate summary of what the witnesses said in the testimony that they gave during the trial. Include only what the witnesses actually said; do not comment on or give your opinion about what the witnesses said.

a. I/My client *(check one):*

☐ had a trial *(please complete items b through d)*

☐ did not have a trial *(please skip items b through d and go to item 7)*

I/My client testified that *(if you/your client did testify, write a complete and accurate summary of the testimony you/your client gave below):* _____

b. I/My client *(check one):*

☐ did not testify at the trial.

☐ did testify at the trial.

I/My client testified that *(if you/your client did testify, write a complete and accurate summary of the testimony you/your client gave):* _____

c. An officer from the police department, sheriff's office, or other public safety agency *(check one):*

☐ did not testify at the trial.

☐ did testify at the trial *(fill out both (1) and (2)):*

(1) The name of the officer who testified is *(fill in the officer's name):* _____

(2) This officer testified that *(write a complete and accurate summary of the officer's testimony):*

d. There were *(check one):*

☐ no other witnesses at the trial.

☐ other witnesses at the trial *(for each witness, write the witness's name, whether the witness testified on your/your client's behalf or the prosecution's behalf, and a complete and accurate summary of the witness's testimony):*

(1) The witness's name is *(fill in the witness's name):* _____

(2) This witness *(check one)* ☐ was ☐ was not an officer from the police department, sheriff's office, or other public safety agency.

(3) This witness testified on behalf of *(check one)* ☐ me/my client ☐ the prosecution.

(4) This witness testified that: _____

Please attach separate pages identifying each other witness that testified at your trial and summarizing what that witness said in his or her testimony. Please label these pages as "Attachment 5f-2," "Attachment 5-f3," etc.

7 The Trial Court's Findings

a. ☐ I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):* _____

b.. ☐ I/My client was not found guilty of the following offenses *(list all of the offenses for which you were/your client was not found guilty):* _____

8 The Sentence

The trial court imposed the following punishment on me/my client in this case *(check all that apply and fill in any required information):*

a. ☐ I/My client was required to go to jail for *(fill in the amount of time you are/your client is required to spend in jail):* _____

b. ☐ I/My client was required to pay a fine (including penalty and other assessments) of *(fill in the amount of the fine):* $_____

c. ☐ I/My client was required to pay restitution of *(fill in the amount of the restitution):* $ _____

d. ☐ I/My client was put on probation for *(fill in the amount of time you are/your client is required to be on probation):* _____

e. ☐ I/My client was required to *(describe any other punishment that the trial court imposed in this case):*

9 Grounds for Appeal

In the space below, please describe in detail the errors you believe the trial court made that are the reason for this appeal.

a. ☐ There was not substantial evidence that supported the trial court's judgment in this case.

Remember that the appellate division:

- *Cannot retry your case or take new evidence;*
- *Cannot consider whether witnesses were telling the truth or lying; and*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision; the court generally only looks to see whether there was some reasonable, believable evidence supporting the trial court's decision.*

b. ☐ The trial court judicial officer committed the following error about either the law or court procedure and that error caused substantial harm to me/my client (this is called "prejudicial error"). *(Please describe each error and how you were/your client was harmed by that error. You can attach more pages if you need more space to describe the errors.):*

(1) _____

(2) _____

(3) _____

REMINDER: You must file this form no later than 30 days after you file your record preparation election. If you do not file this form on time, the court can dismiss your appeal.

Date: _____

_____ ▶ _____

(*Type or print name*) (*Signature of appellent or attorney*)

Case name: _____ | **Case Number:**

Trial Judge's Review of Proposed Statement

I have reviewed this proposed statement on appeal prepared by the appellant.

a. ☐ I certify that parts (4) through (8) of the above statement as proposed by the appellant are a complete and accurate summary of the trial court proceedings. I direct the clerk to file this statement and to send copies to the parties.

b. ☐ The following corrections are needed in order for parts (4) through (8) of the above statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings.

(1) _____

_____

_____

(2) _____

_____

_____

(3) _____

_____

_____

I direct the clerk to send copies of this corrected statement to the parties for their review.

c. ☐ More corrections than could be listed above were needed in order for parts (4) through (8) of the above statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings. I have attached a corrected statement to this form. I direct the clerk to send copies of this corrected statement to the parties for their review.

d. ☐ The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, I direct that a transcript be prepared as the record of these proceedings.

Date: _____ _____

(*Signature of trial court judicial officer*)

CR-136 Abandonment of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), to know your rights. You can get form CR-131 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is only for abandoning (giving up) an appeal in a misdemeanor case (see form CR-131-INFO for a definition of a misdemeanor). Do not use this form to abandon an appeal in an infraction case, such as a case about a traffic ticket; use *Abandonment of Appeal (Infraction)* (form CR-144).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal if the record has not yet been filed in the appellate division. If the record *has* been filed in the appellate division, take or mail the completed form and your proof of service to the appellate division clerk's office. **Do not send this form to the Court of Appeal.**

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Court Case Number:

Trial Court Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

1 Your Information

I am *(check a. or b. and provide the requested information):*

a. ☐ the appellant

Name: _____ Phone: ( ) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: ( ) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

2 On *(fill in the date):* _____

I/My client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

CR-141-INFO Information on Appeal Procedures for Infractions

General Information

This pamphlet provides general information about the procedures for appeals in infraction cases. Infractions, such as many traffic violations for which you can get a ticket or violations of some city ordinances for which you can get a citation, are criminal offenses for which the punishment can be a fine, traffic school, or some form of community service but cannot include any jail or prison time (see Penal Code sections 17, 19.6, and 19.8). For purposes of an appeal by the defendant, a case is considered an infraction case if the defendant was convicted only of an infraction (was not convicted of any misdemeanor) and was neither charged with nor convicted of any felony in the case. This pamphlet does not provide information about appeals in other types of cases, such as misdemeanors or civil cases. For information about appeal procedures in misdemeanor cases, please see *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) and for information about appeal procedures in limited civil cases, please see *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 go to *www.courtinfo.ca.gov/forms*.

The information in this pamphlet is not intended to cover everything you may need to know about appeals in infraction cases. It is only meant to give you an overview to help guide you through the appeal process. You should thoroughly read rules 8.800–8.816 and 8.880–8.936 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 go to *www.courtinfo.ca.gov/rules*.

You are allowed to represent yourself in an appeal in an infraction case. If you have any questions about the appeal procedures, however, you should consult an attorney that you choose. You can get information about finding an attorney at no or low cost on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/*. If you are representing yourself, you must inform the court if your address or telephone number changes so that the court can contact you when necessary.

1 What Is an Appeal?

An appeal is a request to a court to review a ruling or decision made by another court. **In an infraction case, the court hearing the appeal—the appellate court—is the appellate division of the superior court and the trial court is the superior court.**

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. Instead, the role of the appellate division is to review a record of what happened in the trial court and to review the trial court's ruling or decision. The party that appeals may ask the appellate division to determine if the trial court made an error about either the law or court procedures that caused substantial harm to the party that is appealing (this is called "prejudicial error"). When it conducts this review, the appellate division presumes that the trial court's decision is correct; the party that files the appeal must show the appellate division that the trial court made an error and that the error was prejudicial. The party that appeals may also ask the appellate division to determine if there was substantial evidence supporting the trial court's decision. "Substantial" evidence means some reasonable, believable evidence that supports the decision. In conducting this review, the appellate division generally will not reconsider the trial court's judgment about which side had more or stronger evidence or whether witnesses in the trial court were telling the truth or lying. No matter how much evidence there may have been on the other side, the appellate division generally only looks to see whether there was substantial evidence supporting the trial court's decision. In other words, the appellate division generally will not overturn the trial court's decision unless the record clearly shows that the trial court made a prejudicial error or there was not substantial evidence supporting that decision.

2 Who Can Appeal?

Only a party in the trial court proceeding can appeal a decision in that proceeding. You may not appeal on behalf of a friend, a spouse, a child, or another relative. The party that files the appeal 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 charged the person with the infraction (on court papers, this party is referred to as the People of the State of California).

3 What Court Decisions Can Be Appealed?

Generally, a party may appeal any final decision of the trial court that is not in that party's favor. In an infraction appeal, the party that was convicted of committing an infraction typically appeals that conviction or the sentence (the fine or other punishment) imposed 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).

4 How Do I Start the Appeal Process?

The first step in appealing a decision is filing 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 Preparation Election (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 go to *www.courtinfo.ca.gov/forms*.

5 When Do I File the Notice of Appeal?

In an infraction case, you must file your notice of appeal within **60 CALENDAR DAYS** after the trial court renders its judgment in your case. The date the trial court renders its judgment is normally the date the trial court imposed the fine or other punishment on you in your case (sentenced you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, your appeal will be dismissed.**

6 How Do I File the 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. 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).

7 If I File a Notice of Appeal, Do I Still Have to Pay My Fine or Complete Other Parts of My Sentence?

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 the trial court denies your request for a stay, you can apply to the appellate division for a stay. 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.

8 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 elect to have the appellate division receive a record of the oral proceedings in your case—what was said in the trial court—and—if so—what form of that record you want to use. *Notice of Appeal and Record Preparation Election (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide the record.

Since the appellate division judges were not present 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. The official record has three parts: (A) a record of the documents filed in the trial court (other than exhibits); (B) a record of the oral proceedings in the trial court; and (C) the exhibits that were admitted in evidence, refused, or lodged in the trial court.

A. Record of the 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. The documents the clerk must include in this transcript are listed in rule 8.891 of the California Rules of Court. The clerk's transcript does not include exhibits that were filed in the trial court.

B. Record of the Oral Proceedings in the Trial Court

If you want to raise any issue in the appeal that would require the appellate division to consider what happened during the oral proceedings in the trial court, the record on appeal must include a record of the oral proceedings in the trial court. 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 the cost of preparing the record or 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 the record, it will not be able to review any issues that are based on what happened during the oral proceedings, so you are not likely to succeed in your appeal.**

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:

(1) Reporter's transcript

In some infraction cases, a court reporter was present during the trial court proceedings and made a record of the oral proceedings. In these cases, you can elect to have the court reporter prepare a transcript of the oral proceedings, called a reporter's transcript, for the appellate division. Ordinarily, the appellant is responsible for paying the cost of preparing this transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and, if you want the reporter to prepare the transcript, you must deposit this estimated amount with the clerk. If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you can obtain a free transcript. You can complete and file *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show that you are indigent and therefore entitled to a free transcript. You can get form MC-210 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

Once you deposit the estimated cost of the transcript or show the court you are indigent, 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.

(2) Official electronic recording or transcript

In some infraction cases, the trial court proceedings were officially recorded on approved electronic recording equipment. In these cases, you can elect to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. Alternatively, if the appellate division has a local rule permitting this and all the parties agree (stipulate), a copy of the official electronic recording itself can be used as the record of such oral proceedings. You must attach a copy of the stipulation to your record preparation election.

Ordinarily, the appellant is responsible for paying the cost of 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 can obtain a free transcript or official electronic recording. You can complete and file *Defendant's Financial Statement and Notice to Defendant* (form MC-210) to show that you are indigent and therefore entitled to a free transcript or official electronic recording. You can get form MC-210 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent, 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 along with the clerk's transcript to the appellate division.

(3) Statement on appeal

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

If you elect to use a statement on appeal, you must prepare a proposed statement and file that proposed statement with the trial court within 30 days after you file your notice of appeal. If you are not represented by an attorney, you must file the proposed statement on *Statement on Appeal (Infraction)* (form CR-143). You can get form CR-143 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. You must also serve a copy of the statement on the respondent in the case (if the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney). "Service" means that the other side must get a copy of the paper you file with the court. You can get information about how to serve court papers on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/ lowcost/getready.htm#serving*.

The respondent has 20 days from the date you serve and file your proposed statement to file proposed amendments to this statement. The trial judge then reviews the proposed statement and any proposed amendments and makes any corrections or modifications that are needed to ensure that the statement provides a complete and accurate summary of the trial court proceedings. If the judge makes any corrections or modifications, the corrected or modified statement will be sent to you and the respondent for your review. You will have 10 days from the date the statement is sent to you to file objections to this statement. The judge then reviews any objections, makes any additional corrections to the statement, and then certifies the statement as a complete and accurate summary of the trial court proceedings.

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

C. Exhibits

Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged in the trial court are considered part of the record on appeal. However, as noted above, the clerk's transcript does not include such exhibits. If you want the appellate division to consider an exhibit, you must ask the trial court clerk to send the original exhibit to the appellate division. This request must be filed with the trial court when you make your record preparation election. *Notice of Appeal and Record Preparation Election (Infraction)* (form CR-141) includes a space for you to make such a request. You can get form CR-141 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

9 What Happens After I File My Notice of Appeal and Take Care of My Responsibilities Relating to Providing a Record of the Oral Proceedings to the Appellate Division?

As soon as the record of the oral proceedings is prepared in one of the ways described above, 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.

A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument. If you are represented by an attorney in your appeal, your attorney will prepare your brief. If you are not represented by an attorney in your appeal, you will have to prepare your brief yourself. You should read rules 8.910–8.914 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 go to *www.courtinfo.ca.gov/rules*.

The appellant's brief, called an appellant's opening brief, must clearly explain, using references to the clerk's transcript and the reporter's transcript or other record of the oral proceedings in the trial court, what the appellant claims are the legal or procedural errors made by the trial court. 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 you should not try to include any new evidence in your brief. If you (the appellant) do not file your brief, the court may dismiss your appeal.

When you file your brief, the respondent then has an opportunity, but is not required, to respond by filing a respondent's brief. The appellant does not automatically win the appeal if the respondent does not file a brief, but if the respondent chooses not to file a brief, the court can decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, you can also file another brief replying to the respondent's brief if you wish. This is called a reply brief.

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. "Oral argument" is the parties' chance to explain to the judges of the appellate division in person the arguments that were made in the briefs. 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 you waive oral argument, the judges will consider your appeal based on the briefs and the record that were submitted. If you do choose to participate in

oral argument, unless the court orders otherwise, you will have up to15 minutes to present your argument. Remember that the judges will already have read the briefs, so it is not necessary to reread your brief to the judges. It is more helpful to the judges to simply highlight what you think is important or ask the judges if they have any questions.

After the oral argument date passes, the judges of the appellate division will make a decision about your appeal. The clerk of the court will mail you a notice of that decision.

10 What If I Decide I No Longer Want to Appeal?

If you (the appellant) decide you do not want to proceed with your appeal, you must file a written document with the court notifying it that you are abandoning the appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-144) to file this notice in an infraction case. You can get form CR-144 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

CR-142 Notice of Appeal and Record Preparation Election (Infraction)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Infractions (*form CR-141-INFO*)*, to know your rights. You can get form CR-141-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is only for appealing a judgment or an order in an infraction case, such as a case about a traffic ticket. Do not use this form to appeal a judgment or order in either a felony or misdemeanor case; use *Notice of Appeal—Felony (Defendant) (Criminal)* (form CR-120), in a felony case or *Notice of Appeal (Misdemeanor)* (form CR-132), in a misdemeanor case. You can get forms CR-120 and CR-132 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- You must file this form **no later than 60 days after the trial court issued the judgment order you are appealing in this case except in the very limited circumstances listed in rule 8.882(b) of the California Rules of Court. If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same court that issued the judgment or order you are appealing.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Case Number:

Trial Case Name:

The clerk will fill in this number.

Appellate Division Case Number:

1 Your Information

I am *(check a., b., or c.):*

a. ☐ the appellant

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's trial attorney c. ☐ appellant's appellate attorney

Name: _____ Phone: (____) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____

Case Number:

2 Notice of Appeal

I am/My client is appealing *(check a., b., or c.):*

a. ☐ the final judgment of conviction in the case (Penal Code section 1466(2)(A)).
The date the trial court imposed (rendered) this judgment was *(fill in the date):* _____

b. ☐ an order made by the trial court after judgment that affects a substantial right of mine/my client (Penal Code section 1466 (2)(B)). The date the trial court issued this order was *(fill in the date):* _____

c. ☐ Other (*please describe and indicate the date the trial court took the action you are appealing)*:

_____

_____

_____

_____

3 Record Preparation Election

I elect/My client elects to proceed *(check a. or b.):*

a. ☐ WITH a record of the oral proceedings in the trial court *(you must complete item 4 below).*

b. ☐ WITHOUT a record of the oral proceedings in the trial court. I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether the trial court made an error. *(Write your initials here):*

_____

4 I understand that, if I elect to proceed WITH a record of the oral proceedings in the trial court, it is my responsibility to take one of the actions below to make sure that a record of what was said in the trial court proceedings in my case is provided to the appellate division that will be considering my appeal. I understand that if I do not take one of the actions below and the appellate division does not receive this record, I am not likely to succeed in my appeal. *(Write your initials here):* _____

I plan to make sure that a record of what was said in the trial court proceedings in my case is provided to the appellate division in the following way *(check and complete a., b., or c.):*

a. ☐ **Reporter's transcript:** I believe there was a court reporter in the trial court who made a record of what was said in court in my case, and I want to use a transcript prepared by that court reporter as the record of what was said in my case *(check (1) or (2)).*

(1) ☐ I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement and Notice to Defendant* (form MC-210) (you can get form MC-210 at any courthouse or county law library or go to www.courtinfo.ca.gov/forms).

OR

b. ☐ **Official electronic recording:** I believe that an official electronic recording was made of what was said in the trial court in my case and *(check and complete (1) or (2)).*

(1) ☐ I want to use a transcript of this official electronic recording as the record of what was said in my case (*check (a) or (b)*).

(a) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(b) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement and Notice to Defendant* (form MC-210) (*you can get form MC-210 at any courthouse or county law library or go to* www.courtinfo.ca.gov/forms).

(2) ☐ This court has a local rule permitting the use of the official electronic recording itself as the record of the proceedings and the attorney that represented the government agency that filed charges against me and I have agreed (stipulated) that we want to use the actual official electronic recording that was made as the record of what was said in my case. A copy of the stipulation is attached to this notice *(check (a) or (b)*).

(a) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.

(b) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement and Notice to Defendant* (form MC-210) *(you can get form MC-210 any courthouse or county law library or go to* www.courtinfo.ca.gov/forms).

OR

c. ☐ **Statement on appeal:** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case *(check and complete (1) or (2)).*

(1) ☐ I have attached my proposed statement on appeal to this notice of appeal. *If you are not represented by an attorney in this appeal, you must use Statement on Appeal (Infraction) (form CR-143) to prepare and file this proposed statement. You can get form CR-14 at any courthouse or county law library or go to* www.courtinfo.ca.gov/forms*).*

(2) ☐ I will file my proposed statement later. I understand that I must file this proposed statement in the trial court and serve a copy on the other party within 30 days of the date I file this notice of appeal and that if I do not file the proposed statement on time, the court can dismiss my appeal.

Case name: _____

Case Number:

5 Record of Documents Filed in the Trial Court

I understand that the clerk of the trial court will prepare a record of the documents filed in the trial court that contains all of the documents listed in rule 8.891 of the California Rules of Court. In addition to that record, I would like the clerk to send the appellate division the following exhibits that were filed in the trial court *(for each exhibit, give the exhibit number (such as People's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence):*

Exhibit Number	Description	Admitted (Y / N)

REMINDER: Except in the very limited circumstances listed in rule 8.882(b), you must file this form no later than 30 days after the trial court issued the judgment order you are appealing in your case. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

CR-143 Statement on Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO), to know your rights. You can get form CR-141-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is for preparing a statement on appeal only in an infraction case, such as a case about a traffic ticket. Do not use this form to prepare a statement on appeal in a misdemeanor case; use form CR-135.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, this form must be filed **no later than 30 days after you file your notice of appeal.**
- **If you have chosen to prepare a statement on appeal and do not file this form on time, the court will not be able to review any issues that are based on what happened during the oral proceedings, so you are not likely to succeed in your appeal.**
- Fill out parts (1) through (8) of this form and make a copy of the completed form for your records.
- You must serve a copy of the completed form on the other party or parties in the case. You can get information about how to serve court papers on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form, along with your proof of service on the other party or parties, to the clerk's office for the same trial court where you filed your notice of appeal.

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Case Number:

Trial Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

(1) Your Information

I am (*check a. or b.*)

a. ☐ the appellant

Name: _____ Phone: (___) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: (___) _____

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____ **Case Number:**

Information About Your Appeal

2 On *(fill in the date):* _____

I/My client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 I understand that it is my responsibility to make sure that a record of what was said in the trial court proceedings in this case is provided to the appellate division that will be considering this appeal. I have/My client has chosen to use a statement on appeal as the record of what was said in this case. *(Write your initials here):* _____

Proposed Statement on Appeal

4 The Charges Against Me/My Client

a. ☐ My/My client's citation number was *(fill in the citation number from your ticket):* _____

b. ☐ The charges on my/my client's citation were *(list all of the charges indicated on your ticket):*

_____

_____

_____

c. ☐ I/My client *(check (1), (2), or (3)):*

(1) ☐ pled guilty to all of the charges.

(2) ☐ pled guilty to only the following charges: _____

_____

(3) ☐ pled not guilty to all of the charges.

5 Summary of the Proceedings

In the spaces below, please describe any requests (motions) made in the trial court and how the trial court ruled on these motions, and write a complete and accurate summary of what the witnesses said in the testimony that they gave during the trial. Include only what each witness actually said; do not comment on or give your opinion about what the witness said.

a. ☐ I/My client made the following requests (motions) in the trial court *(check all that apply):*

(1) ☐ To submit a photograph or photographs as evidence *(describe the photographs).*

_____

_____

The court ☐ did ☐ did not accept the photographs.

(2) ☐ To submit a map or maps as evidence *(describe the maps*).

_____

_____

The court ☐ did ☐ did not accept the maps.

(3) ☐ To submit other material as evidence *(describe what you asked to submit as evidence in the trial court):* _____

The court ☐ did ☐ did not accept this material.

(4) ☐ Other *(describe any other request you made in the trial court and whether the court granted or denied this request)*: _____

b. ☐ The other party or parties made the following requests (motions) in the trial court *(describe any request the other party or parties made in the trial court and whether the court granted or denied this request):* _____

c. ☐ I/My client *(check one):*

☐ did not testify at the trial.

☐ did testify at the trial.

I/My client testified that *(if you/your client did testify, write a complete and accurate summary of the testimony you/your client gave below):* _____

d. ☐ An officer from the government agency that cited me/my client *(check one):*

☐ did not testify at the trial.

☐ did testify at the trial.

(1) ☐ The name of the officer who testified is *(fill in the officer's name):* _____

(2) ☐ The officer testified that *(write a complete and accurate summary of the officer's testimony below):* _____

e. ☐ There were *(check one):*

☐ no other witnesses at the trial.

☐ other witnesses at the trial *(for each witness, write the witness's name, whether this witness tesitfied on your/your client's behalf or the prosecution's behalf, and a complete and accurate summary of the witness's testimony below).*

(1) The witness's name is *(fill in the witness's name):*

_____

(2) The witness *(check one)* ☐ was ☐ was not an officer from the government agency that cited me/my client.

(3) This witness testified on behalf of *(check one)* ☐ me/my client ☐ the prosecution.

(4) This witness testified that: _____

_____

_____

_____

_____

Please attach separate pages identifying each other witness that testified at your trial and summarizing what that witness said in testimony. Please label these pages as "Attachment 5e-2)," "Attachment 5e-3)," etc.

6 The Trial Court's Findings

a. I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):* _____

_____

_____

_____

_____

b. I/My client was not found guilty of the following offenses *(list all of the offenses for which you were / your client was not found guilty):* _____

_____

_____

_____

_____

Case name: _____

Case Number:

7 The Sentence

The trial court imposed the following fine or other punishment on me/my client *(check all that apply and fill in any required information):*

a. ☐ I/My client was required to pay a fine of *(fill in the amount of the fine):* $ _____

b. ☐ I/My client was required to attend traffic school.

c. ☐ I/My client was required to perform the following number of hours of community service *(fill in the number of hours):* _____

d. ☐ I/My client was required to *(describe any other punishment that the court imposed on you):*

_____

_____

8 Grounds for Appeal

In the space below, please describe in detail the errors you believe the trial court made that are the reasons for this appeal.

a. ☐ There was not substantial evidence that supported the trial court's judgment in this case.

Remember that the appellate division:

- *Cannot retry your case or take new evidence;*
- *Cannot consider whether witnesses were telling the truth or lying; and*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision; the court generally only looks to see whether there was some reasonable, believable evidence supporting the trial court's decision.*

b. ☐ The trial court judicial officer committed the following error about either the law or court procedure and that error caused substantial harm to me/my client (this is called "prejudicial error"). *(Please describe each error and how you were/your client was harmed by that error. You can attach more pages if you need more space to describe these errors):*

(1) _____

_____

(2) _____

_____

(3) _____

_____

REMINDER: You must file this form no later than 30 days after you file your notice of appeal. If you do not file this form on time, the court can dismiss your appeal.

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

Case name: _____

Case Number:

Trial Judge's Review of Proposed Statement

I have reviewed this proposed statement on appeal prepared by the appellant.

a. ☐ I certify that parts ④ through ⑦ of the above statement as proposed by the appellant are a complete and accurate summary of the trial court proceedings. I direct the clerk to file this statement and to send copies to the parties.

b. ☐ The following corrections are needed in order for parts ④ through ⑦ of the above statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings.

(1) _____

_____

_____

(2) _____

_____

_____

(3) _____

_____

_____

I direct the clerk to send copies of this corrected statement to the parties for their review.

c. ☐ More corrections than could be listed above were needed in order for parts ④ through ⑦ of the above statement proposed by the appellant to be a complete and accurate summary of the trial court proceedings. I have attached a corrected statement to this form. I direct the clerk to send copies of this corrected statement to the parties for their review.

d. ☐ The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, I direct that a transcript be prepared as the record of these proceedings.

Date: _____ ▶ _____

(*Signature of trial judge)*

CR-144 Abandonment of Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- Before you fill out this form, read *Information on Appeal Procedures for Infractions (*form CR-141-INFO) to know your rights. You can get form CR-141-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.
- This form is only for abandoning (giving up) an appeal in an infraction case, such as a case about a traffic ticket. Do not use this form to abandon an appeal in a misdemeanor; use *Abandonment of Appeal (Misdemeanor)* (form CR-136).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal if the record has not yet been filed in the appellate division. If the record *has* been filed in the appellate division, take or mail the completed form and your proof of service to the appellate division clerk's office. **Do not send this form to the Court of Appeal.**

Fill in the name and street address of the court that issued the judgment or order you are appealing.

Superior Court of California, County of

Fill in the number and name of the case in which you are filing this appeal.

Trial Case Number:

Trial Case Name:

Fill in the appellate division case number (if you know it).

Appellate Division Case Number:

1 Your Information

I am *(check a. or b. and provide the requested information)*

a. ☐ the appellant

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

b. ☐ appellant's attorney

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

Case name: _____ **Case Number:**

2 On *(fill in the date):* _____

I/My client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

(*Type or print your name*) (*Signature of appellant or attorney*)

APP-150-INFO Information on Proceedings for Writs in the Appellate Division of the Superior Court

General Information

This pamphlet provides general information about proceedings in which a person is requesting a writ—a writ of mandate (sometimes called "mandamus"), prohibition, or review (sometimes called "certiorari")—in the superior court appellate division. Please read this form before you complete *Petition for Writ (Appellate Division)* (form APP-151).

This pamphlet does NOT provide information about appeals in the superior court appellate division. For information about appeal procedures in limited civil cases, please see *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO). For information about appeal procedures in infraction cases, please see *Information on Appeal Procedures for Infractions* (form CR-141-INFO). For information about appeal procedures in misdemeanor cases, please see *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO). This pamphlet also does not cover proceedings for writs of supersedeas or habeas corpus. Please see rule 8.824 of the California Rules of Court regarding writs of supersedeas. For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court, and *Petition for Writ of Habeas Corpus* (form MC-275). You can get these rules and forms at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules* for the rules or *www.courtinfo.ca.gov/forms* for the forms.

The information in this pamphlet is not intended to cover everything you may need to know about proceedings for writs in the appellate division. It is only meant to give you an overview to help guide you through the process. You should thoroughly read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules*.

You are allowed to represent yourself in a writ proceeding in the appellate division. If you have any questions about the writ procedures, however, you should consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/*.

1 What Is a Writ?

A writ is an order (called a "writ") from a higher court directing a lower court to do something that the lower court has a legal obligation to do, or to not do something the court does not have the legal authority to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged. **In this information sheet, we refer to the superior court as the "trial court."**

There are three main types of writs: writs of mandate (sometimes called "mandamus"), writs of prohibition, and writs of review (sometimes called "certiorari"). These names refer to the type of order being issued: writs of mandate are orders to do something, writs of prohibition are orders not to do something, and writs of review are orders providing for review of a judicial action that has already been taken. There are laws (statutes) concerning each type of writ that you should read: see Code of Civil Procedure sections 1084–1097 regarding writs of mandate, sections 1103–1105 regarding writs of prohibition, and sections 1067–1077 regarding writs of review. You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*.

Writs may be requested when a trial court makes what a party believes is a legal error concerning an important ruling during a case and the party believes that he or she will be harmed in a way that cannot be fixed later through an appeal if the error is not corrected. The party is usually asking that the trial court be ordered to cancel (vacate) its ruling, issue a new ruling, and/or not take any steps to enforce its ruling.

Not every mistake a trial court might make can be addressed by an writ; these writs can only address the following types of legal errors:

- The trial court has a legal duty to act but refuses to exercise its power to act;
- The trial court has a legal duty to perform a mandatory act but has not performed that act;
- The trial court had a legal duty to act but abused its discretion in the way it acted; or
- The trial court has performed or is threatening to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way that the court does not have the legal power to do.

A writ proceeding is not the same thing as an appeal. An appeal is the usual way in which a party asks a higher court to review a lower court's decision. But appeals can be used only to review a trial court's final judgment and certain limited orders. Most rulings made by a trial court before it issues its final judgment are not subject to immediate appeal; they can be reviewed only after the case is over, as part of an appeal of the final judgment. Writ proceedings, in contrast, can be used to seek immediate review of important rulings made by a trial court before it issues its final judgment.

Also unlike appeals, writs are discretionary. In an appeal, the appellate division must hear the parties' arguments and decide whether the appealing party is correct that the superior court made an error and whether, based on that error, the party is entitled to the relief requested (this is called "a decision on the merits"). In contrast, in an writ proceeding, the appellate division is not required to issue a decision on the merits; even if the superior court made an error, the appellate division can decide to leave review of that error for an appeal from the final judgment in the case. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"), and courts rarely grant the relief requested even in those cases that are decided on the merits. Both because these writ proceedings are not the ordinary way trial court decisions are reviewed and because these writs are rarely issued, these writ proceedings are often called proceedings for "extraordinary" relief and these writs are often called "extraordinary" writs.

A writ proceeding is also not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, the role of the appellate division is to review a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person requesting the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

The person requesting the writ must also show the appellate division that there is no adequate way to address the trial court's error other than through issuing a writ (this is referred to as having "no adequate remedy at law"). As noted above, the other, more common, way of obtaining review of a superior court ruling is through an appeal. If a superior court ruling can be reviewed either through an immediate appeal or as part of an appeal of the final judgment in the case, the appellate division will generally consider this appeal to be an adequate remedy unless the person requesting the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal (this is referred to as "irreparable" injury or harm) if the appellate division does not issue the writ.

(2) Who Are the Parties in a Writ Proceeding?

The party that requests the writ is called the PETITIONER. The court that the petitioner is asking to be ordered to do something or not do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent. Each other party in the trial court case is called a REAL PARTY IN INTEREST.

Information for the Petitioner

This part of this information sheet is written for the petitioner–the party that is requesting the writ. It explains some of the rules and procedures relating to requesting an writ. The information may also be helpful to a real party in interest. There is additional information for the real party in interest starting on page 10 of this form.

3 Who Can Request a Writ?

Only a party that has a "beneficial interest" in the trial court's ruling can request a writ challenging the ruling. A "beneficial interest" means that the party has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public at large may have in the ruling. While this includes a party—the plaintiff or defendant—in the trial court proceeding, in most cases, nonparties who are directly and negatively affected by a ruling can also seek a writ challenging that ruling. However, only a party in the trial court proceeding can seek a writ challenging a ruling on a motion to disqualify a judge (see Code of Civil Procedure section 170.3(d)).

4 What Kinds of Rulings Can Be Challenged in an Extraordinary Writ Proceeding in the Appellate Division?

There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that can or must be challenged by way of statutory writs:

- A ruling on a motion to disqualify a judge (see Code of Civil Procedure, section 170.3(d));
- Denial of a motion for summary judgment (see Code of Civil Procedure, section 437c(m)(l));
- A ruling on a motion for summary adjudication of issues (see Code of Civil Procedure, section 437c(m)(l));
- Denial of a stay in an unlawful detainer matter (see Code of Civil Procedure, section 1176);
- Denial of a motion to dismiss a criminal matter (see Penal Code section 999(a)); and
- An order disqualifying the prosecuting attorney (see Penal Code section 1424).

You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to request a writ to challenge a particular ruling does not mean that the court must grant your request; the appellate division still has discretion to grant or deny a statutory writ.)

Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than rulings on the admissibility of evidence and the final judgment can potentially be challenged using a writ proceeding if the petitioner has no other adequate remedy at law. These nonstatutory writs are called "common law" writs.

Different courts have the power (called "jurisdiction") to consider requests for writs depending on the type of cases. The appellate division can only consider requests for writs in limited civil cases, misdemeanor cases, and infraction cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see Code of Civil Procedure sections 85 and 88). Misdemeanor cases are those in which a person has been charged with a crime for which the punishment can include jail time of up to one year but not a sentence to state prison (see Penal Code sections 19.6 and 19.8). Infraction cases, such as those regarding traffic tickets or citations for violations of some city ordinances, are cases where a person has been convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any jail or prison time (see Penal Code sections 19.6 and 19.8).

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than $25,000) or felony cases (cases in which a person has been charged with a crime for which the punishment can include a sentence to state prison); requests for writs in these cases can be made in the Courts of Appeal. The appellate division also does not have the jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

5 How Do I Start a Writ Proceeding in the Appellate Division?

The first step in starting a writ proceeding is serving and filing a petition for a writ. A "petition" is a formal request that a court take action. A petition for a writ explains to the appellate division what happened in the trial court, what error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to issue.

6 How Do I Prepare a Writ Petition?

If you are represented by an attorney, your attorney will prepare your petition for a writ. If you are not represented by an attorney, you must use *Petition for Writ (Appellate Division)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*. This form asks you to fill in the information that needs to be contained in a writ petition, including what ruling you are challenging, when the trial court made the ruling, what interest you have in the ruling, what legal error you believe the trial court made, why you do not have an adequate remedy at law, and what order you are requesting the appellate division to issue.

A. Describing Your Interest in the Ruling You Are Challenging

As discussed above, only a person who has a "beneficial interest" in the trial court's ruling can request a writ challenging that ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public at large may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must either indicate that you were a party—the plaintiff or defendant—in the trial court proceeding in which the ruling was issued or, if you were not a party, you must describe how you will be directly and negatively affected by the ruling.

B. Describing the Legal Error You Believe the Trial Court Made

In your writ petition, you must describe the legal error that you believe the superior court made. As discussed above, not every mistake a trial court might make can be addressed by a writ; you must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but refuses to exercise its power to act;
- The trial court has a legal duty to perform a mandatory act but has not performed that act;
- The trial court had a legal duty to act but abused its discretion in the way it acted; or
- The trial court has performed or is threatening to perform a judicial function, like deciding a person's rights under law in a particular situation, in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way. Then you will need to explain why you believe the trial court has not acted in the way it is legally required to act.

C. Describing Why You Have No Adequate Remedy at Law

One of the most important parts of your petition is explaining to the appellate division why you have no other adequate legal remedy. To do this, you will need to show the appellate division that you have no way to adequately challenge the trial court's ruling other than through a writ proceeding and show how you will be irreparably harmed if the appellate division does not issue the writ you are requesting. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the court why it is important for it to issue the writ. This is true even in the case of statutory writs; while the Legislature has already determined that a writ proceeding is an appropriate way to seek review of these rulings, issuing the writ is still discretionary.

As noted above, if the ruling can be reviewed either through an immediate appeal or as part of an appeal of the final judgment in the case, the appellate division will generally consider this appeal to be an adequate remedy unless you can show the appellate division that you will be harmed in a way that cannot be fixed by the appeal (this is referred to as "irreparable" injury or harm) if it does not issue the writ. It is therefore important for you to find out if the ruling you want to challenge can be appealed immediately or as part of the final judgment.

Just as there are laws (statutes) that provide that certain kinds of rulings can be reviewed using a writ, there are also laws that provide that certain kinds of rulings can be appealed immediately. Code of Civil Procedure section 904.2 identifies the types of orders in a limited civil case that can be appealed immediately. These orders include:

- An order made after final judgment in the case;
- An order changing or refusing to change the place of trial (venue);
- An order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum;
- An order granting a new trial or denying a motion for judgment notwithstanding the verdict;
- An order granting or dissolving an injunction or refusing to grant or dissolve an injunction; and
- An order appointing a receiver.

In misdemeanor and infraction cases, the following court orders can be appealed immediately:

- An order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and
- Any order made after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).

You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*. You should also check if there are published court decisions that indicate whether a challenge to the type of ruling at issue in your case should be made using an appeal or a writ proceeding.

D. Describing the Order You Want the Appellate Division to Issue

You must describe what you are asking the appellate division to order the trial court to do or not to do. As noted above, the petitioner typically asks that the trial court be ordered to cancel (vacate) its ruling, issue a new ruling, and/or not to take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to proceed any further in its action until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, in general, you should first ask the trial court to stay its own proceedings. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask for a stay, make sure you also fill out the "Stay Requested" box on the first page of *Petition for Writ (Appellate Division)* (form APP-151).

E. Verifying the Petition

Petitions for writs must be "verified." This means that the person signing the petition—either the petitioner or the petitioner's attorney—must declare under penalty of perjury that the facts stated in the petition are true and correct and indicate the location and date that the petition was signed. On the last page of *Petition for Writ (Appellate Division)* (form APP-151), there is a place for you to verify your petition. This verification is written assuming that the petition will be signed in California. If you are signing form APP-151 outside of California, you will need to cross out the word "California" in the verification and write in the location where you are when you sign the petition.

7 Is There Anything Else That I Need to Serve and File With My Petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court. Since the appellate division judges were not present for the proceedings in the trial court, a record of these proceedings must be sent to the appellate division for its review. The documents that make up this record are called "supporting documents."

The supporting documents must include a transcript or electronic recording of the oral proceedings in the trial court relating to the ruling that you are challenging in the petition. A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was present during the trial court proceedings and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a reporter's transcript, for the appellate division. If a reporter was not present, but the trial court proceedings were officially recorded on approved electronic recording equipment, you can elect to have a transcript prepared for the appellate division from the official electronic recording of these proceedings. Alternatively, if the appellate division has a local rule permitting this and all the parties agree (stipulate), a copy of the official electronic recording itself can be used as the record of such oral proceedings. The petitioner is responsible for paying the cost of preparing a transcript or the cost of preparing a copy of the official electronic recording.

If a transcript or official electronic recording of these proceedings is not available, your petition must include a declaration either (1) explaining why the transcript or official electronic recording is unavailable and fairly summarizing the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling or (2) stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

The following documents must also be included in the supporting documents:

- The trial court ruling being challenged in the petition;
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position; and
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged.

Rule 8.901 of the California Rules of Court also provides, that in extraordinary circumstances, the petition may be filed without these documents. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

Supporting documents must be submitted to the court in the format required by rule 8.931. Among other things, there must be a tab for each document and an index identifying the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or go to *www.courtinfo.ca.gov/rules*.

8 When Do I Need to Serve and File My Petition?

In the case of statutory writs, the statute usually sets a specific deadline by which the petition must be served and filed. Here is a list of the deadlines for filing some of the most common statutory writs (you can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html):*

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see Code of Civil Procedure, section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see Code of Civil Procedure, section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see Code of Civil Procedure, section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging the denial of a motion to dismiss a criminal matter (see Penal Code section 999(a))	15 days after denial of the motion
Writ challenging the denial of a motion to suppress evidence in a criminal matter (see Penal Code sections 1538.5(i))	30 days after denial of the motion

In the case of common law writs or statutory writs for which no deadline is specified, there is no absolute deadline for filing the petition. However, you should file the petition as soon as possible and in any event not later than 60 days after the court makes the ruling that you are challenging in the petition. Remember, the court is not required to grant your petition even if the trial court made an error. Absent extraordinary circumstances, if you delay in filing your petition it creates the impression that it is not really urgent that the appellate division issue the writ you are requesting and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

9 How Do I Serve My Petition?

Rule 8.931(e) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. "Serving" a document on a party means that a copy of the document you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

Part of serving a document is making a record that the document has been served. This record is called a "proof of service," and it shows who was served with the document, how the document was served on that party, and the date the document was served.

10 How Do I File My Petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that took the action or issued the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was issued to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court.

11 Is There a Fee to File a Petition for a Writ?

There is no fee to file a petition for a writ in a criminal case. There is a fee, however, to file such a petition in a civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you think you cannot afford to pay this filing fee because of your financial condition, you can request that the fee be waived. To do this, you must file an application for a waiver of court fees and costs under rules 3.50 et seq. You must use *Application for Waiver of Court Fees and Costs* (form FW-001), to prepare and file this application. You can get form FW-001 at any courthouse or county law library or go to w*ww.courtinfo.ca.gov/forms*. You can file this application either before you file your petition or with your petition.

12 What Happens After I Serve and File My Petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for an extraordinary writ, however. Without waiting, the appellate division can:

- Issue a stay of the trial court proceedings;
- Summarily deny the petition;
- Issue an alternative writ or order to show cause; or
- Notify the parties that it is considering issuing a peremptory writ in the first instance.

The last three of these options are discussed in more detail on the next page.

A. Summary Denial

A "summary denial" means that the court denies the petition without deciding the merits of the petitioner's claims. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

B. Alternative Writ or Order to Show Cause

An "alternative writ" is an order directing the trial court either to do what the petitioner has requested in the petition (or some modified form of what was requested as provided in the appellate division's order) or show the appellate division why it (the trial court) should not be ordered to do so. An "order to show cause" is similar; it is an order directing the trial court to show the appellate division why it (the trial court) should not be ordered to do what the petitioner has requested in the petition (or some modified form of what was requested as provided in the appellate division's order). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has determined that the petition may have merit.

If the appellate division issues an alternative writ and the trial court complies with the order by doing what the petitioner requested (or the modified form of what was requested as provided in the appellate division's order), then no further action by the appellate division is necessary and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ in this way, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest can file a response to the appellate division's order (called a "return") that explains why the trial court should not be ordered to do what the petitioner has requested. The return must be filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

C. Peremptory Writ in the First Instance

A "peremptory in the first instance" writ is an order directing the trial court to do what the petitioner has requested (or some modified form of what was requested as provided in the appellate division's order) that is issued without first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so without first notifying the parties and giving the respondent court and real party in interest an opportunity to file an opposition.

The respondent court or the real party in interest can file a response to the appellate division's notice (called an "opposition") that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have an opportunity to file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

(13) What Should I Do if the Court Denies My Petition?

If the court denies your petition, it may be helpful to consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca .gov/selfhelp/lowcost*.

Information for the Real Party in Interest

This part of this information sheet is written for the real party in interest—the party or parties from the trial court proceeding other than the petitioner. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(14) I Have Received a Copy of a Petition for a Writ in a Case in Which I Am a Party. Do I Need to Do Anything?

No. Although the California Rules of Court provide that you can file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, you are not required to do so. As explained in the response to question (12) above, the appellate division can take certain actions on the petition without waiting for any opposition, including:

- Summarily denying the petition;
- Issuing an alternative writ or order to show cause; or
- Notifying the parties that it is considering issuing a peremptory writ in the first instance.

Most petitions for writs are summarily denied, often within just a few days of filing. If you have not already received something from the appellate division indicating what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be an appropriate time to seek legal advice, if you want it. You are allowed to represent yourself in an writ proceeding in the appellate division. If you have any questions about the writ proceedings and about whether and how you should respond to a writ petition, however, you should consult an attorney. You must retain your own attorney if you want one. You can get information about finding an attorney on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost.*

If the petition has not already been summarily denied, you may serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. Opposition at this stage is optional, however. The appellate division will not grant the writ requested by the petitioner without first issuing an alternative writ, order to show cause, or notice that it is considering issuing a peremptory writ. In all these circumstances, you will receive notice from the court and have an opportunity to file a response. A preliminary opposition is therefore typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause. In general, however, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition has merit.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. “Serving” a document on a party means that a copy of the document you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*

(15) I Have Received a Copy of an Alternative Writ or an Order to Show Cause Issued by the Appellate Division. Do I Need to Do Anything?

Yes. Except when the trial court has already complied with an alternative writ by taking the action specified in that alternative writ, you should serve and file a response called a "return."

As explained in the answer to question (12) above, the appellate division will issue an alternative writ or an order to show cause only if the appellate division has determined that the petition for an extraordinary writ may have merit. An "alternative writ" is an order directing the trial court either to do what the petitioner has requested in the petition (or some modified form of what was requested, as provided in the appellate division's order) or show the appellate division why it (the trial court) should not be ordered to do so. An "order to show cause" is similar; it is an order directing the trial court to show the appellate division why it (the trial court) should not be ordered to do what the petitioner has requested in the petition (or some modified form of what was requested as provided in the appellate division's order).

If the appellate division issues an alternative writ and the trial court complies with the order by doing what the petitioner requested (or the modified form of what was requested as provided in the appellate division's order), then no further action by the appellate division is necessary and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ in this way, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division's order called a "return."

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by an attorney in the writ proceeding, your attorney will prepare your return. If you are not represented by an attorney, you will need to prepare your own return. A return typically consists of a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving" a document on a party means that a copy of the document you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

16 I Have Received a Copy of a Notice Issued by the Appellate Division Indicating That it is Considering Issuing a Peremptory Writ in the First Instance. Do I Need to Do Anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question 12 above, a "peremptory in the first instance" writ is an order directing the trial court to do what the petitioner has requested (or some modified form of what was requested, as provided in the appellate division's order) that is issued without first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and an opportunity to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by an attorney in the writ proceeding, your attorney will prepare your opposition. If you are not represented by an attorney, you will need to prepare your own opposition. Like a return discussed in the response to question 15 above, an opposition typically consists of a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or go to *www.leginfo.ca.gov/calaw.html*.

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving" a document on a party means that a copy of the document that you are filing in court is delivered to that party. You can get information about how to serve court documents on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost /getready.htm#serving*.

17 What Happens After I Serve and File My Return or Opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

APP-151 Petition for Writ (Appellate Division)

_____

Petitioner
(fill in the name of the person filing this petition)

v.

Superior Court of California, County of _____

_____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

_____

Real Party in Interest
(fill in the name of the other party in the trial court proceeding)

Clerk stamps date here when form is filed.

The clerk will fill in this number.

Appellate Division Case Number:

☐ **Stay requested** (*see item* 12 *c.)*

Instructions

- Before you fill out this form, read *Information on Proceedings for Writs in the Appellate Division of the Superior Court* (form APP-150-INFO), to know your rights. You can get form APP-150-INFO at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms*.

- This form is only for requesting a writ in a limited civil, infraction, or misdemeanor case (see form APP-150-INFO for definitions of a limited civil, infraction, and misdemeanor case). Do not use this form to appeal a judgment or an order. For information about appeal procedures, see *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Infractions (*form CR-141-INFO), or *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO). Also do not use this form for requesting a writ of habeas corpus; use *Petition for Writ of Habeas Corpus* (form MC-275). You can get these forms at any courthouse or county law library or go to *www.courtinfo.ca.gov/forms.*

- Unless there is a special statute setting an earlier deadline, you should file this form no later than 60 days after the date the superior court took the action or issued the ruling you are challenging in this petition. It is your responsibility to find out if there is a special statute setting an earlier deadline. If your petition is filed late, the appellate division may deny it.

- Fill out this form and make a copy of the completed form for your records.

- You must serve a copy of the completed form on the real party or parties in interest (see form APP-150-INFO for a definition of real party in interest). You can get information about how to serve court papers on the California Courts Self-Help Center Web site at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving*.

- Take or mail the completed form and your proof of service on the real party in interest to the clerk's office for the same court that took the action or issued the ruling you are challenging.

Case name: _____ **Case Number:**

1 Your Information

I am *(check a. or b.):*

a. ☐ the petitioner

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different)*: _____
Street *City* *State* *Zip*

b. ☐ petitioner's attorney

Name: _____ Phone: ( )

Street address: _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____
Street *City* *State* *Zip*

Alternate phone *(optional):* _____ Fax *(optional):* _____

E-mail *(optional):* _____

Client's name: _____ State Bar number: _____

The Trial Court Action or Ruling Being Challenged

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name *(fill in the trial court case name):* _____

b. Case number *(fill in the trial court case number):* _____

3 The trial court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the trial court):* _____

4 The trial court took this action or made this ruling on the following date *(fill in the date):* _____

5 If you are filing this petition more than 60 days after the date that you listed in 4, explain the extraordinary circumstances that caused the delay in filing this petition *(describe the extraordinary circumstances):*

Case name: _____ **Case Number:**

The Parties

6 I/My client *(check a. or b.):*

a. ☐ was a party in the case identified in **2**.

b. ☐ was not a party in the case identified in **2**, but I/my client will be directly and negatively affected in the following way by the action taken or ruling made by the trial court *(describe how you/your client will be directly and negatively affected by the trial court's action or ruling):*

_____

_____

_____

7 The other party or parties in the case identified in **2** was/were *(fill in the names of the parties):*

_____

Other Related Court Proceedings

8 The trial court action or ruling I am/my client is challenging *(check a. or b.):*

a. ☐ is not the subject of a pending appeal.

b. ☐ is also the subject of the following pending appeal

(1) Appeal title *(fill in the title of the appeal):* _____

(2) Appellate division case number *(fill in the appellate division case number of the appeal):* _____

9 I/My client *(check a. or b. and provide the requested information):*

a. ☐ have not/has not filed a previous petition for a writ challenging this trial court action or ruling.

b. ☐ have/has filed a previous petition for a writ challenging this trial court action or ruling. *(Please provide the following information about this previous petition. If you/your client filed more than one previous petition, please attach another page providing this information for each additional petition.)*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

Grounds for This Petition

10 It was an error for the trial court to take the action or make the ruling described in **3** above for the following reasons *(check at least one and provide the requested information):*

a. ☐ Taking such an action or making such a ruling is prohibited by the following constitutional provision, statute, or other legal authority *(identify the constitutional provision, statute, or other legal authority by name and citation and discuss why you think this authority prohibits the action taken or ruling made by the trial court. Attach additional pages if necessary; label these pages as 10a.):*

_____

_____

_____

_____

b. ☐ The trial court had a legal duty to act or rule in the following, different way *(describe the way in which you believe the trial court was obligated to act or rule and identify, by name and citation, any legal authority you believe is relevant to your claim. Attach additional pages if necessary; label these pages as 10b.):*

c. ☐ Other *(describe any other reasons you believe that taking this action or making this ruling was a legal error by the trial court and identify, by name and citation, any legal authority you believe is relevant to your claim. Attach additional pages if necessary; label these pages as 10c.):*

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. Explain why there is no way other than through this petition for a writ—through an appeal, for example— in which your arguments can be adequately presented to the appellate division:

b. Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:

12 I request that this court *(check all that apply and provide the requested information):*

a. ☐ direct the trial court to do the following *(describe what, if anything, you want the superior court to be ordered to do):*

b. ☐ prohibit the trial court from doing the following *(describe what, if anything, you want the trial court to be ordered NOT to do)*: _____

c. ☐ issue a stay restraining the trial court from proceeding with this action until this court decides whether to grant or deny this petition *(describe below why it is urgent that the trial court be restrained from proceeding with this action and check the Stay Requested box on page 1 of this form):*

I/My client:

(1) ☐ asked the trial court to stay these proceedings, but the trial court denied this request *(include a copy of the trial court's order denying your request for a stay in your supporting documents).*

(2) ☐ did not ask the trial court to stay these proceedings for the following reasons *(describe below why you did not ask the trial court to stay these proceedings):*

d. ☐ take other action *(describe):* _____

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

Case name: _____

Case Number:

Supporting Documents

13 The reporter's transcript or other record of the oral proceedings in the trial court required by rule 8.901(b)(1)(D) of the California Rules of Court is attached.

14 The following other supporting documents required by rule 8.901()(1)(A)–(C):

- The trial court ruling being challenged in this petition;
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position; and
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged;

(check a. or b.):

a. ☐ are attached.

b. ☐ are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.901 provides that in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Verification

I declare under penalty of perjury under the laws of the State of California, based on the accompanying official documents and other information communicated in the course of official business and, otherwise, on my personal knowledge, that the foregoing is true and correct.

Executed on *(fill in the date):* _____ at *(fill in the city):* _____, California.

_____ ▶ _____

(Type or print your name) *(Signature of petitioner or attorney)*

Item SP07-18 Response Form

Title: Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions

☐ **Agree** with proposed changes

☐ **Agree** with proposed changes **if modified**

☐ **Do not agree** with proposed changes

Comments: _____

_____

_____

_____

_____

_____

_____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 Attention: Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.