

Invitation to Comment

Title	Appellate Procedure: Record on Appeal (amend Cal. Rules of Court, rules 8.866, 8.868, 8.917, and 8.919)
Summary	This proposal would amend the California Rules of Court relating to the record on appeal in misdemeanor and infraction cases to specify the consequence if the appellant fails to timely make a required deposit for a reporter’s transcript, official electronic recording, or transcript prepared from such an electronic recording or take one of the alternate actions specified in the rules.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov

Rules 8.866 and 8.919 of the California Rules of Court provide that in misdemeanor cases in which the defendant was not represented by appointed counsel at trial and in infraction cases, if the defendant appeals and requests a reporter’s transcript, the reporter must provide an estimate of how much it will cost to prepare the transcript. Within 10 days after the clerk sends this estimate, the defendant-appellant must deposit the estimated cost of the transcript, file a declaration of indigency, or notify the clerk that he or she will be using a statement on appeal instead of a reporter’s transcript. Rules 8.868 and 8.917 similarly provide for depositing the estimated cost for preparing a copy of an official electronic recording or transcript prepared from an official electronic recording. Currently, however, these rules do not indicate what the consequences are if a defendant-appellant does not timely make the required deposit or take one of the other actions permitted by these rules. In contrast, rules 8.869(b)(3) and 8.916(b)(3), which relate to statements on appeal in misdemeanor and infraction cases, provide that if the appellant does not file a proposed statement on appeal within the time specified in the rule, 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.

This proposal would fill the gap in the rules relating to the use of reporter’s transcripts and official electronic recordings in misdemeanor and infraction appeals by providing that if the appellant does not timely make the required deposit for the transcript or recording or take one of the other actions permitted by these rules, the trial court clerk must promptly notify the appellant that the appeal will be dismissed unless one of the specified actions is taken within 15 days after the notice is mailed.

The committee would particularly appreciate comments on whether dismissal of the appeal or proceeding without a record of the oral proceedings from the trial court is the most appropriate consequence when a defendant-appellant in a misdemeanor or infraction case does not take an action necessary to procure the record on appeal, such as making a required deposit for a requested reporter's transcript or filing a proposed statement on appeal. As noted above, dismissal of the appeal is the consequence currently provided for failure to timely file a proposed statement on appeal under rules 8.869(b)(3) and 8.916(b)(3) and, under rules 8.140 and 8.842, it is also the consequence if the appellant in either a limited or unlimited case fails to take action necessary to procure the record on appeal. However, under rule 8.864(c) and 8.915(c), if an appellant in a misdemeanor or infraction case fails to timely file the required notice informing the court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court, the applicable consequence is that the appeal will proceed without a record of the oral proceedings from the trial court.

Rules 8.866, 8.868, 8.917, and 8.919 of the California Rules of Court would be amended, effective January 1, 2011, to read:

Title 8. Appellate Rules

Chapter 3. Appeals and Records in Misdemeanor Cases

Article 2. Record in Misdemeanor Appeals

Rule 8.866. Preparation of reporter's transcript

(a) When preparation begins

(1) * * *

(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) If the appellant does not take one of the actions specified in (C) within the time required, the trial court clerk must promptly notify the appellant by mail that the appeal will be dismissed unless one of the specified actions is taken within 15 days after the notice is mailed.

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

- 3
- 4 (i) The clerk receives the required deposit under (C)(i); or
 - 5
 - 6 (ii) The trial court determines that the defendant is indigent and orders
7 that the defendant receive the transcript without cost.
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9 **(b) – (e) * * ***

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12 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

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14 **(a) – (c) * * ***

15

16 **(d) When preparation begins**

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18 (1) * * *

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

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23 (A) Within 10 days after the date the defendant files the election under rule
24 8.864(a)(1), the clerk must notify the appellant and his or her counsel of
25 the estimated cost of preparing the transcript or the copy of the
26 recording. The notification must show the date it was mailed.

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

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

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

36

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

39

40 (C) If the appellant does not take one of the actions specified in (B) within
41 the time required, the trial court clerk must promptly notify the appellant

1 by mail that the appeal will be dismissed unless one of the specified
2 actions is taken within 15 days after the notice is mailed.

3
4 ~~(C)~~(D) Preparation of the transcript must begin when:

- 5
6 (i) The clerk receives the required deposit under (B)(i); or
7
8 (ii) The trial court determines that the defendant is indigent and orders
9 that the defendant receive the transcript or the copy of the
10 recording without cost.
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13 **Chapter 5. Appeals in Infraction Cases**

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15 **Article 2. Record in Infraction Appeals**

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17 **Rule 8.917. Record when trial proceedings were officially electronically recorded**

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19 **(a) – (c) * * ***

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

- 22
23 (1) If the appellant is the People, preparation of a transcript or a copy of the
24 recording must begin immediately after the appellant files an election under
25 rule 8.915(a) to use a transcript of an official electronic recording or a copy of
26 the official electronic recording as the record of the oral proceedings.
27
28 (2) If the appellant is the defendant:
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30 (A) Within 10 days after the date the appellant files the election under rule
31 8.915(a), the clerk must notify the appellant and his or her counsel of the
32 estimated cost of preparing the transcript or the copy of the recording.
33 The notification must show the date it was mailed.
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35 (B) Within 10 days after the date the clerk mailed the notice under (A), the
36 appellant must do one of the following:
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38 (i) Deposit with the clerk an amount equal to the estimated cost of
39 preparing the transcript or the copy of the recording;
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41 (ii) File a declaration of indigency supported by evidence in the form
42 required by the Judicial Council; or

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2 (iii) Notify the clerk that he or she will be using a statement on appeal
3 instead of a transcript or copy of the recording.
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5 (C) If the appellant does not take one of the actions specified in (B) within
6 the time required, the trial court clerk must promptly notify the appellant
7 by mail that the appeal will be dismissed unless one of the specified
8 actions is taken within 15 days after the notice is mailed.
9

10 ~~(C)~~(D) Preparation of the transcript must begin when:
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12 (i) The clerk receives the required deposit under (B)(i); or
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14 (ii) The trial court determines that the defendant is indigent and orders
15 that the defendant receive the transcript or the copy of the
16 recording without cost.
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19 **Rule 8.919. Preparation of reporter's transcript**
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21 **(a) When preparation begins**
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23 (1) The reporter must immediately begin preparing the reporter's transcript if the
24 notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the
25 appellant is the People.
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27 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates
28 that the appellant is the defendant:
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30 (A) Within 10 days after the date the clerk mailed the notice under rule
31 8.915(a)(3), the reporter must file with the clerk the estimated cost of
32 preparing the reporter's transcript; and
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34 (B) The clerk must promptly notify the appellant and his or her counsel of
35 the estimated cost of preparing the reporter's transcript. The notification
36 must show the date it was mailed.
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38 (C) Within 10 days after the date the clerk mailed the notice under (B), the
39 appellant must do one of the following:
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41 (i) Deposit with the clerk an amount equal to the estimated cost of
42 preparing the transcript;

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(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) If the appellant does not take one of the actions specified in (C) within the time required, the trial court clerk must promptly notify the appellant by mail that the appeal will be dismissed unless one of the specified actions is taken within 15 days after the notice is mailed.

~~(D)~~(E) 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) – (e) * * *

Item SPR10-12 Response Form

Title: **Appellate Procedure: Record on Appeal** (amend rules 8.866, 8.868, 8.917, | and 8.919)

- 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: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.