

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR19-01**

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**Title**

Appellate Procedure: Notice of appeal and the record in civil commitment cases

**Action Requested**

Review and submit comments by June 10, 2019

**Proposed Rules, Forms, Standards, or Statutes**

Adopt Cal. Rules of Court, rule 8.483; amend rule 8.320; approve form APP-060

**Proposed Effective Date**

January 1, 2020

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Contact**

Sarah Abbott, 415-865-7687  
sarah.abbott@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee proposes a new rule of court describing the required contents of the normal record on appeal for civil commitment cases and a new notice of appeal form for civil commitment cases. This proposal is in response to a suggestion from a member of this committee and is intended to provide needed guidance to litigants and the courts and ensure that appellate records in civil commitment cases are complete.

### Background

The California Rules of Court provide specific direction as to what should be included in the normal record on appeal in many types of cases.<sup>1</sup> However, no rule clearly states what constitutes the normal record on appeal in civil commitment cases. Perhaps because of the absence of a directly applicable rule, appellate records in civil commitment cases may be inadequate, but there is no clear ground for asking the clerk of the superior court to correct the record.

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<sup>1</sup> See, for example, rule 8.120 (unlimited civil appeals); rule 8.320 (criminal appeals); rule 8.407 (juvenile appeals and writs); rule 8.610 (death penalty appeals); rule 8.830 (limited civil appeals); and rule 8.860 (misdemeanor appeals). Additionally, rule 8.480 governs the record on appeal from orders establishing conservatorships under Welfare & Institutions Code section 5350 et seq. (the Lanterman-Petris-Short [LPS] Act), and rule 8.388 governs the contents of the record in appeals from orders granting relief by writ of habeas corpus.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Likewise, the Judicial Council publishes several notice of appeal forms.<sup>2</sup> However, no notice of appeal form specifically applies to civil commitment cases, and such a form could help simplify the appeal process for litigants and court staff.

## **The Proposal**

### **Proposed new rule 8.483**

The proposed new rule governing the normal record on appeal in civil commitment cases is based on existing rule 8.320, governing the contents of the normal record on appeal in criminal cases, as modified to make the rule appropriate for civil commitment appeals. Although civil commitment cases are not criminal, per se, many or most of these matters stem from criminal proceedings, and thus, the contents of the record on appeal will be similar. The new rule is intended to generate a complete and useful record for civil commitment appeals.

The proposed new rule is limited in scope and would apply to appeals of civil commitment orders stemming from criminal proceedings, but not to other types of commitment orders, such as those made under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5300 et seq.), which may be subject to other rules. To provide clear guidance to litigants and courts, the proposed rule explicitly states in subdivision (a) the types of proceedings to which it applies. Other modifications to the language of rule 8.320 have been incorporated into the new rule, including, among others, adding a requirement that diagnostic or psychological reports submitted to the court be included in the record, replacing the term “defendant” with “person subject to the civil commitment order,” and omitting in its entirety subdivision (d) regarding a “limited normal record in certain appeals.”

With respect to placement of the new rule, the appellate rules are generally organized into divisions (Supreme Court and Courts of Appeal, appellate division, and small claims) and then divided into chapters by subject matter. Given the varying contexts in which the issue of civil commitment may arise, such appeals may not fall neatly into any one of the existing divisions or chapters of the appellate rules. Thus, the proposal is to amend title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals) to expand the scope of the chapter to also apply to civil commitment appeals by renaming it “Conservatorship and Civil Commitment Appeals.” New rule 8.483 would immediately follow the existing rules in that chapter governing LPS conservatorship appeals. To address any potential confusion for criminal litigants caused by the placement of the new rule, it is further proposed that an Advisory Committee Comment be added to rule 8.320 (governing the record for criminal appeals) to ensure that litigants and courts are aware of the separate rule governing civil commitment appeals that may be applicable.

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<sup>2</sup> See, for example, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002); *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (APP-102); *Notice of Appeal—Felony (Defendant)* (form CR-120); *Notice of Appeal (Juvenile)* (JV-800); and *Notice of Appeal (Misdemeanor)* (CR-132).

### **Proposed Notice of Appeal—Civil Commitment (form APP-060)**

The proposed new notice of appeal form for civil commitment proceedings (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but modified for use in civil commitment appeals. In particular, given that the person subject to the civil commitment order was either a defendant or a respondent in the underlying proceeding, the form uses the term “Defendant/Respondent” throughout and defines the term to mean the “person subject to the civil commitment” at its first use. The form is also intended to be consistent in scope with the proposed new rule of court governing the normal record on appeal in civil commitment cases. The form includes an item listing the types of civil commitment proceedings, consistent with the types of proceedings in proposed new rule 8.483(a)(1), with which the form may be used. The form would be included in the “APP” (Appellate) category.

### **Alternatives Considered**

#### **Proposed new rule 8.483**

The committee considered making no changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judicial officers. The committee also considered basing the new civil commitment rule on the language of rule 8.480 (governing LPS conservatorship appeals) and modifying that language as appropriate for civil commitment appeals. However, because the new rule is directed to appeals of civil commitment orders stemming from criminal proceedings, not commitments under the LPS Act, the committee decided that basing the new rule on the existing rule governing criminal appeals would be preferable.

The committee further considered the appropriate scope of the new rule, and whether it should include an explicit definition of “civil commitment” proceeding, either in the rule itself or in an advisory committee comment. In subdivision (a), the committee included a paragraph addressing application of the rule to prevent confusion as to what type of proceedings the rule applies. The committee further considered whether to include civil commitments under the LPS Act within the scope of the rule, but because civil commitments under the LPS Act do not necessarily stem from criminal proceedings and may be subject to other rules of court, the committee decided *not* to extend the rule to govern appeals of LPS civil commitments.

With respect to placement of the rule, the committee considered three alternative placements and decided that expanding the scope of chapter 6 to include both conservatorship and civil commitment appeals, and placing the new rule therein, would be clearest. The committee alternatively considered whether the rule should be located in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 3 (Criminal Appeals), article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals. Although this placement could make clear that the rule is intended to cover only appeals of civil commitment orders stemming from criminal proceedings, it could also cause confusion or raise questions as to whether the new rule constitutes a change in substantive law because civil commitments are not criminal proceedings. Consideration was also given to whether to add a new chapter 13 to division 1 of the appellate rules, directed specifically to appeals in civil

commitment proceedings, and to add a new rule under this new chapter. Doing so would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, but it would require the creation of a new chapter containing only a single rule, which is discouraged.

**Proposed Notice of Appeal—Civil Commitment (form APP-060)**

The committee considered not developing a new notice of appeal form for civil commitment orders, and instead expanding the scope of or adding an instruction to an existing form so that the form might also be used in civil commitment appeals. Following a review of existing forms, the committee concluded that creating a new form would be clearer than using any of the preexisting notices of appeal.

The committee considered alternative names for the new form but determined that *Notice of Appeal—Civil Commitment* is the clearest name. With respect to how to reference the person subject to the civil commitment order being appealed most clearly and succinctly throughout the form, the committee considered whether to use the term “person subject to the civil commitment order,” “Defendant/Respondent,” “Petitioner/Respondent,” or some variation thereof. Because the included civil commitment proceedings are not criminal but arise out of underlying criminal proceedings, the committee proposes using the term “Defendant/Respondent,” defined as “the person subject to the civil commitment order.”

Additionally, consideration was given to the scope of a new form, and whether it should include other types of commitments, such as commitments under the LPS Act. Likewise, the committee considered whether the new form might be used for appeals of other types of orders relating to civil commitment proceedings, but concluded that such use would expand the scope of the new form well beyond the scope of the associated proposed new rule of court and could create confusion for litigants and courts.

With respect to how to categorize the form, the committee considered whether the form should be included within the criminal forms and given a “CR” (Criminal) form designation. Because civil commitment appeals are not technically criminal in nature, and in light of the committee’s decision not to place the proposed new rule of court in the chapter of the appellate rules governing criminal appeals, the “CR” designation was not used. Likewise, the committee considered changing the name of the “GC” (Guardianships and Conservatorships) category to also include civil commitments and using the “GC” moniker for the new form. However, because there are no other appellate forms in this category, inclusion of a notice of appeal specific to civil commitments could cause confusion for self-represented litigants in guardianship and conservatorship proceedings. Finally, the committee considered using the “MC” (Miscellaneous) category designation, given the unique subject matter of civil commitment proceedings, but concluded that such a designation could also make it difficult for litigants to locate the new form.

## Fiscal and Operational Impacts

No significant implementation requirements, costs, or operational impacts are anticipated. However, some cost associated with duplication and distribution of the new form is likely, and some additional training will be required for court staff responsible for preparing the record on appeal in civil commitment cases.

### Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is the scope of the rule appropriate, and in particular should the rule be applicable to any other type of civil commitment order, such as commitments under the LPS Act?
- Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript?
- Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order?
- Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules?
- Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal?
- Is the scope of the form appropriate, and in particular, should it be available for the appeal of any other type of civil commitment order, such as commitments under the LPS Act?
- Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## Attachments and Links

1. Cal. Rules of Court, rules 8.830 and 8.483, at pages 6–9
2. Form APP-060, at page 10

Rule 8.483 of the California Rules of Court would be adopted and rule 8.320 would be amended, effective January 1, 2020, to read:

1 **Rule 8.320. Normal record; exhibits**

2  
3 **(a)–(f) \* \* \***

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5 **Advisory Committee Comment**

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8 Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be  
9 included in the record on appeal. Examples of confidential records include Penal Code section  
10 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden*  
11 (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings  
12 on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v.*  
13 *Superior Court* (1982) 31 Cal.3d 424, 430).

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15 **Subdivision (d)(1)(E).** This rule identifies the minutes that must be included in the record. The  
16 trial court clerk may include additional minutes beyond those identified in this rule if that would  
17 be more cost-effective.

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19 Rule 8.483 governs the normal record and exhibits in civil commitment appeals.

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22 **Chapter 6. Conservatorship and Civil Commitment Appeals**

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24 **Rule 8.483. Appeal from order of civil commitment**

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26 **(a) Application and Contents**

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28 **(1) Application**

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30 Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508  
31 govern appeals from civil commitment orders under Penal Code sections  
32 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to  
33 stand trial), 1600 et seq. (continue outpatient treatment or return to  
34 confinement), and 2962 et seq. (mentally disordered offenders), as well as  
35 Welfare & Institutions Code sections 1800 et seq. (extended detention of  
36 dangerous persons), 6500 et seq. (developmentally disabled persons), and  
37 6600 et seq. (sexually violent predators).  
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1 (2) Contents

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3 In an appeal from a civil commitment order, the record must contain a clerk's  
4 transcript and a reporter's transcript, which together constitute the normal  
5 record.

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7 **(b) Clerk's transcript**

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9 The clerk's transcript must contain:

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11 (1) The petition;  
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13 (2) Any demurrer or other plea, admission, or denial;  
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15 (3) All court minutes;  
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17 (4) All jury instructions that any party submitted in writing and the cover page  
18 required by rule 2.1055(b)(2) indicating the party requesting each instruction,  
19 and any written jury instructions given by the court;  
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21 (5) Any written communication between the court and the jury or any individual  
22 juror;  
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24 (6) Any verdict;  
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26 (7) Any written opinion of the court;  
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28 (8) The commitment order and any judgment or other order appealed from;  
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30 (9) Any motion for new trial, with supporting and opposing memoranda and  
31 attachments;  
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33 (10) The notice of appeal and any certificate of probable cause filed under rule  
34 8.304(b);  
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36 (11) Any transcript of a sound or sound-and-video recording furnished to the jury  
37 or tendered to the court under rule 2.1040;  
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39 (12) Any application for additional record and any order on the application;  
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41 (13) Any diagnostic or psychological reports submitted to the court;  
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43 (14) Any written waiver of the right to a jury trial or the right to be present; and

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(15) If the appellant is the person subject to the civil commitment order:

- (A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments; and
- (B) Any document admitted in evidence to prove a juvenile adjudication, criminal conviction, or prison term.

**(c) Reporter’s transcript**

The reporter’s transcript must contain:

- (1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication;
- (2) The oral proceedings on any motion in limine;
- (3) The oral proceedings at trial, excluding the voir dire examination of jurors and any opening statement;
- (4) All 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 of the commitment hearing or other dispositional hearing;
- (9) Any oral waiver of the right to a jury trial or the right to be present; and
- (10) If the appellant is the person subject to the civil commitment order:
  - (A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;
  - (B) The closing arguments; and
  - (C) Any comment on the evidence by the court to the jury.



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**(d) Exhibits**

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

**(e) Stipulation for partial transcript**

If counsel for the person subject to the civil commitment order and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY  <b>DRAFT</b>  <b>03-28-2019</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>	
<b>PEOPLE OF THE STATE OF CALIFORNIA</b> vs. Defendant/Respondent: _____	
<b>NOTICE OF APPEAL—CIVIL COMMITMENT</b>	CASE NUMBER: _____

**NOTICE**

**You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**

1. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment made by the superior court.

NAME of Defendant/Respondent: \_\_\_\_\_  
 DATE of the order or judgment: \_\_\_\_\_

2. This appeal is (*check one*)

- a.  after a jury or court trial.
- b.  after a contested hearing.
- c.  Other (*specify*): \_\_\_\_\_

3. Defendant/Respondent is currently being held under:

- Penal Code, § 1026 et seq. (not guilty by reason of insanity)
- Penal Code, § 1370 et seq. (incompetent to stand trial)
- Penal Code, § 1600 et seq. (return to confinement)
- Penal Code, § 2962 et seq. (mentally disordered offenders)
- Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
- Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)
- Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
- Other (*specify*): \_\_\_\_\_

4.  Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent  was  was not represented by an appointed attorney in the superior court.

5. Defendant/Respondent's mailing address is  same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.  
 as follows: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

\_\_\_\_\_  
 (SIGNATURE OF DEFENDANT/RESPONDENT OR ATTORNEY)