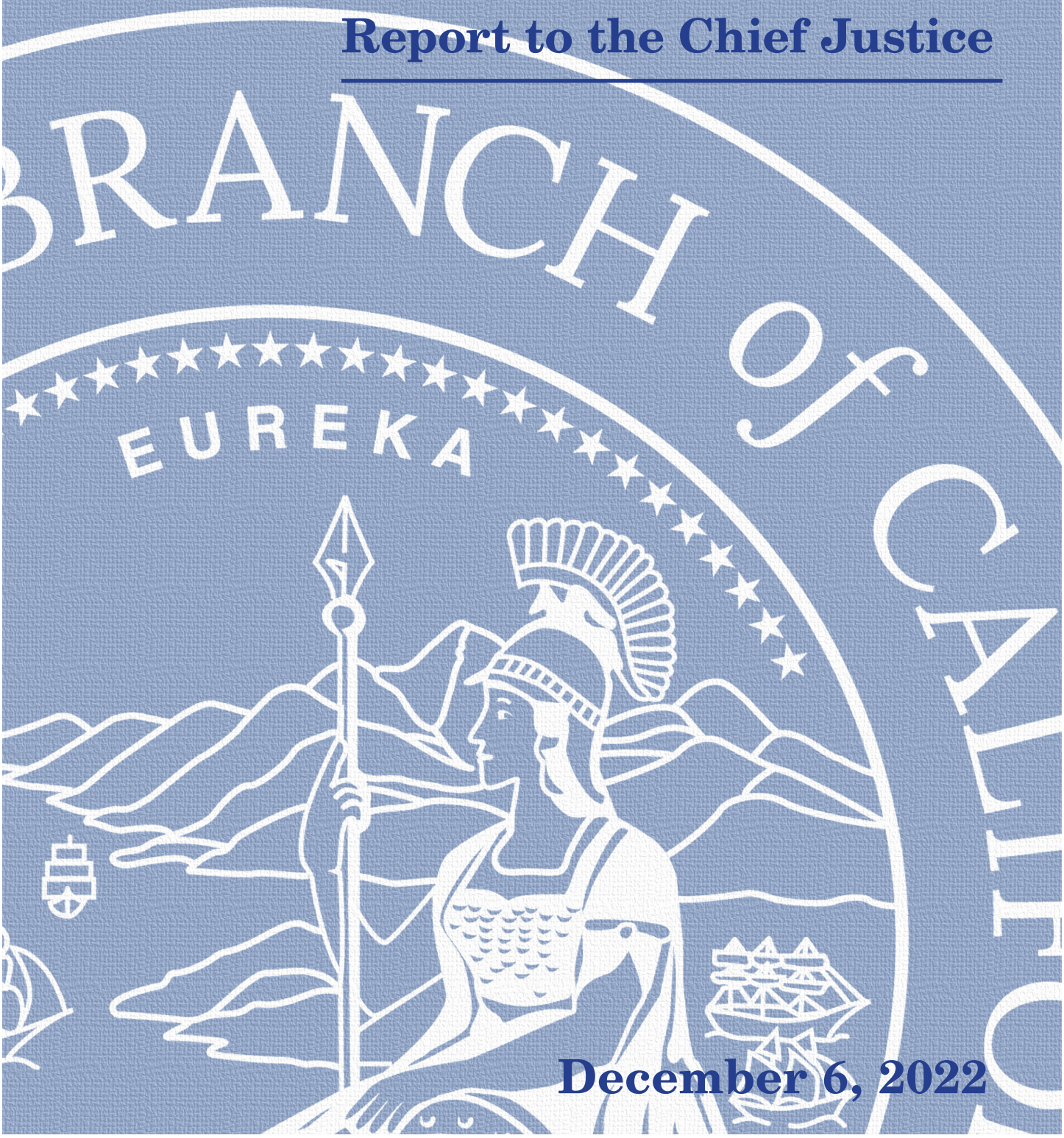
APPELLATE CASEFLOW WORKGROUP

Report to the Chief Justice



December 6, 2022

APPELLATE CASEFLOW WORKGROUP

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Administrative Presiding Justice of the
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Associate Justice of the Court of Appeal,
Third Appellate District

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EXECUTIVE SUMMARY

Charge and Background

Chief Justice Tani G. Cantil-Sakauye formed the Appellate Caseflow Workgroup (workgroup) in June 2022 in response to findings issued by the Commission on Judicial Performance (CJP) concerning case delays in the Third District Court of Appeal (Third District). The workgroup has eighteen members. They include seven justices (five administrative presiding justices and two associate justices), five appellate court managing attorneys, one appellate court clerk/executive officer, three private-sector appellate specialists (including the president of the California Academy of Appellate Lawyers and the chair of the California Lawyers Association Litigation Section's Committee on Appellate Courts), a deputy attorney general specializing in criminal appeals, and an executive director of a program that assigns counsel for qualified indigent appellate litigants.

The Chief Justice directed the workgroup to review policies, procedures, and management and administrative practices of the Courts of Appeal,[1] and to recommend measures to promote transparency, accountability, and efficiency in issuing timely judgments. She also directed the workgroup to recommend measures for these courts to report metrics on case delays. The workgroup was directed to report back no later than early 2023.

Meetings and Process

To fulfill its charge, the workgroup solicited input from appellate justices and their staff, appellate attorneys, appellate and superior court clerks, appellate practitioners, and other stakeholders.

The workgroup met five times over a five-month period to review, analyze, and discuss information and data; hear from stakeholders; review and discuss appellate policies and practices; exchange comments and ideas; and consider, develop, and propose recommendations.

Summary of Findings and Recommendations

The excessive case delays revealed by the CJP in the Third District were avoidable and inexcusable, and they were harmful to the parties, the aims of justice, and the reputation of the court. But the district has taken prompt and effective measures to remedy the problems and to prevent them from recurring.

[1] The references throughout this report to the Courts of Appeal or the appellate courts exclude the California Supreme Court.

The workgroup found that the main causes of the case delays were a lack of transparent reporting to identify delayed cases and a failure to adequately follow up on known delayed cases to prioritize and resolve them. These causes were exacerbated by the facts that the Third District has a high caseload and until recently had a comparatively small attorney workforce.

The workgroup also found that no similar problem of excessively delayed appeals exists in any other district. As of the last reporting period, September 30, 2022, only a small percentage of fully briefed cases statewide were pending for more than 12 months. Within this small percentage, almost all the cases were deferred for valid reasons or were transferred from one court to another for prompt processing. The remaining handful of cases are actively being worked on.

In addition, the workgroup found that the statewide backlog of fully briefed cases in the Courts of Appeal has fallen significantly. In the last five years, the number of these cases was reduced by 47 percent, far eclipsing the 14 percent reduction in the overall number of appeals during the same period. This progress has left the courts better positioned to resolve cases more quickly.

The revelation of the case delays in the Third District was crucial to correct the serious problem it exposed, but it overshadowed the larger context of the appellate courts' solid and improving overall condition.

The revelation of the excessive delays identified by the CJP was crucial to correct the serious problem it exposed, but it overshadowed the larger context of the appellate courts' solid and improving overall condition.

Still, the workgroup recommends that more be done to prevent excessive case delays from developing in any appellate district. Accordingly, it recommends that the Chief Justice take the following action:

- Request that a report be provided to the Judicial Council's Administrative Presiding Justices Advisory Committee (APJAC) every six months identifying appeals that have been fully briefed for more than a year and that do not have a valid reason for being deferred, and further direct that the APJAC ensure the prompt processing and resolution of identified cases.
- Direct that another report be provided to the APJAC annually to improve its ability to review and manage appellate caseload inequities.
- Urge the APJAC to recommend to the Judicial Council a new or amended rule authorizing the administrative presiding justices, under the oversight of the Chief Justice, to collectively review and address contentions that an administrative presiding justice or presiding justice has not properly managed an important matter.

The workgroup also recommends various other proposals to expedite the record preparation and briefing phases of the appellate process.

If adopted, these measures will speed up the appellate process, prevent excessive case delays from developing, and enhance the public's confidence in the appellate courts.

OVERVIEW OF THE COURTS OF APPEAL

The Courts of Appeal are charged by the California Constitution to render judgments on matters subject to the courts' appellate and original jurisdiction, and to issue decisions in writing with reasons stated for judgments that determine causes.[2] The appellate courts are busy. In fiscal year 2021–22, they issued 8,372 written opinions, of which 8,063 resolved appeals and 309 resolved writ petitions. In addition to resolving cases and writ petitions by issuing written opinions, the courts process appeals that are not resolved by opinions, decide writ petitions that are not resolved by opinions, rule on innumerable motions, and issue countless orders.

There are currently 106 justice positions authorized for the Courts of Appeal. These positions are distributed among 19 divisions within 6 districts, as follows:

District	Number of Divisions	Location	Number of Justices
First	5	San Francisco	20 justices (4 in each division)
Second	7	Los Angeles	28 justices (4 in each division)
	1	Ventura	4 justices
Third	1	Sacramento	11 justices
Fourth	1	San Diego	10 justices
	1	Riverside	8 justices
	1	Santa Ana	8 justices
Fifth	1	Fresno	10 justices
Sixth	1	San Jose	7 justices

The districts vary in terms of geography and population. The Third District, for example, has 11 justices and encompasses the largest geographic area, with 23 northern California counties within its jurisdiction. In contrast, the Sixth District has 7 justices and covers the smallest geographic area, with only 4 counties.

[2] Cal. Const., art. VI, §§ 3, 10, 11 & 14.

Following is a map showing the appellate district boundaries.

Each district is unique and has a set of local rules and internal operating procedures that supplement the California Constitution, statutes, and rules of court.

Presiding Justices and Administrative Presiding Justices

Each division of the Courts of Appeal has one presiding justice who is appointed by the Governor. In a district that has more than one division, the Chief Justice designates a presiding justice to act as the administrative presiding justice.[3] In a district with only one division, the presiding justice acts as the administrative presiding justice. Thus, in the First, Second, and

[3] Cal. Rules of Court, rule 10.1004.

All further rule references are to the California Rules of Court unless otherwise indicated.

Fourth Districts, the administrative presiding justice is appointed by the Chief Justice, while in the Third, Fifth, and Sixth Districts, the presiding justice is automatically the administrative presiding justice of their district.[4]

Each administrative presiding justice is "responsible for leading the court, establishing policies, promoting access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other resources."[5] The administrative presiding justice must perform duties delegated by a majority of the justices in the district with the Chief Justice's concurrence. Among other duties, the administrative presiding justice is responsible for personnel matters, acting as a presiding justice in matters not assigned to a particular division, cooperating and coordinating with the Chief Justice regarding Judicial Council activities, working with the Chief Justice to expedite business and equalize work through the transfer of cases, administering the court's day-to-day operations, and handling matters involving the budget and facilities.[6]

Under the leadership of the Chief Justice, the administrative presiding justices sit on the APJAC.[7] In this capacity, they are tasked with establishing administrative policies to advance efficient functioning of the appellate courts; advising the Judicial Council of resource needs and soliciting the council's support in meeting budget, administrative, and staffing requirements; proposing training for justices and appellate support staff; commenting on and making recommendations to the council about appellate court operations; allocating resources among the appellate courts; and recommending budget change proposals.[8]

Three appellate divisions are separated geographically from the original base of their districts:

- Division Six of the Second District is located in Ventura;
- Division Two of the Fourth District is located in Riverside; and
- Division Three of the Fourth District is located in Santa Ana.

Presiding justices in these geographically separate divisions are authorized, under the general oversight of the district's administrative presiding justice, to supervise staff not assigned to particular justices, act on behalf of the division regarding day-to-day activities, administer the division budget for day-to-day operations, and manage the division's facilities.[9]

[4] Rule 10.1004(a).

[5] Rule 10.1004(b).

[6] Rule 10.1004(c).

[7] Rule 10.52(c).

[8] Rule 10.52(b) & (d).

[9] Rule 10.1004(d).

Appellate Courts' Writ Workload

In reviewing and developing recommendations to reduce appellate delay, the workgroup focused on the appellate courts' workload that involves processing appeals from superior court judgments. The workgroup, however, briefly describes another aspect of the appellate courts workload—the courts' work involving writ petitions—because it is significant and must often be prioritized over appeals.

Last fiscal year, approximately 5,844 writ petitions relating to civil, criminal, juvenile, and juvenile dependency matters were filed in the Courts of Appeal. Unlike appeals from superior court judgments, writ petitions involve the appellate courts' discretionary jurisdiction.[10] Most writ petitions are for mandate (to compel the performance of a nondiscretionary duty),[11] prohibition (to prevent a threatened judicial act that would exceed a lower court's jurisdiction),[12] certiorari,[13] supersedeas (to stay a lower court's judgment or order),[14] or habeas corpus (to review the legality of actions affecting incarcerated prisoners).[15]

When a writ petition is filed, the court must first decide whether to exercise its discretionary jurisdiction over the matter. The amount of discretion the court has in making this decision is extensive but not unbounded. When the court declines to exercise its discretionary jurisdiction, it may deny the petition with a limited or no explanation of its reasons. Nonetheless, extensive review, research, and analysis—often on an expedited and priority basis—is typically required to decide the issues presented.

All appellate courts typically assign the initial review and analysis of writ petitions to attorneys who specialize in the law governing such petitions. These attorneys normally prepare an analysis and recommendation for a panel of three randomly assigned justices to consider. Courts differ on the procedures used for panel members to confer and rule on the petitions.

Some categories of writs, such as those filed in connection with juvenile court dependency proceedings, are given very high priority and are treated more like appeals than writs in the sense that lengthy written decisions are usually issued.

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[10] Cal. Const., art. VI, §§ 10 & 11; Code Civ. Proc., § 904.1(a) ("An appeal, other than in a limited civil case, is to the court of appeal"); Pen. Code, § 1235(b) ("An appeal from the judgment or appealable order in a felony case is to the court of appeal for the district in which the court from which the appeal is taken is located").

[11] Code Civ. Proc., § 1085.

[12] Code Civ. Proc., § 1102.

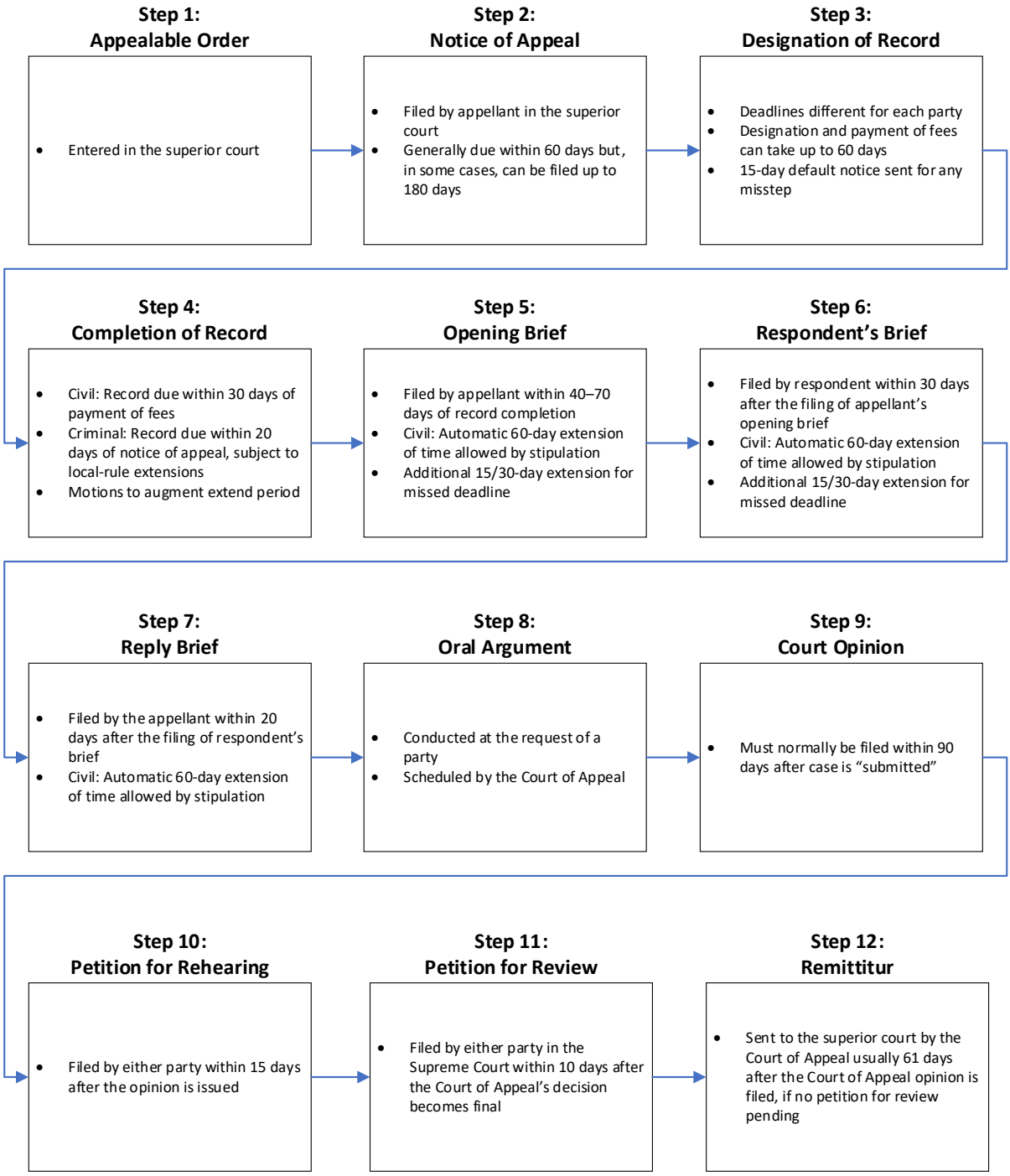
[13] Code Civ. Proc., §§ 1067, 1068.

[14] Rule 8.112.

[15] Cal. Const., art. VI, § 10; rules 8.380–8.387.

Appellate Courts' Appeals Workload

In contrast to the writ process, the appeals process begins when the superior court issues an appealable order or judgment that leaves a party dissatisfied. To appeal from the order or judgment, the party must file a notice of appeal in the superior court in the time frame set by law. The ensuing appellate process involves many steps, as illustrated in the following chart.



As indicated by the chart, the amount of time needed to process and resolve appeals is substantial even in best-case scenarios, such as when the record is timely prepared and filed, no record augmentations are sought, no extensions of the briefing deadlines are requested, oral argument is waived or promptly scheduled, no difficulties arise during the court's review and analysis of the issues or during its preparation and circulation of the draft memorandum or opinion, all panel members agree on the analysis and disposition, and no petitions for rehearing or review are sought. The appellate process can easily take a year or more, even when all these steps progress smoothly.

Considerations Affecting Appellate Case Processing

How quickly appeals can be processed is affected by several factors, many of which are unique to California and outside the appellate courts' control.

The Code of Judicial Ethics requires judges to dispose of judicial matters fairly, promptly, and efficiently and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.[16] Other authority indicates that judges are expected to decide matters assigned to them within 90 days after an appeal is "submitted," and they are prohibited from receiving their salaries when they have an undecided matter under submission for more than 90 days.[17] Appellate cases are submitted when the court has heard oral argument or approved its waiver.[18]

Excessive delays are easy to condemn but harder to define. The National Center for State Courts takes the position that in 95 percent of civil cases, 450 days (about one year and three months) is a reasonable time from the date the notice of appeal is filed to the date the opinion is issued.[19] And it takes the position that a reasonable time for criminal appeals, excluding death penalty cases, is 600 days (about a year and eight months). These guidelines are ill-fitting in California, given the many factors that delay appellate processing that are outside the control of the courts and justices.

The workgroup identified a number of systemic circumstances that can hasten or delay case processing.

[16] Cal. Code Jud. Ethics, canons 2A, 3B(8).

[17] Cal. Const., art. VI, § 19; *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 477, fn. 4.

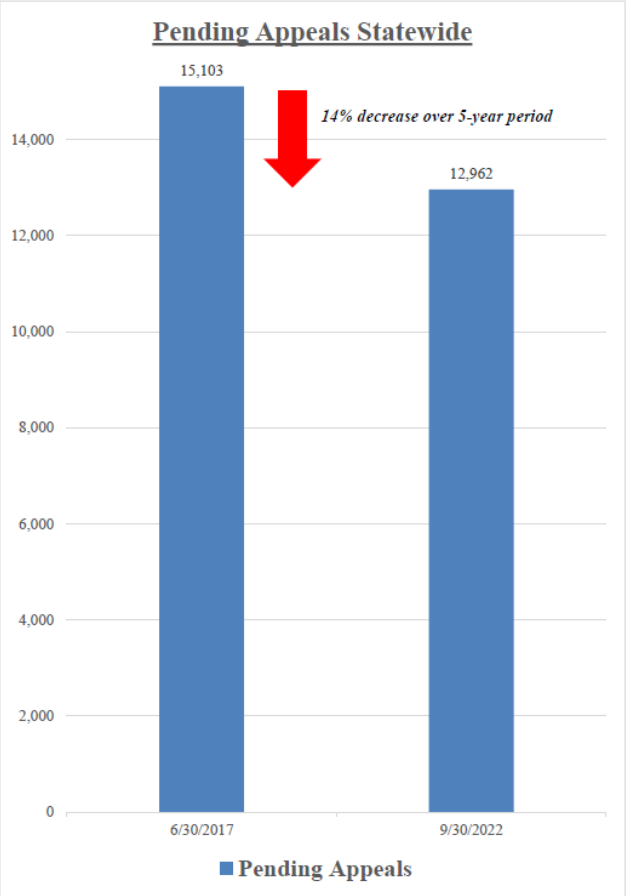
[18] Rule 8.256(d)(1).

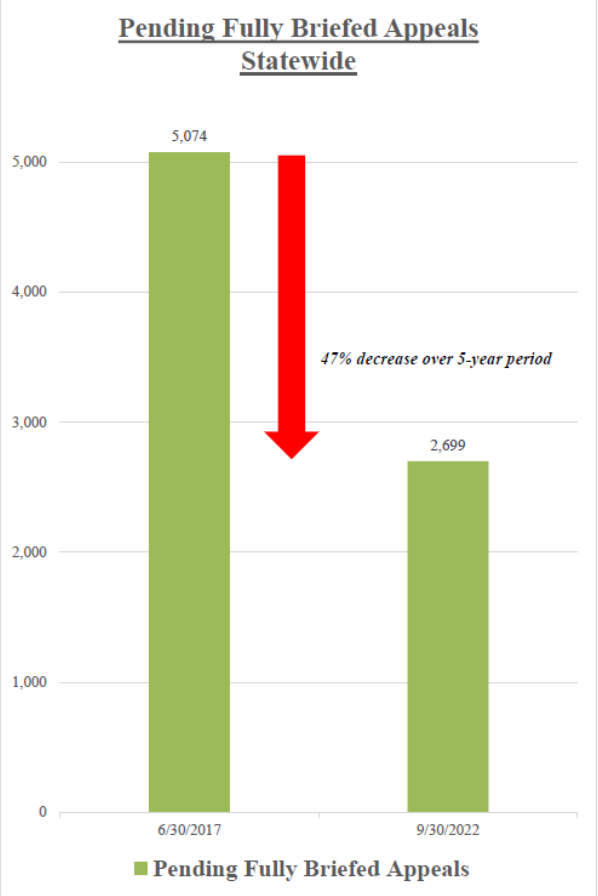
[19] Doerner, John P. (2014), *Model Time Standards for State Appellate Courts*. National Center for State Courts. https://ncsc.contentdm.oclc.org/digital/collection/appellate/id/1032/.

Cases Can Be Resolved More Quickly Because Fully Briefed Caseloads Have Been Significantly Reduced

The part of the appellate process over which the courts and justices have the most control is the period that begins once a case is fully briefed. The workgroup found that in recent years significant statewide progress has been made in reducing the number of pending fully briefed cases. This reduction enables justices to start reviewing and deciding cases more quickly.

The significant reduction in pending caseloads cannot be explained away by suggesting that it was due to a decrease in appeals. While it is true that in the past five years the number of appeals pending fell by 14 percent, the number of pending fully briefed cases was reduced by 47 percent.





In short, the ability of the Courts of Appeal to resolve fully briefed cases more quickly has considerably improved in recent years.

Many Cases Are Deferred for Valid Reasons

The workgroup found that the processing of many appeals is properly extended for valid reasons. Examples of such reasons include:

- A bankruptcy court has stayed all related proceedings, including state appellate proceedings;
- Stays have been entered at the request of the parties, to allow for further proceedings in the trial court, or for other legitimate reasons;
- Supplemental briefs have been ordered to consider the effect of newly enacted legislation or for other legitimate reasons;
- Tentative opinions have been issued;
- Panel members are actively engaged in discussing the appropriate case resolution;
- Opinions have been issued but rehearing was granted;
- Interim petitions for review in the Supreme Court have been filed or granted;
- Cases are remanded by the United States or California Supreme Court; or
- Cases involve an appeal from a death sentence.

Cases Are Often Delayed Because of Automatic Extensions

California statutes and rules provide for many automatic extensions of time at various steps of the appellate process, and the courts have no ability to deny them. For example, if a party in a civil case makes a mistake in designating the record or fails to pay a record preparation fee, a notice of default must be sent by the superior court clerk, and the party is given 15 days from the date of the notice to remedy the problem.[20] Delays are compounded in cases in which multiple mistakes are made because multiple 15-day notices must be sent.

The parties in civil cases may also stipulate to extend the time for filing their briefs by up to 60 days.[21] And if a party in a civil case fails to file a brief within the prescribed deadline, the appellate court clerk is required to notify the party that the brief must be (but still can be) filed within 15 days from the date of the notice.[22] If a party in a criminal case fails to file a timely brief, a similar notice is sent, but it informs the party that the brief must be filed within 30 days from the date of the notice.[23] These automatic extensions can add up, and they result in a considerable amount of processing time over which the courts have no control.

[20] Rule 8.140(c).

[21] Rule 8.212(b)(1).

[22] Rule 8.220(a).

[23] Rule 8.360(c)(5).

Case Processing Is Affected by Statutory and Other Priorities

Statutory and other priorities also affect case processing. In California, many types of appeals are required by statute to be given priority. A list of statutes and rules that explicitly address many of these statutory priorities is provided in the appendix to this report. In addition, dozens of other statutes and rules indirectly suggest that other types of appeals should be prioritized. Prioritizing some appeals means that the appeals not prioritized necessarily take longer to resolve.

How best to prioritize cases requires a consideration of multiple factors in addition to the statutory directives, which can compete or be unclear. No guidelines explain how justices should apply these factors and directives, but they are best assessed by the assigned justice in the exercise of the justice's discretion and in consideration of the justice's entire docket.[24]

The statutory priorities are often expressed in categorical terms or are unclear and can lead to superficial assumptions about how cases should be prioritized. In the CJP findings that gave rise to the establishment of this workgroup, the justice was criticized because "more than half of [his] delayed cases were matters in which the people of the state were parties. He did not accord these matters calendar preference over civil appeals, and other cases (excluding juvenile matters) that had been filed during the same period, as provided by section 44 of the Code of Civil Procedure."[25]

The premise, however, assumes that Code of Civil Procedure section 44 categorically requires appeals involving the People to be prioritized over almost all other appeals. But dozens of other statutes expressly grant appellate preference. Without knowing the subject matter and circumstances of the "civil appeals, and other cases," it is unclear whether the justice's cases involving the People necessarily warranted a higher priority.

The premise also supposes that Code of Civil Procedure section 44 contains a clear directive. The section states:

> Appeals in probate proceedings, in contested election cases, and in actions for libel or slander by a person who holds any elective public office or a candidate for any such office alleged to have occurred during the course of an election campaign shall be given preference in hearing in the courts of appeal, and in the Supreme Court when transferred thereto. All these cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties.

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[24] As our Supreme Court recognized recently, while the Legislature may impose reasonable rules and regulations governing how the courts are to conduct their business, the courts retain the right to control their own dockets, including the right to determine the order in which cases are decided. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 852–853.) If the rule were otherwise, serious constitutional questions would arise under the separation of powers doctrine. (*Id.* at p. 853.)

[25] Public admonishment by the CJP, https://cjp.ca.gov/wp-content/uploads/sites/40/2022/06/Raye_DO_Pub_Admon_6-1-22.pdf?emrc=f5c572.

The People are parties in every criminal appeal. While many criminal appeals warrant priority, others may not. Appeals potentially affecting a defendant's liberty certainly take precedence, but appeals involving minor issues may not. Should a court prioritize an appeal of a defendant who was sentenced to life in prison when the defendant's appeal only seeks, for example, a recalculation of a small fine? Should such a case be prioritized over other appeals that also have statutory priority or present more legitimate, time-sensitive concerns, such as a civil appeal threatening the economic livelihood of a person or small family-owned business?

Reflexive assumptions about case priorities are misguided and may be harmful. Prioritizing appeals in a way to best advance the interests of the parties and the public is complicated and requires justices to consider statutory directives, the individual circumstances of particular appeals, and the other cases on their dockets.

Most Proposition 66 Appeals Must Be Deferred

Appeals filed under Proposition 66 are often deferred as the result of policy and budgetary decisions made by the other branches of government. Proposition 66 was approved by the California electorate in November 2016 to hasten the review of death penalty cases by changing various court procedures. Before Proposition 66, habeas corpus petitions in death-penalty cases were filed in and decided by the Supreme Court. Now, these petitions are filed in and decided by the trial court in which the defendant was originally convicted. Once decided in that court, the decision may be appealed to a Court of Appeal, followed by a final review by the California Supreme Court.

Appeals under Proposition 66 often cannot be processed because the Legislature has declined to authorize funding to pay for the retention of counsel for the appellant, or to enable courts to hire the necessary staff to handle these cases. Since the passage of Proposition 66, the judicial branch has regularly, but unsuccessfully, sought funding to enable the appellate courts to implement it. Although some of these cases can be processed when they raise straightforward procedural issues and the appellant is represented by private or other retained counsel, most will continue to be deferred.

Case Processing Is Slowed When There Are Prolonged Vacancies in Justice Positions

Currently there are 14 justice vacancies, with 3 more expected at the beginning of 2023 as the result of planned retirements. Courts, of course, have no authority over appointments to fill justice vacancies. This authority lies with the Governor.[26] The Governor's decision to fill vacancies is weighty and takes time, but the appellate courts' ability to process and resolve cases efficiently is inevitably diminished when vacancies are left unfilled for prolonged periods. Exacerbating the problem is that when a justice retires or leaves, the court often loses some or all of the justice's staff, including attorneys. These positions cannot be easily filled while the justice position remains vacant.

[26] Cal. Const., art. VI, § 16.

The loss of productivity resulting from justice vacancies can be mitigated with the appointment of pro tempore judges, but only to some extent.[27] Pro tempore judges are typically authorized for 60 days, with the possibility of an additional 30- or 60-day extension. Within these short periods, these temporary judges must familiarize themselves with the workload and their assigned court's policies and practices. Successive pro tempore appointments to fill prolonged vacancies lead to additional unavoidable inefficiencies. Finally, it can be challenging to find judges who are available to be appointed pro tempore. Many superior courts have case backlogs and their own judicial vacancies, and superior court presiding judges facing such circumstances can resist or impose limits on allowing judges to serve pro tempore on an appellate court.

[27] See Cal. Const., art. VI, § 6 (authorizing the Chief Justice to assign judges to other courts).

THE THREE PHASES OF AN APPEAL

The workgroup separated the appellate process into three distinct phases:

1. Record preparation phase;
2. Briefing phase; and
3. Decisional phase.

The Record Preparation Phase

The appellate process begins when a litigant files a notice of appeal with the trial court.[28] The clerk of the trial court mails a notice that the appeal has been filed to all counsel of record and to the appropriate Court of Appeal.[29]

The next step is the preparation of the appellate record.[30] This record typically consists of the clerk's transcript[31] (or an appendix in lieu of the clerk's transcript)[32] and the reporter's transcript.[33]

Applicable rules contemplate that appellate records will be prepared quickly, but this aspiration is often unfulfilled for reasons discussed below. Generally, the rules require that the clerk's and the reporter's transcripts in a criminal appeal be completed within 20 days of the date of the notice of appeal.[34] Local rules in the districts sometimes grant automatic extensions.[35] While the appellate court may order "one or more extensions of time for preparing the record," the total time extended may not exceed 60 days.[36] The rules provide that "[e]ach clerk/executive officer of the Court of Appeal, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule."[37]

[28] Rule 8.100.

[29] Rule 8.100(e).

[30] Rule 8.120.

[31] Rule 8.122.

[32] Rule 8.124.

[33] Rule 8.130.

[34] Rule 8.336(c)(2) & (d)(3).

[35] See Ct. App., First Dist., Local Rules, rule 2(b) (granting 30-day automatic extension).

[36] Rule 8.336(e)(2).

[37] Rule 8.336(h).

The workgroup met and spoke with court executive officers and representatives from multiple superior courts who identified two main causes of the most serious delays in the record preparation process:

- Many superior courts have too few fully trained record clerks.
- The pool of available certified shorthand reporters statewide is too small and has been shrinking.

Clerk's Transcript

The clerk's transcript is prepared by a clerk in the superior court. In civil cases, this transcript consists of the documents required by the rules of court[38] and the documents listed by the appellant on *Appellant's Notice Designating Record on Appeal* (form APP-003). A respondent may also designate documents to be included in the clerk's transcript.[39]

A clerk's transcript can include any documents that are contained in the trial court file, such as:

- Filed documents and/or forms;
- Orders that were issued;
- Minute orders that record what happened in the trial court;
- Any exhibit that was admitted into evidence, or that was refused or lodged; and
- The record of administrative proceedings (in cases involving such proceedings).

In criminal appeals, the clerk's transcript consists mainly of the documents that the rules of court require to be included.[40]

The superior courts have too few fully trained staff to compile clerks' transcripts promptly. The problem is particularly acute in smaller courts that may have too few appeals to justify hiring a full-time records preparation clerk. In these courts, the record preparation task becomes part of a larger job with competing duties, which may be perceived as having higher priority. In courts that are short-staffed, delays are worsened by employee turnover, vacancies, and absences.

Preparing the clerk's transcript can be difficult. The types of records needed for civil, criminal, and juvenile cases are all different, and it takes training and time to learn how to properly prepare these records. Finding case files, reviewing their contents, and identifying relevant documents takes time. In civil cases, designations of record submitted by self-represented litigants or less experienced attorneys can be unclear and imprecise, and they can require time-consuming follow-up measures, such as issuing multiple default notices. These difficulties

[38] Rule 8.122(b).

[39] Rule 8.122(a)(2).

[40] Rule 8.320(b) & (d).

are deepened when the court's newest and less experienced clerks are assigned record preparation duties.

On a positive note, technology is helping to make the record preparation process easier and faster. The adoption of rules requiring or allowing parties to file pleadings electronically, and programs that facilitate the electronic compilation and transfer of the appellate record, are easing the superior court's burdens. Preparing an electronic appellate record from an electronic database can be easier and more streamlined. But while this technological transition is underway, it is not complete, and in many courts, paper documents must be scanned for them to be included in an electronic record. Not all courts have full scanning capacity, and some courts, because of their small size or unique circumstances, want to retain the ability to transfer hard copies of appellate records.

Appendix in Lieu of Clerk's Transcript

In civil cases, an appendix can be used as an alternative to a clerk's transcript. Under this method of record preparation, the appellant prepares an appendix and decides which documents to include in it. If the respondent believes the appellant's appendix fails to include all of the relevant documents, the respondent may prepare a responsive appendix. The parties may also stipulate to using a joint appendix, under which the parties agree about which documents to include.

Because these appendixes are prepared by the parties rather than clerks, the record preparation process can be faster than the process of completing a clerk's transcript. Still, preparing an appendix is complicated and the parties, especially self-represented litigants and less experienced attorneys, frequently make errors. These errors cause delays because they require the appellate court clerks to notify the parties of the errors and await corrections. It is not uncommon for numerous notices of errors to be sent, thus compounding the delays.

Reporter's Transcript

A reporter's transcript is a written record prepared by a certified shorthand reporter of everything that was said in court, word-for-word, during proceedings relevant to the appeal. With a few minor exceptions, audio recordings are not permitted.[41] A reporter's transcript is needed when a written record of the oral proceedings is necessary for a full understanding of the appellate issues. The parties may elect either an agreed statement[42] or a settled statement[43] as a record of the proceedings instead of a reporter's transcript.

Obtaining timely submission of court reporters' transcripts is a growing problem that has two primary components. The first component is that court reporters are increasingly less accountable to the courts. In the past, more court reporters were employed by courts, which

[41] See Code Civ. Proc., § 269.

[42] Rule 8.134.

[43] Rule 8.137.

provided superior and appellate courts significant control over how and when transcripts were prepared. In recent decades, however, superior courts have been unable to employ court reporters in civil and other non-criminal cases. If parties in those cases want a written record of the oral discourse in their superior court proceedings for purposes of an appellate record, they must hire a private certified shorthand reporter. Courts have less control over how and when reporter's transcripts are prepared by private certified shorthand reporters. Reporter delays in preparing transcripts are frequent, and courts must often resort to time-consuming cajoling, pressure, and issuing orders to get reporters to complete and submit their transcripts.

The second primary component of the problem in obtaining timely submission of reporter's transcripts is that there are simply not enough certified shorthand reporters. The Superior Court of San Diego County, for example, reports that in 2021 alone, the court lost 11 court reporters through attrition while only 36 people passed the state certification examination during that same year. In November 2022, the Superior Court of Los Angeles County stopped providing court reporters in all cases except felony criminal and juvenile matters, citing a lack of available reporters.

> The pool of available certified shorthand reporters statewide is too small and has been shrinking.

The shortage of court reporters causes serious delays in record preparation. Even when court reporters are available, they often must be in court to transcribe hearings. When they are continuously transcribing hearings in court, they do not have time to prepare transcripts.

The shortage of reporters adversely affects the dispensation of justice in other ways. In cases in which court reporters are not provided by the superior court, only parties that can afford to pay for a reporter can develop an appellate record that includes a written, verbatim record of what was said in the superior court proceedings. A reporter's transcript can be critical to presenting the issues for appellate court review. When such a record is available only for those who can pay for it, the result is a two-tiered system of appellate justice: one for those with financial resources and another for those without.[44]

In 1993, the Judicial Council promulgated rules that would have allowed court proceedings to be recorded electronically, thereby reducing the need for court reporters. But in *California Court Reporters Association v. Judicial Council of California* (1995) 39 Cal.App.4th 15, the court struck down those rules, explaining that "[u]ntil the Legislature amends [Code of Civil Procedure] section 269 to permit electronic recording to create an official record, the normal

[44] Superior courts must provide a court reporter to civil litigants with a fee waiver who have made a timely request. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 599.) But even then, courts are obligated to provide a reporter only when one is available, and that is not always the case.

practice in California superior courts is for an official shorthand reporter to create the official record." (*Id.* at p. 33.)

It is unlikely the number of court reporters will significantly increase anytime soon and the number of active, licensed certified shorthand reporters in California falls every year. There are about 15 percent fewer licensed reporters in California than there were five years ago[45] and the number of people taking the licensing exam continues to decline. In 2018, there were 339 examinees; in 2021, there were only 175, and of those 175 examinees, only 36 passed.

One positive development was the passage of Assembly Bill 156 (Stats. 2022, ch. 569), which was signed into law by the Governor on September 27, 2022. This law allows certified reporters to create a verbatim record of proceedings by using voice-writing or voice-recognition technology instead of using symbols or abbreviations in written or machine shorthand. This enables reporters to use a closed microphone voice dictation silencer, steno mask, or similar device in capturing the court proceedings. The recent passage of this bill makes it difficult to know the extent to which it will encourage more reporters to join the field. Additional actions by the Legislature likely will be needed to allow alternative methods of creating an official record.

Record Preparation Phase Recommendations

To address some of these issues and to expedite other aspects of the record preparation process, the workgroup recommends that the Chief Justice take the following actions:

1. Encourage the Judicial Council to provide additional training to superior court record preparation clerks. The Judicial Council should consider advertising and expanding the training it provides through in-person classes and online training formats.[46]
2. Encourage the appellate courts to offer district-specific assistance to superior court record preparation clerks. This is because all appellate districts operate differently with district-specific rules and expectations.
3. Encourage the Judicial Council to consider whether there are ways to reduce the number of tasks required by superior court clerks to prepare the record.
4. Encourage the Judicial Council to consider revising applicable Judicial Council record-designation forms to be simpler, clearer, and more efficient, such as the Second District's form.
5. Encourage the Judicial Council to consider revising the rules of court to not only allow, but also to encourage, represented civil litigants to prepare their own joint appendixes.

[45] California Dept. of Consumer Affairs, Annual Reports (Court Reporters Board of California year-by-year comparison), https://www.dca.ca.gov/publications/annual_reports.shtml.

[46] The Judicial Council's Center for Judicial Education and Research currently offers a Court Clerks Training Institute course every two years. This course is a five-day orientation for new superior court clerks that includes a segment on preparing appellate records.

6. Encourage the appellate courts to work with local bar associations to offer programs to help self-represented litigants and less experienced attorneys navigate the process of designating the record.
7. Encourage the Courts of Appeal to consider methods and available funding to enhance the Appellate Self-Help Resource Center website with a feature that would ask users questions and then automatically populate forms based on the answers provided (such as the TurboTax model). The website is easy to use and has helped thousands of self-represented litigants and attorneys unfamiliar with the appellate process. The enhanced feature would lead to fewer mistakes, which would lead to faster case processing.
8. Encourage the Judicial Council to consider amending the rules of court governing reporter's transcripts in civil cases that require the clerk of the superior court to supervise and process the reporter's transcripts that will ultimately be part of the appellate record. The Second District allows parties in some cases to elect to proceed by filing transcripts directly in the Court of Appeal, and the clerk of that court reported that the process has generally worked well and has streamlined the cases.
9. Encourage the Judicial Council to consider adopting a rule of court that would allow litigants in criminal cases to stipulate to the use of the superior court file in lieu of a clerk's transcript. The need to cure omissions from and to make augmentations to the standard criminal record are two of the most significant causes for record preparation delay. Allowing the superior court to use its file in lieu of creating the clerk's transcript would eliminate those problems and facilitate timely submission of the record to the Court of Appeal. Consideration must be given to whether such a rule would increase the size of criminal case records such that they would be unwieldy for appellate review and whether any such increase could be mitigated by the adoption of electronic record preparation by all superior courts.
10. Encourage the appellate courts to consider adopting local rules expressing the expectation that record-augmentation requests be submitted in one motion on the earliest date practicable, or not later than 30 days after the record has been filed or counsel appointed.[47] Such a rule would reduce late requests to augment the record as a method of obtaining a stay of the briefing deadline.
11. Encourage the Judicial Council to review and consider whether to modify *Civil Case Information Statement* (form APP-004) to allow litigants or counsel to identify an alternative, non-statutory ground for an appeal to be given priority.

The Briefing Phase

The briefing phase of the appellate process begins when the parties are notified that the record has been completed, submitted to the Court of Appeal, and filed. During this phase, three briefs are typically filed: the appellant's opening brief, the respondent's brief, and the appellant's

[47] See Ct. App., First Dist., Local Rules, rule 4(c).

reply brief.[48] In some cases, additional briefs are filed because there are numerous parties, there is a cross appeal,[49] the court has permitted the filing of an amicus curiae brief,[50] the parties have requested and have been granted permission to file supplemental briefs, or the court on its own motion has requested supplemental briefing.

Generally, the appellant's opening brief describes the judgment or order being appealed and argues why it was legally incorrect. The respondent's brief responds to the points raised by the appellant and it argues why the appellant is not entitled to appellate relief. The appellant's reply brief addresses the respondent's brief, and it argues why the points made in the respondent's brief fail to overcome the points made in the opening brief.

The briefing phase takes multiple months even when parties do not take advantage of extensions of time to file their brief. The appellant's opening brief is due 40 days after the Court of Appeal notifies the appellant that the record or reporter's transcript has been filed.[51] In a civil case in which the appellant has elected to proceed with their own appendix and has not requested a reporter's transcript, the appellant's opening brief and appendix are due 70 days from the date of the election.[52] The respondent's brief is due 30 days after the appellant's opening brief was filed[53] and the appellant's reply brief is due 20 days after the respondent's brief was filed.[54]

The rules provide for certain automatic extensions of these deadlines. In most civil cases the parties may extend each of the time periods for filing a brief by up to an additional 60 days by stipulating to such an extension,[55] and the appellate court "may not shorten" any such extension.[56] In addition, if a party in a civil case fails to file a brief by a prescribed deadline, the appellate court clerk is required to notify the party that the brief must be filed within 15 days from the date of the notice.[57] If a party in a criminal case fails to file a timely brief, a similar notice is sent, but it informs the party that the brief must be filed within 30 days from the date of the notice.[58] The districts and divisions have different practices on how quickly they send these notices, an issue we address further below. Some districts send them almost immediately

[48] Rule 8.200(a).

[49] See rule 8.216.

[50] Rules 8.200(c), 8.360(f).

[51] Rules 8.212(a)(1)(A), 8.360(c)(1).

[52] Rule 8.212(a)(1)(B).

[53] Rules 8.212(a)(2), 8.360(c)(2).

[54] Rules 8.212(a)(3), 8.360(c)(3).

[55] Rule 8.212(b)(1).

[56] Rule 8.212(b)(2).

[57] Rule 8.220(a).

[58] Rule 8.360(c)(5).

and others do not. In any event, the appellate court must accept a brief that is filed within 15 days from the date of the notice.[59]

In addition to these automatic extensions of briefing deadlines, other mandatory extensions sometimes apply. For example, during the COVID-19 pandemic appellate courts extended briefing deadlines under the authority of emergency orders entered by the Judicial Council.[60] And under federal and state law, courts must provide a briefing extension when it constitutes a reasonable accommodation to a person with a disability or when not providing an extension would deny a person with a medical condition the full benefit of court services.[61] Together, these rules for automatic and mandatory extensions allow the briefing phase to be extended for 10 months or longer. The courts have little or no authority to shorten this period, and no court or justice can be fairly criticized for the processing time attributable to these nondiscretionary extensions.

Various automatic and mandatory extensions of time can result in protracted delays over which the courts have no control.

In addition to automatic and mandatory extensions, extensions for cause are also allowed under the rules. In describing the policies governing requests for such extensions, the rules state that, on one hand, the rule-established "time limits . . . should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice."[62] On the other hand, the rules state that a party's right to have effective assistance of counsel includes the right to have "adequate time for counsel to prepare briefs or other documents," and that adequate time allows the preparation of "accurate, clear, concise, and complete submissions."[63] In expressly balancing these interests, the rules conclude that any request for a non-automatic extension of time "must demonstrate good cause—or an exceptional showing of good cause."[64] If such cause is demonstrated, rule 8.63(a)(3) dictates that the court "must extend the time."[65]

[59] Rule 8.212(b)(4).

[60] See California Courts Newsroom, Court Emergency Orders, Appellate Courts (March 18, April 9, and April 15, 2020), https://newsroom.courts.ca.gov/covid-19-news-center/court-emergency-orders.

[61] See 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(7) (2022); Gov. Code, § 11135.

[62] Rule 8.63(a)(1).

[63] Rule 8.63(a)(2).

[64] Rule 8.63(a)(3). An "exceptional showing of good cause" is required in certain priority appeals, such as appeals from judgments or orders terminating parental rights or freeing a child from parental custody. See rules 8.416(a) & (f), 8.450(d).

[65] Clouding the applicable standard, rule 8.60(b) states that if such cause is demonstrated, the "presiding justice *may* extend the time to do any act required or permitted under these rules" (italics added).

The rules describe wide-ranging considerations for assessing whether a party has demonstrated "good cause—or an exceptional showing of good cause,"[66] such as:

- The degree of prejudice, if any, to any party;
- The positions of the client and opponent in civil appeals;
- The length of the record;
- The number and complexity of the issues;
- Whether settlement negotiations are underway and their status;
- Whether the case is entitled to priority;
- Whether counsel is new to the case;
- Whether counsel or the client needs more time to review the brief;
- Whether counsel can make a specific showing of other time-limited commitments that prevent the timely filing of the brief;
- Whether counsel is ill, has a personal emergency, or has a planned vacation that was not expected to conflict with the due date; and
- Any other relevant factor.[67]

The workgroup had an extensive and lively discussion on non-automatic requests for extensions to file briefs. Members concluded that the rules articulate sensible policies and factors for courts to weigh in evaluating these requests. Still, some concerns were identified. First, some attorney members of the workgroup commented that, while they have no objections to the rules' policies and factors for courts to weigh, their experience has been that appellate courts inconsistently apply these policies and factors. One institutional attorney observed that appellate specialists often know which courts will be more lenient about extension requests, and they triage their workload by seeking extensions in those courts. Thus, decisions to seek extension requests in particular cases can be driven by this practical consideration rather than a more meaningful evaluation of the relative importance and priority of the cases in the attorney's workload.

> Presiding justices, especially those in districts with multiple presiding justices, should periodically confer to advance more consistent applications of the standards used in considering requests for discretionary extensions of time.

Some justices on the workgroup raised concerns with the approved Judicial Council forms for seeking extensions of time. These forms are different in civil (APP-006) and criminal (CR-126)

[66] Rule 8.63(b).

[67] Rule 8.63(b)(1)–(11).

appeals, but some justices believed that neither provides sufficient information on which to assess the factors set forth in rule 8.63(b)(1)–(11). The civil form includes no place for the movant to identify whether the case has priority, and while the form requires the movant to identify if the other side was unwilling to stipulate to an extension, it does not require the movant to otherwise explain the extent to which an extension may or may not prejudice the client or other side. Although the criminal form requires the movant to identify the defendant's conviction and the length of the record, it does not require the movant to otherwise explain the extent to which an extension may or may not prejudice the defendant.

Briefing Phase Recommendations

To address some of these issues and to expedite other aspects of the briefing phase, the workgroup recommends that the Chief Justice take the following actions:

1. Encourage presiding justices, especially those in districts with multiple presiding justices, to confer periodically in a meaningful attempt to advance more consistent applications of the standards used in considering requests for discretionary extensions of time.
2. Request that the appellate court clerks establish policies and practices that will ensure that notices to parties under rules 8.220(a) and 8.360(c)(5) are uniformly sent to the defaulting party within a day or two of the missed deadline. In addition, the Judicial Council's Appellate Advisory Committee should consider whether the rules of court should be modified to allow an opposing party to send out such a notice, and to make the 15-day time period for filing the brief start to run from the earlier of the clerk's or the party's notice.
3. Encourage the Judicial Council to review and consider whether forms APP-006 and CR-126 should be modified to enable courts to better evaluate whether a movant has demonstrated good cause. Specifically, the council should consider whether the civil form should require additional information such as whether the appeal is a priority case, and the degree to which any extension might prejudice the client or opponent. For the criminal form, the council should consider whether the form should require additional information to help the court assess the degree to which an extension might prejudice the defendant. The council should also consider whether the rules of court should be modified to require the parties to include all or some of this information when they request an extension without using an approved form.
4. Encourage the Judicial Council to consider whether parties should be encouraged or required to submit, along with their briefs, excerpts of the record that would compile all parts of the record that are relevant and useful to the court in deciding the appeal.

The Decisional Phase

Once the appellant's reply brief is filed (or the time for filing it has expired), the appeal is considered fully briefed and the decisional phase of the appeal begins. Many appeals are dismissed before becoming fully briefed because the parties have abandoned or settled the appeal, or a motion to dismiss was granted. Thus, the number of cases that become fully briefed (and that therefore require resolution by an opinion) is far less than the number of appeals filed. Because most cases are not assigned to justices until they are fully briefed, the number of cases that are fully briefed is the most important and meaningful measure of justices' caseloads.

The ways cases are assigned varies. In some courts, cases are assigned to justices immediately or shortly after they become fully briefed, while in other courts they are assigned later, after the cases have been reviewed and justices' workloads are assessed. In some courts, cases are assigned weights to account for their complexity and then distributed in a way to roughly equalize workloads, while in other courts cases are assigned with the understanding that over time justices will receive relatively equal workloads. In many courts, certain categories of cases are assigned on a rotational basis, such as dependency matters or *Wende* appeals.[68]

The ways in which cases are worked on also varies. All justices have full-time chambers attorneys, although the numbers vary. All courts also have writ and central staff attorneys, although their numbers also vary. In some courts all cases are assigned to chambers, which then seek assistance from central staff attorneys when they are available and needed to assist with the caseload. In other courts certain types of cases are assigned to chambers attorneys while other types of cases are first assigned to central staff attorneys.

Justices, chambers attorneys, and central staff attorneys all prepare memoranda or draft opinions proposing how a case should be decided. Some justices prepare many of their own drafts, while others rely more heavily on the attorneys for initial drafts. Each justice supervises his or her chambers staff. In some courts, justices decide whether and how their work is to be assigned to attorneys and completed; in others, cases are weighted and assigned first to attorneys who then coordinate with the responsible justice for the completion of the work.

Regardless of how cases are assigned, the next step in the decisional process is to draft a memorandum or proposed opinion. The steps required to prepare such a draft do not vary significantly. Briefs must be read and reread, the record must be reviewed, research must be conducted, analyses must be considered and evaluated, and the memorandum or draft opinion must be drafted, edited, cite-checked, and proofread.

The time required to complete these tasks varies significantly. An experienced attorney working with, consulting, and supporting the assigned justice can draft an opinion in a case with a

[68] A *Wende* appeal is one in which the criminal defendant's attorney has filed a statement declaring that no appealable issue was identified.

simple issue in a day or two. A case with average complexity that involves multiple issues can take a week or two. A difficult case can take a month or more.

When the assigned justice is satisfied with the draft, it is circulated to the other panel members who were randomly assigned to the case. Those panel members must consider the draft, read the briefs, evaluate the analysis, often conduct further research, and determine whether they agree or disagree with the proposed disposition. They may suggest revisions to the draft and these suggestions may or may not be accepted. If the panel members are unable to agree on the draft, concurring or dissenting opinions are considered and drafted. Depending on the case complexity and the existence of disagreements, the process of reaching a final opinion can be lengthy and involve significant additional justice and staff work.

What happens after an opinion is drafted depends on whether the parties have asked for oral argument. If argument has been waived, the assigned justice and any concurring or dissenting justices finalize their respective opinions and the majority opinion with any concurrence or dissent is filed. If argument has been requested, different procedures are followed. In some courts the assigned justice decides when to set the case for argument. In other courts the oral argument date is set at the time the case is assigned, requiring the justice to obtain an extension from the presiding justice if one is needed.

Different courts also have different procedures for conducting oral argument. Some courts issue tentative opinions or focus letters prior to argument. In courts that issue tentative opinions, if the parties accept the tentative opinion, oral argument is canceled and the tentative opinion typically becomes the court's final opinion. Some courts conduct arguments monthly or biweekly, and some even more frequently. Some courts strictly limit the length of oral argument, while others allow argument to continue as long as it remains productive. During the COVID-19 pandemic all courts conducted oral argument remotely. Courts are now increasingly holding arguments in the courtroom, or allowing hybrid arguments, in which one or more parties appear in person in court and one or more parties appear remotely.

Cases are typically deemed submitted after the conclusion of the argument. Cases in which argument was waived are deemed submitted when the court approves the waiver.[69] Once a case is deemed submitted, the opinion must be filed within 90 days.[70] After the argument, the panel continues to discuss any differences in views and the final opinions are prepared with any concurrences or dissents.

A filed opinion represents the court's initial determination of how an appeal should be decided and can be published or unpublished. Published opinions are used to resolve appeals that raise important legal issues that are either unresolved or that arise in a new or different factual context. Unpublished opinions are used when the issues involved are more common or uncontroversial. Less complicated opinions can be relatively short and can resolve the issues in

[69] Rule 8.256(d)(1).

[70] Cal. Const., art. VI, § 19.

a dozen pages or so. More complicated opinions can be lengthy, and they can require 50 pages or more.

Parties can challenge the court's initial filed opinion by filing a petition for rehearing, arguing the court made a legal or factual error when deciding the case.[71] In most courts, those petitions are forwarded to the authoring justice for investigation and a recommendation. If that justice determines the petition is possibly meritorious, he or she can request formal opposition from the opposing side.[72] Based on the petition and any opposition, the authoring justice commonly recommends either granting the petition (which vacates the opinion and places the case at large as if no opinion had ever been filed),[73] denying the petition (which leaves the opinion unchanged), or denying the petition and then modifying the opinion to make whatever changes are necessary to address points that were raised in the petition.

An opinion is final and is no longer subject to change 30 days after it is filed if no rehearing is granted.[74] If an order changes an opinion without modifying the judgment, the finality period is not extended.[75] But if an order changes an opinion and modifies the judgment, the finality period runs from the date of the modification order.[76]

In light of the CJP findings that gave rise to the establishment of this workgroup, the workgroup conducted an extensive review to determine whether there are cases in any of the Courts of Appeal in which the decisional phase has been excessively delayed. The result was heartening. The workgroup found that as of the end of the last quarter only a small percentage of fully briefed cases statewide were pending for more than 12 months. Within this small percentage, almost all of the cases were deferred for valid reasons or were transferred from one court to another for prompt processing. The remaining handful of cases within the small percentage are complex cases actively being worked on.

As of September 30, only a small percentage of fully briefed cases statewide were pending for more than 12 months, and the cases within this small percentage were pending for valid reasons or were actively being worked on.

[71] Rules 8.268, 8.366.

[72] Rule 8.268(b)(2).

[73] Rule 8.268(d).

[74] Rule 8.264(b)(1).

[75] Rule 8.264(c)(2).

[76] *Id.*

Decisional Phase Recommendations

The workgroup discussed whether, and to what extent, the different practices and approaches taken by different appellate courts affect the time of the decisional phase. It concluded that, while the differences may have some effect on the timing, any such effect is minimal. Far more significant is whether cases are monitored to ensure that they are not languishing and whether effective action is taken to ensure that delayed cases are promptly resolved. Specific recommendations to improve monitoring and to ensure effective follow-up to prevent excessive delays from developing are set forth in detail below.

> Efficient case processing is best achieved by managers monitoring whether cases are languishing and requiring prompt action when they are.

THE CASE DELAYS IN THE THIRD DISTRICT

The workgroup next turns to address its findings regarding the case delays in the Third District, and to present its recommendations to help ensure that similar case delays do not recur or develop in any appellate court.

The Problem of Excessively Delayed Appeals in the Third District Was Limited to Some Justices and Has Been Effectively Addressed

As mentioned earlier, the case delays revealed by the CJP in the Third District were avoidable and inexcusable, and they were harmful to the parties, the aims of justice, and the reputation of the court. But as also previously mentioned, the district has taken prompt and effective measures to address the identified problems and to prevent them from recurring.

The workgroup found that the primary causes of the problem were the lack of transparent reporting to identify delayed cases and the failure to follow up on known delayed cases to prioritize, process, and resolve them. This oversight was exacerbated by the facts that the district had and has a high caseload, had an attorney workforce that was relatively too small, and had judicial vacancies but eschewed the appointment of pro tempore justices.

Many measures have been taken within the district to remedy the problem and to minimize the chance of its recurrence. The workgroup is pleased to report that as a result of these actions, there is currently *no* appeal in the Third District that has been pending for more than 12 months without a valid reason.

The current acting administrative presiding justice implemented a number of management changes to increase transparency, foster communication, raise awareness, and help justices and staff prioritize and resolve delayed cases. For example, he instituted a transparent monthly reporting and follow-up process to identify, review, and help process fully briefed cases that have been pending for more than eight months. Each month, a report identifying these cases is given to all the justices.[77] The report includes comments by the assistant clerk/executive officer of statistical trends and relevant case circumstances. Now, the vast majority of cases identified on the report remain pending for valid reasons or are in their final stages (i.e., oral argument is scheduled but has not occurred, or the opinion is being cite-checked and finalized). The report is reviewed by the district's managing attorney, who makes recommendations on whether a justice who has an identified case that lacks a valid reason for delay needs assistance by, for example, being assigned fewer cases in subsequent case-assignment rotations, being given additional attorney or staff help, or having cases transferred to other justices.

[77] Although a similar report, one that identified cases that were pending for more than 12 months, was instituted by the former administrative presiding justice, the report was not shared with other justices, and for too long there was minimal follow-up.

The current acting administrative presiding justice also began inviting executive staff (the district's managing attorney, clerk/executive officer, and assistant clerk/executive officer) to participate in monthly justice meetings to report on filings, case dispositions, and other matters. Justices and executive staff are encouraged to share information freely, which has increased engagement by the justices in court administration.

More attention is also now given to properly identify cases that may warrant calendar preference. When docketing new criminal appeals in the Appellate Court Case Management System, clerks input when the cases are assigned and the length of the sentences imposed. The managing attorney then identifies cases with short sentences and points out other circumstances that may justify prioritizing the cases so that these factors are readily apparent.

Finally, the current administrative presiding justice has ended the practice of not seeking appointment of pro tempore justices. Appointing pro tempore justices in the future will help the district to sustain workflow productivity in resolving cases.

In addition to management changes, the district's staffing was increased. In June 2021, the APJAC determined that the district's judicial workforce was too small given the size of the district's caseload. The committee voted to allocate additional funds to the district, enabling it to hire seven additional attorneys.[78]

Perhaps the most notable and encouraging action taken in response to the CJP investigation and findings was that the district's justices, attorneys, and other staff collectively engaged in exceptional efforts to resolve older cases and reduce case backlogs. Between the end of 2020 (around the time the CJP initiated its investigation) and the end of September 2022 (the date of the most recent statistical report), the district filed 2,195 opinions. This is 338 more opinions than were filed in the preceding 21-month period, during which 1,857 opinions were filed.

The hard work has paid off. At the end of fiscal year 2019–20, the district had 814 fully briefed cases, and as of the end of September 2022, this number was reduced to 298. This reflects a *63.4 percent reduction* in fully briefed cases. This impressive progress cannot be explained away by pointing out that the number of appeals also fell during this period. While it is true that the number of appeals fell, likely because of the COVID-19 pandemic, the district's rate of resolving cases far eclipsed the rate of the slowdown of appeals. At the end of fiscal year 2019–20, the district had 2,039 pending appeals, while at the end of September 30, 2022, it had 1,350. Thus, while the number of appeals fell by 33.8 percent, the number of fully briefed cases fell by 63.4 percent.

In short, the Third District took prompt and effective measures to address the problems raised by the CJP investigation and findings, and to prevent them from recurring. It has no excessively

[78] According to the district, prior to this allocation the last time the district received additional funding for permanent attorney positions was 20 years earlier, in 2001, when it received funding for three such positions.

delayed cases, has significantly reduced its fully briefed caseload, and is in a far better position to ensure that appeals continue to be resolved in a timely manner.

Improved State-level Reporting and Oversight Will Help Prevent Appeals from Becoming Excessively Delayed

The workgroup found that the case delays in the Third District could have been discovered and remediated earlier if, in addition to better monitoring and follow-up internally, there had been better state-level oversight and accountability.

The workgroup therefore recommends that the Chief Justice direct the Administrative Director of the Judicial Council to provide a report every six months to the APJAC that identifies appeals that have been fully briefed for more than a year. It further recommends that the Chief Justice request that each appellate district compile from the report a list of cases for which there is no valid reason for their processing to be extended and to provide the list to the APJAC.

Examples of valid reasons include:

- When the appeal has been stayed by order of a bankruptcy court;
- When the appeal has been stayed as the result of the request of the parties, to allow for further proceedings in the trial court, or for other legitimate reasons;
- When supplemental briefs have been ordered to consider the effect of newly enacted legislation or for other legitimate reasons;
- When a tentative opinion has been issued;
- When panel members are actively engaged in discussing the appropriate case resolution;
- When an opinion has been issued but rehearing was granted;
- When an interim petition for review in the Supreme Court has been filed or granted;
- When a case is remanded by the United States Supreme Court or California Supreme Court; or
- When the case involves an appeal from a death sentence.

Finally, the workgroup recommends that the Chief Justice direct the APJAC to take action to ensure that identified cases are promptly processed and resolved. Such action may include the following:

- Providing the assigned justice of an identified case with additional resources;
- Assigning an identified case to a different authoring justice; or
- Requesting approval from the Supreme Court to transfer an identified case to a different appellate division or district.

Improved State-level Reporting and Oversight Will Help to Address Caseload Inequities

The workgroup found that the case delays in the Third District were partially caused and exacerbated by inequities in the ratios of caseload/workforce among the appellate courts.

Population, demographics, laws, and other factors affect the number and the types of appeals that are filed in different appellate courts. Recognizing that cases are not evenly distributed, the six administrative presiding justices periodically take measures to help equalize relative caseloads. These measures usually involve requesting transfers of cases to courts that are better positioned to handle them or allocating additional resources to overburdened courts to allow them to expand their workforce.[79]

In the past three fiscal years, hundreds of cases have been transferred between courts. These include cases transferred from Division Two of the Fourth District to other divisions in that district and cases transferred from the Fifth and Sixth Districts to the First, Second, and Fourth Districts. As another example, in June 2021 the APJAC allocated fiscal resources to enable courts to hire additional staff attorneys. Seven new attorney positions were authorized for the Third District, four new attorney positions were authorized for the Fifth District, two new attorney positions were authorized for the Fourth District, and one new attorney position was authorized for each of the remaining districts.

Evaluating and addressing caseload inequities is not as easy as it may seem. Each year, the Judicial Council publishes the *Court Statistics Report*, a report that analyzes statewide caseload trends in the state courts. The report uses various metrics to assess each district/division on various categories such as the number of appeals and writs filed, the number of cases decided, and the length of time it took to complete different phases of the appellate process.

These statistics are useful but are typically published a year after the fiscal year captured in the report,[80] are widely misunderstood, and are used inaccurately to assess the relative productivity of divisions and districts. Relying on these statistics alone to compare productivity results in faulty comparisons, yet these faulty comparisons are common.[81] Meaningful comparisons must take into account the judicial workforces available in, and the types of cases handled by, the different courts.

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[79] See Cal. Const., art. VI, § 12(a); rule 10.1000.

[80] This means that management responses to the data in this report cannot be adopted until, at the very earliest, one year after conditions are revealed that may need to be addressed. And because the budget cycle takes at least one year, this means that budgetary responses to the data cannot be authorized until, at the very earliest, two years after conditions are revealed that may need to be addressed.

[81] See, e.g., Judicial Council of Cal., *Report of the Appellate Process Task Force* (2000), www.courts.ca.gov/documents/min0800.pdf [suggesting workload comparisons should be made on a cases-per-justice basis]; *Daily Journal* (Sept. 21, 2022), Vol. 128, No. 183, p. 4 [same].

The judicial workforce in each district/division includes justices and attorneys.[82] The size of this workforce does not correlate directly to the number of justices assigned to the court. Inter-district/division redirection of fiscal resources, budget cuts and augmentations, and intra-district/division funding choices have resulted in judicial workforces that vary and are disproportionate. Variations on the size of courts' workforces are entirely appropriate. A court that processes more cases typically requires a larger workforce than a district that processes fewer cases of a similar type, regardless of the number of the courts' authorized justices.

Comparisons of district/division caseloads are flawed unless they take into account the full judicial workforces available in, and the types of cases handled by, the different courts.

Consider hypothetical District A and District B. District A has 10 justices, and it resolved 200 cases last year. District B has 20 justices, and it also resolved 200 cases last year. In isolation, these statistics suggest that District A was far more productive. A typical, but inaccurate, comment on the two districts might be something like, "The justices in District A averaged 20 cases each, while the justices in District B averaged 10 cases each." But in fact, *relative* productivity depends on the comparative levels of the two districts' judicial workforces. If District A had 40 attorneys (and thus a total of 50 justices and attorneys), and District B had 20 attorneys (and thus a total of 40 justices and attorneys), then District B was more productive than District A.

The most meaningful way to evaluate the districts' relative workload at any given time is to compare the number of fully briefed cases with the amount of the available judicial workforce. The chart below provides a snapshot of those statistics as of September 30, 2022. This snapshot depicts what the workload was at that time. It does not depict whether districts have been efficient or inefficient, nor does it depict whether appeals have been evenly distributed.

[82] We include attorneys in the judicial workforce because attorneys work with justices in the decisional process by researching and analyzing the legal issues and drafting memoranda, opinions, and substantive orders. We do not include judicial assistants and clerks in the definition of judicial workforce, but we of course recognize the critical roles they have in processing appeals effectively and in a timely manner.

Statewide Comparison of Pending Fully Briefed Workload Appeals Per Judicial Staff			
As of September 30, 2022			
	Number of Fully Briefed Cases (A)	Judicial Staff (B)	Appeals per Judicial Staff (C = A/B)
First District	396	71	5.78
Second District	784	152.5	5.14
Third District	298	55	5.42
Fourth District[83]	705	121	5.83
Division 1	*220*	*45*	*4.89*
Division 2	*279*	*38*	*7.34*
Division 3	*206*	*38*	*5.42*
Fifth District	317	46.63	6.80
Sixth District	199	34	5.85
Statewide Totals	***2,699***	***480.13***	***5.62***

The ratio of routine and complex cases filed in courts also matters. Civil appeals generally take longer on average to resolve than criminal appeals, which include as a subset *Wende* appeals, which are usually relatively easy to resolve. In fiscal year 2021–22, the districts' ratios of civil and criminal cases varied meaningfully.

Percentage of Appellate Opinions Written By Category in FY 2021–22			
	Civil	Adult and Juvenile Criminal	Juvenile Dependency
First District	40%	50%	10%
Second District	34%	45%	21%
Third District	21%	71%	8%
Fourth District	35%	49%	16%
Fifth District	15%	73%	12%
Sixth District	29%	62%	9%
Statewide Totals	***30.5%***	***54.5%***	***15%***

Accounting for variations in the nature and complexity of the caseloads is challenging, but failing to recognize these differences leads to imbalanced and incomplete productivity comparisons.

[83] Recognizing the differences in the caseload/workforce ratios among the divisions in the Fourth District, the district's administrative presiding justice years ago instituted a policy of transferring at least eight cases each month from Division 2 to Division 1.

In light of these considerations, the workgroup recommends that the Chief Justice direct the Administrative Director of the Judicial Council to provide an annual report to the APJAC to help it better monitor caseload/workforce inequities among the districts/divisions. In addition to other relevant metrics, the report should include for each district/division the number of appeals filed, the number of opinions issued, the number of pending fully briefed cases, the number of justices authorized, the available judicial workforce, and the types and complexity of cases filed to the extent they can be reasonably discerned.

Enhanced Oversight Will Help to Address Management Issues Earlier and to Strengthen Confidence in the Appellate Courts

The workgroup also found that the issues in the Third District might have been identified and remediated earlier if there had been, in addition to better management in the Third District, a mechanism for supplementary state-level management oversight.

Historically, administrative presiding justices or presiding justices in geographically separate divisions have largely managed their courts independently. Substantial management independence is appropriate and necessary given the considerable differences among the courts, but management actions or inactions should not be effectively immune from review.

Thus, to improve and strengthen confidence in management decisions, the workgroup recommends that the Chief Justice urge the APJAC to recommend that the Judicial Council adopt a new rule, or amend an existing rule, of the California Rules of Court authorizing the administrative presiding justices, under the oversight of the Chief Justice, to collectively review and address contentions that an administrative presiding justice or presiding justice has not properly managed an important matter. The workgroup recommends that the Chief Justice encourage the Judicial Council to adopt a new rule, or amend an existing rule, stating language substantially similar to the following:

> **Oversight of administrative presiding justices and presiding justices**
>
> (1) Administrative presiding justices and presiding justices are expected to manage their courts inclusively and transparently. A contention that an administrative presiding justice or presiding justice has not properly addressed or managed an important matter may be brought to the attention of the administrative presiding justices collectively, under the oversight of the Chief Justice, for them to review and take appropriate remedial or other lawful action.
>
> (2) Any administrative presiding justice who is the subject of such a contention is recused from reviewing the contention but must cooperate with those who are reviewing it.
>
> (3) Presiding justices in multi-division districts, including those in geographically separate divisions, must cooperate with the administrative presiding justice of their district when the administrative presiding justice is carrying out his or her oversight responsibilities.

Statistical Reliability Will Be Enhanced by Requiring Consistent Data Entry

The workgroup found that inconsistencies in data entry into the court's case management system impact the information reported in the *Court Statistics Report*. As an example, different protocols have been used when coding the fully briefed date in cases in which supplemental briefing was ordered. Some courts coded the fully briefed date as the date when the case first became fully briefed, while others coded the fully briefed date as the date when the supplemental briefing was complete. As another example, some courts open dockets for each appealing party, while others do not.

Furthermore, the data can also be affected by procedural anomalies, inadvertent clerical errors, or local court practices. If one of two consolidated appeals is inadvertently left open at the conclusion of the appeal, the statistical average for how long cases were pending may be skewed and the number of opinions issued may be higher or lower depending on how cases that can be resolved by either an order or an opinion are handled.

The workgroup recommends that the Chief Justice request that the appellate clerks work with Judicial Council staff to review current data-input practices and establish standards to ensure consistent coding and entry practices among the appellate courts.

SUMMARY OF RECOMMENDATIONS

The workgroup proposes that the Chief Justice take the following actions:

Summary of Recommendations		
PURPOSE OF RECOMMENDATIONS	**RECOMMENDATIONS**	**PAGE NUMBER**
To Help Ensure Excessive Case Delays Do Not Recur or Develop	1. Direct the Administrative Director of the Judicial Council to provide a report every six months to the Administrative Presiding Justices Advisory Committee (APJAC) that identifies appeals that have been fully briefed for more than a year. 2. Request that each appellate court compile from the report a list of cases for which there is no valid reason for deferral and to provide the list to the APJAC. 3. Direct the APJAC to ensure the prompt processing and resolution of identified cases.	Page 31
To Reduce Caseload/Workforce Inequities Among Districts/Divisions	1. Direct the Administrative Director of the Judicial Council to provide an annual report to the APJAC to help it better monitor caseload/workforce inequities among the districts/divisions. 2. Direct the Administrative Director of the Judicial Council to include metrics that identify for each district/division the number of appeals filed, the number of opinions issued, the number of pending fully briefed cases, the number of justices authorized, the available judicial workforce, and the types and complexity of cases filed to the extent they can be reasonably discerned.	Page 35
To Enhance Management Oversight and Increase Confidence in Management Decisions	1. Urge the APJAC to recommend to the Judicial Council a new rule, or amend an existing rule, of the California Rules of Court stating language substantially similar to the following: **Oversight of administrative presiding justices and presiding justices** (1) Administrative presiding justices and presiding justices are expected to manage their courts inclusively and transparently. A contention that an administrative presiding justice or presiding justice has not properly addressed or managed an important matter may be brought to the attention of the administrative presiding justices collectively, under the oversight of the Chief Justice, for them to review and take appropriate remedial or other lawful action. (2) Any administrative presiding justice who is the subject of such a contention is recused from reviewing the contention but must cooperate with those who are reviewing it. (3) Presiding justices in multi-division districts, including those in geographically separate divisions, must cooperate with the	Page 35

Summary of Recommendations		
PURPOSE OF RECOMMENDATIONS	**RECOMMENDATIONS**	**PAGE NUMBER**
	administrative presiding justice of their district when the administrative presiding justice is carrying out such oversight responsibilities.	
To Improve the Usefulness of Statistical Data	1. Request that the appellate clerks work with Judicial Council staff to review current data-input practices and establish standards to ensure consistent coding and entry practices among the appellate courts.	Page 36
To Expedite the Preparation of the Appellate Record and the Parties' Briefing	1. Encourage the Judicial Council to provide additional training to superior court record preparation clerks and to consider advertising and expanding the training it provides through in-person classes and online courses. 2. Encourage the appellate courts to offer district-specific assistance to superior court record preparation clerks to help those clerks better understand district-specific rules and expectations. 3. Encourage the Judicial Council to consider whether there are ways to reduce the number of tasks required by superior court clerks in preparing records. 4. Encourage the Judicial Council to consider revising applicable Judicial Council record-designation forms to be simpler, clearer, and more efficient. 5. Encourage the Judicial Council to consider revising the rules of court to not only allow, but also to encourage, represented civil litigants to prepare their own joint appendixes. 6. Encourage the Courts of Appeal to work with local bar associations to offer programs to help less experienced attorneys and self-represented litigants navigate the record designation process. 7. Encourage the Courts of Appeal to consider methods and available funding to enhance the Appellate Self-Help Resource Center website with a feature that would ask users questions and then automatically populate forms based on the answers provided. 8. Encourage the Judicial Council to consider amending the rules of court governing reporter's transcripts in civil cases that require the clerk of the superior court to supervise and process the reporter's transcripts that will ultimately be part of the appellate record. 9. Encourage the Judicial Council to consider adopting a rule of court that would allow litigants in criminal cases to stipulate to the use of the superior court file in lieu of a clerk's transcript. 10. Encourage the Courts of Appeal to consider adopting local rules that express the expectation that a record-augmentation request be submitted in one motion on the earliest date	Pages 19–20

Summary of Recommendations		
PURPOSE OF RECOMMENDATIONS	**RECOMMENDATIONS**	**PAGE NUMBER**
	practicable, or not later than 30 days after the record has been filed or counsel appointed. 11. Encourage the Judicial Council to review and consider whether to modify *Civil Case Information Statement* (form APP-004) to allow litigants or counsel to identify an alternative, non-statutory ground for an appeal to be given priority.	
	12. Encourage presiding justices, especially those in districts with multiple presiding justices, to confer periodically in a meaningful attempt to advance more consistent applications of the standards used in considering requests for discretionary extensions of time. 13. Request that the appellate clerks establish policies and practices to ensure that notices to parties under rules 8.220(a) and 8.360(c)(5) are uniformly sent to the defaulting party within a day or two of the missed deadline. 14. Encourage the Judicial Council to review and consider whether forms APP-006 and CR-126 should be modified to enable courts to better evaluate whether a movant has demonstrated good cause. 15. Encourage the Judicial Council to consider whether parties should be encouraged or required to submit, along with their briefs, excerpts of the record that would compile the parts of the record that are relevant and useful to the court in deciding the appeal.	Page 24

PRIORITIZING APPELLATE CASES

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
RULES OF COURT	
Cal. Rules of Court, rule 8.240	"A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, 'calendar preference' means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument."
Cal. Rules of Court, rule 8.416	Expedited process for appeals of termination of parental rights and juvenile dependency appeals in expedited review project courts: (a) Application (1) This rule governs: (A) Appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code section 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq.; and (B) Appeals from judgments or appealable orders in all juvenile dependency cases of: (i) The Superior Courts of Orange, Imperial, and San Diego Counties; and (ii) Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have agreed and have adopted local rules providing that this rule will govern appeals from that superior court. (2) In all respects not provided for in this rule, rules 8.403–8.412 apply. * * *

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
	(h) Oral argument and submission of the cause (1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver. (2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument. (3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.
Cal. Rules of Court, rule 8.417 (takes effect 1/1/2023)	Expedited process for appeals from orders granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction: (a) Application This rule governs appeals from orders of the juvenile court granting a motion to transfer a minor from juvenile court to a court of criminal jurisdiction. * * * (i) Oral argument and submission of the cause (1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver. (2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
	(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.
Cal. Rules of Court, rule 10.660(d)	Appeal of superior court decision on writ petition under Gov. Code, § 71639.1 regarding trial court labor relations disputes: An appeal of the superior court decision must be heard and decided on an expedited basis in the Court of Appeal for the district in which the petition was heard and must be given priority over other matters to the extent permitted by law and the rules of court. The notice of appeal must state the following on the first page, below the case number, in the statement of the character of the proceeding (see rule 2.111(6)): "Notice of Appeal on Petition filed under Government Code sections 71639.5 and 71825.2—Expedited Processing Requested."
Cal. Rules of Court, rule 10.803(d)	Appeal of superior court decision on writ petition under Gov. Code, § 71675 regarding release of budget and management information by Judicial Council (i.e., information access disputes): An appeal of the superior court decision must be heard and decided on an expedited basis in the Court of Appeal for the district in which the petition was heard and must be given priority over other matters to the extent permitted by law and rules of court. The notice of appeal must state the following on the first page, below the case number, in the statement of the character of the proceeding (see rule 2.111(6)): "Notice of Appeal on Writ Petition filed under rule 10.500(j)(1) and Government Code section 71675—Expedited Processing Requested."

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
CALIFORNIA CONSTITUTION	
Cal. Const., art. X A, § 6	Appeal of action involving water resources development: (c) The superior court or a court of appeals shall give preference to the actions or proceedings described in this section over all civil actions or proceedings pending in the court. The superior court shall commence hearing any such action or proceeding within six months after the commencement of the action or proceeding, provided that any such hearing may be delayed by joint stipulation of the parties or at the discretion of the court for good cause shown. The provisions of this section shall supersede any provisions of law requiring courts to give preference to other civil actions or proceedings. The provisions of this subdivision may be enforced by mandamus.
CODE OF CIVIL PROCEDURE	
Code Civ. Proc., § 44	Appeal of probate proceedings, contested election proceedings, and certain libel/slander actions: Appeals in probate proceedings, in contested election cases, and in actions for libel or slander by a person who holds any elective public office or a candidate for any such office alleged to have occurred during the course of an election campaign shall be given preference in hearing in the courts of appeal, and in the Supreme Court when transferred thereto. All these cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties.

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
Code Civ. Proc., § 45	Appeal of judgment freeing or denying a recommendation to free minor from parental control: An appeal from a judgment freeing a minor who is a dependent child of the juvenile court from parental custody and control, or denying a recommendation to free a minor from parental custody or control, shall have precedence over all cases in the court to which an appeal in the matter is taken. In order to enable the child to be available for adoption as soon as possible and to minimize the anxiety to all parties, the appellate court shall grant an extension of time to a court reporter or to counsel only upon an exceptional showing of good cause.
Code Civ. Proc., § 1062.5	Appeal of proceedings involving declaratory relief in medical malpractice insurance cases: If the declaration is appealed, the appeal shall be given precedence in the court of appeal and Supreme Court and placed on the calendar in the order of its date of issue immediately following cases in which the state is a party.
Code Civ. Proc., § 1291.2	Appeal of arbitration proceedings: In all proceedings brought under the provisions of this title, all courts wherein such proceedings are pending shall give such proceedings preference over all other civil actions or proceedings, except older matters of the same character and matters to which special precedence may be given by law, in the matter of setting the same for hearing and in hearing the same to the end that all such proceedings shall be quickly heard and determined.

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
Code Civ. Proc., § 1294.4(a) (See Cal. Rules of Court, rules 8.710 et seq.; rule 8.717.)	Appeal of order dismissing or denying a petition to compel arbitration involving a claim under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15657.03) in which a party has been granted a trial court preference: (a) Except as provided in subdivision (b), in an appeal filed pursuant to subdivision (a) of Section 1294 involving a claim under the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code) in which a party has been granted a preference pursuant to Section 36 of this code, the court of appeal shall issue its decision no later than 100 days after the notice of appeal is filed. (b) The court of appeal may grant an extension of time in the appeal only if good cause is shown and the extension will promote the interests of justice.
ELECTIONS CODE	
Elec. Code, § 13314	Appeal of writ proceedings involving alleged error in placement of name on ballot or other election materials: (a) (1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur. (2) A peremptory writ of mandate shall issue only upon proof of both of the following: (A) That the error, omission, or neglect is in violation of this code or the Constitution. (B) That issuance of the writ will not substantially interfere with the conduct of the election.

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
	(3) The action or appeal shall have priority over all other civil matters.
Elec. Code, § 14310(c)(2)(B)	Appeal of action relating to request for order that provisional ballot be included in official canvass: A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters. A fee shall not be charged to the claimant by the clerk of the court for services rendered in an action under this section.
Elec. Code, § 16003	Appeal of action contesting election of presidential electors: In a contest of the election of presidential electors the action or appeal shall have priority over all other civil matters. Final determination and judgment shall be rendered at least six days before the first Monday after the second Wednesday in December.
Elec. Code, § 16920	Appeal of action contesting primary election other than recount: Either party to a contest may appeal to the district court of appeal of the district where the contest is brought, if the appeal is perfected by the appellant within 10 days after judgment of the superior court is pronounced. The appeal shall have precedence over all other appeals and shall be acted upon by the district court of appeal within 10 days after the appeal is filed.
FAMILY CODE	

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
Fam. Code, § 3454	Appeal of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) cases: An appeal may be taken from a final order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 3424, the enforcing court may not stay an order enforcing a child custody determination pending appeal.
GOVERNMENT CODE	
Gov. Code, § 7910(c)	Appeal of action involving judicial review of local appropriations limits: A court in which an action described in subdivision (b) is pending, including any court reviewing the action on appeal from the decision of a lower court, shall give the action preference over all other civil actions, in the manner of setting the action for hearing or trial and in hearing the action, to the end that the action shall be quickly heard and determined.
Gov. Code, § 7911	Appeal of action involving judicial review of return of excess local revenue: Judicial review of such determination may be obtained only by a proceeding for a writ of mandate which shall be brought within 30 days after the governing body's determination. All courts wherein such actions are or may be hereafter pending, including any court reviewing such action on appeal from the decision of a lower court, shall give such actions preference over all other civil actions therein, in the manner of setting the same

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
	for hearing or trial and in hearing the same, to the end that all such actions shall be quickly heard and determined.
Gov. Code, § 12963.5(d)	Appeal of action to compel compliance with subpoena brought by civil rights department: The order of the superior court is immediately appealable in the court of appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order, serve and file a notice of appeal. The appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable after the notice of appeal is filed.
Gov. Code, § 15475.5(a)	Appeal of action involving judicial review of decisions of Office of Energy Infrastructure Safety: The decisions of the office are subject to judicial review in the superior court. The superior court shall give preference to cases seeking judicial review of decisions of the office over all civil actions or proceedings pending before the superior court. Appeals of the superior court's decision of those cases shall be given preference in hearings before the court of appeal and the Supreme Court.
Gov. Code, § 65752	Appeal of certain proceedings involving local general plans: All actions brought pursuant to Section 65751, including the hearing of any such action on appeal from the decision of a lower court, shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be speedily heard and determined.

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
PENAL CODE	
Pen. Code, § 1509.1(c)	Appeal from grant or denial of relief on successive habeas petition: The people may appeal the decision of the superior court granting relief on a successive petition. The petitioner may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability. A certificate of appealability may issue under this subdivision only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of Section 1509 have been met. An appeal under this subdivision shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision. The superior court shall grant or deny a certificate of appealability concurrently with a decision denying relief on the petition. The court of appeal shall grant or deny a request for a certificate of appealability within 10 days of an application for a certificate. The jurisdiction of the court of appeal is limited to the claims identified in the certificate and any additional claims added by the court of appeal within 60 days of the notice of appeal. An appeal under this subdivision shall have priority over all other matters and be decided as expeditiously as possible.
PROBATE CODE	
Prob. Code, § 1962(b) (See Cal. Rules of Court, rule 8.482.)	Appeal of judgment authorizing conservator to consent to sterilization: When a judgment authorizing the conservator of a person to consent to the sterilization is rendered, an appeal is automatically taken by the person proposed to be sterilized

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
	without any action by that person, or by his or her counsel. The Judicial Council shall provide by rule for notice of and procedure for the appeal. The appeal shall have precedence over other cases in the court in which the appeal is pending.
PUBLIC RESOURCES CODE	
Pub. Resources Code, § 21167.1(a)	Appeal of certain proceedings involving environmental impact: In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give the action or proceeding preference over all other civil actions, in the matter of setting the action or proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.
Pub. Resources Code, § 21168.6.7(c) (See Cal. Rules of Court, rule 8.700 et seq.; rule 8.705.)	Appeal of streamlined CEQA proceedings relating to Oakland Sports and Mixed Use Project: Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
	the certified record of proceedings with the court. On or before September 1, 2019, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.
Pub. Resources Code, § 21168.6.8(f) (See Cal. Rules of Court, rule 8.700 et seq.; rule 8.705.)	Appeal of streamlined CEQA proceedings relating to Inglewood Sports and Entertainment Complex: Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of any environmental impact report for the project or granting of any project approvals to require the actions or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. On or before July 1, 2019, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this subdivision.
Pub. Resources Code, § 21168.6.9(d) (See Cal. Rules of Court, rule 8.700 et seq.; rule 8.705.)	Appeal of streamlined CEQA proceedings involving environmental leadership transit projects: On or before January 1, 2023, the Judicial Council shall adopt rules of court that apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership transit project or the granting of any project approval that require the action or proceeding, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 365 calendar days of the filing of the certified record of proceedings with the court.

Authorities Expressly Providing for Appellate Calendar Priority	
Code Section / Rule	**Description / Statutory Language**
Pub. Resources Code, § 21185 (See Cal Rules of Court, rule 8.700 et seq.; rule 8.702(g) ["Unless otherwise ordered by the reviewing court, oral argument will be held within 45 days after the last reply brief is filed"].)	Appeal of streamlined CEQA proceedings involving environmental leadership development projects: The Judicial Council shall adopt a rule of court to establish procedures that require actions or proceedings brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership development project certified by the Governor under this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.
Pub. Resources Code, § 21189.51 (See Cal Rules of Court, rule 8.700 et seq.; rule 8.702(g) ["Unless otherwise ordered by the reviewing court, oral argument will be held within 45 days after the last reply brief is filed"].)	Appeal of CEQA proceedings relating to Capitol Building Annex and State Office Building Projects: (a) On or before July 1, 2017, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for a capitol building annex project or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings pursuant to Section 21189.52. (b) On or before July 1, 2019, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for annex project related work or a state office building or the granting of any project approvals

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	with respect to either that work or building that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings pursuant to Section 21189.52.
Pub. Resources Code, § 21189.70.3 (See Cal. Rules of Court, rule 8.700 et seq.; rule 8.705.)	Appeal of streamlined CEQA proceedings involving Old Town Center transit and transportation facilities project: Notwithstanding any other law, Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for the transit and transportation facilities project approved pursuant to Section 21189.70.2 or the granting of any approvals for this project, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 business days of the filing of the certified record of proceedings with the court. On or before January 1, 2022, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this section.
Pub. Resources Code, § 25903	Appeal of judicial review of site and facility certification validity provisions: If any provision of subdivision (a) of Section 25531, with respect to judicial review of the decision on certification of a site and related facility, is held invalid, judicial review of such decisions shall be conducted in the superior court subject to the conditions of subdivision (b) of Section 25531. The superior court shall grant priority in setting such matters for review, and the appeals from any such review shall be given preference in hearings in the Supreme Court and courts of appeal.

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Code Section / Rule	**Description / Statutory Language**
WELFARE & INSTITUTIONS CODE	
Welf. & Inst. Code, § 395(a)(1)	Appeal of child dependency proceedings under Welf. & Inst. Code, § 300 et seq.: A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment. However, that order or judgment shall not be stayed by the appeal, unless, pending the appeal, suitable provision is made for the maintenance, care, and custody of the person alleged or found to come within the provisions of Section 300, and unless the provision is approved by an order of the juvenile court. The appeal shall have precedence over all other cases in the court to which the appeal is taken.
Welf. & Inst. Code, § 800(a)	Appeal of proceeding declaring minor a ward of the court: A judgment in a proceeding under Section 601 or 602 may be appealed from, by the minor, in the same manner as any final judgment, and any subsequent order may be appealed from, by the minor, as from an order after judgment. Pending appeal of the order or judgment, the granting or refusal to order release shall rest in the discretion of the juvenile court. The appeal shall have precedence over all other cases in the court to which the appeal is taken.
Welf. & Inst. Code, § 801 (See Cal. Rules of Court, rule 8.417.)	Appeal of juvenile transfer order: (a) An order transferring a minor from the juvenile court to a court of criminal jurisdiction shall be subject to immediate appellate review if a notice of appeal is filed within 30 days of the order transferring the minor to a court of criminal jurisdiction. An

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	order transferring the minor from the juvenile court to a court of criminal jurisdiction may not be heard on appeal from the judgment of conviction. (b) Upon request of the minor, the superior court shall issue a stay of the criminal court proceedings until a final determination of the appeal. The superior court shall retain jurisdiction to modify or lift the stay upon request of the minor. (c) The appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable after the notice of appeal is filed.