Item A

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 13, 2017

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Record in juvenile appeals

Action Requested
Please read before January 18 rules subcommittee conference call

Deadline
January 18, 2017

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Introduction

Item 11 on the committee's annual agenda this committee year is to consider whether to develop a rule regarding the record on appeal in juvenile cases where the appellant is not a party who would ordinarily have access to the juvenile court case file (this is a priority 2 project with a proposed January 1, 2018 completion date). This memo discusses this issue and options that the rules subcommittee may want to consider for addressing it. Please note that an unpublished opinion issued by the Second District Court of Appeal earlier this week addresses procedures that are similar to the some of the record preparation procedures discussed in this memo.[1]

Background

Welfare and Institutions Code section 827

[1] *Mark M, v. The Superior Court of Los Angeles* (January 11, 2017) B279631, 2017 WL 108038

The confidentiality of juvenile case files is established by statute. Subdivision (a)(1) of Welfare and Institutions Code section 827 identifies those who may inspect a juvenile court case file.[2] In addition to authorizing inspection by many public officials and entities involved in various aspects of the child welfare system, this code section also specifically authorizes inspection by:

> (A) Court personnel.
>
> (C) The minor who is the subject of the proceeding.
>
> (D) The minor's parents or guardian.
>
> (E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor. . . .
>
> (P) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

Subdivision (a)(5) of section 827 identifies those individuals listed in (a)(1) who may also receive copies of the case file.[3] The individuals listed above in (A), (C), (D), and (E) are among those who are authorized to receive such copies.

Rule 5.552 and form JV-570

The Judicial Council has adopted rules in title 5, Division 3 of the California Rules of Court, the Juvenile Rules,[4] that incorporate and implement the requirements of Welfare and Institutions Code section 827. California Rules of Court, rule 5.552, *Confidentiality of records (§§ 827, 828),*[5] defines "juvenile case file" as including, among other things:

> (1) All documents filed in a juvenile court case;
>
> (2) Reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers; . . .
>
> (5) Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program;

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[2] You can access the full text of this section at: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC)

[3] Subdivision (a)(5) was added to section 827 effective January 1, 2008 by Stats.2007, c. 468 (S.B.39), § 3. There is caselaw from before this provision was added to the statute that held that the right to inspect the case file did not include the right to copy the records.

[4] See rule 5.500.

[5] You can access this rule at: http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_552

Like Welfare and Institutions Code section 827, rule 5.552 also identifies those who may have access such files. Subdivision (b)(1) of this rule provides that, in addition to various public officials and entities, the following individuals "may inspect, receive, and copy the juvenile case file without an order of the juvenile court:"

> (A) Court personnel; . . .
>
> (C) The child who is the subject of the proceeding;
>
> (D) The child's parents;
>
> (E) The child's guardians;
>
> (F) The attorneys for the parties, including any trial court or appellate attorney representing a party in the juvenile proceeding or related appellate proceeding;

Rule 5.552 also establishes a procedure for those not otherwise entitled to access the juvenile court file under section 827 to request the juvenile court's permission to access the file. Subdivision (c) of rule 5.552 provides that:

> With the exception of those persons permitted to inspect juvenile court records without court authorization under sections 827 and 828, every person or agency seeking to inspect or obtain juvenile court records must petition the court for authorization using *Petition for Disclosure of Juvenile Court Records* (form JV-570).

Form JV-570, [6] which was renamed *Request for Disclosure of Juvenile Case File*, includes spaces for the petitioner to identify the records he or she is seeking and to indicate the reason for the request. The "reasons" section of the form includes spaces that the petitioner can use to identify any pending civil, criminal, juvenile, or "other" pending court case.

Appellate rules

The rules in Title 8, the Appellate Rules, include separate provisions that address confidentiality of records in juvenile cases under that title. Rule 8.401(b),[7] which is part of Division 1, Chapter 5 *Juvenile Appeals and Writs*, provides that, with some limited exceptions:

> [T]he record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.

As in criminal cases, in juvenile cases the appellant does not designate the record on appeal. Instead record preparation automatically is triggered by the filing of the notice of appeal and the

[6] You can access this form at: http://www.courts.ca.gov/documents/jv570.pdf

[7] You can access this rule at: http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_401

contents of the record is specified by rule. Under rule 8.407,[8] the clerk's transcript must include most of the documents filed in the juvenile court, including:

> (4) Any report or other document submitted to the court. . .
>
> (12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments.

The content of the reporter's transcript varies depending on the type of judgment or order being appealed.

Both rule 8.409 and rule 8.416 require, among other things, that within 20 days after the notice of appeal is filed in a juvenile case, the superior court clerk and the court reporter must prepare and certify the clerk's and reporter's transcripts.[9] These rules then require that the superior court clerk send the record:

> (1) When the transcripts are certified as correct, the court clerk must immediately send:
>
> (A) The original transcripts to the reviewing court, noting the sending date on each original; and
>
> (B) One copy of each transcript to the appellate counsel for the following, if they have appellate counsel:
>
> (i) The appellant;
>
> (ii) The respondent;
>
> (iii) The child's Indian tribe if the tribe has intervened; and
>
> (iv) The child.
>
> (2) If appellate counsel has not yet been retained or appointed for the appellant or the respondent, or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

Thus, under these rules, the superior court is required to prepare a record on appeal that includes items that are part of a confidential juvenile case file and to send copies of that record to the Court of Appeal and to the attorneys for those who are parties to the appeal.

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[8] You can access this rule at: http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_407

[9] You can access this rule at: http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_409

Issue and suggestion

Committee member Joseph Lane has indicated that the Second District Court of Appeal is experiencing delay in juvenile appeals in which the appellant is an individual who has been participating in the juvenile proceedings, but is not among those entitled to access the juvenile court file under section 827. This may happen, for example, when the appellant is a person who filed a petition seeking de facto parent status and is appealing the denial of that petition or a person who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition.[10] In these circumstances, the Los Angeles Superior Court requires that the appellant complete and file a *Request for Disclosure of Juvenile Case File* (form JV-570) before the court will begin preparing the record on appeal. Appellants in these circumstances, who may not be represented by an attorney, often do not file form JV-570. Without the record, the appeal cannot move forward.

To address this, Mr. Lane has suggested that the committee consider proposing a rule providing that if such an appellant does not file form JV- 570 within x days of the filing of the notice of appeal, the appeal can be dismissed.

Current court practices

When the committee began considering this suggestion last year, one of the first questions that arose was whether the problems being experienced in the Second District were also being experienced in other districts. Committee member Mr. Sacher gathered informal information from the appellate projects in most of the other districts. He found that practices with respect to preparation of the record on appeal in the types of juvenile cases identified by Mr. Lane vary across Court of Appeal Districts. The information he received indicated that in the Second and Sixth Districts, appellants are being required to file from JV-570 before a record will be prepared but that in the First, Third, and Fourth Districts, appellants are not being required to file form JV-570. Mr. Sacher's information indicated that in the Third District, the record is sent to the district appellate project and not to the appellant. In order to obtain access to the record, the appellant must file a motion in the Court of Appeal. Usually, the appeal is dismissed for non-prosecution since the appellant has not qualified for the appointment of counsel and has not submitted a motion.

To gather additional information about trial court practices in this area, late last year, messages were sent out to listserves for juvenile court judges and for trial court administrators inquiring about whether courts require the filing of JV-570 in these circumstances or have a different

[10] As examples of appeals in these circumstances, see In re Michael R (2006) 67 Cal.App.4th 150 and In re David F.(2016) 2016 WL 193633.

procedure. Responses were received from seven superior courts; these responses are set out in the attached table. Four courts indicated that they either require the filing of JV-570 or indicated that they had not encountered such situations, but would require a JV-570 if such a circumstance presented itself. Three courts indicated that they do not require the filing of a JV-570. One court indicated that it prepares the record on appeal if directed to do so by the Court of Appeal and sends the record to the district appellate project. One court indicated that when such a situation arose recently, a judge of the superior court made determinations about what documents in the juvenile court file the appellant was entitled to receive. One court indicated it did not have a procedure for addressing this type of situation. Note that most of these courts have local rules that address access to the juvenile court case files; links to these local rules are included in the attached table. None of these local rules specifically address access in the context of preparation of a record on appeal.

These responses confirm the results of Mr. Sacher's earlier inquiry in terms of there being varying practices among the courts. They do not, however, shed much additional light on why the practices vary or how best to address the problems that have arisen in the Second District.

Discussion

Application of Welfare and Institutions Code Section 827

The differing practices in the trial and appellate courts with respect to preparing the record on appeal in these cases may reflect, at least in part, a lack of clarity about whether Welfare and Institutions Code section 827 actually applies to a situation in which the record on appeal is being prepared, and thus whether the requirement for filing a petition in the juvenile court seeking access to the juvenile case file is a prerequisite to the superior court's preparation of the record on appeal. Staff found no statute, published case, or other authority directly addressing this issue.

Section 827 does not directly address the record on appeal in juvenile cases or the preparation of this record. In contrast, Family Code section 7805, which addresses confidentiality in proceedings to free children from parental custody and control – proceedings that are similar in nature to juvenile dependency proceedings in which parental rights are terminated – specifically addresses confidentiality of records in appellate proceedings. Subdivision (b) of this statute provides:

> In a proceeding before the court of appeal or Supreme Court to review a judgment or order entered in a proceeding under this part, the court record and briefs filed by the parties may be inspected only by the following persons:
>
> (1) Court personnel.

(2) A party to the proceeding.

(3) The attorneys for the parties.

(4) Any other person designated by the presiding judge of the court before which the matter is pending.

This provision has been in Family Code section 7805 and its predecessor, Civil Code section 233.5, for more than 35 years. This statutory language was, in fact, the model for the adoption in 1981of the language in rule 8.401(b), quoted above, which limits access to the record on appeal in juvenile cases.[11] Welfare and Institutions Code section 827 has also been in effect for more than 35 years. During that time, section 827 has been amended on numerous occasions, but no language specifically addressing access to appellate court records in juvenile cases has been added to section 827. This, combined with the Judicial Council's conclusion, evidenced by the adoption of 8.401(b), that a rule specifically addressing access to the record on appeal in juvenile cases was necessary to protect the confidentiality of these records, suggests that section 827 does not govern access to the record on appeal.

This does not necessarily answer the question of whether section 827 applies when the record on appeal is in the process of being prepared, however. At the record preparation stage of the proceedings, the records at issue might still be considered part of a juvenile court case file, and thus subject to section 827's access limitations. The practice in Los Angeles and several other courts of requiring the appellant to file a JV-570 if he or she not included on section 827's list appears consistent with this view.

Note, however, that the preparation of the record on appeal is generally governed by the Appellate Rules. As indicated above, rule 8.407 and 8.409 address the contents and preparation of the record in juvenile appeals. These rules do not include any provision indicating that some appellants are required to file a JV-570 before the record on appeal will be prepared and/or sent to them. In an unpublished opinion issued by the Second District Court of Appeal earlier this week, the court discussed the Los Angeles Superior Court's practice of similarly requiring the filing of a JV-570 by a prospective adoptive parent who filed a notice of intent to file a writ petition under Welfare and Institutions Code section 366.28 to review an order designating specific placement of a dependent child after termination of parental rights.[12] The Court of Appeal in that case, in ordering the superior court to prepare the record without the filing of the JV-570, focused on the fact that the California Rules of Court do not require a prospective adoptive parent to file a JV-570 request prior to filing a notice of intent to file a writ petition.

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[11] April 16, 1981 memo to members of the Judicial Council's Superior Court Committee from the Administrative Office of the courts re: Proposal Regarding Procedure in Juvenile Court Appeals.

[12] *Mark M, v. The Superior Court of Los Angeles* (January 11, 2017) B279631, 2017 WL 108038

Application of provisions authorizing access by an attorney for a party

The courts' differing practices with respect to preparing the record on appeal in these cases may also reflect, at least in part, a lack of clarity about whether an appellant who is not among the specific individuals named in section 827 should be considered a party in the proceeding for purposes of the provisions in section 827 and the rules that authorize access to juvenile records by attorneys for the parties.

Section 827 and rules 5.552, 8.401, and 8.409 all provide that attorneys for the parties are entitled to copy or receive records in juvenile cases without petitioning the court. Neither section 827 nor these rules include a definition of the term "party" for purposes of access to records in juvenile cases. The rule establishing definitions of terms used in the Juvenile Rules similarly does not include a definition of the term "party."[13] Absent a specific definition of "party," the definition of "party" in rule 1.6, which defines terms used throughout the California Rules of Court unless the context or subject matter otherwise requires, would apply in interpreting rule 5.552:

> "Party" is a person appearing in an action. Parties include both self-represented persons and persons represented by an attorney of record. "Party," "plaintiff," "People of the State of California," "applicant," "petitioner," "defendant," "respondent," "other parent," or any other designation of a party includes the party's attorney of record.

As with the Juvenile Rules, the Appellate Rules do not include a separate definition of the term "party." However, rule 8.10 specifically provides that "[u]nless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules."

Rule 1.6's definition of this term – "'Party' is a person appearing in an action" – would seem to cover any person who files a petition or an appeal in a juvenile proceeding. If an appellant other than the individual's listed in section 827 is considered a "party" for purposes of these provisions, then such a party's appellant's attorney should be entitled to access the juvenile record under section 827 and these rule provisions without filing a JV-570. The procedure followed in Riverside Superior Court, in which the record on appeal is sent to the district's appellate project, seems consistent with this view.

There is some basis for making a contrary argument, however. Prior to 1990, section 827 provided that juvenile records:

> may be inspected only by court personnel, the minor who is the subject of the proceeding, his parents or guardian, the attorneys for such parties, and such other persons as may be

[13] See rule 5.502, *Definitions and Use of Terms*, at http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_502

> designated by court order of the judge of the juvenile court upon filing a petition therefor (emphasis added)

This language suggests that the original intent of this provision was to allow attorneys for the minor or the minor's parents or guardians to inspect juvenile records. Effective January 1, 1991, this language was changed to read:

> may be inspected only by court personnel, the district attorney, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor.[14]

Staff did not find anything in the history of this legislation suggesting that the change from "such parties" to "the parties" was meant to be a substantive change.

Furthermore, interpreting "party" as including any person who appeals a ruling in a juvenile case and as entitling that person's counsel to receive a copy of the record on appeal could potentially undermine the confidentiality of juvenile records. Rule 8.407 does not establish different requirement for the contents of clerk's transcript depending on who is the appellant or what judgment or order is being appealed. As noted above, under rule 8.407 the clerk's transcript in all juvenile cases includes, among other things, "[a]ny report or other document submitted to the court." This would mean that an attorney for an appellant would have access to all such reports, even when such reports are not relevant to the judgment or order being appealed.

Finally, if the term party these provisions in these provisions were interpreted to apply to any person appearing in the action, these provisions would only entitle such parties attorneys, but not the parties themselves, to access the record. Thus these provisions would not address what procedure should be followed when there is a self-represented appellant. As suggested by the information gathered by Mr. Sacher, the appellants in the types of cases at issue, who are not the child or the child's parent or guardian, may not be entitled to appointment of appellate counsel and thus are likely to be self-represented.

Options

This section discusses several options that the subcommittee might want to consider for addressing the issue raised by Mr. Lane. These options are described below and advantages and disadvantages of each option are identified, along with questions that the subcommittee would need to address if the option were pursued. Draft rule amendments intended to implement most of these options are attached. These drafts include drafter's notes that explain the intent of

[14] Statutes of 1990, chapter 246 (A.B. 2638)

proposed new rule provisions and the origin of some of the proposed language. The first two options would all necessitate revisions to some existing Judicial Council forms. These revisions are described below, but revisions to the forms are not attached.

OPTION 1 –Require the Appellant to File *Request for Disclosure of Juvenile Case File* (form JV-570)

This option would implement the suggestion submitted by Mr. Lane. In concept, Mr. Lane's suggestion is to add a provision similar to that in rule 8.140, applicable in civil appeals, which provides:

> [I]f a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the party in writing that it must do the act specified in the notice within 15 days after the notice is sent, and that if it fails to comply, the reviewing court may impose one of the following sanctions:
>
> (1) If the defaulting party is the appellant, the court may dismiss the appeal.

In the attached draft, the language designed to implement this concept is incorporated into rule 8.405(b)(7). However, as noted above, unlike in civil appeals, in juvenile appeals, the California Rules of Court do not currently place any responsibility for procuring the record on an appellant; these rules provide for automatic preparation of the record on appeal when a notice of appeal is filed in a juvenile case and specify the contents of the record on appeal. Therefore, the attached draft also include provisions to:

- Establish appellants' underlying obligation to file the *Request for Disclosure of Juvenile Case File* (form JV-570) in these cases (rule 8.405(a)(4));
- Stop the automatic preparation of the record on filing of the notice of appeal in these cases (rule 8.405(b)(1)(B));
- Notify the Court of Appeal that the normal record preparation process will not apply in the case (rule 8.405(b)(3) and (8));
- Exempt these cases from the existing rule provisions that set the content of the record on appeal and instead direct the clerk and court reporter to prepare the record specified by the juvenile court (rule 8.407 and 8.409(c))(2);
- Establish a new trigger for when the record must be prepared and sent (rule 8.409(c)).

To fully implement this option, revisions would also be needed to *Notice of Appeal (California Rules of Court, Rule 8.400)* (form JV-800) to include notice of the appellant's obligation to file JV-570 and to *Request for Disclosure of Juvenile Case File* (form JV-570) to reflect that an appellant filing this form need not specify the documents to which he or she is seeking access.

The advantages of option 1 include:

- It would clarify the procedures for preparing the record on appeal in these cases;
- It would protect the confidentiality of records in juvenile case files;
- It would utilize existing procedures to evaluate the appropriateness of providing access records in juvenile case files; and
- Assuming that Courts of Appeal would end other practices designed to protect confidentiality in these cases, it would substantially reduce burdens on Courts of Appeal in these cases;

The disadvantages of option 1 include:

- It would add considerable time to the record-preparation process in these appeals where reaching resolution quickly is a high priority;
- Even if the procedures are clarified, it may be difficult for self-represented litigants to navigate the obligation to file a JV-570, resulting in these cases being dismissed for procedural default rather than being decided on the merits;
- For those trial courts that are not currently requiring the filing of a JV-570 in these cases, it would add new obligations; and
- It would apply section 827 to the appellate record preparation process when it is not clear that this statute is applicable.

If the subcommittee decides to pursue option 1, *questions the subcommittee would need to address include:*

- How should the appellants to whom the obligation to file a JV-570 applies be identified in the rule?
- The draft amendments focus on access to the record by the appellant:
    - Are there concerns about access to the record by anyone else who would ordinarily receive a copy of the record on appeal, such as the representative of the child's Indian tribe?
    - If the juvenile court grants permission for the appellant to inspect and copy records from the juvenile court file, must the record still be sent only to appellant's counsel?
    - Should the rules be modified to address access to the record by a self-represented appellant?

OPTION 2 –Require the Court of Appeal to Determine What to Include in the Record on Appeal and Who Should Receive the Record

This option would incorporate elements of the procedures described by the Riverside Superior Court and in the Third District Court of Appeal. Under this procedure an initial version of the record on appeal would be sent to the Court of Appeal for its review and that court would determine the appropriate contents of the final record and to whom it could be distributed. To implement this option the attached draft would:

- Require the notice of appeal to identify whether the appellant is among those entitled to inspect and copy records in a juvenile case file (rule 8.405(a)(2)). This is intended to identify those cases in which the alternate record preparation process will apply both for the superior court and, since the notice on appeal is sent to the reviewing court, for the Court of Appeal;
- Exempt these cases from the existing rule provisions that set the content of the record on appeal and instead direct the clerk and court reporter to prepare the record specified by the Court of Appeal (rule 8.407 and 8.409(f)(8));
- Require the superior court clerk to notify the appellant and other interested parties that:
    - The Court of Appeal will be determining the content of the record on appeal and who will receive copies of that record; and
    - Recipients of the notice may use JV-572 to file objections to the inclusion of items listed in rule 8.407 in the record on appeal or to the distribution of the record on appeal to the appellant or others entitled to a copy of the record on appeal. (rule 8.409(f)(2);
- Require initial version of the clerk's and reporter's transcripts to be sent to the Court of Appeal for its review (rule 8.409(f)(3) and (4)); and
- Require the Court of Appeal to apply the criteria used to decide whether to grant a Request for Disclosure of Juvenile Case File in deciding what records from the juvenile case file to include in the record on appeal and who should receive the record on appeal (rule 8.409(f)(5) and (6))

The advantages of option 2 include:

- It would clarify the procedures for preparing the record on appeal in these cases;
- It would protect the confidentiality of records in juvenile case files;
- Since the rules would place the obligation on the Court of Appeal to determine what should be included in the record on appeal without requiring the appellant to file either a JV-570 or a motion in the Court of Appeal, this procedure may be less difficult for self-represented litigants to navigate, resulting in fewer of these cases being dismissed for procedural default rather than being decided on the merits; and
- Assuming that superior courts end other practices designed to protect confidentiality in these cases, it would substantially reduce burdens on litigants and superior courts in these cases;
- It would allow the Court of Appeal to address access to the record on appeal for self-represented appellants.

The disadvantages of option 2 include:

- It would likely add time to the record-preparation process in these appeals where reaching resolution quickly is a high priority;
- For those Court of Appeal District that are not currently determining what should be included in the record on appeal in these cases, it would add new obligations; and

- It would establish a new, unfamiliar procedure for determining the appropriate contents and recipients of the record on appeal and would take the determination away from the juvenile court, which is most familiar with the case.

If the subcommittee decides to pursue option 2, *questions the subcommittee would need to address include:*

- The draft rules do not directly address the application of section 827 or the current practices in those superior courts that are requiring the appellant to file a JV-570.
    - Is an amendment to section 827 needed to clarify how it does or does not apply to the appellate record preparation process:
    - Are these amendments to the California Rules of Court sufficient to pre-empt local court rules and practices requiring the filing of a JV-570?
- How should the appellants who must be identified in the notice of appeal be described?
- The draft rules do not require the appellant to file a JV-570 or a motion seeking access to the juvenile records and only provide for the filing of objections to the inclusion of items in the record on appeal.
    - Will the Court of Appeal have sufficient information to appropriately determine what to include in the record on appeal without receiving either a motion or something like a JV-570 from the appellant?
    - Should the rules require or allow some sort of a submission supporting inclusion of items in the record on appeal?

OPTION 3 –Specify a Limited Record in These Appeals by Rule

This option is designed to establish a limited record on appeal in those appeals in which the appellant or respondent may be a person who is not entitled to inspect or copy records in a juvenile case file under section 827. This is modeled on rule 8.320(d) which establishes a limited normal record in certain appeals in felony cases.[15] Essentially, instead of requiring the juvenile court or the Court of Appeal to balance factors and determine appropriate access on a case-by-case basis, in recommending and adopting this amendment, the subcommittee, committee, and Judicial Council would be weighing these factors and identifying those juvenile records for which the interests of the appellant and respondent in accessing these records for purposes of an appeal outweighs the policy considerations favoring confidentiality of juvenile case files. The attached draft of this option would amend rule 8.407 to:

- Add a subdivision setting a limited record in appeals from:
    - An order granting or denying de factor parent status; or

[15] You can access this rule at: http://www.courts.ca.gov/cms/rules/index.cfm?title=eight&linkid=rule8_320

  - An order granting or denying a section 388 petition filed by a person not entitled to access the juvenile case file under section 827.

- Limit the clerk's transcript in these appeals to:
  - The petition that resulted in the order being appealed;
  - Any response filed to the petition under (A)
  - The order appealed from;
  - Any court minutes relating to the order appealed from; and:
  - The notice of appeal.
- Limit the reporter's transcript in these appeals to the oral proceedings at any hearing that resulted in the order being appealed.

The advantages of option 3include:

- It would clarify the content of the record on appeal in these cases;
- If superior courts and Courts of Appeal end other practices designed to protect confidentiality in these cases, it would reduce the time for record-preparation in these appeals where reaching resolution quickly is a high priority;
- It would not impose new burdens on litigants, the superior court, or the Court of Appeal and, if superior courts and Courts of Appeal end other practices designed to protect confidentiality in these cases, it may substantially reduce these burdens;
- Since the rules would not place an obligation on self-represented litigants to file JV-570 or a motion in the Court of Appeal, if local courts did not impose such requirements, this procedure may be less difficult for self-represented litigants to navigate, resulting in fewer of these cases being dismissed for procedural default rather than being decided on the merits; and
- It not would establish a new, unfamiliar procedure for determining the appropriate contents and recipients of the record on appeal.

The disadvantages of option 3 include:

- It is not clear if this approach would adequately protect the confidentiality of records in juvenile case files because it is not clear if it encompasses all the cases in which the appellant or respondent may be a person who is not entitled to access juvenile court records under section 827;
- Differing practices for record preparation in these cases might continue to exist in the trial and appellate courts; and
- The question of access to the record by self-represented parties is not addressed.

If the subcommittee decides to pursue option 3, *questions the subcommittee would need to address include:*

- Should the determination of what to include in the record on appeal in these cases be made by statewide rule or should it be done on a case-by-case basis? Note that section 827 and rule 5.552 contemplate that this determination will be done on a case-by-case basis considering, among other things, the relationship of the person who is seeking records to the child and/or the proceedings and what records are sought. Under this draft rule amendment the relationship of the person receiving the records to the proceedings and the records sought would be consistent, but the relationship of the person to the child would vary.
- Does the draft encompass all the cases in which the appellant or respondent may be a person who is not entitled to access juvenile court records under section 827?
- Balancing the interests of the child and other parties to the juvenile court proceedings, the interests of the appellant, and the interests of the public, are the records listed in the draft rules appropriate to release to an appellant or respondent in the identified juvenile proceedings?
    - Are the records are necessary and have substantial relevance to the legitimate need of the appellant and respondent?
    - Does the need for access to the records outweighs the policy considerations favoring confidentiality of juvenile case files?
- The draft rule amendments do not directly address the application of section 827 or the current practices in those superior courts that are requiring the appellant to file a JV-570 or those Courts of Appeal that are requiring the filing of a motion for the appellant to access the record.
    - Is an amendment to section 827 needed to clarify how it does or does not apply to the appellate record preparation process:
    - Are these amendments to the California Rules of Court sufficient to pre-empt local court rules and practices requiring the filing of a JV-570 or the filing of a motion?
- The draft amendments focus on access to the record by the appellant and respondent:
    - Are there concerns about access to the record by anyone else who would ordinarily receive a copy of the record on appeal, such as the representative of the child's Indian tribe?
    - Should the rules also be modified to address access to the record by a self-represented appellant?

OPTION 4 – Not Pursuing Amendments to the California Rules of Court
This is essentially the "do nothing" option for the subcommittee. The subcommittee would not recommend any California Rules of Court; any effort to address this issue would be left to the local rule-making authority of the Courts of Appeal and superior courts. Committees are

generally expected to consider this option whenever they consider whether to recommend changes to the California Rules of Court or Judicial Council forms.

The advantages of option 4 include:

- It would not mandate changes or uniform practice by the superior courts or the Courts of Appeal.

The disadvantages of option 4 include:

- It would not clarify record preparation procedures in these cases;
- There would not be uniformity in the protection of the confidentiality of records in juvenile case files;
- The procedures would likely continue to be difficult for self-represented litigants to navigate, resulting in these cases being dismissed for procedural default rather than being decided on the merits; and
- Both superior courts and Courts of Appeal would continue to expend considerable time and records in the record-preparation process in these appeals.

Rules Subcommittee Task

The subcommittee's task is to review this memo and:

- Decide what approach to recommend that the committee consider pursuing;
- If the subcommittee wishes to recommend a statewide approach, decide the approach the subcommittee wants to recommend and discuss the questions regarding that approach; or
- Ask staff or committee members for further information/analysis.

COURT	PRACTICE
	Require non-party appellant to file form JV570
Los Angeles	Currently, we require a judicial ruling on the JV570. If the appellant fails to file the JV570, however, the status of the appeal is uncertain; this creates a problem for the trial court and the appellate court. One resolution would be a rule that provides for default dismissal if the JV570 is not filed. As an alternative, a rule that would provide for release of records to a non-party appellant. (See Los Angeles Superior Court Local Rule 7.2, Confidentiality of Juvenile Case Files, at http://www.lacourt.org/courtrules/CurrentCourtRulesPDF/Chap7.pdf#page=7)
San Bernardino	Currently, we provide the appeal to the appeals division, and we do not recall having appeals contact us if the party is not a party to the case, as indicated in the original email below. A party would be required to file the 827 petition in order to view and/or have the record provided to the reviewing court. (See San Bernardino Superior Court Local Rule 1690, Release of Information Relating to Juveniles, at http://www.sb-court.org/Portals/0/Documents/PDF/Forms%20and%20Rules/rulesofcourt.pdf)
Tulare	Pursuant to our court's LRC Rule 1111 Confidentiality of Juvenile Court Records, an appellant or anyone not listed in W&I 827 as being entitled to inspect or receive copies are required to file A JV-570 Request for Disclosure of Juvenile Case File (including records of appeal). The juvenile judge would determine what to can be release and/or set a hearing. We have not receive a request as this, but this would be our process if we received a request from an appellant. (See Tulare Superior Court Local Rule 1111, Confidentiality of Juvenile Court Records, at: http://www.tularesuperiorcourt.ca.gov/docs/LocalRulesAsAmended.pdf)
Ventura	In Ventura county, any non-party appellant who wanted access to juvenile court records would need to file a request under WIC 827.

	(See Ventura Superior Court Local Rule 12.00 Release of Juvenile Case File Information, at: http://www.ventura.courts.ca.gov/local_rules/ventura_county_rules_of_court.pdf
	Do not require appellant to file form JV570
Butte	Although seldom, we have had this situation occur. We do not provide the appellant with the record on appeal nor do we require a *Request for Disclosure of Juvenile Case File* (form JV-570). In a recent case, a hearing was held in which the judge made a determinations as to which documents could be made available to the appellant. The judge ordered the De Facto Parent Request, the hearing minutes and the denial were the only documents to which the appellant was entitled.
Riverside	We do not require a request for disclosure. Our procedure is to file the notice of appeal and send the appeal packet to the District Court of Appeal. The District Court then advises the trial court to prepare the record or if a dismissal will be ordered. If the direction from the District Court of Appeal is to prepare the record, our practice is to send the appeal record to the Appellate Defenders Inc. (ADI) or counsel appointed by the District Court, not directly to the appellant. (See Riverside Superior Court Local Rules 5230 and 5251, at: http://www.riverside.courts.ca.gov/localrules/completerules.pdf)
Solano	We don't have a procedure and don't have a standing order for this. We require a JV-570 only if they request copies of the file or clerk's transcript at our front counter. (See Solano Superior Court Local Rules 6.4 and 6.5 , at: http://www.solano.courts.ca.gov/materials/Solano%20County%20Local%20Rules%20Effective%202017-01-01%20--%20Rule%206.pdf)

OPTION 1 –Require the appellant to file JV-570

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1) To appeal from a judgment or appealable order under these rules, the appellant must file a notice of appeal in the superior court. Any notice of appeal on behalf of the child in a Welfare and Institutions Code section 300 proceeding must be authorized by the child or the child's CAPTA guardian ad litem.

(2) The appellant or the appellant's attorney must sign the notice of appeal.

(3) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(4) If the appellant is not [entitled to inspect and copy the juvenile court case file under Welfare and Institutions Code section 827][the child who is the is the subject of the proceeding, the child's parent or guardian, the petitioning agency in a dependency action, or the district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law] the appellant must file a *Request for Disclosure of Juvenile Case File* (form JV-570) with the notice of appeal.

DRAFTER'S NOTES: This proposed new provision would require the filing of the JV-570 with the notice of appeal. It is designed to give the superior court notice at the very outset that this is an appeal in which alternate record preparation procedures will apply and to start the rule 5.552 review process as early as possible. The bracketed language provides different approaches for identifying the cases in which these alternative procedures will apply. The first alternative cross-references to section 827, ensuring that all potential appellants not entitled to inspect and copy records under that statute are covered, but also making the rule difficult for self-represented litigants to understand. The second alternative incorporates language from section 827, making the rule it easier for self-represented litigants to understand, but also potentially leaving out some appellants.

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) Send a notification of the filing to:

(i) Each party other than the appellant, including the child if the child is 10 years of age or older;

(ii) The attorney of record for each party;

(iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(iv) Any Court Appointed Special Advocate (CASA) volunteer;

(v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and

(vi) The reviewing court clerk; and

(B) If the appellant was not required to file a *Request for Disclosure of Juvenile Case File* (form JV-570) under rule 8.401(a)(4), notify the reporter by telephone and in writing to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

DRAFTER'S NOTES: This proposed amendment is designed to ensure that the court reporter does not begin preparing the transcript in cases in with a JV-570 is required.

(2) * * *

(3) The notification to the reviewing court clerk must also:

(A) Include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950; and

(B) Indicate whether the appellant was required to file a *Request for Disclosure of Juvenile Case File* (form JV-570) under rule 8.401(a)(4).

DRAFTER'S NOTES: This proposed provision is designed to ensure that the Court of Appeal is notified that this is an appeal in which the alternate record preparation procedures will apply.

(4) - (6) * * *

(7) If the appellant who is required to file a *Request for Disclosure of Juvenile Case File* (form JV-570) under rule (a)(4) does not file this request with the notice of appeal:

(A) The superior court clerk must promptly notify the appellant in writing that it must file a *Request for Disclosure of Juvenile Case File* (form JV-570) within 15 days after the clerk's notice is sent, and that if it fails to comply, the reviewing court may dismiss the appeal.

(B) If the appellant fails to file the request as specified in the notice given under (A), the superior court clerk must promptly notify the reviewing court of the default and the reviewing court may dismiss the appeal. If the appeal is dismissed, the reviewing court must promptly notify the superior court. The reviewing court may vacate the dismissal for good cause.

(C) If the superior court clerk fails to give a notice required by (A), a party may serve and file a motion for sanctions under (B) in the reviewing court, but the motion

must be denied if the files a *Request for Disclosure of Juvenile Case File* (form JV-570) within 15 days after the motion is served.

DRAFTER'S NOTES: This proposed new provision would establish the sanction of dismissal for failing to file a JV-570 when one is required. It also requires notice and an opportunity to cure the default before the sanction is imposed. The language of this provision is modeled on rule 8.140.

(8) If the appellant files a *Request for Disclosure of Juvenile Case File* (form JV-570) under this rule:

(A) The clerk must immediately send a copy of the request to the reviewing court clerk;

(B) When the juvenile court issues its order on the request, the clerk must immediately transmit a copy of the order to the reviewing court clerk.

DRAFTER'S NOTES: This proposed new provision would ensure that the Court of Appeal is kept informed when the JV-570 is filed and when this request is decided..

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

Except as provided in (c), the clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

(4) Any report or other document submitted to the court;

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

(8) The notice of appeal and any order pursuant to the notice;

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

(10) Any application for additional record and any order on the application;

(11) Any opinion or dispositive order of a reviewing court in the same case; and;

(12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

(b) Normal record: reporter's transcript

Except as provided in (c), the reporter's transcript must contain any oral opinion of the court and:

(1) In appeals from disposition orders, the oral proceedings at hearings on:

(A) Jurisdiction;

(B) Disposition;

(C) Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

(3) In all other appeals, the oral proceedings at any hearing that resulted in the order or judgment being appealed.

(c) Limited normal record in certain appeals

If the appellant was required to file a *Request for Disclosure of Juvenile Case File* (form JV-570) under rule 8.401(a)(4), the record on appeal must contain only those items the juvenile court orders to be released to the appellant.

DRAFTER'S NOTES: This proposed new provision would clarify that the general provisions establishing the contents of the record on appeal do not apply in a case in which the juvenile court is considering a request for disclosure of juvenile records.

~~(c)~~ (d) * * *

~~(d)~~ (e) * * *

~~(e)~~ (f) * * *

Rule 8.409. Preparing and sending the record [NOTE: similar changes would also need to be made to rule 8.416]

(a) – (b) * * *

(c) Preparing and certifying the transcripts

(1) Except as provided in (2), within 20 days after the notice of appeal is filed:

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

~~(2)~~(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the requirements of rule 8.144(a)(4).

(2) If the appellant files a *Request for Disclosure of Juvenile Case File* (form JV-570) under rule 8.401 and the juvenile court issues an order approving this request in whole or in part:

(A) Within 20 days after the juvenile court issues its order, the clerk must prepare an original and copies of the clerk's transcripts specified in (1) containing only the records the juvenile court orders to be released to the appellant;

(B) The clerk must immediately notify the court reporter by telephone and in writing to prepare and deliver to the clerk within 20 days after the juvenile court issues is order a reporter's transcript containing only the oral proceedings the juvenile court orders to be released to the appellant.

DRAFTER'S NOTES: This proposed new provision would clarify that the trigger for preparing the record on appeal in cases in which a JV-570 is required is the juvenile court's issuance of its order on this request and that the record must contain only what the juvenile court has ordered be released..

(d) * * *

(e) Sending the record

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

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

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

(i) The appellant;

(ii) The respondent;

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

(iv) The child.

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

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

OPTION 2 –Require the Court of Appeal to Determine What to Include in the Record on Appeal and Who Should Receive the Record

Rule 8.405. Filing the appeal

(a) Notice of appeal

(1) To appeal from a judgment or appealable order under these rules, the appellant must file a notice of appeal in the superior court. Any notice of appeal on behalf of the child in a Welfare and Institutions Code section 300 proceeding must be authorized by the child or the child's CAPTA guardian ad litem.

(2) The notice of appeal must indicate whether the appellant is [entitled to inspect and copy the juvenile court case file under Welfare and Institutions Code section 827]

[(A) The child who is the is the subject of the proceeding;

(B) The child's parent or guardian;

(C) The petitioning agency in a dependency action;

(D) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law, or

(F) Another person or entity with a relationship to the child in (A) or an interest in the case.]

DRAFTER'S NOTES: This proposed new provision would require the notice of appeal to identify whether the appellant would be entitled to inspect and copy the juvenile case file under section 827. It is designed to give both the superior court and the Court of Appeal notice at the outset that this is an appeal in which alternate record preparation procedures will apply. The bracketed language provides different approaches for identifying the cases in which these alternative procedures will apply. The first alternative cross-references to section 827, ensuring that all potential appellants not entitled to inspect and copy records under that statute are covered, but also making the rule difficult for self-represented litigants to understand. The second alternative incorporates language from section 827, making the rule it easier for self-represented litigants to understand, but also potentially leaving out some appellants.

~~(2)~~(3) The appellant or the appellant's attorney must sign the notice of appeal.

~~(3)~~(4) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) * * *

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

Unless otherwise ordered by the reviewing court under rule 8.409(f), the clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

(4) Any report or other document submitted to the court;

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

(8) The notice of appeal and any order pursuant to the notice;

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

(10) Any application for additional record and any order on the application;

(11) Any opinion or dispositive order of a reviewing court in the same case; and;

(12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

(b) Normal record: reporter's transcript

Unless otherwise ordered by the reviewing court under rule 8.409(f), the reporter's transcript must contain any oral opinion of the court and:

(1) In appeals from disposition orders, the oral proceedings at hearings on:

(A) Jurisdiction;

(B) Disposition;

(C) Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

(3) In all other appeals, the oral proceedings at any hearing that resulted in the order or judgment being appealed.

(c) – (e) * * *

Rule 8.409. Preparing and sending the record [NOTE: similar changes would also need to be made to rule 8.416]

(a) – (b) * * *

(c) Preparing and certifying the transcripts

Except as provided in (f), within 20 days after the notice of appeal is filed:

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

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the requirements of rule 8.144(a)(4).

(d) * * *

(e) Sending the record

Except as provided in (f):

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

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

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

(i) The appellant;

(ii) The respondent;

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

(iv) The child.

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

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

(f) Cases in which record must be reviewed by the Court of Appeal

(1) This subdivision applies if the notice of appeal indicates that the appellant is not [entitled to inspect and copy the juvenile court case file under Welfare and Institutions Code section 827][the child who is the is the subject of the proceeding, the child's parent or guardian, the petitioning agency in a dependency action, or the district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law].

(2) When the clerk sends notification of the filing of the notice of appeal, it must also notify the appellant and all those [who must be sent notification of the filing of the notice of appeal under rule 8.405(b)(1)(A)][entitled to receive notice of a petition for disclosure under rule 5.552] that:

(A) The Court of Appeal must review and approve the contents of the record on appeal in this case and its distribution to the appellant and others entitled to a copy of the record on appeal under (e).

(B) Within 15 days of the date of the clerk's notice, recipients may serve and file objections in the Court of Appeal to the inclusion of items listed in rule 8.407 in

the record on appeal or the to the distribution of the record on appeal to the appellant or others entitled to a copy of the record on appeal under (e); and

(C) Form JV-572 may be used for filing such objections. A blank copy of this form must be attached to the clerk's notice.

DRAFTER'S NOTES: This proposed new provision would require the superior court to notify the appellant and other interested parties of the different record preparation procedures applicable in these appeals. The bracketed language in the initial sentence of proposed paragraph (2) provides alternatives for who should receive notice regarding this record preparation. The first set of bracketed language would provide for notice to those who are ordinarily notified of the filing of a notice of appeal. The second set of bracketed language would provide for notice to those who are ordinarily served with a copy of a *Request for Disclosure of Juvenile Case File* (form JV-570).

Subparagraph (B) would give those who received notice under this provision the opportunity to submit objections to the inclusion of items from the juvenile case file in the record on appeal. This is modeled on rule 5.552, which sets the procedures for the juvenile court to consider *Requests for Disclosure of Juvenile Case File* (form JV-570) The requirement in subparagraph (C) to provide a blank copy of the objection form is modeled on the language of rule 5.552(e), although the petitioner is generally the one required to serve the form under that rule.

(3) Within 20 days after the notice of appeal is filed, the clerk must prepare and certify as correct an original of the clerk's transcript and the reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript.

(4) When the transcripts are certified as correct, the court clerk must immediately send them to the reviewing court, noting the sending date on each original.

DRAFTER'S NOTES: Proposed new paragraphs (3) and (4) would establish the timeline for initial preparation and submission of a draft record on appeal to the Court of Appeal for review. The language is modeled on language in current subdivisions (c) and (e) of this rule.

(5) The reviewing court must review the transcripts and any objections filed under (2). In determining what to include in the record on appeal or to distribute, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the appellant, and the interests of the public. The court may permit inclusion or distribution of records from juvenile case files only insofar as is necessary, and only if the reviewing court concludes that:

(A) The records are necessary and have substantial relevance to the legitimate need of the appellant; and

(B) The need for access to the records outweighs the policy considerations favoring confidentiality of juvenile case files. The confidentiality of juvenile case files is intended to protect the privacy rights of the child.

(6) On completion of its review under (5), the court must issue an order specifying the contents of the record on appeal and its distribution. A copy of this order must be sent to the superior court clerk.

DRAFTER'S NOTES: Proposed new paragraphs (5) and (6) would establish the procedure for the Court of Appeal to determine what items from the juvenile case file to include in the record on appeal. The language of subparagraph (5)(2) is modeled on the language of rule 5.552(e), which sets the procedures for the juvenile court to consider a *Request for Disclosure of Juvenile Case File* (form JV-570).

(7) Within 20 days after the reviewing court issues its order, the superior clerk must prepare and certify as correct an original clerk's transcript containing only the records the reviewing court ordered to be included and sufficient copies of the transcript to distribute to all those the reviewing court ordered must receive the transcript;

(8) The clerk must immediately notify the court reporter by telephone and in writing to prepare, certify as correct, and deliver to the clerk within 20 days after the reviewing court issues is order a reporter's transcript containing only the oral proceedings the reviewing court orders to be included in the transcript and sufficient copies of the transcript to distribute to all those the reviewing court ordered must receive the transcript.

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

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

(B) One copy of each transcript to those to whom the Court of Appeal ordered the transcripts to be distributed.

DRAFTER'S NOTES: Proposed new paragraphs (7) through (9) would establish the timeline for preparation and submission of a final record on appeal to the Court of Appeal for review. The language is modeled on language in current subdivisions (c) and (e) of this rule. However, this draft would require the Court of Appeal to determine who is to receive the record on appeal and, thus, to determine the number of copies of the transcripts to be prepared.

OPTION 3 –Specify a Limited Record in Appeals That May Filed by a Non-Party (Note – this could be combined with Option 1 or Option 2)

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

Except as provided in (c), the clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

(4) Any report or other document submitted to the court;

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

(8) The notice of appeal and any order pursuant to the notice;

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

(10) Any application for additional record and any order on the application;

(11) Any opinion or dispositive order of a reviewing court in the same case; and;

(12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

(b) Normal record: reporter's transcript

Except as provided in (c), the reporter's transcript must contain any oral opinion of the court and:

(1) In appeals from disposition orders, the oral proceedings at hearings on:

(A) Jurisdiction;

(B) Disposition;

(C) Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

(3) In all other appeals, the oral proceedings at any hearing that resulted in the order or judgment being appealed.

(c) Limited normal record in certain appeals

(1) *Application*

This subdivision establishes what comprises the normal record when the appeal is of the following judgements or orders:

(A) The granting or denial of a petition for de facto parent status; and

(B) The granting or denial of a petition under Welfare and Institutions Code section 388 filed by a person who is not [entitled to inspect and copy the juvenile court case file under Welfare and Institutions Code section 827][the child who is the is the subject of the proceeding, the child's parent or guardian, the petitioning agency in a dependency action, or the district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law]; and

(2) *Clerk's transcript*

A clerk's transcript containing:

(A) The petition that resulted in the order being appealed;

(B) Any response filed to the petition under (A)

(C) The order appealed from;

(D) Any court minutes relating to the order appealed from; and:

(E) The notice of appeal.

(2) *Reporter's transcript*

A reporter's transcript of the oral proceedings at any hearing that resulted in the order being appealed.

DRAFTER'S NOTES: This proposed new provision would establish the normal content of the record on appeal in the types of cases in which there may be appellants who are not entitled under section 827 to inspect and copy the juvenile case file. This is intended to minimize confidentiality concerns in these appeals by narrowing what is included in the record on appeal.

~~**(c)**~~ **(d)** *** * ***

~~**(d)**~~ **(e)** *** * ***

~~**(e)**~~ **(f)** *** * ***

Item B

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date
January 17, 2017

To
Appellate Advisory Committee, Rules Subcommittee

From
Heather Anderson, Supervising Attorney, Legal Services

Subject
Public Comments on Proposed Rules to Implement

Action Requested
Please read before January 18 subcommittee conference call

Deadline
January 18, 2017

Contact
Heather Anderson
415-865-7691
heather.anderson@jud.ca.gov

Introduction

As you may recall, late last year, the Appellate Advisory Committees recommended circulating for public comment a set of proposed new rules of court intended to implement recent legislation that requires the Court of Appeal to issue its decision in cases involving the review of certain orders denying motions to compel arbitration no later than 100 days after the notice of appeal is filed. The Judicial Council's Rules and Projects Committee approved that recommendation and the proposed rules were circulated for public comment between December 5, 2016 and January 11, 2017. A copy of the invitation to comment is available at: http://www.courts.ca.gov/documents/SP16-13.pdf.

Public Comments

Nine individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposal, four agreed with the proposal if modified, and two did not indicate a position on the proposal overall but provided comments. A tenth person submitted input to the comment box, but the input was not about this proposal. The full text of the comments received on the proposal and staff's suggested committee responses are set out in the attached comment chart. The main substantive comments and staff's proposed responses are also discussed below,

but there are other comments and responses that are discussed only in the comment chart, so **please review the draft comment chart carefully**.

Notice of Appeal Period

As you may recall, with a few exceptions, the proposed rules were generally modeled on existing rules 8.700 – 8.702 which implement statutory requirements for expedited review in certain cases under the California Environmental Quality Act (CEQA). These exceptions included setting a longer notice of appeal period and a shorter period for the filing of the appellant's opening brief than under the CEQA rules. The CEQA rules require that the notice of appeal be filed within 5 days after notice of entry of the judgment is served and then give the appellant 25 days from the filing of the notice of appeal to file an opening brief. As circulated, these proposed new rules would instead require the notice of appeal to be filed within 20 days after notice of entry of the order is served and would give the appellant 10 days after the notice of appeal is filed to serve and file an opening brief. Under this proposal, the appellant would be expected to utilize some of the proposed 20-day notice of appeal period to prepare its opening brief. The committee ultimately decided that this approach was preferable because it would provide greater flexibility in scheduling the remaining briefing while still allowing time for the court's deliberations during the statutorily–mandated 100-day period for the appeal.

In the invitation to comment, the committee specifically sought comments on which approach is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief. Five commentators provided specific input on this question:

- Two commentators – the California Assisted Living Association (CALA) and the Superior Court of Los Angeles County – expressed a preference for the 5-day notice of appeal period:
  - CALA expressed concern about making the briefing periods for appellants and respondents similar and that appellants might want to file the notice of appeal early for purposes of obtaining a stay
  - The Superior Court of Los Angeles County expressed a desire for the rules to be similar to those for the expedited CEQA review
- On commentator – the Court of Appeal, Fifth Appellate District, suggested shortening the notice of appeal period to 10 or 15 days in order to shorten the overall period for completing these cases.
- Two commentators – Mr. Craton and the Orange County Bar Association – expressed a preference for the proposal as circulated, with the longer notice of appeal period:
  - Mr. Craton noted the jurisdictional nature of the deadline for filing the notice of appeal and expressed concern about the likelihood of inadvertent defaults when the notice of appeal period is very short
  - The Orange County Bar simply expressed that the proposed approach is preferable.

Although, in terms of numbers, the weight of the comments favors lengthening the notice of appeal period, staff does not recommend making this change for the reasons stated in the suggested response to the comments of CALA and the Court of Appeal, Fifth Appellate District in the attached comment chart:

- Shortening the notice of appeal period and lengthening the briefing time will not actually increase the overall length of time available for the appellant to prepare its opening brief;
- While shortening the notice of appeal period and lengthening the briefing time is likely to reduce the number of cases in which the reporter's transcript is not yet available when the appellant's opening brief is due (necessitating filing a later, final brief that includes citations to the transcript), it is not likely to eliminate this issue altogether because the deadlines will remain very tight;
- As noted by Mr Craton, because the notice of appeal period is jurisdictional, making the notice of appeal period shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether.
- Under Code of Civil Procedure section 1008, the deadline for filing a motion for reconsideration is "within 10 days after service upon the party of written notice of entry of the order," so a 5-day or even 10-day notice of appeal period will create potential conflicts with the deadline for filing a motion for reconsideration in the trial court.
- Increasing the time for filing the opening brief will necessitate reducing the already short time that either the parties have for briefing or the Court of Appeal has to consider the matter and issue its decision in these cases.

CALA does raise a legitimate concern about appellants who may wish to file a notice of appeal quickly for purposes of obtaining a stay. Under the proposal, such an appellant would have a substantially shorter time to file the opening brief. However, such an appellant could still seek a stay in the trial court even if the notice of appeal was not yet filed.

Extensions of the Notice of Appeal Period

Proposed rule 8.712(c) in the proposal that was circulated for public comment mirrored provisions in rule 8.108 that provide extensions on the time for filing the notice of appeal when cross appeals or certain post-trial motions are filed in the trial court. Five commentators provided input on this provision:

- Three commentators expressed concern or suggested eliminating all or part of this provision:
    - The Consumer Attorneys of California recommended eliminating this provision entirely. They indicated that motions for new trials and motions to vacate judgments are not applicable to orders denying motions to compel arbitration.
    - One of the Presiding Justices of the Second District Court of Appeal expressed concern that these extensions of the time for filing the notice of appeal ae inconsistent with the intent of the legislation that these appeals be disposed of within 100 days.

  - The Court of Appeal, Fourth Appellate District, Division One, like the Consumer Attorneys of California, indicated that the use of a motion for new trial or to vacate judgment is very uncommon following the denial or dismissal of a motion to compel arbitration. The Court also expressed concern the lack of guidance about how the courts are to handle conflicts, noted in the Advisory Committee Comment to the rule, between the deadlines for the filing of the notice of appeal and these post-trial motions.

- To commentators – the Orange County Bar Association and the Los Angeles Superior Court – in response to a specific inquiry in the invitation to comment, expressed support for including a provision that addresses the time for filing a cross-appeal.

In response to these comments, staff recommends revising the proposed rules to delete the provisions regarding motions for new trial and motions to vacate judgments. Staff did a Westlaw search for any cases involving denials for motions to compel arbitration where either a motion for a new trial or a motion to vacate was filed. Staff found no such cases. It seems that these provisions should therefore be deleted as inapplicable.

In contrast, there is case law indicating that motions for reconsideration can be used following an order on a petition to compel arbitration. (See *Blake v. Ecker* (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in *Le Francois v. Goel* (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5 and Knight et al, Cal. Prac. Guide Alt. Disp. Res. Ch. 5-G, sec. 5:335.6.) . The legislation enacting new Code of Civil Procedure section 1494.4 did not eliminate the right to seek reconsideration of these rulings. Staff therefore believes that it would be best for the proposed rules to follow the model of rule 8.108 in clarifying the impact on the time for filing a notice of appeal in the event that such a motion is filed in the trial court. Since the legislation is focused on limiting the time spent on the appellate process, not the trial court process, staff does not think that including such a provision is inconsistent with the intent of the legislation.

Staff also recommends deleting the proposed advisory committee comment accompanying this rule, which, as circulated for public comment, provided:

> It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

It appears that this comment was a hold-over from an earlier draft of the rules in which a 5-day notice of appeal period was proposed. The notice of appeal period would have overlapped with the time for filing a motion for reconsideration. As noted above, however, the proposed 20-day notice of appeal period does not overlap with this time period. Given that this comment is not accurate with respect to motions for reconsideration and staff is recommending the deletion of

the rule provisions relating to motions for new trial or to vacate a judgment, staff recommend deleting this advisory committee comment in its entirety.

Based on the comments, there does not seem to be an objection to retaining the provision that gives guidance about the time to file a cross-appeal. Therefore, staff suggest retaining it in the rule.

Transcript Reimbursement Fund Applications

The invitation to comment specifically noted that proposed rules did not include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund because of concerns relating to delay in the preparation of the record and because appellant in these cases are unlikely to qualify for such reimbursement. The committee specifically sought comments on this approach. Two commentators provided input on this issue:

- The Los Angeles Superior Court suggested that the rule should address Transcript Reimbursement Fund applications. They noted that a party electing a reporter's transcript is ordinarily permitted to apply for reimbursement from the Fund and suggested that, unless specifically prohibited from using this fund, consistency with the existing rules on reporter's transcripts would be best.
- The Orange County Bar Association expressed a preference for inclusion of the proposed rule on lending of the record.

Staff's view is that the Los Angeles Superior Court has raised a legitimate point about access to the Transcript Reimbursement Fund. Staff therefore suggests that the proposed rule include a cross reference to the provision in rule 8.130 that encompasses potential substitution of an application to the Fund for reporter's transcript deposit. This will not necessarily encourage use of such applications, but it will cover such a situation if it occurs. Staff also suggest keeping the lending of the record provision that was included in the proposal circulated for public comment, as it provides a helpful alternative method of providing the record in these situations.

Subcommittee Task

Staff has prepared a revised draft of the proposed rules. This draft reflects staff's draft of potential modifications to the proposal in response to the public comments, which are shown in yellow highlighting. The subcommittee's task with respect to this proposal is to:

- Discuss the comments received on the proposal;
- Discuss and approve or modify staff suggestions for responding to the comments, as reflected in the draft comment chart and revised draft rules; and

- Decide what to recommend to the full advisory committee regarding adoption of the proposal.

Attachments

1. Revised draft of the proposed rules
2. Draft comment chart

California Rules of Court, rules 8.104 would be amended and rules 8.710 – 8.717 are adopted, effective July 1, 2017 to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 1. Taking the Appeal

Rule 8.104. Time to appeal

(a) Normal time

(1) Unless a statute~~,~~ or rules 8.108, ~~or rule~~ 8.702, or 8.712 provide~~s~~ otherwise, a notice of appeal must be filed on or before the earliest of:

(A) – (C) * * *

**(b) – (e) * * *

Advisory Committee Comment

Subdivision (a). This subdivision establishes the standard time for filing a notice of appeal and identifies rules that establish very limited exceptions to this standard time period for cases involving certain post judgment motions and cross-appeals (rule 8.108), certain expedited appeals under the California Environmental Quality Act (rule 8.702), and ~~review~~ appeals under Code of Civil Procedure section 1294.4 of an order dismissing or denying a petition to compel arbitration ~~under Code of Civil Procedure section 1294.4~~ (Rule 8.712).

Under subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk served the document. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(A) begins to run.

Subdivision (a)(1)(B) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(B) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the requirement is reiterated here because of the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

Subdivision (b). * * *

Chapter 12. ~~Review of~~ Appeal Under Code of Civil Procedure Section 1294.4 From An Order Dismissing Or Denying A Petition To Compel Arbitration ~~Under Code of Civil Procedure Section 1294.4~~

Rule 8.710. Application

(a) Application of the rules in this chapter

The rules in this chapter govern appeals under Code of Civil Procedure section 1294.4 ~~to review~~ from a superior court order dismissing or denying a petition to compel arbitration ~~under Code of Civil Procedure section 1294.4~~.

(b) Application of general rules for civil appeals

Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to civil appeals, apply to appeals under this chapter.

Rule 8.711. Filing and service

(a) Method of Service

Except ~~when the court orders otherwise under (b) or~~ as otherwise provided by law~~,~~ :

(1) All documents must be served electronically on parties who have consented to electronic service or who are otherwise required by law or court order to accept electronic service. All parties represented by counsel are deemed to have consented to electronic service. All self-represented parties may so consent.

(2) All documents that the rules in this chapter require be served on the parties that are not served electronically must be served by personal delivery, ~~electronic service,~~ express mail, or other means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013 and reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court.

(b) Electronic filing ~~and service~~

~~(1)~~ In accordance with rule 8.71, all parties except self-represented parties are required to file all documents electronically except as otherwise provided by these rules, the local rules of the reviewing court, or court order. Notwithstanding rule 8.71(b), in appeals governed by this chapter, a court may order a self-represented party to file documents electronically.

~~(2) All documents must be served electronically on parties who have consented to electronic service or who are otherwise required by law or court order to accept electronic service. All parties represented by counsel are deemed to have consented to electronic service. All self-represented parties may so consent.~~

(c) Exemption from extension of time

The extension of time provided in Code of Civil Procedure section 1010.6 for service completed by electronic means does not apply to any service in actions governed by these rules.

Rule 8.712. Notice of appeal

(a) Contents of notice of appeal

(1) The notice of appeal must state that the superior court order being appealed is governed by the rules in this chapter.

(2) ~~A copy~~ Copies of the order being appealed and the order granting preference under Code Civ. Proc., § 36 must be attached to the notice of appeal.

(b) Time to appeal

The notice of appeal must be served and filed on or before the earlier of:

(1) Twenty days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of ~~judgment~~ the order dismissing or denying a petition to compel arbitration or a filed-endorsed copy of the ~~judgment~~ order, showing the date either was served; or

(2) Twenty days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of ~~judgment~~ the order dismissing or denying a petition to compel arbitration or a filed-endorsed copy of the ~~judgment~~ order, accompanied by proof of service.

(c) Extending the time to appeal

~~(1) *Motion for new trial*~~

~~If any party serves and files a valid notice of intention to move for a new trial or, under rule 3.2237, a valid motion for a new trial and that motion is denied, the time to appeal from the judgment is extended for all parties until the earlier of:~~

~~(A) Five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; or~~

~~(B) Five court days after denial of the motion by operation of law.~~

~~(2) *Motion to vacate judgment*~~

~~If, within the time prescribed by subdivision (b) to appeal from the judgment, any party serves and files a valid notice of intention to move or a valid motion to vacate the judgment and that motion is denied, the time to appeal from the judgment is extended for all parties until five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order.~~

(1) *Motion to reconsider appealable order*

If any party serves and files a valid motion ~~to reconsider an appealable the order~~ under Code of Civil Procedure section 1008, subdivision (a), to reconsider the order dismissing or denying a petition to compel arbitration, the time to appeal from that order is extended for all parties until five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order.

(2) *Cross-appeal*

If an appellant timely appeals from ~~a judgment or appealable~~ the order dismissing or denying a petition to compel arbitration, the time for any other party to appeal from the same ~~judgment or~~ order is extended until five court days after the superior court clerk serves notification of the first appeal.

~~**Advisory Committee Comment**~~

~~It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.~~

Rule 8.713. Record on appeal

(a) Record of written documents

The record of the written documents from the superior court proceedings must be in the form of a joint appendix or separate appellant's and respondent's appendixes under rule 8.124.

(b) Record of the oral proceedings

(1) The appellant must serve and file with its notice of appeal a notice designating the record under rule 8.121 specifying whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must designate a reporter's transcript.

(2) Within 10 days after the superior court notifies the court reporter to prepare the transcript under rule 8.130(d)(2), the reporter must prepare and certify an original of the transcript and file the original and required number of copies in superior court.

(3) If the appellant does not present its notice of designation as required under (1) or if any designating party does not submit the required deposit for the reporter's transcript under rule 8.130(b)(1) or a permissible substitute under rule 8.130(b)(3) with its notice of designation or otherwise fails to timely do another act required to procure the record, the superior court clerk must serve the defaulting party with a notice indicating that the party must do the required act within two court days of service of the clerk's notice or the reviewing court may impose one of the following sanctions:

(A) If the defaulting party is the appellant, the court may dismiss the appeal; or

(B) If the defaulting party is the respondent, the court may proceed with the appeal on the record designated by the appellant.

(4) Within 10 days after the record is filed in the reviewing court, a party that has not purchased its own copy of the record may request the appellant, in writing, to lend it the appellant's copy of the record at the time that appellant serves its final opening brief under rule 8.715(c)(2). The borrowing party must return the copy of the record when it serves its brief or the time to file its brief has expired. The cost of sending the copy of the record to and from the borrowing party shall be treated as a cost on appeal under rule 8.891(d)(1)(B).

Rule 8.714. Superior court clerk duties

Within five court days following the filing of a notice of appeal under this rule, the superior court clerk must:

(1) Serve the following on each party:

(A) Notification of the filing of the notice of appeal; and

(B) A copy of the register of actions, if any.

(2) Transmit the following to the reviewing court clerk:

(A) A copy of the notice of appeal, with the ~~copy~~ copies of the order being appealed and the order granting preference under Code Civ. Proc., § 36 attached; and

(B) A copy of the appellant's notice designating the record;

Rule 8.715. Briefing

~~**(a) Electronic filing**~~

~~Unless otherwise ordered by the reviewing court, all briefs must be electronically filed.~~

(a) Time to serve and file briefs

Unless otherwise ordered by the reviewing court:

(1) An appellant must serve and file its opening brief within 10 days after the notice of appeal is served and filed.

(2) A respondent must serve and file its brief within 25 days after the appellant files its opening brief.

(3) An appellant must serve and file its reply brief, if any, within 15 days after the respondent files its brief.

(b) Contents and form of briefs

(1) The briefs must comply as nearly as possible with rule 8.204.

(2) If a designated reporter's transcript has not been filed at least 5 days before the date by which a brief must be filed, an initial version of the brief may be served and filed in which references to a matter in the reporter's transcript are not supported by a citation to the volume and page number of the reporter's transcript where the matter appears. Within 10 days after the reporter's transcript is filed, a revised version of the brief must be served and filed in which all references to a matter in the reporter's transcript must be supported by a citation to the volume and page number of the reporter's transcript where the matter appears. No other changes to the initial version of the brief are permitted.

(d) Stipulated extensions of time to file briefs

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that such an extension will promote the interests of justice, that the time for resolving the action may be extended beyond 100 days by the number of days by which the parties stipulated to extend the time for filing the brief, and that to that extent, they have waived any objection to noncompliance with the deadlines for completing review stated in Code of Civil Procedure section 1294.4 for the duration of the stipulated extension.

(e) Failure to file brief

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must serve the party with a notice indicating that if the required brief is not filed within two court days of service of the clerk's notice, the court may impose one of the following sanctions:

(1) If the brief is an appellant's opening brief, the court may dismiss the appeal;

(2) If the brief is a respondent's brief, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant; or

(3) Any other sanction that the court finds appropriate.

Rule 8.716. Oral argument

The reviewing court clerk must send a notice of the time and place of oral argument to all parties at least 10 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

Rule 8.717. Extensions of time

The Court of Appeal may grant an extension of the time in appeals governed by this chapter only if good cause is shown and the extension will promote the interests of justice.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Suggested Committee Response
1.	California Assisted Living Association by Heather S. Harrison Vice President of Public Policy Sacramento, CA	AM	On behalf of the California Assisted Living Association (CALA), I am submitting these comments regarding Proposal SP16-13, proposed amendments to the California Rules of Court 8.104 and 8.710 through 8.717. CALA addresses its comments to the question of whether it is preferable to have a longer notice of appeal period and a shorter time for filing the appellant's opening brief or the alternative of having only five days to file a notice of appeal and a longer period for filing the appellant's opening brief. CALA concludes that it is preferable to have a shorter notice of appeal period to allow for an adequate period to prepare and file appellant's opening brief and to ensure both appellant and appellee have similar time period for preparing briefs without penalizing the appellant for filing a notice of appeal right away. A party will generally need less time to decide whether to appeal an adverse ruling and more time to prepare the appellate brief. Typically, a party whose petition to compel arbitration has been denied will not need a full twenty days to decide whether to appeal the court's decision. And once that decision is made, preparing and filing the notice of appeal itself is not time consuming. Accordingly, reducing the time to file the notice of appeal to five days is unlikely to pose a hardship. Preparing an appellate brief in ten days, however, may be quite burdensome.	The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Under these proposed rules, the appellant would have a total of 30 days to both determine whether to file an appeal and to prepare and file an opening brief. This gives the appellant a slightly longer time to prepare its opening brief than the 25-day period provided for the respondent to prepare its brief. The proposal circulated for public comment divided this total 30-day period by providing 20 days before the notice of appeal must be filed and 10 days after the notice of appeal is filed until the appellant's opening brief is due. Shortening the notice of appeal period and lengthening the briefing time as suggested by the commentator will simply change how this period is divided, it not the increase the overall length of time available for the appellant to prepare its opening brief. As noted by another commentator, because the notice of appeal period is jurisdictional, making the notice of appeal period shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether. In addition, a 5-day or even 10-day notice of appeal period will create potential conflicts with the deadline for filing a

	Commentator	Position	Comment	Suggested Committee Response
			On balance, therefore, more time should be allotted to preparation of the appellate brief than filing the notice of appeal. Fairness also weighs in favor of increasing the briefing period. Both appellants and appellees should have similar time to prepare their briefs. Although an appellant could delay filing a notice of appeal until the end of the twenty-day notice-of-appeal deadline to allow more time to draft the opening brief, an appellant may want to file the notice of appeal quickly. For example, an appellant may want to appeal immediately and ask the appellate court to stay trial court proceedings pending appeal. Under the proposed rules, an appellant who files a notice of appeal early would be penalized with fewer days to prepare the appellate brief. In this scenario, an appellant must choose between (1) accessing appellate court remedies as soon as possible and (2) having adequate time to prepare the appellate brief. Appellants should not be forced to make such a choice. CALA asks the Council to modify the proposed rule to reallocate the days for filing the notice of appeal and the appellant's brief so that both appellant and appellee have similar and adequate time to prepare their briefs without penalizing the appellant for seeking appellate court remedies quickly.	motion for reconsideration in the trial court. Finally, increasing the time for filing the opening brief will reduce the already short time that the Court of Appeal has to issue its decision in these cases. The longer notice of appeal period does mean that an appellant would have to sacrifice briefing time if he or she wants to file the notice of appeal early for purposes of obtaining a stay of any trial court proceedings. However, the appellant could still seek a stay of any trial court proceedings even if the notice on appeal had not yet been filed.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Suggested Committee Response
			CALA further notes that the reference to "rule 3.2237" in proposed Rule 8.712(c)(1) appears to be in error.	The committee appreciates the commentator pointing out this error. Based on other comments, the committee has revised the proposal to delete this provision in its entirety.
2.	Consumer Attorneys of California by Saveena K. Takhar Associate Staff Counsel Sacramento, CA	NI	I write on behalf of the Consumer Attorneys of California (CAOC) to comment on Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration. CAOC generally supports the proposed rules, but has technical concerns with some of the proposed terminology and procedure outlined below. **Background** Consumer Attorneys of California co-sponsored by SB 1065 (Monning), along with the California Advocates for Nursing Home Reform and the Congress of California Seniors. SB 1065, signed by Governor Brown, will ensure speedy access to justice for victims of elder abuse who have proven to the court they are elderly and dying and have been granted a trial court preference by providing that when there is an appeal from an order dismissing or denying a petition to compel arbitration, the court of appeal must issue its decision within 100 days after the notice of appeal is filed. <u>8.712(b) – Time to appeal</u> CAOC is concerned about the references to a judgment in both subsections (b)(1) and (b)(2). An order denying arbitration would not result in a judgment of any kind. The references in 8.712	Under the definitions used in the Appellate Rules, the term "judgment" includes any judgment or order that may be appealed. However, since this chapter is limited to appeals from orders dismissing or denying petitions to

	Commentator	Position	Comment	Suggested Committee Response
			(b)(1) and (2) should instead refer to an order, not a judgment, because the applicable document at this phase of the case is an appealable order. 8.712(c) – Extending the time to appeal CAOC recommends that 8.712(c) be deleted in its entirety. Subsection (c)(1) creates a procedure for filing a motion for a new trial. This is not relevant or necessary because motions for new trials are not filed after an order compelling arbitration. Subsection (c)(2) discusses motions to vacate judgment, as stated above, no judgment results from an order to compel arbitration. Subsection (c)(3) regarding motions for reconsideration is at odds with the statute as well. Defendants have the right of immediate appellate review, so subsection (c)(3) is not necessary. 8.713 & 8.715 – Record on appeal & briefing One other possible problem CAOC would like to highlight is the interplay between designating the record on appeal in 8.713 and the briefing schedule in 8.715, which requires the appellant to file the opening brief on the same day the court reporter may file the transcript. The solution would be to instead change the designation of record rule, 8.713, to require appellant to file a certified copy of the reporters' transcript along with the Notice of Appeal, which would also eliminate the need for 8.715(c)(2).	compel arbitration, the committee has revised the proposed rule to refer to orders. The committee appreciates this input. Based on this and other comments, the committee has revised the proposal to eliminate paragraphs, (1) and (2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Case law indicates that parties may move for reconsideration of an order denying a motion to compel arbitration. See *Blake v. Ecker* (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in *Le Francois v. Goel* (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5. The committee's view is that the rules should reflect the availability of this procedure in the trial court. The committee appreciates this suggestion, but requiring appellants to obtain and file a certified transcript with their notice of appeal would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to propose such a rule at a later date.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Suggested Committee Response
3.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	A	**Comment One** We propose that the underscored provision should be added to subdivision (a)(2) of proposed rule 8.712. **Rule 8.712. Notice of appeal** **(a) Contents of notice of appeal** (1) (2) Copies of the order being appealed and the order granting preference under Code Civ. Proc., § 36 must be attached to the notice of appeal.	The committee agrees with this suggestion and has modified the proposal as suggested by the commentator.
			Comment Two One of the Presiding Justices of this district is of the opinion that extending the time to file the notice of appeal for various post-order events under subdivision (c) of rule 8.712, as well as allowing parties to stipulate for extensions under subdivision (d) of rule 8.715, impermissibly extends beyond 100 days the time to dispose of the appeals that are subject to these proposed rules. This Presiding Justice is of the view that the intent of the legislature is clear that these appeals must be disposed within 100 days and that it is contrary to the demonstrated intent of the legislature to fashion provisions that will permit delays in disposition exceeding 100 days. This problem is acute, in this Presiding Justice's view, in that post-order proceedings may be drawn out and extended by the vagaries of trial court schedules.	The committee appreciates this input. With respect to subdivision (c) in proposed rule 8.712, based on other comments, the committee has revised the proposal to eliminate paragraphs, (1) and (2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Under the law in effect prior to the enactment of Code of Civil procedure section 1294.4, parties may move for reconsideration of an order denying a motion to compel arbitration. See *Blake v. Ecker* (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in *Le Francois v. Goel* (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5. The legislation did not eliminate this option. The committee's view is that the

	Commentator	Position	Comment	Suggested Committee Response
				proposed rules should follow the model of rule 8.108 in terms of clarifying how the filing of a motion for reconsideration would impact the time to appeal. The committee does not believe that clarifying this is inconsistent with the intent of the legislation, which is to limit the duration of the appellate proceedings in order to protect the interests of the injured elder person. The proposed language of (c)(3) does not extend the 100-day period specified by Code of Civil Procedure section 1294.4(a) since that period begins upon the filing of the notice of appeal. With respect to subdivision (d) of proposed rule 8.715, the committee does not believe that this is inconsistent with the underlying intent of the legislation. Such a stipulated extension cannot occur without the agreement of the attorney for the injured elder person. This insures that the elder person's interests will be protected.
4.	Court of Appeal, Fourth Appellate District, Division One by Hon. Judith McConnell San Diego, CA	NI	**I. RULE 8.710.** Rule 8.710(a) sets forth the scope of application of the new chapter 12 to Title 8, Division 1 of the rules and provides: "The rules in this chapter govern appeals to review a superior court order dismissing or denying a petition to compel arbitration under Code of Civil Procedure section 1294.4." Since Code of Civil Procedure section 1294.4 does not include specific provisions addressing	The committee agrees in concept with the commentator's suggestion and has modified both the title of the chapter and rule 8.710(a) so that they no longer refer to petitions to compel arbitration under section 1294.4.

	Commentator	Position	Comment	Suggested Committee Response
			petitions to compel arbitration, we suggest a slight re-wording of this rule to specify that the rules in chapter 12 apply to appeals from a superior court order "dismissing or denying a petition to compel arbitration *in an action subject to* Code of Civil Procedure section 1294.4." (Italics added.) **RULE 8.711** Rule 8.711 sets out the rules for the filing and service of documents in a proceeding specified in Code of Civil Procedure section 1294.4. Paragraph (a) is entitled "Service" and specifies that except as otherwise ordered or required by law, the parties must use a method of service "reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court." Paragraph (b), which is entitled "Electronic filing and service," incorporates additional requirements for electronic service of documents. Finally, proposed rule 8.715(a) also specifies that unless otherwise ordered by the court, the parties must file all briefs electronically. We suggest that these proposed rules be reorganized so that the requirements for service be set forth in the same paragraph or, at a minimum, that the heading of paragraph (a) be revised to "Method of service." Similarly, we believe that the requirements for electronic filing	The committee agrees with this suggestion and has revised the proposal to consolidate the provisions discussing service and to delete proposed 8.715(a).

	Commentator	Position	Comment	Suggested Committee Response
			are adequately set forth in proposed rule 8.711(b), such that proposed rule 8.715(a) may be deleted as superfluous.	
			As to proposed rule 8.711(b)(1), dealing with electronic service, we note there is a typographical error in line 2, with the words "documents" and "electronically" missing a space between them.	The committee appreciates the commentator pointing out this typographical error. The committee has modified the proposal to correct this error.
			This paragraph also specifies that self-represented parties are not required to use electronic filing unless the court of appeal orders otherwise. Given the strict time constraints applicable to proceedings subject to these rules, we recommend that the Committee revise this rule to require a self-represented party to use electronic filing unless otherwise ordered by the court.	The committee considered this suggestion but decided that it is preferable to retain the provision allowing the Court of Appeal to order a self-represented parties to file electronically, rather than making electronic filing the default for these parties. The proposed rule's authorization for the Court of Appeal to order self-represented litigants to file electronically already expands the courts' authority in these cases. Under rule 8.71, the general rule relating to electronic filing, self-represented litigants cannot be ordered to file electronically. The requirement for an order is designed to ensure that the Court makes a determination that electronic filing is feasible for the self-represented litigant, rather than putting a burden on the self-represented litigant to seek to be excused from electronic filing.
			RULE 8.712 Rule 8.712 addresses the requirements for the content and timing of the filing of the notice of appeal. Paragraph (b) provides that the notice of	The committee appreciates this input. The committee appreciates this input. Based on this and other comments, the committee has revised the proposal to eliminate paragraphs, (1) and

	Commentator	Position	Comment	Suggested Committee Response
			appeal must be filed within 20 days of the service by either the superior court or a party (whichever occurs first) of a notice of entry of judgment or a file-endorsed copy of the judgment. Paragraph (c) of that rule provides that the time for filing the notice of appeal is extended where the superior court denies a motion for new trial, a motion to vacate judgment or motion for reconsideration. The Committee comment to the proposed rule provides "It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for new trial, a motion for reconsideration, or a motion to vacate the judgment." However, neither the comment nor rule 8.712 provide any guidance or explanation as to whether the rule is intended to (1) bar a notice of appeal that is not filed within the time specified by paragraph (b) even if one of the specified motions is filed after the deadline in (b) has passed, (2) preclude a party from filing any of the specified motions after a notice of appeal is filed in compliance with paragraph (b), or (3) achieve some other result. We urge the Committee to clarify the intent of the rule in this regard and note the following for its consideration: (a) anecdotally, it appears that the use of a motion for new trial or to vacate judgment is very uncommon following the denial or dismissal of a motion to compel arbitration; and (b) extending the time for filing of the notice of appeal to accommodate traditional post-trial	(2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Case law indicates that parties may move for reconsideration of an order denying a motion to compel arbitration. See *Blake v. Ecker* (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in *Le Francois v. Goel* (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5. The committee's view is that the rules should reflect that this procedure is available in the trial court and should, like rule 8.108, address how the filing of such a motion would impact the time to appeal. Since, under Code of Civil Procedure section 1008, the deadline for filing a motion for reconsideration is "within 10 days after service upon the party of written notice of entry of the order," the proposed advisory committee comment was incorrect that this deadline would expire before the proposed 20-day notice of appeal period. This advisory committee has also been deleted.

	Commentator	Position	Comment	Suggested Committee Response
			motions to challenge ajudgment or order will significantly prolong the time for resolution of cases the Legislature intended to expedite by enacting Code of Civil Procedure section 1294.4. The Committee has also asked for specific comment on whether rule 8.712(c)(4), which addresses the time for the filing of a cross-appeal, is necessary. Given the strict time constraints of Code of Civil Procedure section 1294.4, we believe that it is. **RULE 8.713** Rule 8.713 sets forth the applicable requirements for the record on appeal. Paragraph (b)(2) deals with reporter's transcripts and specifies that the reporter has 10 days from notice of the transcript request to prepare and certify the transcript. As civil proceedings in many courts now involve the use of private court reporting services rather than reporters employed by the superior courts, we suggest that the Committee provide further specification in this rule that an extension of time to file and certify a reporter's transcript in a proceeding subject to these rules will only be granted on a showing of exceptional good cause. **RULE 8.715** Rule 8.715 addresses the requirements for briefing in proceedings subject to Code of Civil Procedure section 1294.4. As noted above, we believe that proposed rule 8.714(a) can be eliminated as superfluous in light of the	The committee considered this suggestion but concluded that it additional language regarding extensions of time not necessary. Under rule 8.60, only the Court of Appeal is authorized to extend the deadline for completing a reporter's transcript, so the court will be able to determine if any such extension is appropriate in these cases. As noted above, the committee has revised the proposal to eliminate 8.714(a), as suggested by the commentator.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Suggested Committee Response
			requirements of rule 8.71 l(b)(l). In addition, we are concerned that the language of rule 8.714(c)(l), specifying that briefs must comply "as nearly as possible" with traditional requirements for briefs set forth in rule 8.204, is too ambiguous to provide any guidance to parties or the courts as to what is required. We urge the Committee to adopt a more traditional standard (e.g., substantial compliance) for determining the adequacy of briefs. In conclusion, thank you for the opportunity to comment on the proposed rule changes.	With respect to the language of rule 8.71(b)(1), this is modeled on existing rule 8.702(f)(3)(A), which addresses briefs in expedited CEQA appeals. The committee's view is that these rules should use consistent language for equivalent provisions. Therefore, the committee will consider whether to recommend amending both these provisions at a later date.
5.	Court of Appeal, Fifth Appellate District by Charlene Ynson Court Administrator/Clerk Fresno, CA	AM	Instead of 8.712 (a)(1), there should be a special form for this type of appeal stating the deadlines (in addition the trial court should be required to state the deadlines at the hearing, while providing the special form). 8.712(b)- instead of 20 days in (b) it should be 10 or 15 days for the serving of the NOA. (if our time doesn't start until the NOA is served, then the concern would be not so much about our clock, but about the clock in general since these are cases requiring expedited treatment) 8.713(b)(4) because we are recommending changing the times in 8.715 the word "final" can be eliminated on the third line (before opening brief)	The committee appreciates this suggestion, but proposing a new notice of appeal form would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to develop such a form at a later date. The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. The proposed 20-day notice on appeal period is already 40 days (or two-thirds) shorter than the 60-day period generally applicable in civil appeals to the Court of Appeal. As noted by another commentator,

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Suggested Committee Response
			8.714 change 5 days to 2 days because we need every day we can get and with electronic filing it shouldn't be hard to serve within 2 days; however, if we change the numbers in 8.715 as discussed below, then that would give respondent and appellant equal time after the NOA is filed to file their briefs. 8.715 (b)(1) change the 10 days to 15 days, (b)(2) change 25 days to 20 days, (b)(3) change 15 days to 5 days. (The reason for respondent to have 5 days more than appellant is because appellant can start working on their brief as soon as they file the NOA, or even earlier because they probably know they are going to file it during the time in 8.712 (b) "Time to appeal"). 8.715 (c)-because we are giving appellant 5 more days to file their opening brief either eliminate (c)(2) altogether or reduce 10 days to 5 days.	because the notice of appeal period is jurisdictional, making the notice of appeal period even shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether. In addition, a 10-day notice of appeal period will create potential conflicts with the deadline for filing a motion for reconsideration in the trial court. Finally, the committee does not believe that increasing the time for filing the opening brief by 5 or 10 days will eliminate the potential for the appellant having to file its opening brief before the transcript is available.
			One last question: Is it practical for the court to order self-represented parties to file electronically when that conflicts with other rules of court? Do we maybe want to clearly state that in this particular instance or case, the self-represented party is ordered to file electronically? (8.711(a-c)) CLARIFICATION TO EARLIER COMMENTS FROM 5TH DCA: I would like to clarify the below questions submitted earlier today - these comments are in	The committee believes that it is appropriate in this limited group of appeals in which the Legislature has set an extraordinarily short timeframe to give the Court of Appeal the authority to order self-represented litigants to electronically file documents. The committee has revised the proposed language to make it clearer that this authority is limited to these particular appeals.

	Commentator	Position	Comment	Suggested Committee Response
			response to the comments from the 4th Appellate District where the suggestion was made to "revise this rule to require a self-represented party to use electronic filing unless otherwise ordered by the court." One last question: Is it practical for the court to order self-represented parties to file electronically when that conflicts with other rules of court? Do we maybe want to clearly state that in this particular instance or case, the self-represented party is ordered to file electronically? (8.711(a)) Our question is really, Can we require self-represented parties to use e-filing unless otherwise ordered by the court? and if so, shouldn't we clearly state in the rule that this requirement only applies to these particular cases?	
6.	Curt R. Craton CRATON, SWITZER & TOKAR LLP Long Beach, CA	A	The proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief is preferable to the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief for the following reasons: The deadline to file a notice of appeal is jurisdictional whereas the period for filing the appellant's opening brief is not. If the press of business in an attorney's law practice causes him or her to miss the deadline to file a notice of appeal, the client's rights are prejudiced. By contrast, if the deadline to file a brief is missed, the court of appeal	The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.

	Commentator	Position	Comment	Suggested Committee Response
			generally grants an extension or the attorney can seek relief from the default. The latter is less prejudicial to the client. Court Rules ought to account for (to the extent reasonably practicable) the realities of practicing law. On any given day, a typical lawyer places and returns calls with clients, engages in frequent communications with opposing counsel, and must meet constant administrative deadlines in more than one case that the attorney oversees. Many of these deadlines are beyond the attorney's control because they are set by statute, court rule, or a court order in a pending case. A jurisdictional deadline of only 5 days to file a notice of appeal invites the practical probability of missing the filing deadline. For example, the period of time between the Wednesday before the Thanksgiving holiday and the following Monday is only 4 days. Thus a 5-day deadline to file a notice of appeal in that situation would effectively be reduced to only 1 court day. That problem could be mitigated by making the rule 5 court days. But the point remains: intervening events in the life of an attorney such as a death in the family or even a brief hospital stay due to illness or injury could cause a short deadline to be missed. By contrast, an unforeseeable intervening event such as just described would be grounds for relief from a short deadline to file an opening brief. The consequential effect of missing a jurisdictional deadline is a probable malpractice claim by the	

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Suggested Committee Response
			aggrieved client against the attorney. By contrast, the ability of an attorney to obtain relief from a missed briefing deadline mitigates the likelihood of a malpractice claim. Accordingly, a short notice of appeal deadline will likely increase court congestion arising from malpractice cases, which easily can be avoided by implementing the proposed longer notice of appeal period with the shorting briefing period. Thank you for considering my comments. Please let me know if I should present my comments in a more formal manner. The instructions that my local bar association sent to me did not indicate the form or manner in which comments should be submitted. It appeared that a mere email to you was all that was required.	
7.	Marci Harness East Palo Alto, CA		Comments not related to proposal.	No response required.
8.	Orange County Bar Association by Michael L. Baroni President New Port Beach, CA	A	**The Judicial Council requested comments on four points.** The first question was: **"Whether the proposed amendment to the advisory committee comment to rule 8.104 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule."** We believe the proposed amendment to the advisory committee comment to Rule 8.104 is sufficient to provide adequate notice and that more	The committee appreciates this input.

	Commentator	Position	Comment	Suggested Committee Response
			information would make the Rule confusing. The second question was: **"Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief (which will allow longer periods for the respondent's and reply briefs) or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief (but which will require shorter periods for the respondent's and reply briefs in order to comply with the 100-day period for adjudicating appeals)."** The proposed approach is preferable. The third questions was: **"Whether it is necessary for the rules to include a provision such as proposed in 8.712(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal."** Rule 8.712(c)(4) appears acceptable as proposed. The last question was: **"Whether the proposed rules should include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund."** We believe the Judicial Council should follow Rule 8.153 with respect to any lending of the record.	The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association. The committee appreciates this input. Based this and on other comments, the committee retained the proposed paragraph (c)(4) relating to cross-appeals. The committee appreciates this input. Based on this and other comments, the committee has retained the proposed provision regarding lending the record, but also included a cross-reference to a provision in rule 8.130 allowing a Transcript Reimbursement Fund application to serve as a substitute for the reporter's transcript deposit.
9.	Peter G. Rose	AM	The statute at issue is narrow and it is unlikely my	The committee appreciates this suggestion.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Suggested Committee Response
	Managing Attorney Court of Appeal, First Appellate District		court will be asked to decide many appeals under its terms. But accelerated appeals are becoming more common and I anticipate the rules drafted to implement this statute will be used as a template for future statutes with wider applicability. Therefore I think it is important to respond to this proposal. My comments on this topic are informed by my court's recent experience deciding an accelerated appeal in a CEQA case under California Rules of Court, rules 8.700 through 8.705. As Managing Attorney for my court, I was able to see how those rules impacted each stage of the decision-making process. That experience leads me to conclude the 100-day period from notice of appeal to decision is too short. As I read the proposed rules, an appellate court will only have about 40 days to read the briefs, conduct the necessary research, write an opinion, hear oral argument, and file an opinion. That is not enough time. I understand the 100-day standard is statutorily mandated and there is nothing the Judicial Council can do to change it. But there is something else the Judicial Council can do. The size of appellate briefs is dictated by the Rules of Court and the proposed rules for this statute allow parties to file full-sized 14,000 word briefs. I believe the size of briefs for this and all other accelerated appeals should limited. The most recent statistics published by the Judicial Council's Office of Court Research show the median period between the filing of a notice of appeal and the filing of an	However, proposing shorter briefs would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to propose such a change at a later date.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Suggested Committee Response
			opinion in a civil case is 509 days. The 100-day period mandated by new Code of Civil Procedure, section 1294.4, subdivision (a) is less than one-fifth of that amount. While a commensurate reduction in the size of the appellate briefs would be justified, it might be too drastic for some members of the bar. A more conservative approach, and one that I urge the Judicial Council to adopt, would be to limit the briefs in this type of appeal to 7,000 words. Limiting the size of briefs is consistent with legislative intent. When the Legislature adopted Code of Civil Procedure section 1294.4, it stated specifically it intended to enact "a limited expedited appeal process". Shortened briefs are also a practical necessity. It would be difficult for a court to perform all the steps necessary to prepare and file a decision within the time allotted if the parties are allowed to file full-sized 14,000 word briefs. If the size of the briefs is limited, courts will at least have a chance to meet the statutorily mandated 100-day standard.	
10.	Superior Court Los Angeles by Sandra Pigati-Pizano Management Analyst Management Research Unit Los Angeles, CA	AM	*Whether the proposed amendment to the advisory committee comment to rule 8.14 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule.* The proposed amendment is sufficient and consistent with similar rules re 8.702 filing.	The committee appreciates this input.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Suggested Committee Response
			Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief. From the appeals unit perspective, the latter is preferred. A 5-day notice of appeal period is consistent with (expedited) rule 8.702 in CEQA cases.	The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.
			Whether it is necessary for the rules to include a provision such as proposed in 8.71(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal. Yes, a provision re cross-appeals should be included, similar to 8.702(c)(4).	The committee appreciates this input. Based this and on other comments, the committee retained the proposed paragraph (c)(4) relating to cross-appeals.
			Whether it is necessary for the rules to include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund. The correct rule is 8.702(d)(2)(B). For consistency in the rules there should be included a provision similar to rule 8.702(d)(2)(B) regarding application for reimbursement from the Transcript Reimbursement Fund (TRF). Although the committee elected to exclude a similar provision because of concerns relating to delay in the preparation of the record, and because the 'appellant in these cases in unlikely to qualify for such reimbursement,' and as an alternative included a provision regarding lending of the record. We	The committee appreciates this input. Based on this and other comments, the committee has retained the proposed provision regarding lending the record, but also included a cross-reference to a provision in rule 8.130 allowing a Transcript Reimbursement Fund application to serve as a substitute for the reporter's transcript deposit.

ITC SP16-13

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Suggested Committee Response
			would argue that a party electing a reporter's transcript as required for the oral record is ordinarily permitted to apply for reimbursement from the TRF. Unless specifically prohibited from using this fund, consistency in rules is always best for all parties. *What would the implementation requirements be for the courts?* Staff training – 1 hour for review, discussion, identification Creation and testing of docket codes in CMS – 24 hours *Would 3 months from JC approval of this proposal until its effective date provide sufficient time for implementation?* Yes.	