



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
May 3, 2017	Please read before May 18 rules subcommittee conference call
To	Deadline
Members of the Appellate Advisory Committee's Rules Subcommittee	May 18, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Rule requirements for verification of writ petitions	

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#### Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend several rules in Title 8 to consistently reflect statutory requirements for verification of petitions. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal.

#### Public Comments

Eight individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, two did not indicate a position on the proposal but provided comments, and one did not agree with the proposal. A chart with the full text of the comments received and staff's draft responses is attached and the substantive comments are discussed below. Based on these comments, staff recommends that the subcommittee recommend adoption of this proposal as circulated.

The commentator who indicated that he did not agree with the proposal, Curt Harris, did not actually comment on the content of the proposed rule amendments. His comment focuses on concern about whether petitioners in habeas proceedings receive appropriate notice of court action on their petitions. Since the issue raised is outside the scope of the proposal, staff recommend that this comment be treated as a new suggestion and be considered by the subcommittee when it is reviewing proposals for the 2017-2018 committee annual agenda.

One of the commentators who did not state a position on the proposal, Albert DeLaIsla, indicated that the proposal would have no impact on court operations and that three months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. These comments were similar to those from the Superior Courts of Los Angeles and San Diego counties, both of which indicated that they agreed with the proposal.

The second commentator who did not state a position on the proposal – the Court of Appeal, Second Appellate District – indicated some concern that “there may be a conflict between Pen. Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if “party” in 1474(3) is read to be limited to the defendant/petitioner.” Penal Code section 1474(3) states that “[t]he petition must be verified by the oath or affirmation of the party making the application.” At least one court has dismissed without prejudice a petition for habeas corpus verified by an attorney in which the critical allegations were made based on the attorney’s belief, concluding that such allegations were heresay that could not support a prima facie case for relief (see *People v. McCarthy* (1986) 176 Cal.App.3d 593). However, in *In re Robbins* (1998) 18 Cal.4th 770, the Supreme Court declined to dismiss a habeas petition simply because it was verified by an attorney, stating:

Respondent observes that the petition is not verified by petitioner, but instead by his counsel, and asserts it should be dismissed for that reason. Penal Code section 1474 provides in subdivision 3 that a petition for writ of habeas corpus “must be verified by the oath or affirmation of the party making the application,” but it also states in its opening sentence that a petition may be “signed either by the party for whose relief it is intended, or by some person in his behalf.” (Italics added.) Because counsel may apply for habeas corpus relief on behalf of his or her client, it follows that when appointed counsel does so, verification by counsel satisfies the statute. (See *In re Davis* (1979) 25 Cal.3d 384, 389, 158 Cal.Rptr. 384, 599 P.2d 690.)

Based on this case law, verification of a habeas by attorney in and of itself should not raise concerns.

### Subcommittee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects staff's recommendation that the proposal be recommended for adoption as circulated for public comment. The subcommittee's task with respect to this proposal is to:

- Discuss the comments received on the proposal and approve or modify staff suggestions for responding to these comments, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and approve or modify staff's draft recommendation to the advisory committee regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

### Attachments

1. Draft of report to the Judicial Council
2. Draft comment chart
3. Invitation to comment



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

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Title	Agenda Item Type
Appellate Procedure: Verification of Writ Petitions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972	January 1, 2018
Recommended by	Date of Report
Appellate Advisory Committee	May 15, 2017
Louis R. Mauro, Chair	Contact
	Heather Anderson, Supervising Attorney, 415-865-7691 <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>

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### **Executive Summary**

To clarify that, under statute, all petitions for writs of mandate, certiorari, prohibition, and habeas corpus must be verified, the Appellate Advisory Committee recommends adding a provision indicating verification is required to all of the rules in title 8 relating to such petitions that do not already include such a provision.

### **Recommendation**

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 to add provisions indicating that writ petitions must be verified.

The amended rules are attached at pages 5–7.

## Previous Council Action

The Judicial Council adopted rule 56, the predecessor to current rules 8.485-8.493, relating to writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, effective July 1, 1943 as part of a comprehensive set of new Rules on Appeal which included rules on original proceedings. As adopted, rule 56 required that petitions seeking these writs be verified. The council has amended and renumbered this rule several time since its adoption, but the provision regarding verification of these writ petitions has remained substantively unchanged.

The 1943 Rules on Appeal also included the predecessors to rules 8.495 and 8.496, relating to writ proceedings to review cases from the Workers Compensation Appeals Board and the Public Utilities Commission, respectively. These rules did not include provisions addressing verification. Rule 8.495 has remained unchanged in this respect, but effective July 1 1981, the Judicial Council amended the predecessor to rule 8.496 to include, among other things, a provision indicating that a petition seeking review of a Public Utilities Commission decision must be verified. The report to the Council indicates that this amendment was intended to clarify the “somewhat obscure” statutory requirement that these petitions be verified.

The Judicial Council adopted rule 56.5, the predecessor to current rules 8.380-8.387, relating to habeas corpus proceedings, effective January 1, 1966. This rule generally required that such petitions be filed on a form approved by the Judicial Council. Although the rule did not refer to verification of the petition, the petition form approved by the Judicial has always indicated that verification is required.<sup>1</sup> Similarly, the Judicial Council approved petition forms for use in termination of parental rights cases, misdemeanor, infraction, or limited civil cases, and small claims cases all of which include a verification, even though the verification requirement is not mentioned in the relevant rules.<sup>2</sup>

## Rationale for Recommendation

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.<sup>3</sup> Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, as noted above, rule 8.486, the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, provides in subdivision (a)(4) that “[t]he petition must be verified.”<sup>4</sup>

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<sup>1</sup> The relevant Judicial Council form is *Petition for Writ of Habeas Corpus* (form MC-275).

<sup>2</sup> For rules 8.452 and 8.456, the relevant Judicial Council form is *Petition For Extraordinary Writ* (form JV-825). For rule 8.931, the relevant Judicial Council form is *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For rule 8.972, the relevant Judicial Council form is *Petition for Writ (Small Claims)* (form SC-300).

<sup>3</sup> See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

<sup>4</sup> See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703,

However, there are some rules relating to writ petitions that do not specifically refer to a verification requirement. For example, rule 8.495, relating to review of Workers' Compensation Appeals Board cases, does not specifically refer to verification of the petition.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the petitioner contended that it did not have to file a verified petition challenging the Workers Compensation Appeals Board decision. The Court of Appeal in that case addressed whether the absence of a verification requirement in rule 8.495 implied an intent to override the statutory requirement for verifying the petition. The court concluded, given that the Judicial Council's authority to adopt rules is limited to rules that are not inconsistent with statute:

to the extent rule 8.495 does not require verification for petitions for writs of review addressing Appeals Board decisions, that rule would be inconsistent with Code of Civil Procedure section 1069 and Labor Code section 5954 and therefore not controlling.

To clarify the statutory requirement for verification of these writ petitions and eliminate any question about the intent of the applicable Rules of Court, the committee is recommending that any rule in Title 8 pertaining to these writs that does not already reflect the verification requirement be amended to do so.

## **Comments, Alternatives Considered, and Policy Implications**

### **External comments**

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Eight individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, two did not indicate a position on the proposal but provided comments, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages X–XX.

The commentator who indicated that he did not agree with the proposal did not actually comment on the content of the proposed rule amendments. His comment focuses on concern about whether petitioners in habeas proceedings receive appropriate notice of court action on their petitions. Since the issue raised is outside the scope of the proposal, the committee will treat this as a new suggestion to be considered when the committee is reviewing proposals for the 2017-2018 committee annual agenda.

One of the commentators who did not state a position on the proposal indicated that the proposal would have no impact on court operations and that three months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. These

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relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

comments were similar to those from other commentators who indicated that they agreed with the proposal.

The second commentator who did not state a position on the proposal indicated some concern that there may be a conflict between Penal Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if “party” in 1474(3) is read to be limited to the defendant/petitioner. Penal Code section 1474(3), relating to petitions for writs of habeas corpus, states that “[t]he petition must be verified by the oath or affirmation of the party making the application.” At least one court has dismissed without prejudice a petition for habeas corpus verified by an attorney in which the critical allegations were made based on the attorney’s belief, concluding that such allegations were hearsay that could not support a prima facie case for relief (see *People v. McCarthy* (1986) 176 Cal.App.3d 593). However, in *In re Robbins* (1998) 18 Cal.4th 770, the Supreme Court declined to dismiss a habeas petition simply because it was verified by an attorney, stating:

Because counsel may apply for habeas corpus relief on behalf of his or her client, it follows that when appointed counsel does so, verification by counsel satisfies the statute.”

Based on this, the committee concluded that there is no conflict between Penal Code section 1474(3) and the proposed rule amendments.

### **Alternatives**

The committee considered not recommending any changes to these rules, but concluded that it would be helpful for all the rules relating to writ petitions to consistently alert petitioners to the verification requirement. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

### **Implementation Requirements, Costs, and Operational Impacts**

No appreciable implementation requirements, costs, or operation impacts are anticipated.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

These proposed amendments support Judicial Council Operational Plan Objective 5 to develop and implement effective trial and appellate case management practices.

### **Attachments and Links**

1. Amended rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972, at pages 5–7
2. Chart of comments, at pages 8–15

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 4. Habeas Corpus Appeals and Writs**

6  
7 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an**  
8 **attorney**

9  
10 **(a) Required Judicial Council form**

11  
12 A person who is not represented by an attorney and who petitions a reviewing court for  
13 writ of habeas corpus seeking release from, or modification of the conditions of, custody of  
14 a person confined in a state or local penal institution, hospital, narcotics treatment facility,  
15 or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-  
16 275). For good cause the court may permit the filing of a petition that is not on that form,  
17 but the petition must be verified.

18  
19 **(b)–(c) \* \* \***

20  
21  
22 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

23  
24 **(a) Form and content of petition and memorandum**

25  
26 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for*  
27 *Writ of Habeas Corpus* (form MC-275) but must contain the information requested  
28 in that form and must be verified. All petitions filed by attorneys, whether or not on  
29 form MC-275, must be either typewritten or produced on a computer, and must  
30 comply with this rule and rules 8.40(b)–(c) relating to document covers and  
31 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on  
32 form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

33  
34 (2)–(3) \* \* \*

35  
36 **(b)–(d) \* \* \***



Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1 **Chapter 5. Juvenile Appeals and Writs**

2  
3 **Article 3. Writs**

4  
5 **Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions**  
6 **Code section 366.26**

7  
8 **(a) Petition**

9  
10 (1) \* \* \*

11  
12 (2) The petition must be verified.

13  
14 ~~(2)~~(3) \* \* \*

15  
16 **(b)–(i) \* \* \***

17  
18 **Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review**  
19 **order designating or denying specific placement of a dependent child after**  
20 **termination of parental rights**

21  
22 **(a) Petition**

23  
24 (1) \* \* \*

25  
26 (2) The petition must be verified.

27  
28 ~~(2)~~(3) \* \* \*

29  
30 **(b)–(i) \* \* \***

31  
32 **Chapter 8. Miscellaneous Writs**

33  
34 **Rule 8.495. Review of Workers' Compensation Appeals Board cases**

35  
36 **(a) Petition**

37  
38 (1)–(2) \* \* \*

39  
40 (3) The petition must be verified.

41  
42 ~~(3)~~(4) \* \* \*

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

1  
2 **(b)–(c) \* \* \***

3  
4  
5 **Division 2. Rules Relating to the Superior Court Appellate Division**

6  
7 **Chapter 6. Writ Proceedings**

8  
9 **Rule 8.931. Petitions filed by persons not represented by an attorney**

10  
11 **(a) Petitions**

12  
13 A person who is not represented by an attorney and who petitions the appellate division for  
14 a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor,*  
15 *Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit  
16 an unrepresented party to file a petition that is not on form APP-151, but the petition must  
17 be verified.

18  
19 **(b)–(d) \* \* \***

20  
21 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

22  
23 **Chapter 2. Writ Petitions**

24  
25 **Rule 8.972. Petitions filed by persons not represented by an attorney**

26  
27 **(a) Petitions**

28  
29 (1) A person who is not represented by an attorney and who requests a writ under this  
30 chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).  
31 For good cause the court may permit an unrepresented party to file a petition that is  
32 not on that form, but the petition must be verified.

33  
34 (2)–(3) \* \* \*

35  
36 **(b)–(d) \* \* \***

## ITC SPR17-03

### Title of proposal (Appellate Procedure: Verification of Writ Petitions)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Appellate Court Clerks' Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending these rules as proposed. Adopting a standardized provision requiring all writ petitions to have a verification would bring consistency to the California Rules of Court and would require very little on the part of the Judicial Branch to implement.	The committee notes the commentator's support for the proposal; no response required.
2.	Court of Appeal Second Appellate District by: Thomas Kallay, Managing Attorney	NI	There is some concern that there may be a conflict between Pen. Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if "party" in 1474(3) is read to be limited to the defendant/petitioner.	The committee's understanding, based on discussion in <i>In re Robbins</i> (1998) 18 Cal.4th 770, is that an attorney may verify a petition for a writ of habeas corpus on behalf of his or her client.
3.	Albert DeLaIsla Principal Administrative Analyst IMPACT Team - Criminal Operations Orange County, CA	NI	No impact to operations. Will require communication to Judges and Legal Research. This would clarify that the requirement for verification is applicable to ALL petitions for writs of mandate, certiorari, prohibition, and habeas corpus. Per PC 1474 – The petition must be verified by the oath or affirmation of the party making the application.  <ul style="list-style-type: none"><li>• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case</li></ul>	The committee appreciates the commentator's input on these implementation questions; no response required.

**ITC SPR17-03**

**Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>management systems?</p> <p><b>Response: None</b></p> <ul style="list-style-type: none"> <li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li> </ul> <p><b>Response: Yes.</b></p>	
4.	Curt Harris San Diego, CA	N	<p>Concerning the notification procedure of the Sacramento County Superior Court (and possibly other state lower courts), no written notification of a decision reached in, specifically, a writ of habeas corpus is required to be sent by the Court to the petitioner. An oversight of that magnitude can cause a petition to be denied for, possibly, invalid reasons due to lack of timely appeal.</p> <p>As habeas corpus deals solely with confinement issues, its requirement that the petitioner and, in theory, any other involved party must exercise due diligence on his or her own part to determine what the Court has decided in that case, the instructions that said party must either follow the writ’s progress online or must physically enter the courthouse to access court records is impossible to comply with. Since habeas corpus deals with a confined person, a prisoner, and even when that person is not physically confined in any penal institute but released on probation or parole, and since that, post-confinement punishment is still considered</p>	This comment raises issues that are beyond the scope of the amendments proposed in the invitation to comment. The committee will treat this as a suggestion for future consideration by the committee.

**ITC SPR17-03**

**Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>as actual confinement, habeas corpus is an appropriate avenue for redress.</p> <p>However, just as the prisoner who remains in custody, a parolee or probationer may still be unable to determine what progress the Court has made on his or her petition as that person may be unable to physically enter the Sacramento Superior Court, or, due to the type of conviction, may be barred from using the Internet entirely (a PC §290 registrant, for example); the failure of the Sacramento County Superior Court to afford a habeas corpus petitioner from the timely resolution of his or her writ due solely to the lack of any timely notification procedure not only impedes the prompt resolution of that specific matter, but does indeed thwart due process itself.</p> <p>Any untimely appeal to any state appellate court could be subject to misinterpretation due to confusion over the lower court's policies, and, if the appellate court has similar directives and policies, may further this injustice. Thus, any requirement by any California State court, be it Superior or Appellate, the requirement that a habeas corpus petitioner physically enter a courthouse, or access a court's website, or have unrestricted access to a telephone as the sole means of seeking information on a writ of habeas corpus handling, is inoperable. Any attempt by a state Appellate Court to modify any of the procedures it used to handle writs</p>	

**ITC SPR17-03**

**Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>without first attending to a lower court’s notification procedures, is simply folly. The State must first offer unhindered and unimpeded access to its courts for those who file the actual petitions in them. Without that, there can be no improvement to any judicial procedure(s) and any of the state’s courts.</p> <p>And, the method that the Court uses to inform the petitioner of its outcome must be unambiguous. At the moment the Sacramento Superior Court, at least, does not meet that standard. The following emails illustrate that fairly well. If a court officer did attempt to mail the results of a specific petition out via traditional postal service, in this instance it did not reach the intended recipient.</p> <p>It would appear that some attention needs be directed at the policies governing how a state court notifies writ petitioners of a writ’s outcome.</p> <p>Email excerpts, Sacramento County Superior Court website:</p> <p>Sacramento Superior Court case #16HC00347</p> <p>On Tuesday, February 14, 2017, Chiamparino, Contessa &lt;<a href="mailto:ChiampC@saccourt.ca.gov">ChiampC@saccourt.ca.gov</a>&gt; wrote: We do not send outcomes for writs via mail or email. It is the responsibility of the petitioner to check the website for the outcome. The</p>	

**ITC SPR17-03**

**Title of proposal (Appellate Procedure: Verification of Writ Petitions)**

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

	Commentator	Position	Comment	Committee Response
			<p>information on the website is obtained from the same system that electronically reports the outcome to the Department of Justice, and is very reliable.</p> <p>You will not be able to print documents from criminal cases from the website. In order to receive copies of documents from criminal cases you would need to either request to review the file in person at the criminal records front counter located at the address listed below (there are pay per use copy machines available in the lobby where you can copy the documents), or you can mail your request, along with a check addressed to the Sacramento Superior Court. If the documents need to be certified, that will cost \$25. Copies are .50 per page.</p> <p>Tess Chiamparino Operations Manager, Criminal Division Sacramento Superior Court 720 9<sup>th</sup> Street Sacramento, CA 95814 Visit us on the web at <a href="http://www.saccourt.ca.gov">www.saccourt.ca.gov</a></p> <p>On Friday, February 10, 2017, McKee, Leslie &lt;<a href="mailto:MckeeL@saccourt.ca.gov">MckeeL@saccourt.ca.gov</a>&lt;<a href="mailto:MckeeL@saccourt.ca.gov">mailto:MckeeL@saccourt.ca.gov</a>&gt;&gt; wrote: Good Morning,</p> <p>This matter was not on the record so there is no transcript to prepare. I'm not familiar with the</p>	

**ITC SPR17-03****Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>process of writs so I can't even direct you to the right person.</p> <p>My apologies for not being more helpful.</p> <p>Leslie A. McKee, CSR 12810 Court Reporter, Dept. 13 Sacramento Superior Court x916 874 7263</p> <p>Good morning, Mr. Harris, Ms. McKee forwarded your request to me. I am the clerk for Judge Arguelles. This matter was “not on the record” meaning there was no live court proceeding and therefore no transcript to be prepared. Judge Arguelles made an order based on the filings and that order was mailed to you on October 26, 2016. Apparently, you did not receive this order so I have attached a copy. Thank you, Suzanne.</p> <p>Suzanne M. Slort Courtroom Clerk, Department 13 Sacramento Superior Court (916) 874-7786</p>	
5.	Orange County Bar Association by: Michael L. Baroni, President	A	No Comment	The committee notes the commentator’s support for the proposal; no response required.
6.	Superior Court Los Angeles	A	What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.



**ITC SPR17-03**

**Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>management systems, or modifying case management systems.</p> <p>Minimal staff training would be required.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, the three month effective date is sufficient for implementation.</p>	
7.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator’s support for the proposal; no response required.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	<p>The advisory committee seeks comments from <i>courts</i> on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. <b>Minimal implementation – if writ petition is not properly verified, the clerk would have to issue a deficiency notice and the petition could only be considered if the defect was cured.</b></li> </ul>	The committee notes the commentator’s support for the proposal and appreciates the commentator’s input on these implementation questions; no response required.

**ITC SPR17-03****Title of proposal** (Appellate Procedure: Verification of Writ Petitions)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"><li>• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes.</b></li></ul>	

# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT SPR17-03

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**Title**

Appellate Procedure: Verification of Writ Petitions

**Action Requested**

Review and submit comments by Friday, April 28

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

Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972

**Proposed Effective Date**

January 1, 2018

**Proposed by**

Appellate Advisory Committee  
Hon. Louis Mauro, Chair

**Contact**

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

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to several rules relating to writ petitions to include provisions reflecting statutory requirements that these petitions be verified. This proposal is in response to a recent Court of Appeal opinion that noted the absence of such a provision in one of these rules.

### Background

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.<sup>1</sup> Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, rule 8.486, the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, provides in subdivision (a)(4) that “[t]he petition must be verified.”<sup>2</sup> However, there are some rules relating to writ petitions that do not specifically refer to a verification requirement. For example, rule 8.495, relating to review of Workers’ Compensation Appeals Board cases, does not specifically refer to verification of the petition.

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<sup>1</sup> See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

<sup>2</sup> See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703, relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

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

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the Court of Appeal, Second Appellate District, discussed the absence of a provision addressing verification in rule 8.495.

### **The Proposal**

To clarify that the requirement for verification is applicable to all petitions for writs of mandate, certiorari, prohibition, and habeas corpus, the committee proposes to add a provision regarding the verification requirement to all of the rules relating to such petitions in Title 8 that do not already include such a provision.

### **Alternatives Considered**

The committee considered not recommending any changes to these rules, but concluded that it would be helpful for all the rules to consistently alert petitioners to the verification requirement.

### **Implementation Requirements, Costs, and Operational Impacts**

No appreciable implementation requirements, costs, or operational impacts are anticipated.

## **Request for Specific Comments**

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

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

Proposed amendments to rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 4. Habeas Corpus Appeals and Writs**

6  
7 **Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an**  
8 **attorney**

9  
10 **(a) Required Judicial Council form**

11  
12 A person who is not represented by an attorney and who petitions a reviewing court for  
13 writ of habeas corpus seeking release from, or modification of the conditions of, custody of  
14 a person confined in a state or local penal institution, hospital, narcotics treatment facility,  
15 or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-  
16 275). For good cause the court may permit the filing of a petition that is not on that form,  
17 but the petition must be verified.

18  
19 **(b)–(c) \* \* \***

20  
21  
22 **Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

23  
24 **(a) Form and content of petition and memorandum**

25  
26 (1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for*  
27 *Writ of Habeas Corpus* (form MC-275) but must contain the information requested  
28 in that form and must be verified. All petitions filed by attorneys, whether or not on  
29 form MC-275, must be either typewritten or produced on a computer, and must  
30 comply with this rule and rules 8.40(b)–(c) relating to document covers and  
31 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on  
32 form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

33  
34 (2)–(3) \* \* \*

35  
36 **(b)–(d) \* \* \***

1 Chapter 5. Juvenile Appeals and Writs

2  
3 Article 3. Writs

4  
5 Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions  
6 Code section 366.26

7  
8 (a) Petition

9  
10 (1) \* \* \*

11  
12 (2) The petition must be verified.

13  
14 ~~(2)~~(3) \* \* \*

15  
16 (b)-(i) \* \* \*

17  
18 Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review  
19 order designating or denying specific placement of a dependent child after  
20 termination of parental rights

21  
22 (a) Petition

23  
24 (1) \* \* \*

25  
26 (2) The petition must be verified.

27  
28 ~~(2)~~(3) \* \* \*

29  
30 (b)-(i) \* \* \*

31  
32 Chapter 8. Miscellaneous Writs

33  
34 Rule 8.495. Review of Workers' Compensation Appeals Board cases

35  
36 (a) Petition

37  
38 (1)-(2) \* \* \*

39  
40 (3) The petition must be verified.

41  
42 ~~(3)~~(4) \* \* \*

1 (b)–(c) \* \* \*

2  
3  
4 **Division 2. Rules Relating to the Superior Court Appellate Division**

5  
6 **Chapter 6. Writ Proceedings**

7  
8 **Rule 8.931. Petitions filed by persons not represented by an attorney**

9  
10 **(a) Petitions**

11  
12 A person who is not represented by an attorney and who petitions the appellate division for  
13 a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor,*  
14 *Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit  
15 an unrepresented party to file a petition that is not on form APP-151, but the petition must  
16 be verified.

17  
18 (b)–(d) \* \* \*

19  
20 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

21  
22 **Chapter 2. Writ Petitions**

23  
24 **Rule 8.972. Petitions filed by persons not represented by an attorney**

25  
26 **(a) Petitions**

27  
28 (1) A person who is not represented by an attorney and who requests a writ under this  
29 chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).  
30 For good cause the court may permit an unrepresented party to file a petition that is  
31 not on that form, but the petition must be verified.

32  
33 (2)–(3) \* \* \*

34  
35 (b)–(d) \* \* \*



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
May 9, 2017	Please read before May 18 rules subcommittee conference call
To	Deadline
Members of the Appellate Advisory Committee's Rules Subcommittee	May 18, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Format for electronic reporter's transcripts	

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#### Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend rule 8.144 to include format requirements for reporters' transcripts that are delivered in electronic form. The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo provides background information about the proposal and discusses the public comments received.

#### Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporter's transcripts in computer-readable form, but requires that the original transcript be in paper form. Subdivision (a) of this statute provides:

- (a) Any court, party, or other person entitled to a transcript may request that it be delivered in computer-readable form, except that an original transcript shall be on paper. A copy of the



original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter or official reporter pro tempore shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment.

Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply “[e]xcept as modified by standards adopted by the Judicial Council.”

Rule 8.144 addresses the format of the record on appeal, including the format of reporter’s transcripts. Currently, this rule contains the following provision regarding the format of computer-readable reporter’s transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

For the past several years, the committee has been working with representatives of unions representing court reporters on legislation to amend Code of Civil Procedure section 271. The main focus of that effort has been on eliminating the requirement that the original reporter’s transcript be in paper format. However, the draft amendments developed through this effort would also eliminate the archaic default format provisions in the statute and more directly restate that the format requirements for electronic reporter’s transcripts are to be established by rules adopted by the Judicial Council.

This year’s bill to amend section 271 is Assembly Bill 1450, which can be accessed at: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1450](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1450). This bill would, among other things, establish “grace periods” for both the acceptance of electronic transcripts by the courts and the delivery by court reporters of electronic transcripts that comply with the Judicial Council formatting rules. These provisions are meant to recognize that, at this time, some courts may not be able to receive, store, or use transcripts that are in required electronic format and some court reporters may not be able to produce electronic transcripts that fully comply with the proposed amendments to rule 8.144. The bill would give courts and court reporters several years to take the steps necessary to make the transition to electronic transcripts in the format proposed in the amendments to rule 8.144.

The committee and the representatives of court reporters unions are continuing to actively work together on AB 1450. As of the date of this memo, the bill has passed out of the Assembly and awaiting assignment to a committee in the Senate. September 15, 2017 is the last day for each

house to pass bills. October 15, 2017 is the last day for the Governor to sign bills that are passed by the Legislature on or before September 15, 2017.

## Public Comments

Thirteen comments were received on this proposal from individuals or organizations:

- Four commentators indicated that they agreed with the proposal:
  - The California Appellate Court Clerks Association;
  - The Court Reporter's Office, Superior Court of Orange County;
  - The Superior Court of San Diego County; and
  - The Orange County Bar Association.
- Three commentators indicated that they agreed with the proposal if amended:
  - The Superior Court of Los Angeles County;
  - The Superior Court of Riverside County; and
  - The Superior Court of Ventura County.
- Three comments indicated that the commentators did not agree with the proposal:
  - Dana Belloli, an Official Reporter;
  - Jeannette Jessup, and Official Reporter; and
  - Service Employees International Union, California Labor Federation, IFPTE 21, Laborers International Union of North America, America, Locals 777 & 792 of the Orange County Employees Association, and American Federation of State County and Municipal Employees, who submitted a joint comment
- Three commentators did not state a position on the proposal, but provided comments:
  - The California Court Reporters Association;
  - Albert De La Isla; and
  - Jennifer Hicks

A chart with the full text of the comments received is attached. Based on these comments, staff recommends that the subcommittee recommend waiting to present any recommendation on this proposal until the November 17 Judicial Council meeting.

All of the commentators who indicated that they do not agree with the proposed amendments to rule 8.144, including most of the unions representing court reporters, expressed concern about the inability of court reporters to comply with some of the proposed new formatting requirements at this time – particularly the requirements for bookmarking and merging multi-reporter transcripts into a single document. These commentators suggested that currently only one court-reporting software can produce transcripts that comply with these requirements and that court reporters would therefore be forced to purchase the software and subscription service of that vendor, at the reporters' expense, if these rule amendments were adopted. Other commentators

also expressed concerns about potentially conflicting language in this rule and the current language of Code of Civil Procedure section 271, which, as noted above, only permits copies of a transcript to be in electronic format.

These same concerns are driving the work by the committee and many of these same the court reporters unions on AB 1450. The bill's approach to addressing the concerns about court reporting software not currently being able to produce transcripts compliant bookmarking and other formatting requirements has not been to abandon new formatting requirements for electronic transcripts. Instead, at the suggestion of the reporters' unions, the bill would establish the "grace period" for compliance with the Judicial Council formatting rules. This grace period would give other court reporting software vendors the opportunity to update the capability of their products and for court reporters to implement these software changes along with other regular software updates. The bill would also address the concerns raised about potential conflicts between the current language of section 271 and the proposed rule language.

All of this suggests that the committee should wait to determine whether to move forward with a proposal to amend rule 8.144 until the final language and status of AB 1450 is known. Although under the existing language of Code of Civil Procedure section 271, the Judicial Council has the authority to set the format for copies of reporters' transcripts that are delivered in computer-readable form, the proposed amendments to rule 8.144 circulated this spring were designed to be a companion AB 1450. To sync-up the timing of the rule and legislative processes, staff suggest that the subcommittee recommend that this proposal not be presented to the Judicial Council at its September 15, 2017 meeting, which is the meeting at which other rule proposal are scheduled to be considered, but instead that any proposal be presented to the Judicial Council at its November 17 meeting, which will be after both the Legislature's adoption deadline and the Governor's signing deadline.

#### Rules Subcommittee Task

The subcommittee's task with respect to this proposal is to discuss the comments received on the proposal and approve or modify staff suggestions for delaying action on this proposal. If the subcommittee decides it wishes to take a different approach, this item could be discussed further at the subcommittee's May 24 meeting.

#### Attachments

1. Draft comment chart
2. Invitation to comment

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
1.	Dana Belloli Official Court Reporter Turlock Ca	N	Having been a working reporter for the past 30 years, both freelance and official, I believe this proposal is bad law. It will require additional costs to working reporters to be paid to software company(s), with no benefit to the public. Court reporters can already provide the services presently required, and the only benefit will be to these people/company(s) who court reporters will be required to pay a monthly fee to. It will especially adversely effect those reporters who work part-time yet still must pay the month fee as required by these software company(s). Thank you.	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending of rule 8.144 as proposed with one addition. That the rule requires that transcripts submitted by court reporters not be password protected.  To the advisory committee's questions:  <i>It is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?</i> It doesn't seem necessary to require both. Digital signatures obviously offer more protection for the court reporters, but depending on the digital certificates being used for the digital signature and the encryption level, it might make things more difficult for the court in terms of electronically filing, flattening and encrypting (in the case of sealed electronic	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>documents) than if those documents had just been electronically signed. It seems like requiring electronic signatures might be the least cumbersome option for the courts.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	
3.	California Court Reporters Association By Brooke Ryan and Erin Spence	NI	<p>On behalf of California's court reporters, the California Court Reporters Association ("CCRA") wishes to thank the Judicial Council and the Appellate Advisory Committee for proposing these important amendments to California Rules of Court, rule 8.144. CCRA endorses the use of electronic transcripts and agrees with the forward-looking concept of proposed Rule 8.144. We believe that the proposed rule will be improved with some minor changes.</p> <p>We believe the requirements of subdivisions (a)(1)(D) and (c)(1)(C), concerning page numbering, should be harmonized. The former provides only that transcripts should contain pages which are consecutively numbered. However, the latter provides more detail, but fails to state the pages must be numbered consecutively. CCRA proposes that the requirements of these two subdivisions be merged into a single paragraph, which would be contained in subdivision (a) and thus be applicable to electronic transcripts through the</p>	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>introductory sentence of subdivision (c)(1) ["In addition to complying with (a) ..."].</p> <p>CCRA suggests that an additional section, (3)(A), possibly entitled Page Numbering, be added with respect to transcript page numbering for both paper and electronic transcriptions. CCRA proposes that transcripts of confidential proceedings (e.g., Marsden hearings) be consecutively numbered within the context of the entire transcript (as opposed to being set out in a separately numbered transcript). CCRA believes this amendment will provide needed guidance to court reporters and uniformity of practice throughout the state. To that end, CCRA proposes this language be included within the rule as adopted: "The reporter's sealed and confidential transcripts must be redacted from the main transcript while maintaining consecutive page numbers using only Arabic numerals (e.g. 1, 2, 3) throughout the document, including indices and certificates, and must be filed under separate cover."</p> <p>On Page 2, line 39, a section (a)(6) could be added to list the order of the transcript, such as Appellate Cover, Superior Court Cover, Indices Sessions, Witnesses, Exhibits. CCRA believes that it is important that all transcripts be filed in a consistent order, especially since reporters will be filing a one-volume reporters' transcript on appeal.</p> <p>Under current law [(a)(3)], confidential and</p>	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>sealed transcripts are delivered in a secure envelope. CCRA proposes that the amended rule provide electronic transcripts be delivered securely by encrypted transmission. Encryption technology is readily available and widely used in numerous industries and applications. This technology would allow the courts to control who has access to the confidential transcripts by furnishing a password to those authorized persons. Sealed and confidential electronically filed transcripts should be required to follow the guidelines currently set for paper transcripts.</p> <p>CCRA believes that (5)(1) relating to 300 sheets needs to remain because the ability to bind more than 300 pages is unwieldy. We also believe that that section should be specifically excluded if filing electronically. Suggest it is added to (c)(2)(B).</p> <p>CCRA suggests that the reference to “the cover page required by (a)(3)” in proposed subdivision (c)(2)(A) should refer to subdivision (a)(5).</p> <p>An additional correction for consideration is Page 3, line 29 – (D) is inconsistent with page 2, line 5 “(4) Indexes.” In (4), reporters filing paper transcripts must have an index for witnesses and exhibits. In (D) reporters must have a separate index for sessions, witnesses and exhibits. CCRA suggests that indexing, whether on paper or electronic, should be identical, especially since reporters are having</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>to print transcripts that are currently being filed electronically on appeal to the appellate lawyers.</p> <p>Also, CCRA recommends that the last phrase of proposed subdivision (c)(2)(A) be modified to read, (A) Each individual reporter must include the cover page required by (a)(5), the indexes required by (a)(4), and an electronically signed certificate in their respective portion of the transcript.” This change is necessary because in those instances in which several reporters contribute to a transcript, each will sign a certificate as to his or her portion. The proposed rule establishes the practice as to each reporter’s portion of the entire transcript. We also suggest adding a section (D) “The primary reporter must digitally sign the single electronic document.” CCRA believes that the above changes are necessary for clarity to the reporters preparing the electronic transcripts. The need to have digital and electronic signatures separate is the fact that once a transcript is digitally signed it cannot have any changes made to it, such as merging volumes together to make one electronic document, making a master index from all volumes. Each reporter still needs to electronically sign their respective certificate page in their transcript.</p> <p>In reference to (c)(1)(A) regarding scanned documents, CCRA would suggest an additional sentence such as “except as ordered by the court.” There are certain instances (death of a</p>	



## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>reporter, computer crashes) where a scanned copy of a previously prepared transcript is the only way to add it to an appeal.</p> <p>Thank you for the opportunity to offer these suggestions. CCRA remains available to lend its technical experience as the proposed rule takes final form.</p>	
4.	Court Reporter's Office, Superior Court of Orange County By Sean E. Lillywhite	A	<p>The Court Reporters Office in Orange County recommends the committee consider requiring only one signature type, not both; and recommends the rule require an electronic signature.</p> <p>This court is not currently e-filing court reporter transcripts. However, this court recently launched a pilot project for e-filing of court reporter transcripts on civil and probate appeals with the DCA. Adding an e-signature component and formatting requirements would not appreciably increase cost or implementation.</p> <p>Since our court is not currently e-filing court reporter transcripts, we will have sufficient time to work the new requirements into our implementation.</p>	
5.	Albert De La Isla Principal Administrative Analyst IMPACT Team – Criminal Operations Superior Court of Orange County	NI	<p>The amendment has to do with addressing specific requirements when a court reporter's transcript is delivered in electronic form. The proposed amendment to the rule would make the formatting requirements easier to follow. This would have more impact to CRIS than</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>Operations. I believe CRIS is at the moment still preparing hard copy transcripts for Criminal Appeals but there have been recent talks about changing this as they have already implemented electronic transcripts with Civil.</p> <p>If electronic transcripts are implemented in felony appeals, then the Felony Appellate procedures would have to be modified and an interface developed to be able to receive electronically and file stamp electronically.</p> <p><i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Response: Minimal if we are just receiving the document electronically by an electronic means. However, if we choose to build an interface so that they are loaded in the CMS and electronically filed stamped, the requirements are unknown.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Response: Operationally, yes if we do not build an interface.</p>	
6.	Jennifer Hicks	NI	In response to the suggested proposal, a majority of court reporters, at the present	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>moment, are capable of providing full text-searchable PDF (portable document format) at no additional cost to the court or to the court reporter. What hinders the court reporters from going forward in providing such productivity is the following:</p> <p>1.       Bookmarking and hyperlinks</p> <p>EXPLANATION: Bookmarking and hyperlinks – The proposed code section obligates the reporter to interpret or assume what the court or end user wants by bookmarking and attaching hyperlinks. The Court Reporter's position is to preserve the integrity of the record. By a Court Reporter taking on the role and deciding what should be hyperlinked or bookmarked for the end user assumes or could be perceived as being biased. Though it may seem minute of a task to do, it is disingenuous in asking the reporter to produce said product to prevent the Court Reporter from being in violation with the Court Reporters Board's Tenet of Ethics and/or Professional Conduct.</p> <p>In regards to exhibits being hyperlinked, this would be a very tedious task. There are some cases where counsel and the court make a clean record of marking and receiving exhibits. But there are more times, than not, that exhibits are marked and never used; they are marked in one section and then used several days later; they are misidentified, relabeled, portions redacted, and so on, to have to go through and hyperlink</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>all these areas is difficult. This, again, requires the reporter to interpret what the court and counsel's intentions are or were during the proceedings which violates the neutrality of the Court Reporter's position.</p> <p>Preparing any type of transcript, whether it's lengthy or short, is time consuming and oftentimes is filed on the due date, depending on a reporter's workload. Requiring a reporter to now bookmark and hyperlink a transcript, especially with the above-mentioned scenario, is quite cumbersome that reporters will not be able to meet their deadlines and file for extensions which would prolong the appeal process. This is not only a detriment to the reporter, because it's frowned upon, but also to the court.</p> <p>The Court Reporters are capable of processing and accommodating the following procedure as proposed but request clarification.</p> <ol style="list-style-type: none"><li>1. Conflicting codes.</li><li>2. To volume or not to volume</li><li>3. Block numbering/larger pagination</li><li>4. Cost<ol style="list-style-type: none"><li>a. Digital signature/electronic signature</li><li>b. program</li></ol></li></ol> <p>EXPLANATION: When the reporter is mandated or ordered to prepare a transcript he/she would follow several codes which work together to come up with the end result of a transcript. By changing only one of the codes, the reporter falls in detriment of</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>not following codes properly because the reporter will have mixed information in the process of preparing a transcript which would result in a transcript that's useless to the end user.</p> <p>1. Conflicting Code(s) - An official reporter meets those obligations without ever having to interpret what the court needs are. There is a clear understanding of what is expected of an official reporter. By implementing the suggested code section would counter existing rules and codes that reporters follow in preparing transcripts that indicate the term "Paper" or "Printed Copy." Further inquiry with the Court Reporters Board and legislation need to be made to ensure all existing rules be changed so there is a consistency and that there is no confusion amongst the reporters as to which rule they must follow and will the rules coincide with one another as intended. i.e. 69950(a), 271(a) and (b), CCP 2025, 8.130(f)4) and Government Code 69954(b). If Section 8.144 is allowed to be changed as proposed, a Court Reporter could be in violation of the above code sections and putting their license in jeopardy.</p> <p>2. To Volume or not to volume – The language on this particular procedure needs to be clarified or redefined. Due to one's own interpretation this may not be seen as intended and there could be some confusion.</p> <p>Under the new subsection (a)(5) Cover, (A)</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>“Each volume’s cover,” originally under this section “Binding” it defined what a volume consisted of, 300 pages. (We are assuming this remains the same.) But the suggested proposal’s language has been stricken and there is no definition of what a volume consist of for electronic format. A volume is defined as 300 pages only if the transcript remains in paper form. We cannot assume that is what is wanted for electronic format.</p> <p>The rule needs to specify that volumes will continue to consist of 300 pages and will be merged together as a whole (1 file) upon submission.</p> <p>3. Block numbering/larger pagination – Is or could this section be optional? Some court reporters stride to paginate their pages (transcripts) consecutively so it’s one smooth flowing transcript. Easy for the end user. If it’s wished that the reporters use block numbering, this would create large page numbering and more volumes than if the pages of the transcript were done consecutively. For the end user it may feel choppy rather than flowing like a book.</p> <p>This procedure is more of a detriment to the primary reporters because they are focusing their attention on coordinating and setting block numbers rather than directing their attention to preparing the transcript at hand or other obligations they may have.</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>Where on the other hand, if paginated consecutively, the primary reporter will be notified as each reporter finishes their portion and provide a page number to the next court reporter in the segment and collaborates indexes instead of multiple pages of witness lists and exhibit pages.</p> <p>When block numbering is utilized there will be occasions when blurbs are used because all designated pages were not filled with text. When the transcript is uploaded into a program, any program, the pagination will not correspond respectively because it cannot read that "Pages 485-600 were intentionally left blank." This will violate the proposed language under (c)(1)(C) indicating, "The electronic page counter in a PDF file viewer must match the transcript page numbering."</p> <p>The end result is that the transcript is assembled in a book-style format so the end user is able to navigate throughout the pages with ease.</p> <p>4. Cost</p> <p>a. Digital signature/electronic signature – It is preferred to have a digital signature. There is an ongoing cost to the Court Reporter, during the reporter's career as well as in their retirement to continue to meet their obligations.</p> <p>b. Program – As indicated, the introduction of these rules were suggested by a reporter's association who endorses a program that will provide all the suggested changes in 8.144. Regardless if that specific plan is used or</p>	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>not, there is a cost to the reporter to use a program to meet the need of bookmarking and hyperlinking should that language remain in. JCC is informed it's at no cost to them or the courts because the burden is on the court reporters.</p> <p>If this rule is implemented, it will force reporters to use a program to meet the guidelines, not only during their career, but also for ten years after they retire. Without going into details, this is a detriment to the reporters financially during their career as well as into retirement.</p> <p>Court Reporters can produce and accommodate the transcripts right now -- at no cost to the court and no additional cost to the court reporter -- by uploading the transcripts in PDF format. With the elimination of bookmarking and hyperlinking requirements and with making all court reporter codes consistent with computer-readable format language, this will eliminate the court reporter interpreting what the end user wants and protect the court reporter from violating codes and Tenets of Ethics and focus on preserving the integrity of the record.</p> <p>Specific comments: Implementation requirements for the court: Training and preparation will be needed to ensure staff understands the protocol thoroughly, i.e., uploading, processing, digitally file stamping, notifying parties. This applies to</p>	



## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>both the clerks and the reporters. From the reporter's standpoint, not all reporters are tech savvy, and so this might be challenging for some. This will be another task that the court reporter supervisor/manager will have to monitor to ensure no delays in the process.</p> <p>It's foreseen that the transcripts will have more typographical errors and/or format errors on them because those are usually caught when the court reporter prints out the final copies to submit. Some even rely on their supervisor to catch the errors during processing of the transcript. That process will be eliminated.</p>	
7.	Jeannette Jessup Official Reporter Monterey, CA	N	<p>We are a very small county and do not use lead reporters. Some of our software also does not have the ability to bookmark. So the change for bookmarking by a lead reporter and merging all volumes in one document will be difficult if not impossible.</p>	
8.	Orange County Bar Association By Michael L. Baroni	A	No specific comment	
9.	Service Employees International Union by Kimberly Rosenberger  California Labor Federation by Caitlin Vega  IFPTE 21 by Shane Gusman	N	<p>We the undersigned organizations representing trial court employees write in opposition to the proposed amendment to the California Rules of Court, rule 8.144.</p> <p>We strongly urge the Appellate Advisory Committee to abandon proposals to change the rule of court, as they are too restrictive, inhibit technological advancements, and impose an</p>	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Laborers International Union of North America, by Liberty Sanchez</p> <p>America, Locals 777 &amp; 792 Orange County Employees Association by Patrick Moran</p> <p>American Federation of State County and Municipal Employees by Joshua Golka</p>		<p>unfair and expensive burden on court reporters. The majority of Computer-Aided Transcription (CAT) software is unable to comply with the requirements proposed, specifically the proposals found in sections (c)(1)(C), (c)(1)(D), (2)(B) and (2)(C).</p> <p>The transition to modern technology has been costly and often unsuccessful in the public sector and especially in the judicial branch. However, the most successful use of technology in the judicial branch has been that of the court reporters. Advancements have allowed for real time captioning, electronic transcripts, and so much more. This is directly due to the reporters being the owners, as well as the operators of the technology they use. The proposed amendments to the rule of court take away that autonomy and monopolize the CAT software field. The proposed rules impose requirements that only one vendor at this time provides.</p> <p>Court reporters are in a unique position where they not only are the target demographic for use of the technology, but they are also the customer. This has given the reporters purchasing power that has allowed them to directly influence the field. Court reporters have continued to evolve in the technology they use, investing in CAT software that improves the access and availability to transcripts for the courts and the public. This technology comes directly out of the pocket of the reporters, despite their rates having stagnated for over a</p>	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<p>quarter of a century.</p> <p>Additionally, section 2(B) requires multiple volumes to be merged into a single electronic document. Currently this is performed by court clerks in the Internal Appeals Division and accounts for a large bulk of their work. The division is responsible for collecting transcripts, tracking deadlines, and merging the total document as one unit for the Court of Appeals. To shift this work entirely on to court reporters is problematic for a number of reasons. The additional workload proposed not only creates an untenable amount of work for the reporter, but it would also result in a merging of job classifications without meeting or notifying the unions that represent these workers. Furthermore, it greatly increases the workload of reporters without any compensation. This proposal will likely result in increased backlog and delayed access to justice, as the deadlines will remain the same despite requiring new technology and new duties.</p> <p>The proposed rules place a costly onus on court reporters and also create a monopoly in the industry that discourages innovation and competition. Court reporters are supportive of efforts to shift to electronic transcripts, despite the cost and additional work placed on them. However, the proposed changes approach evolving technology in the wrong way. We oppose the proposed Rule of Courts changes, and instead urge the committee to consider</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			language that allows for the advancement of technology rather than burdensome limitations.	
10.	Superior Court of Los Angeles County	AM	<p>Suggested modification:            Rule 8.144 (c) (1) (E) - It would not be necessary to have both an electronic and digital signature on electronically transmitted transcripts. Once the mechanism is in place, digital signatures are fairly easy to handle or maintain. The court's concern would be validity and authentication. If the transcripts are submitted via an electronic portal or by email, there is a high certainty that it actually came from the court reporter. Electronic signature would be easier and cheaper.</p> <p><i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <ul style="list-style-type: none"> <li>• Staff training and communication               <ul style="list-style-type: none"> <li>○ Transcript Auditors (6) 4-6 hours</li> <li>○ Court Reporters (450+) 4 hours</li> </ul> </li> <li>• Update Court Reporter Manual 16 hours</li> <li>• Update Court website information re transcript formatting, including examples 16 hours</li> </ul> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			Yes, three months is sufficient for implementation.	
11.	Superior Court of Riverside County By Susan D. Ryan	AM	Only copies can be in electronic format. At this time, the original must be a hard copy. Recommend the following additions: Page 6 line 10. (c) Add the words "copies of the" after the word for. (c) Additional requirements for copies of the reporter's transcript delivered in electronic form Page 7 line 3 under the heading (2) Multivolume or multi-reporter transcripts In addition to the requirements in (1), copies of multivolume or multi-reporter transcripts delivered in electronic format must comply with the following requirements:	
12.	Superior Court of San Diego County By Michael Roddy, Executive Officer	A	<i>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?</i> No comment.  <i>What would the implementation requirements be for courts?</i> No impact on appeals clerks.  <i>Would three months from Judicial Council approval of this proposal until its effective date</i>	

**ITC SPR17-01**

**Appellate Procedure: Format for Reporter’s Transcripts Delivered in Electronic Form)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>provide sufficient time for implementation?</i>                      Yes, as far as appeals clerks are concerned.</p>	
13.	Superior Court of Ventura County by Nan L Richardson	AM	<p><b>Digital vs. Electronic signature:</b></p> <ul style="list-style-type: none"> <li>• Electronic – indicates a person’s intent to sign a record and is legally binding</li> <li>• Digital – encrypts a data associated with a document. Does not legally bind a signature to a document</li> </ul> <p>Preference: All reporter transcripts be electronically signed</p> <p><b>Implementation:</b></p> <ul style="list-style-type: none"> <li>• Training official court reporters – 3 to 4 hours per official reporter; 2 hours per contract reporter</li> </ul> <p><b>Three months for implementation sufficient?</b></p> <ul style="list-style-type: none"> <li>• Six months preferred</li> </ul> <p>Title 8. Appellate Rules: Rule 8.144. Form of the Record</p> <p>(c)(1)(A) “Be generated electronically; it must not be created from a scanned document.”</p> <ul style="list-style-type: none"> <li>• Court reporters may need to scan a transcript if the paper transcript is available and has been previously prepared, but the electronic transcript is no longer available due to reporter unavailability or technological issues that prevent access to the electronic transcript                             <ul style="list-style-type: none"> <li>○ Suggested change: “Be generated electronically; it may be scanned if electronic generation unavailable.”</li> </ul> </li> </ul>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"><li>(2)(A) "Each individual reporter must include the cover page required by (a)(3)" ... should read (a)(5)</li></ul>	

# Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT SPR17-02

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<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form	Review and submit comments by April 28, 2017
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 8.144	January 1, 2018
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding the format of the record on appeal to incorporate requirements for reporters' transcripts that are delivered in electronic form. This proposal is based on a suggestion from a court reporters association.

### Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form." Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply "[e]xcept as modified by standards adopted by the Judicial Council."

Rule 8.144 generally addresses the format of the record on appeal, including the format of reporters' transcripts. Currently, this rule contains only the following provision regarding the format of computer-readable reporters' transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

(Cal. Rules of Court, rule 8.144(a)(4).)

There are additional formatting issues and questions that arise when a transcript is in electronic format that it may be helpful for rule 8.144 to address.

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



## **The Proposal**

The committee is proposing amendments to rule 8.144 to provide additional guidance regarding the format for reporters' transcripts that are delivered in electronic form. To make the overall rule clearer, the committee is also proposing reorganizing some of the existing provisions. The main amendments include:

- Current subdivisions (a), (b), and (c), which establish general formatting requirements for reporters' and clerks' transcripts, would be consolidated into a single subdivision (a), titled *Format*. This should make it easier for rule users to find all of the general formatting requirements. To make this longer subdivision easier to follow, each paragraph would be given a heading. This also preserves the most of the headings now used in subdivisions (b) and (c). In addition, a proposed new requirement that each index begin on a separate page would be placed here, as having each index begin on a separate page would be helpful in all transcripts, whether in paper or electronic form.
- The current provisions that specifically relate to transcripts that are in paper form would be gathered together in a new subdivision (b). This reorganization should make finding these specific formatting requirements easier.
- New subdivision (c) would address the specific requirements for reporters' transcripts in delivered in electronic form, including that the transcript be in a full-text searchable PDF or other searchable format approved by the court; include an electronic bookmark to each heading, subheading, and component of the transcript; and permit users to copy and paste, keeping the original formatting. This new subdivision would include separate paragraphs for both general requirements and special requirements for multireporter or multivolume transcripts that are in electronic format. As with proposed subdivisions (a) and (b), this structure should make it easier for rule users to find all of the requirements relating to reporters' transcripts delivered in electronic form in one place.

Other nonsubstantive changes to the rule are also incorporated in this proposal.

## **Alternatives Considered**

The committee considered not recommending any changes to rule 8.144 but concluded that providing more guidance on the format of reporters' transcripts in electronic form would be helpful.

## **Implementation Requirements, Costs, and Operational Impacts**

No appreciable implementation requirements, costs, or operation impacts are anticipated.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?

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

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

### **Attachments and Links**

Proposed amendments to Cal. Rules of Court, rule 8.144, at pages 4–8

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 2. Civil Appeals

6  
7 Article 2. Record on Appeal

8  
9 Rule 8.144. Form of the record

10  
11 (a) ~~Paper and~~ Format

12  
13 (1) General

14 In the clerk's and reporter's transcripts:

15  
16 (A) All documents filed must have a page size of 8½ by 11 inches. ~~If filed~~  
17 ~~in paper form, the paper must be white or unbleached and of at least 20-~~  
18 ~~pound weight;~~

19  
20 (B) The text must be reproduced as legibly as printed matter;

21  
22 (C) The contents must be arranged chronologically;

23  
24 (D) The pages must be consecutively numbered, except as provided in (e);  
25 and

26  
27 (E) The margin must be at least 1¼ inches from the left edge.

28  
29 ~~(2) If filed in paper form, in the clerk's transcript only one side of the paper may~~  
30 ~~be used; in the reporter's transcript both sides may be used, but the margins~~  
31 ~~must then be 1¼ inches on each edge.~~

32  
33 ~~(3)~~(2) Line numbering

34 In the reporter's transcript the lines on each page must be consecutively  
35 numbered and must be double-spaced or one-and-a-half-spaced; double-  
36 spaced means three lines to a vertical inch.

37  
38 ~~(4) A computer-readable copy of a reporter's transcript must be in a text-~~  
39 ~~searchable format approved by the reviewing court while maintaining~~  
40 ~~original document formatting.~~

1 ~~(5)~~(3) Sealed and confidential records

2 The clerk's and reporter's transcripts must comply with rules 8.45–8.47  
3 relating to sealed and confidential records.

4  
5 ~~(b)~~(4) Indexes

6 Except as provided in rule 8.45, at the beginning of the first volume of each:

7  
8 ~~(1)~~(A) The clerk's transcript must contain alphabetical and chronological  
9 indexes listing each document and the volume, where applicable, and  
10 page where it first appears;

11  
12 ~~(2)~~(B) The reporter's transcript must contain alphabetical and  
13 chronological indexes listing the volume, where applicable, and page  
14 where each witness's direct, cross, and any other examination, begins;  
15 and

16  
17 ~~(3)~~(C) The reporter's transcript must contain an index listing the volume,  
18 where applicable, and page where any exhibit is marked for  
19 identification and where it is admitted or refused. The index must  
20 identify each exhibit by number or letter and a brief description of the  
21 exhibit.

22  
23 (D) Each index required by (A), (B), and (C) must begin on a separate  
24 page.

25  
26 ~~(e)~~(5) Binding and Cover

27  
28 ~~(1) — If filed in paper form, clerk's and reporter's transcripts must be bound on the~~  
29 ~~left margin in volumes of no more than 300 sheets.~~

30  
31 ~~(2)~~(A) Each volume's cover must state the title and trial court number of  
32 the case, the names of the trial court and each participating trial judge,  
33 the names and addresses of appellate counsel for each party, the  
34 volume number, and the inclusive page numbers of that volume.

35  
36 ~~(3)~~(B) In addition to the information required by ~~(2)~~(A), the cover of each  
37 volume of the reporter's transcript must state the dates of the  
38 proceedings reported in that volume.

39  
40 **(b) Additional requirements for record in paper form**

41  
42 In addition to complying with (a), if the record is filed in paper form:

43

- 1           (1) The paper must be white or unbleached and of at least 20-pound weight;  
2  
3           (2) In the clerk’s transcript only one side of the paper may be used; in the  
4           reporter’s transcript both sides may be used, but the margins must then be 1¼  
5           inches on each edge.  
6  
7           (3) Clerks’ and reporters’ transcripts must be bound on the left margin in  
8           volumes of no more than 300 sheets.  
9

10 **(c) Additional requirements for reporter’s transcript delivered in electronic form**  
11

12           (1) General  
13

14           In addition to complying with (a), a reporter’s transcript delivered in  
15           electronic format must:  
16

- 17           (A) Be generated electronically; it must not be created from a scanned  
18           document.  
19  
20           (B) Be in full text-searchable PDF (portable document format) or other  
21           searchable format approved by the court.  
22  
23           (C) Be paginated beginning with the first page or cover page as page 1 and  
24           consecutively numbered using only Arabic numerals (e.g., 1, 2, 3)  
25           throughout the document, including indices and certificates. The  
26           electronic page counter in a PDF file viewer must match the transcript  
27           page numbering.  
28  
29           (D) Include an electronic bookmark to each heading, subheading, and  
30           component of the transcript, including all sessions or hearings (date  
31           lines), all witness examinations, the index, and all exhibits. All  
32           bookmarks and hyperlinks, when clicked, must retain the user’s  
33           currently selected zoom settings.  
34  
35           (E) Be digitally and electronically signed by the court reporter.  
36  
37           (F) Permit users to copy and paste, keeping the original formatting, but  
38           with headers, footers, line numbers, and page numbers excluded.  
39  
40           (G) Permit courts to electronically add filed/received stamps.  
41  
42

1           (2) Multivolume or multireporter transcripts

2  
3           In addition to the requirements in (1), multivolume or multireporter  
4           transcripts delivered in electronic format must comply with the following  
5           requirements:

6  
7           (A) Each individual reporter must include the cover page required by (a)(3),  
8           the indexes required by (a)(4), and a digitally and electronically signed  
9           certificate in its respective portion of the transcript.

10  
11          (B) The transcript must be merged into a single electronic document, which  
12          may consist of multiple volumes.

13  
14          (C) The primary reporter must prepare a master index for the merged  
15          transcript that includes all of the information from the indexes required  
16          under (A). This master index must be the first bookmark in the  
17          transcript, regardless of where the master index is located within the  
18          transcript.

19  
20          (3) Additional functionality or enhancements

21  
22          Nothing in this rule prohibits courts from accepting additional functionality  
23          or enhancements in reporters' transcripts delivered in electronic form.

24  
25          (d) \* \* \*

26  
27          (e) **Pagination in multiple reporter cases**

28  
29          (1) In a multiple reporter case, each reporter must estimate the number of pages  
30          in each segment reported and inform the designated primary reporter of the  
31          estimate. The primary reporter must then assign beginning and ending page  
32          numbers for each segment.

33  
34          (2) If a segment exceeds the assigned number of pages, the reporter must number  
35          the additional pages with the ending page number, a hyphen, and a new  
36          number, starting with 1 and continuing consecutively.

37  
38          (3) If a segment has fewer than the assigned number of pages, on the last page of  
39          the segment, before the certificate page, the reporter must add a hyphen to the  
40          last page number used, followed by the segment's assigned ending page  
41          number, and state in parentheses "(next volume and page number is \_\_\_\_)."  
42

1 (f) \* \* \*

2

3

**Advisory Committee Comment**

4

5 **Subdivision (a)(3) and (4)(b).** ~~Subdivision (a)(4) is adopted under Code of Civil Procedure~~  
6 ~~section 271(b), which allows the Judicial Council to adopt format requirements for computer-~~  
7 ~~readable copies of a reporter's transcript. Subdivisions (a)(5) Paragraphs (3) and (b)(4) of~~  
8 subdivision (a) refer to special requirements concerning sealed and confidential records  
9 established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establishes special requirements regarding  
10 references to sealed and confidential records in the alphabetical and chronological indexes to  
11 clerks' and reporters' transcripts.

12



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
May 16, 2017	Please read before May 18 committee meeting
To	Deadline
Members of the Appellate Advisory Committee's Rules Subcommittee	May 18, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Record in juvenile appeals	

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#### Introduction

As you may recall, earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend rule 8.137, regarding settled statements, to address difficulties in the timely preparation of these statements, approve a new form APP-014 for appellants to use in preparing proposed statements, and revise the current form APP-003 for designating the record on appeal in unlimited civil cases to reflect these proposed changes. The Judicial Council's Policy Coordination and Liaison Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses background to this proposal and the public comments received on the proposal.

#### Background

Settled statements are one of the methods permitted under the Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is defined as a summary of the trial court proceedings prepared by the appellant and approved by the trial court (this contrasts with an agreed statement, which is not reviewed by the trial court but is agreed to by the parties).



Settled statements are typically used as the record of the oral proceedings in the trial court, replacing a reporter's transcript, but currently they can also be used to provide a record of the documents filed in the trial court, replacing a clerk's transcript or appendix.

**Settled statements in unlimited civil cases**

Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule reflects a basic presumption that court reporter's transcripts will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, an appellant must file a motion asking to use a settled statement:

(a) Motion to use settled statement

- (1) An appellant intending to proceed under this rule must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both reporter's and clerk's transcripts.
- (2) The motion must be supported by a showing that:
  - (A) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;
  - (B) The designated oral proceedings were not reported or cannot be transcribed;  
or
  - (C) The appellant is unable to pay for a reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)). A party proceeding in forma pauperis is deemed unable to pay for a transcript.

The rule also provides very little direction regarding how a proposed statement is to be prepared and how it is to be reviewed and approved by the trial court.

Given that court reporters were historically present to record the proceedings in unlimited civil cases and the hurdle of having to file a motion, in the past, settled statements were a little-used option in Court of Appeal proceedings. As noted by committee member Joseph Lane, however, times have changed. Court reporters are no longer present to record the proceedings in many civil cases and therefore more appellants are now trying to use the settled statements procedure. This has proved problematic, as appellants attempt to navigate the motion procedure and prepare proposed statements and trial court attempt to review and certify proposed statement. These problems are having an increasing impact on both litigants and the Courts of Appeal.

### **Statements on appeal in limited civil cases**

A statement on appeal is the equivalent of a settled statement in a limited civil case appealed to the appellate division of the superior court. Unlike in unlimited civil cases, historically, court reporters were often not present to record the proceedings in limited civil cases. Statements on appeal were therefore commonly used to prepare the record in these cases and continue to be used currently.

Rule 8.837 addresses statements on appeal in limited civil cases. Unlike rule 8.137, this rule, adopted effective January 1, 2009, does not require the appellant to file a motion requesting to use a statement on appeal; the appellant may simply elect in his or her record designation to use a statement on appeal. Rule 8.837 also provides fairly detailed directions to appellants regarding the content of proposed statements on appeal and to trial courts about reviewing and approving (certifying) these statements. At the same time as it adopted this rule, the Judicial Council also approved *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) which provides a template to appellants for preparing a proposed statement.<sup>1</sup> Rule 8.837 generally requires self-represented appellants to use this form.

### **The proposal that was circulated**

The proposal that was circulated for public comment, a copy of which is included in your materials, would have amended the rule on settled statement in unlimited civil cases, rule 8.137, to make it more like the rule for limited civil cases, rule 8.837. Among other things, these amendments would have eliminated the requirement to file a motion to use a settled statement if the oral proceedings were not reported by a court reporter or if the appellant was granted a fee waiver and would have added much more detail about the contents of proposed statements and the procedure for reviewing and finalizing the statements. In addition, the proposal included a new form designed to help appellants prepare their initial proposed statement – *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) – modeled on the existing appellate division form *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). The invitation to comment included a number of questions on which the committee sought specific input from commentators.

### **Public Comments**

Twelve individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal, six indicated that they agreed with the proposal if amended, and two did not indicate a position on the proposal overall. Many of the comments were extensive, with responses to the questions asked by the committee and suggestions for modifying the proposal. A chart with the full text of the comments received and staff's draft

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<sup>11</sup> You can access this form at: <http://www.courts.ca.gov/documents/app104.pdf>

responses is attached. This chart is divided up by topic area so that all the comments addressing a particular question or issue can be seen together. The main issues raised by the comments, possible responses, and possible modifications to the proposal are discussed below, but there are other comments and responses discussed only in the draft comment chart, so **please review the draft comment chart carefully.**

Also attached are drafts of the proposed rule amendments and the forms showing staff's suggested modifications. The suggested changes to the rule amendments are shown using **yellow highlighting** and possible changes to the forms are shown using handwritten inserts and deletions.

### **Rule 8.137**

The majority of the commentators who specifically addressed the proposed amendments to rule 8.137 expressed support for the concept of eliminating the requirement for filing a motion to use a settled statement when the proceedings were not reported by a court reporter or when the appellant has a fee waiver. There were three main substantive issues raised by the commentators.

#### **Complexity of rule language**

Two commentators – the Judicial Council Advisory Committee on Providing Access and Fairness (PAF) and the Court of Appeal, Second Appellate District – expressed concern about the complexity of the language used in rule 8.137. As discussed below, both of these commentators focused, in part, on the complexity caused by the option of having the settled statement serve not only as a record of the oral proceedings, but also, through attachments, as the record of the documents filed in the case. However, these commentators' concerns were broader than that. PAF suggested that the rule should be re-written in simpler language geared toward self-represented litigants and the Second District expressed general concern that proposed rule 8.137 is unnecessarily complicated.

As always, the goal is for the rules to be both accurate and easy to understand. The attached revised draft would reduce the rule's complexity somewhat by eliminating the option of using a settled statement as the record of the documents filed in the case. of using, the requirement to describe the proceedings to be included in the settled statement, and the requirement to summarize the trial court judgment. But the subcommittee could consider working on further revisions to make this rule less complex and easier to understand. In thinking about whether and when this might be done, there are a few things the subcommittee may want to consider:

- Overall, the California Rules of Court are not written with self-represented litigants as intended the target audience. Legal terminology is commonly used throughout the rules. Rather than modifying the rules, the way that the council and its advisory committees have

tried to help self-represented litigants navigate procedural requirements is through information sheets and resources on the self-help website;

- The proposed amendments to rule 8.137 are based in large part on the existing language of rule 8.837. This raises the question about whether it would be preferable to consider changes to similar provisions in both rules at the same time, or whether proceed with different language in rule 8.137 and then consider whether to modify rule 8.837 at a later date.
- Depending on how extensive the possible revisions to rule 8.137 were, the proposal might need to be circulated for public comment again before being recommended for adoption by the council.

#### **Requirement that self-represented litigants use form APP-014**

As circulated for public comment, the proposed amendments to rule 8.137 would require that a self-represented litigant use the proposed new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) unless the court, for good cause, exempts them from this requirement. PAF and the Second District both objected to this proposed requirement. PAF generally objected to treating self-represented litigants differently from attorneys in this respect and expressed concern about imposing a new burden on self-represented litigants in the form of making a request to the court to be exempted from the requirement to use the form. The Second District suggested that the form is too complex for self-represented litigants to use and so its use should be optional.

The proposed requirement that self-represented litigant use the proposed new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is based on a similar requirement in existing rule 8.837, which, in turn, was based on the requirement in rule 8.830 that self-represented petitioners use the Judicial Council form when filing a petition for a writ of habeas corpus. The committee received comments on this topic when the proposal to adopt rule 8.837 and APP-104 were circulated for public comment in 2007. At that time, two courts – the superior courts of Los Angeles and San Diego Counties – and the Appellate Court Committee of the San Diego County Bar Association expressed support for the requirement and Public Council suggested that the proposal be modified to strongly urge, but not require the use of the Judicial Council form. The committee responded to Public Council’s comment as follows:

The committee believes that these rules appropriately recognize that self-represented litigants face special challenges in preparing proposed statements on appeal and believes that it is preferable to include a requirement, similar to that relating to petitions for writs of habeas corpus, that self-represented litigants use the Judicial Council form. The goal of this form is to assist self-represented litigants in preparing a proposed statement.

Currently, many self-represented litigants find it very difficult to prepare such proposed statements and courts, in turn, find it difficult to review proposed statements that do not

contain necessary information. The committee's intent is to make the process of preparing these statements easier for both litigants and the courts. As litigants and courts gain experience with this form, the committee would welcome suggestions for improving either the form or the rule.

The subcommittee could consider modifying the current proposal to eliminate this requirement. Some of the same factors listed above with respect to whether and when to consider simplifying the rule language would also come into play in considering this requirement:

- Would be preferable to consider changes to the requirements in both rules 8.137 and 8.837 at the same time, or to consider proceeding with different language in rule 8.137 and then consider whether to modify rule 8.837 at a later date.
- Modifying the proposal to eliminate this requirement might result in the proposal needing to be circulated for public comment again before being recommended for adoption by the council.

### **Option for using settled statement as record of documents**

The invitation to comment asked for input on the following question:

Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

Five commentators directly responded to this question. Four of these commentators expressed support for eliminating this option and one did not support this. Three other commentators separately raised concerns about the complexities caused by this option.

Based on these comments, staff suggests that the subcommittee recommend revising the proposal to eliminate this option.

### **Form APP-003**

In reviewing the proposal in light of the public comments, staff noticed that there is a change needed to form APP-003 to correspond with the proposed amendments to rule 8.137. As circulated for public comment, the proposed amendments to rule 8.137 require that the appellant designate the oral proceedings to be included in the settled statement. Proposed new paragraph (b)(3)(C) uses language similar to that in rule 8.130, relating to designation of the proceedings to be included in a reporter's transcript. It also specifically references using form APP-003 to indicate whether certified reporters transcripts of any of the designated proceedings have been prepared.

To reflect this proposed rule provision, staff recommends revising section 5 on form APP-003 to clarify that the table for designating proceedings to be included in a reporters' transcript that now

appears in 5.b. should also be used to designate the proceedings to be included in a settled statement. In deciding whether to make this change, the subcommittee will need to consider whether this would be a technical change to the form or a minor substantive change unlikely to create controversy and thus need not be circulated for public comment or whether it should be circulated for public comment.

### **Proposed form APP-014**

#### **Helpfulness of the form**

As you may recall, there was some question about whether the proposed new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) would be helpful to litigants and the courts. Therefore, the invitation to comment specifically asked for input on this question. Five commentators responded directly to this inquiry and all indicated that the form would be helpful. Based on this, staff suggest that the subcommittee recommend approval of this form, with the changes indicated in the comment chart and on the attached revised draft form.

#### **Summarizing vs. attaching judgment**

The invitation to comment asked for input on the following question:

Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?

Five commentators directly responded to this question. Four of these commentators expressed support for eliminating replacing the section asking the appellant to summarize the judgment with a requirement to attach the judgement or order being appealed. Based on these comments, staff suggests that the subcommittee recommend revising the proposal to make this change.

#### **Single form vs. separate form for family and probate**

Several commentators suggested that the proposed form needed to be modified to before it could be used in family and probate appeals. Staff consulted the staff to the Family and Juvenile Law Advisory Committee about these suggestions. They agreed. In fact, their view was that many changes beyond those identified by the commentators would need to be made to the form to make it truly useful in those proceedings and that it would probably be best to work on creating a separate form for family law proceedings. If the subcommittee agrees with this approach, the proposal will need to be modified to clarify that form APP-014 is only intended for appeals in general civil cases.

### **Plain language review**

PAF recommended that the proposed form be reviewed by a professional plain-language translator. Staff is working to see if this can be done in time for the committee to consider possible revisions to the proposed form before it is presented to RUPRO. Note that, because this form is modeled in large part on form APP-104, some of the same considerations discussed above in connection with rule 8.137 about whether and when to recommend such changes will arise.

### Subcommittee Task

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 draft revisions to the rule amendments and forms; and
- Discuss and resolve how to address the comments regarding the rule language, requirement to use proposed form APP-014, and whether a separate form or forms for family law and probate proceedings should be developed.

### Attachments

1. Draft revisions to rule 8.137
2. Draft revisions to form APP-003
3. Draft revisions to proposed form APP-014
4. Draft comment chart
5. Invitation to comment

Rule 8.137 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 2. Civil Appeals

6  
7 Article 2. Record on Appeal

8  
9 Rule 8.137. Settled statement

10  
11 (a) Description

12  
13 A settled statement is a summary of the superior court proceedings that is approved by the  
14 superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a  
15 settled statement as the record of the oral proceedings in the superior court, instead of a  
16 reporter's transcript, and may move to use a settled statement as the record of the written  
17 documents from the superior court proceedings, instead of a clerk's transcript or appendix.

18  
19 ~~(a)(b)~~ Motion to use When a settled statement may be used

20  
21 (1) An appellant may elect in his or her notice designating the record on appeal under  
22 rule 8.121 to use a settled statement as the record of the oral proceedings in the  
23 superior court without filing a motion under (2) if:

24  
25 (A) The designated oral proceedings in the superior court were not reported by a  
26 court reporter; or

27  
28 (B) The appellant has an order waiving his or her court fees and costs.

29  
30 ~~(1)(2)~~ An appellant intending to proceed under this rule for reasons other than those listed  
31 in (1) must serve and file in superior court with its notice designating the record on  
32 appeal under rule 8.121 a motion to use a settled statement instead of a reporter's  
33 transcript or both a reporter's and a clerk's transcripts.

34  
35 ~~(2)(A)~~ The motion must be supported by a showing that:

36  
37 (A)(i) A substantial cost saving will result and the statement can be settled  
38 without significantly burdening opposing parties or the court;

39  
40 (B)(ii) The designated oral proceedings were not reported or cannot be  
41 transcribed; or  
42



1                    ~~(C)(iii)~~ Although the appellant does not have a fee waiver, he or she is unable  
2                    to pay for a reporter's transcript and funds are not available from the  
3                    Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding~~  
4                    ~~in forma pauperis is deemed unable to pay for a transcript.~~

5  
6                    ~~(3)~~(B) If the court denies the motion, the appellant must file a new notice designating  
7                    the record on appeal under rule 8.121 within 10 days after the superior court  
8                    clerk sends, or a party serves, the order of denial.

9  
10                  (3) An appellant's notice under (1) or motion under (2) must:

11  
12                  (A) Specify the date of each oral proceeding to be included in the settled statement;

13  
14                  ~~(B) — Describe the proceedings specified under (A);~~

15  
16                  (B) Identify whether each proceeding designated under (A) was reported by a court  
17                  reporter and, if so, for each such proceeding:

18  
19                  (i) Provide the name of the court reporter, if known; and

20  
21                  (ii) Identify whether a certified transcript has previously been prepared by  
22                  checking the appropriate box on *Appellant's Notice Designating Record*  
23                  *on Appeal (Unlimited Civil Cases)* (form APP-003) or, if that form is not  
24                  used, placing an asterisk before that proceeding in the notice.

25  
26                  (4) If the designated oral proceedings in the superior court were reported by a court  
27                  reporter:

28  
29                  (A) Within 10 days after the appellant serves either a notice under (1) or a motion  
30                  under (2), the respondent may serve and file a notice indicating that he or she  
31                  is electing to provide a reporter's transcript in lieu of proceeding with a settled  
32                  statement. The respondent must also either:

33  
34                  (i) Deposit a certified transcript of all of the proceedings designated by the  
35                  appellant under (3) and any additional proceedings designated by the  
36                  respondent under rule 8.130(b)(3)(C); or

37  
38                  (ii) Serve and file a notice that the respondent is requesting preparation, at  
39                  the respondent's expense, of a reporter's transcript of all proceedings  
40                  designated by the appellant under (3) and any additional proceedings  
41                  designated by the respondent. This notice must be accompanied by either  
42                  the required deposit for the reporter's transcript under rule 8.130(b)(1) or

1                    the reporter’s written waiver of the deposit in lieu of all or a portion of  
2                    the deposit under rule 8.130(b)(3)(A).

3  
4                    (B) If the respondent timely deposits the certified transcript as required under (i),  
5                    the appellant’s motion to use a settled statement will be dismissed. If the  
6                    respondent timely files the notice and makes the deposit or files the waiver as  
7                    provided under (ii), the appellant’s motion to use a settled statement will be  
8                    dismissed and the clerk must promptly send the reporter notice of the  
9                    designation and of the deposit, waiver, or both and notice to prepare the  
10                   transcript, as provided under rule 8.130(d).

11  
12 **(b)(c) Time to file; contents of proposed statement**

- 13  
14                   ~~(1) Within 30 days after the superior court clerk sends, or a party serves, an order~~  
15                   ~~granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A)  
16                   ~~electing to provide a reporter’s transcript in lieu of proceeding with a settled~~  
17                   ~~statement, the appellant must serve and file a proposed statement in superior court~~  
18                   ~~within 30 days after filing its notice under (b)(1) or within 30 days after the superior~~  
19                   ~~court clerk sends, or a party serves, an order granting a motion under (b)(2) a~~  
20                   ~~condensed narrative of the oral proceedings that the appellant believes necessary for~~  
21                   ~~the appeal. Subject to the court’s approval in settling the statement, the appellant~~  
22                   ~~may present some or all of the evidence by question and answer.~~  
23  
24                   (2) Appellants who are not represented by an attorney must file their proposed statement  
25                   on *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014). For good  
26                   cause, the court may permit the filing of a statement that is not on form APP-014.

27  
28 **(d) Contents of proposed statement**

29  
30 The proposed statement must contain:

31  
32 ~~(2)(1)~~ Contain a statement of the points the appellant is raising on appeal. If the condensed  
33                   narrative under (2) covers only a portion of the oral proceedings, describes less than  
34                   ~~all the testimony, the appellant must state the points to be raised on appeal; the~~  
35                   ~~appeal is then limited to those the points identified in the statement unless the~~  
36                   reviewing court determines that the record permits the full consideration of another  
37                   point or, on motion, the reviewing court permits otherwise.

38  
39 ~~(2) — A summary of the trial court’s rulings and judgment.~~

40  
41 (2) Contain a condensed narrative of the oral proceedings that the appellant specified  
42                   under (b)(3).

43

1 (A) The condensed narrative must include a concise factual summary of the  
2 evidence and the testimony of each witness relevant to the points that the  
3 appellant states under (1) are being raised on appeal. Subject to the court's  
4 approval in settling the statement, the appellant may present some or all of the  
5 evidence by question and answer. Any evidence or portion of a proceeding not  
6 included will be presumed to support the judgment or order appealed from.

7  
8 (B) If one of the points that the appellant states will be raised on appeal is a  
9 challenge to the giving, refusal, or modification of a jury instruction, the  
10 condensed narrative must include any instructions submitted orally and not in  
11 writing and must identify the party that requested the instruction and any  
12 modification.

13  
14 ~~(3)(4) An appellant intending to use a settled statement instead of both a reporter's and a~~  
15 ~~clerk's transcripts must accompany the condensed narrative with copies of all items~~  
16 ~~required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2), and~~  
17 ~~may accompany the condensed narrative with copies of any document includable in~~  
18 ~~the clerk's transcript under rule 8.122(b)(3) and (4).~~

19  
20 (3) Have attached to it a copy of the judgment or order being appealed.

21  
22 **(e) Respondent's response to proposed statement**

23  
24 ~~(4)(1)~~ Within 20 days after the appellant serves the condensed narrative proposed  
25 statement, the respondent may serve and file either:

26  
27 (A) Proposed amendments to the condensed narrative proposed statement; or

28  
29 (B) A notice indicating that he or she is electing to provide a reporter's transcript  
30 in lieu of proceeding with a settled statement. The respondent must also either:

31  
32 (i) Deposit a certified transcript of all the proceedings specified by the  
33 appellant under (b)(3) and any additional proceedings designated by the  
34 respondent under rule 8.130(b)(3)(C); or

35  
36 (ii) Serve and file a notice that the respondent is requesting preparation, at  
37 the respondent's expense, of a reporter's transcript of all proceedings  
38 specified by the appellant under (b)(3) and any additional proceedings  
39 designated by the respondent. This notice must be accompanied by either  
40 the required deposit for the reporter's transcript under rule 8.130(b)(1) or  
41 the reporter's written waiver of the deposit in lieu of all or a portion of  
42 the deposit under rule 8.130(b)(3)(A).

43

1 (5)(2) If the respondent serves and files The proposed statement and proposed amendments  
2 under (1)(A), they may be accompanied by copies of any document includable in the  
3 clerk's transcript under rule 8.122(b)(3) and (4).  
4

5 **(e)(f) Settlement, preparation, and certification Review of appellant's proposed statement**  
6

7 (1) The clerk must set a date for a settlement hearing by the trial judge that is No later  
8 than 10 days after the respondent files proposed amendments or the time to do so  
9 expires, whichever is earlier, and must give the parties at least five days' notice of  
10 the hearing date a party may request a hearing to review and correct the proposed  
11 statement. No hearing will be held unless ordered by the trial court judge, and the  
12 judge will not ordinarily order a hearing unless there is a factual dispute about a  
13 material aspect of the trial court proceedings.  
14

15 (2) At the hearing, the judge must settle the statement and fix the times within which the  
16 appellant must prepare, serve, and file it.  
17

18 (2) The trial court judge may order that a transcript be prepared as the record of the oral  
19 proceedings instead of correcting a proposed statement on appeal if the trial court  
20 proceedings were reported by a court reporter, the trial court judge determines that  
21 doing so would save court time and resources, and the court has a local rule  
22 permitting such an order. The court will pay for any transcript ordered under this  
23 subdivision.  
24

25 (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the  
26 time for requesting a hearing expires, the trial court judge must review the proposed  
27 statement and any proposed amendments filed by the respondent and take one of the  
28 following actions:  
29

30 (A) If the proposed statement does not contain material required under (d), the trial  
31 judge may order the appellant to prepare a new proposed statement. The order  
32 must identify the additional material that must be included in the statement to  
33 comply with (d) and the date by which the new proposed statement must be  
34 served and filed. If the appellant does not serve and file a new proposed  
35 statement as directed, the appellant will be deemed to be in default and rule  
36 8.140 applies.  
37

38 (B) If the trial judge does not issue an order under (A), the trial judge must either:  
39

40 (i) Make any corrections or modifications to the statement necessary to  
41 ensure that it is an accurate summary of the evidence and the testimony  
42 of each witness relevant to the points that the appellant states under  
43 (d)(1) are being raised on appeal; or

1  
2 (ii) Identify the necessary corrections and modifications, and order the  
3 appellant to prepare a statement incorporating these corrections and  
4 modifications.  
5

6 (4) If a hearing is ordered, the court must promptly set the hearing date and provide the  
7 parties with at least 5 days' written notice of the hearing date. No later than 10 days  
8 after the hearing, the trial court judge must either:  
9

10 (A) Make any corrections or modifications to the statement necessary to ensure  
11 that it is an accurate summary of the evidence and the testimony of each  
12 witness relevant to the points that the appellant states under (d)(1) are being  
13 raised on appeal; or  
14

15 (B) Identify the necessary corrections and modifications and order the appellant to  
16 prepare a statement incorporating these corrections and modifications.  
17

18 (5) The trial court judge must not eliminate the appellant's specification of grounds of  
19 appeal from the proposed statement.  
20

21 **(g) Review of the corrected statement**  
22

23 (1) If the trial court judge makes any corrections or modifications to the proposed  
24 statement under (f), the clerk must serve copies of the corrected or modified  
25 statement on the parties. If under (f) the trial court judge orders the appellant to  
26 prepare a statement incorporating corrections and modifications, the appellant must  
27 serve and file the corrected or modified statement within the time ordered by the  
28 court. If the appellant does not serve and file a corrected or modified statement as  
29 directed, the appellant will be deemed to be in default and rule 8.140 applies.  
30

31 (2) Within 10 days after the corrected or modified statement is served on the parties, any  
32 party may serve and file proposed modifications or objections to the statement.  
33

34 (3) ~~If the respondent does not object to the prepared statement within five days after it is~~  
35 ~~filed, it will be deemed properly prepared and the clerk must present it to the judge~~  
36 ~~for certification. Within 10 days after the time for filing proposed modifications or~~  
37 ~~objections under (2) has expired, the judge must review the corrected or modified~~  
38 ~~statement and any proposed modifications or objections to the statement filed by the~~  
39 ~~parties. The procedures in (2) or in (f)(3) apply if the judge determines that further~~  
40 ~~corrections or modifications are necessary to ensure that the statement is an accurate~~  
41 ~~summary of the evidence and the testimony of each witness relevant to the points~~  
42 ~~that the appellant states under (d)(1) are being raised on appeal.~~  
43

1 **(h) Certification of the statement on appeal**

2  
3 (1) If the trial court judge does not order the preparation of a transcript under (f)(2) in  
4 lieu of correcting the proposed statement or order any corrections or modifications to  
5 the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify  
6 the statement.

7  
8 ~~(4)~~(2) The parties<sup>2</sup> may serve and file a stipulation that the statement as originally served  
9 under (c) or as ~~prepared~~ corrected or modified under (f)(3), (f)(4), or (g)(3) is correct.  
10 Such a stipulation is equivalent to the judge's certification of the statement.

11  
12 (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the  
13 certified statement must immediately be transmitted to the clerk for filing of the  
14 record under rule 8.150.  
15  
16



ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

**1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a.  A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
  - (1)  I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
  - (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
    - (a)  An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
    - (b)  An application for a waiver of court fees and costs under rule 3.50 et seq. use Request to Waive Court Fees (form FW-001) to prepare and file this application.
- b.  An appendix under rule 8.124.
- c.  The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d.  An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e.  A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

**2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

I elect to proceed:

- a.  WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

*(you must check (1), (2), or (3) below) } italics*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

2. b.  WITH the following record of the oral proceedings in the superior court.
- (1)  A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply)*:
    - (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
    - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
    - (c)  Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
      - (i)  all of the designated proceedings.
      - (ii)  part of the designated proceedings.
    - (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
  - (2)  An agreed statement. *(Check and complete either (a) or (b) below.)*
    - (a)  I have attached an agreed statement to this notice.
    - (b)  All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
  - (3)  A settled statement under rule 8.137. *(You must check (a), (b), or (c) below.)*
    - (a)  The oral proceedings in the superior court were not reported by a court reporter.
    - (b)  The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
    - (c)  I am requesting to use a settled statement for reasons other than those listed in (a) or (b). *(You must attach the motion required under rule 8.137(a) to this form.)*

3. **RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. **NOTICE DESIGNATING CLERK'S TRANSCRIPT**

*(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)*

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket *(if any)*



CASE NAME:	SUPERIOR COURT CASE NUMBER:
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**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

**5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT OR PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide (check one):

- (1)  My copy of the reporter's transcript in paper format.
- (2)  My copy of the reporter's transcript in computer-readable format.
- (3)  My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

You must complete b. in this section if you checked item 2b(3) above indicating you elect to use a settled statement.

or in the settled statement

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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5. b. Proceedings

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)					<input type="checkbox"/> Yes <input type="checkbox"/> No

and, if applicable,

c. The proceedings designated in 5b  include  do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date:

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



\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case**.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If it is not attached to that notice, this form must be filed **no later than 30 days after you file that notice**. Or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. **If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:  
  
Trial Court Case Name:

You fill in the Court of Appeal case number (if you know it):

Court of Appeal Case Number:

**1 Your Information**

a. Name of Appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

b. Appellant's contact information (skip this if the appellant has a lawyer for this appeal):

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street or PO Box City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

c. Appellant's lawyer (skip this if the appellant does not have a lawyer for this appeal):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (if different): \_\_\_\_\_  
Street or PO Box City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Firm Name:





Trial Court Case Name: \_\_\_\_\_

**2 Information About Your Appeal**

- a.  **2** On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form. *A copy of the judgment or order I am appealing is attached.*
- b.  **3** On (fill in the date): \_\_\_\_\_
  - I filed a notice designating the record on appeal, electing to use a *settled* statement on appeal.
  - The Court sent or the other party served me with an order granting my motion to use a settled statement.

**Proposed Statement**

**3 4 Reasons for Your Appeal**

Please note, in an appeal, the Court of Appeal can only review a case for whether certain kinds of legal errors were made:

- There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing.
- A "prejudicial error" was made during the trial court proceedings.

The Court of Appeal:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a.  There was not substantial evidence that supported the *attached* judgment, order, or *or* other decision that I indicated *am* in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me. (Describe each error and how you were harmed by that error.)

(1) Describe the error: \_\_\_\_\_

Describe how you were harmed by the error: \_\_\_\_\_

Check here if you need more space and attach a separate page or pages describing the *lack of substantial evidence*. You can use \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

(2) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how you were harmed by the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-014, item 4." 3.b.

You can use form MC-025 for this attachment.

4 ~~5~~ **The Dispute**

a. In the trial court, I was the (check one):

- Plaintiff (the party who filed the complaint in the case). */petitioner*
- Defendant (the party against whom the complaint was filed). */respondent*

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): */petitioner's* \_\_\_\_\_ */petition*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): */respondent's* \_\_\_\_\_ */petition*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-014, Item 5." 4

INSERT B here

This is INSERT B





INSERT A here

other than a motion described in a.

Trial Court Case Number:

Trial Court Case Name: \_\_\_\_\_

5 6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 4 for this appeal?

Yes (fill out b) No (skip to 7)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 4 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: (a) Describe the motion:

(b) The motion was filed by the plaintiff defendant on (date):

(c) There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

(d) The trial court granted this motion. denied did not grant this motion.

(e) Other (describe any other action the trial court took concerning this motion):

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-014, Item 6b(4)." S.C.I.

(2) Describe the second motion: (a) Describe the motion:

(b) The motion was filed by the plaintiff defendant on (date):

(c) There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

(d) The trial court granted this motion. denied did not grant this motion.

INSERT A

Trial Court Case Number: \_\_\_\_\_

Trial Court Case Name: \_\_\_\_\_

6 Summary of Any Motions and the Court's Order on the Motion

Are you appealing an order that the trial court made on a

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in (4) for this appeal?

Yes (fill out b)  No (skip to 7)

by you or another party

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in (4) for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1)-(5) below

That resulted in the order you are appealing

(1) Describe the first motion: \_\_\_\_\_

\_\_\_\_\_

(2) The motion was filed by the  plaintiff.  defendant. on (date): \_\_\_\_\_

1 petitioner 1 respondent

(3) There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_

(4) The trial court  granted this motion.  did not grant this motion.

(5)  Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_

\_\_\_\_\_

INSERT B here

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-014, Item 6b(1)." 5a.

(2) Describe the second motion: \_\_\_\_\_

\_\_\_\_\_

The motion was filed by the  plaintiff.  defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_

\_\_\_\_\_

The trial court  granted this motion.  did not grant this motion.





Trial Court Case Name: \_\_\_\_\_

5 6 b. (e)  Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_

INSERT B here

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-014, item 6b(2)." 5 c 2

(3)  Check here if any other motions were filed that are relevant to the reasons you gave in 4 for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-014, item 6b(3)." 3

6 7 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (skip to item 8) 7

Yes (check (1) or (2) and complete items b, c, d, and e)

(1)  Jury trial

(2)  Trial by judge only

b. Did you testify at the trial?

No 3

Yes (Write a complete and accurate summary of the testimony you gave that is relevant to the reasons you gave in 4 for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your testimony or any exhibits you asked to present and whether these objections were sustained.):

INSERT B here

Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-014, Item 7b." 6 3

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in 4 for this appeal?

No

Yes (complete items (1), (2), and (3)):

(1) The witness's name is (fill in the witness's name): \_\_\_\_\_ petitioner

(2) The witness testified on behalf of the (check one):  plaintiff  defendant/respondent



6 7 c. (3) This witness testified that (Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness's testimony or any exhibits this witness asked to present and whether these objections were sustained.): \_\_\_\_\_

Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-014, Item 7c."

d. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning this witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "APP-014, Item 7d."

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in 4 for this appeal. (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.): \_\_\_\_\_

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write "APP-014, Item 7e."

7 8 The Trial Court's Findings

Did the trial court make findings in the case?

No

Yes (describe the findings made by the trial court): \_\_\_\_\_

Check here if you need more space to describe the trial court's findings and attach a separate page or pages describing these findings. At the top of each page, write "APP-014, Item 8."



**9 The Trial Court's Final Judgment**

The trial court issued the following final judgment in this case *(check all that apply and fill in any required information)*:

a. I was required to:

Pay the other party damages of *(fill in the amount of the damages)*: \$ \_\_\_\_\_

Do the following *(describe what you were ordered to do)*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. The other party was required to:

Pay me/my client damages of *(fill in the amount of the damages)*: \$ \_\_\_\_\_

Do the following *(describe what the other party was ordered to do)*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  Other *(describe)*: \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-014, Item 9."

*Remember to attach a copy of the judgment or order you are appealing.*

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

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*

# ITC SPR17-01

## Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

### List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment	Committee Response
1.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	AM	<p>The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. An important aspect of PAF’s work is making court processes more fair, understandable, and accessible to those without attorneys. SPR17-01 attempts to make the settled statements procedure less burdensome for litigants in unlimited civil cases. PAF will support SPR17-01 if it is modified to better address the needs of self-represented litigants. PAF would like to work closely with the Appellate Advisory Committee to address the concerns and recommendations outlined below.</p> <p>See additional comments below.</p> <p>Thank you for considering these recommendations. PAF looks forward to the opportunity to work with the Appellate Advisory Committee on these recommendations</p>	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	A	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes. By including settled statement as part of the designation, eliminating the need to motion the trial court to proceed by way of settled statement, and revising/creating forms for litigants, the whole process is being simplified to reduce delays.</p> <p>See additional comments below.</p>	

**ITC SPR17-01****Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
3.	Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	NI	<i>See additional comments below.</i>	
4.	Family Violence Appellate Project by Erin Smith San Francisco	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes  <i>See additional comments below.</i>	
5.	Orange County Bar Association by Michael L. Baroni	A	No specific comment	The committee notes the commentator's support for the proposal; no response required.
6.	San Diego County Bar Association By Michael Pulos	NI	The Appellate Practice Section of the San Diego County Bar Association lauds the efforts of the Appellate Advisory Committee in amending rule 8.137 to simplify the process for obtaining a Settled Statement on Appeal. The Section offers the following observations:  <i>See additional comments below.</i>	
7.	State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	A	Q: Does the proposal appropriately address the stated purpose? A: Yes  <i>See additional comments below.</i>	
8.	State Bar of California Standing Committee on the Delivery	AM	<i>Does the proposal appropriately address the stated purpose?</i>	

**ITC SPR17-01****Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	of Legal Services by Sharon Djemal		Yes.  See additional comments below.	
9.	Superior Court of Los Angeles County	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes. The proposal appropriately addresses the stated purpose.  See additional comments below.	
10.	Superior Court of San Diego By Mike Roddy	A	<i>No specific comment</i>	The committee notes the commentator's support for the proposal; no response required.
11.	Superior Court of Orange County by Civil and Probate Operations Managers	AM	<i>See additional comments below.</i>	
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	<i>See additional comments below.</i>	

**ITC SPR17-01****Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>Rule 8.137 – General</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	California Rule of Court 8.137 should be written in Plain Language (also known as “Plain English”). As currently written, the rule of court contains complicated legal terminology that would be difficult for the average non-attorney to understand. Self-represented litigants are expected to understand and be bound by this rule of court. The rule, therefore, should be written in a way that the average person could easily understand.	<i>PLEASE SEE DISCUSSION IN STAFF MEMO</i>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	The Clerks Association agrees with amending rule 8.137. It will make the procedure of obtaining a settled statement easier for self-represented litigants, will reduce delay and provide the court with a more adequate record to review.	The committee notes the commentator’s support for the proposal; no response required.
Family Violence Appellate Project by Erin Smith San Francisco	Recommendation: FVAP supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator’s support for the proposal; no response required.
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is also a concern that proposed rule 8.137 is unnecessarily complicated. As an illustration, consider subdivision (b)(3)(B) [“Describe the proceedings specified under (A)”]. Once the date of the proceeding has been identified, and it has been ascertained that it was reported, there is no need to “describe” what happened. A self-represented litigant is bound to be baffled by this requirement which any two lawyers are likely to interpret differently.	Based on this comment, the committee has revised the proposal to eliminate proposed subdivision (b)(3)(B) from the amendments to rule 8.137. Please note, however, that this information is currently requested on form APP-003 when designating a reporter’s transcript and, under the committee’s revised proposal, this part of the form would also be used for designating the proceedings to be included in a settled statement.  <i>PLEASE SEE DISCUSSION IN STAFF MEMO</i>
State Bar of California, Litigation Section Committee on Appellate	Our Recommendation: The Committee on Appellate Courts supports the proposed rule change, which aims to make the	The committee notes the commentator’s support for the proposal; no response required.

**ITC SPR17-01**

**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>Rule 8.137 – General</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Courts by Paula Mitchell	settled statements procedure in unlimited civil cases less burdensome.	

<b>Rule 8.137 – Requirement that self-represented litigants use APP-014</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<p><b>Requiring That Self-Represented Litigants Use Form APP-014.</b></p> <p>Under SPR17-01, self-represented litigants would be required to use proposed form APP-014. Use of the form would be optional, however, for litigants with attorneys. This appears to unfairly discriminate against self-represented litigants. PAF understands that self-represented litigants are more likely to have a difficult time drafting legally sufficient proposed statements on appeal. PAF also understands that APP-014 is designed to make it easier for litigants to draft these important statements. PAF does not, however, see sufficient reason for denying self-represented litigants the same flexibility afforded to litigants with attorneys.</p> <p>Finally, the proposal suggests that for good cause, the court may permit a self-represented litigant to file a proposed statement of appeal that is not on form APP-014. It is unclear, however, what this process would look like. Would the self-represented litigant make a specific motion to the court? Would the court determine good cause on its own motion? What factors would the court use in determining good cause? Neither Rule 8.137 nor APP-014 explain how this process would operate. This may unintentionally create a new and burdensome process for self-represented litigants. Litigants who have</p>	<i>PLEASE SEE DISCUSSION IN STAFF MEMO</i>

**ITC SPR17-01**

**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>Rule 8.137 – Requirement that self-represented litigants use APP-014</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	attorneys would not face the same burden. For all of the reasons stated above, PAF would prefer that APP-014 be either a required form for all litigants or an optional form for all litigants.	
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is a concern that Form APP-104 is far too complicated for a self-represented litigant. For that reason, use of this form by a self-represented litigant should be only at the option of such a litigant. This would require an amendment of subdivision (c)(2).	<i>PLEASE SEE DISCUSSION IN STAFF MEMO</i>

<b>Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<b>Combining Complicated Processes</b> Under SPR17-01, the clerk’s transcript and the appellant’s appendix processes are combined into the settled statement process. Combining these processes makes California Rule of Court 8.137 long, complex, and intimidating to read. Proposed form APP-014 has also become a very long form as a result of combining these processes. Lengthy, complex, or intimidating rules or forms are particularly problematic for self-represented litigants.  PAF asks that the Appellate Advisory Committee explore whether there is an alternative to combining the above-mentioned processes. If the Committee determines that the processes must be combined, then PAF asks that the Committee	Based on this and other comments, the committee has revised its proposal to include amendments to rule 8.137 and revisions to form APP-003 and proposed form APP-014 eliminating the option to use the settled statement as a record of the documents filed in the case.



**ITC SPR17-01****Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	explore how to revise Rule 8.137 and form APP-014 so that they are shorter and simpler to understand.	
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	Yes. The option to attach documents to the settled statement should be eliminated as these documents should be included in an appendix under CRC, Rule 8.124.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	Unfortunately, proposed rule 8.137 also departs more than occasionally from plain English. As an illustration, it takes a trained appellate specialist and several readings to parse out all that is required by subdivision (b)(4). It would be more comprehensible if the rule would simply list the documents that are otherwise required in the clerk's transcript by subdivision (b)(1) of rule 8.122. Subdivision (b)(4) states that these documents must "accompany" the condensed narrative, leaving it open just what "accompany" means, rather than stating in simple English that these documents must be submitted.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Superior Court of Orange County by Civil and Probate Operations Managers	Furthermore, we support eliminating the option that allows an appellant to use a settled statement as the record of the documents filed in the trial court by attaching copies of the required documents to the statement given that appellants can use an appendix for the same purpose and because this option is rarely used by appellants.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

# ITC SPR17-01

## Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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<b>Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	No.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
San Diego County Bar Association By Michael Pulos	<p><b>Proposed Settled Statements; rule 8.137(a), (b)(2), and (d)(4) - When a settled statement may be used.</b></p> <p>Amended rule 8.137(b)(2) provides that an appellant who intends to proceed under this rule for reasons other than those listed in (1) must serve and file in the superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both a reporter's and clerk's transcripts. We have two comments:</p> <p>(a) The proposed rules would permit the use of a settled statement of superior court proceedings in place of not just the oral proceedings in a reporter's transcript but also of the written documents that normally would appear in a clerk's transcript. We suggest permitting the use of settled statements as a substitute for the clerk's transcript or appendix only in cases of lost or otherwise unavailable documents. This is because the use of a settled statement in place of clerk's transcripts would be, in many cases, inadequate—especially where the actual written document is otherwise available. For example, in an appeal that challenges a judgment on the pleadings or a</p>	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

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<b>Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	dismissal without leave to amend following the sustaining of a demurrer, a mere summary of the complaint—in lieu of the complaint itself—would be a poor substitute. Simply put, the rules should not permit for the use of a settled statement in the absence of some showing that the document is unavailable. Accordingly, we recommend adding to the rule a provision that would narrow the use of settled statements as substitutes for the clerk’s transcripts and appendices. It is particularly important that the rule include any limitation on such use of settled statements in order to assist courts in ruling on motions to use settled statements as records on appeal. . .	

<b>Rule 8.137 – Other suggested changes</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Family Violence Appellate Project by Erin Smith San Francisco	[M]any family law and probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: “A summary of the trial court’s order and/or judgment.” Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.”	Based on other comments received, the committee has revised the proposal to eliminate the requirement that the appellant summarize the judgment or order being appealed and replaced it with a requirement that a copy of the judgment or order be attached to the appellant’s proposed statement.

## ITC SPR17-01

### Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Rule 8.137 – Other suggested changes		
Commentator	Comment	Committee Response
San Diego County Bar Association By Michael Pulos	<p><b>Proposed Settled Statements; rule 8.137(f) – Review of appellant’s proposed statement.</b></p> <p>In rule 8.137(f)(3)(A), litigants who appeal are informed that if the proposed statement omits required material, the trial judge may order appellant to prepare a new proposed statement, identifying the additional material to be included and the date by which the new proposed statement must be served and filed. It goes on to state that if appellant does not serve and file a new proposed statement as directed, rule 8.140 applies. The APS recommends inserting a phrase in the last sentence of that subparagraph, explaining that “appellant will be deemed to be in default and,” after the word “directed,” and before “rule 8.140 applies.” The amended last sentence would read, “If the appellant does not serve and file a new proposed statement as directed, appellant will be deemed to be in default and rule 8.140 applies.” This suggestion is offered because many self-represented litigants may have difficulty navigating the rules of court and may not immediately appreciate the dire consequences of failing to submit an amended settled statement.</p>	<p>The committee has revised the proposal to include the language suggested by the commentator in both subdivisions (f)(3)(A) and (g)(1) of rule 8.137.</p>
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	<p>[M]any family law and Probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: “A summary of the trial court’s order and/or judgment.”</p>	<p>Please see the response to the comments of the Family Violence Project above.</p>

## ITC SPR17-01

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<b>Form APP-003</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<ul style="list-style-type: none"><li>• PAF’s understanding is that litigants, including those who are self-represented, will file proposed form APP-014 along with revised form APP-003. Presently, form APP-003 and its revisions include complicated legal terminology and appears to be written at a high-grade level. PAF recommends that form APP-003 be put onto the Judicial Council’s Plain Language template and receive professional Plain Language translation. Again, these steps will improve the likelihood that the average person can understand the form.</li><li>• PAF understands that revised form APP-003 and proposed form APP-014 would be used by self-represented litigants as well as lawyers. PAF agrees that it is important that the forms be understandable and user-friendly for both self-represented litigants as well as lawyers. PAF would recommend, however, that the Judicial Council prioritize the self-represented litigant’s ability to understand and successfully use these forms. This ensures that everyone, from the inexperienced layperson to the sophisticated attorney, has adequate opportunity to understand and successfully complete the forms.</li></ul>	The commentator is correct that form APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	Revisions to form APP-003 should include the following: <ul style="list-style-type: none"><li>• In section 1 c delete the Fifth Appellate District as it has repealed its local rule permitting the use of the superior court file. (see enclosed)</li><li>• In section 2b (3)(a) correct the spelling of “proceedings” (see enclosed).</li></ul>	The committee has revised the proposal to incorporate this suggested change.  The committee has revised the proposal to incorporate this suggested change.

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<b>Form APP-003</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<ul style="list-style-type: none"> <li>In section 5b add the words “or settled statement” to the first sentence. (see enclosed)</li> </ul>	Based on other comments, the committee has revised its proposal to include amendments to rule 8.137 to eliminate the option of using a settled statements in lieu of a clerk’s transcript or appendix. The committee therefore declines to recommend this suggested change.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	<p>Suggestions to Improve form APP-003</p> <ul style="list-style-type: none"> <li>Page 1, item 2. (Record of Oral Proceedings in Superior Court)” - add “(You must check a. or b. below)” after “I elect to proceed:”</li> <li>Page 2, item 2.b. - after the prompt add: “(You must check (1), (2), or (3) below.”)</li> <li>Make proposed form APP-003 (Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)) look more akin to proposed form APP-103 (Appellant’s Notice Designating Record on Appeal (Limited Civil Case)). Proposed form APP-103, from SPR-17-04, is much easier to read and formatting is more clear.</li> </ul>	<p>The committee has revised the proposal to incorporate this suggested change.</p> <p>The committee has revised the proposal to incorporate this suggested change.</p> <p>Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above. APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.</p>

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<b>Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	Yes. A standardized Judicial Council form would be helpful to both litigants and the trial courts. A standardized form will be easier for the trial courts to review and hopefully help to keep pro se litigants on point.	The committee appreciates this input.
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the process through the trial court.  We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	The committee appreciates this input.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the process through the trial court.  We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	The committee appreciates this input.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Yes, the Proposed Statement on Appeal would be helpful to both litigants and the courts. Rather than creating an entirely separate form for family law cases, there are suggestions below to adjust the form to meet the needs of a family law case.	The committee appreciates this input.
Superior Court of Los Angeles County	Form APP-014 would be extremely helpful to litigants and the trial courts.	The committee appreciates this input.

## ITC SPR17-01

### Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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<b>Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	It is not helpful for the appellant to summarize the final judgment as they will do so from their viewpoint. Attach a copy of the judgment.	Based on the weight of the comments received, the committee has revised proposed form APP-014 and its proposed amendments to rule 8.137 to replace the requirement that the appellant summarize the final judgment with a requirement that the judgment or order being appealed be attached to the form.
Family Violence Appellate Project by Erin Smith San Francisco	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of California Appellate Court Clerks Association above. The committee believes that item 4 on the form provides the appellant with the opportunity to identify the issue(s) on appeal.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of Family Violence Appellate Project above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	It may be more efficient and easier for the court to read the actual judgment instead of a self-represented litigant's recitation of what he or she thinks the judgment says.	Please see the response to the comments of California Appellate Court Clerks Association above.
Superior Court of Los Angeles County	Require a copy of the judgment in lieu of the summary on the last page.	Please see the response to the comments of California Appellate Court Clerks Association above.



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<b>Form APP-014 – Additional items or additional space</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	<p><i>What additional items, if any, need to be included on the form?</i> None.</p> <p><i>Should the form include additional space for the summary of any of the items?</i> No.</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> No.</p>	The committee appreciates this input.
Family Violence Appellate Project by Erin Smith San Francisco	<p><i>What additional items, if any, need to be included on the form?</i> No additional items recommended</p> <p><i>Should the form include additional space for the summary of any of the items?</i> No additional items recommended</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.</p>
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	<p><i>What additional items, if any, need to be included on the form?</i> No additional items recommended</p> <p><i>Should the form include additional space for the summary of any of the items?</i> No additional items recommended</p>	The committee appreciates this input.

# ITC SPR17-01

## Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
	<p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i></p> <p>Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.</p>	<p>The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.</p>
<p>State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal</p>	<p><i>What additional items, if any, need to be included on the form?</i></p> <p>The following items are suggestions to adapt form APP-014 to family law cases instead of using a one-size-fits-all form:</p> <ul style="list-style-type: none"> <li>• Page 3, item 5.a. – Plaintiff/Petitioner; Defendant/Respondent</li> <li>• Item 5 – add a new subpart c (current c would become subpart d). New subpart c would read: “The petitioner requested in the petition the following (briefly describe the orders requested in the petition filed with the trial court):”</li> <li>• Page 3, item 5. – add a new subpart e. New subpart e would read: “The respondent requested in the response the following (briefly describe the orders requested in the response filed with the trial court):”</li> <li>• Page 4, item 6.b.(1) – The motion was filed by the . . . plaintiff/petitioner; defendant/respondent</li> <li>• Item 6.b.(2) – same changes as 6.b.(1).</li> <li>• Page 5, item 7.c.(2) – The witness testified on behalf of the . . . plaintiff/petitioner; defendant/respondent</li> </ul> <p><i>Should the form include additional space for the summary of any of the items?</i></p>	<p>The committee has revised the form to incorporate this suggested change.</p> <p><i>PLEASE SEE DISCUSSION IN STAFF MEMO</i></p> <p>The committee has revised the form to incorporate this suggested change.</p> <p>The committee has revised the form to incorporate this suggested change.</p> <p>All Judicial Council plain language forms use 14 point spacing for lines and are available in fillable PDF on the California Courts website, once adopted.</p>

**ITC SPR17-01**

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<b>Form APP-014 – Additional items or additional space</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>It may be helpful to make the spacing 1.5 lines between the lines. It would also be helpful if the form is available in a fillable pdf format.</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i></p> <p>The length of a summary is very case-specific. It is better to keep the prompts and have litigants fill out the form to the best of their ability and include attachments if necessary.</p>	<p>The committee appreciates this input.</p>
<p>Superior Court of Los Angeles County</p>	<p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i></p> <p><i>We suggest using form MC-020, Additional Page, if additional space is needed.</i></p>	<p><i>The committee has modified its proposal in response to this comment. Because the form refers to attaching a page in lieu of writing the summary on the form, rather than using an additional page, the committee has revised the proposal to refer to Attachment (form MC-025).</i></p>

<b>Form APP-014 –Other suggested changes</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs</p>	<p>PAF appreciates the Appellate Advisory Committee’s use of the Plain Language template for proposed form APP-014. PAF recommends that form APP-014 also be professionally translated into Plain Language and written at a lower-grade level. These steps will improve the likelihood that the average person, who is likely to read at or below a 7th grade reading level, can understand the form.</p>	<p><i>PLEASE SEE DISCUSSION IN STAFF MEMO</i></p>
<p>California Appellate Court Clerks</p>	<p>New form APP-014 should be adopted with the following</p>	

# ITC SPR17-01

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
Association by Daniel P. Potter, President San Jose,CA	<p>changes:</p> <ul style="list-style-type: none"><li>• Add date fields in the following sections: 6b (1), 6b(2), 7a(1), 7a(2), 7b and 7c(2). (see enclosed)</li><li>• In section 9, change the heading to read "The Trial Court's Final Judgment or Order Being Appealed" and in the first sentence under the aforementioned heading to include"...or order". (see enclosed)</li></ul>	<p>The committee has revised the proposal to add spaces for the appellant to indicate the date that a motion was filed because this is likely to be helpful in identifying the relevant motion. The committee decided against adding spaces to indicate the date that the motion was granted or denied or the date of the trial, because it concluded that these dates are less likely to be necessary for the judge reviewing the proposed statement and increase the difficulty for the appellant in completing the form.</p> <p>Based on the comments received, the committee has revised proposed form APP-014 to delete this section and replace it with a requirement that the judgment or order being appealed be attached to the form.</p>
Family Violence Appellate Project by Erin Smith San Francisco	<ul style="list-style-type: none"><li>• We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, "Was there a trial in your case?" Many family law and probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional "trial," but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters</li></ul>	<p><i>PLEASE SEE DISCUSSION IN STAFF MEMO</i></p>

# ITC SPR17-01

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<p>(see, e.g., Probate Code § 825 [no right to jury trial in most probate proceedings]; § 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: “Did the court consider evidence and/or testimony?” We believe this would provide greater clarity for self-represented individuals.</p> <ul style="list-style-type: none"> <li>• In addition, for the same reason, many family law and probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . . Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.”</li> <li>• We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, “electing to use a statement on appeal,” we believe it is intended to state, “electing to use a settled statement.”</li> <li>• In APP-014, because family law, probate, and likely other types of cases do not have “plaintiffs” or “defendants,” but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly.</li> <li>• Similarly, in question 5(a), 5(b) and 5(c), because family</li> </ul>	<p>Based on the comments received, the committee has revised proposed form APP-014 to delete section 9 and replace it with a requirement that the judgment or order being appealed be attached to the form.</p> <p>The committee has revised proposed form APP-014 to incorporate this suggested change.</p> <p>The committee has revised proposed form APP-014 to incorporate this suggested change.</p> <p>The committee has revised proposed form APP-014 to</p>

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<b>Form APP-014 –Other suggested changes</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	law and probate cases, and possibly other types of cases as well, do not typically have “complaints,” but rather “petitions” or “requests for order,” we recommend that “complaint” be changed to “initial document.”	refer to a complaint/petition.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	<ul style="list-style-type: none"> <li>• We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, “Was there a trial in your case?” Many family law and Probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional “trial,” but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code section 825 [no right to jury trial in most probate proceedings]; and section 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: Did the court consider evidence and/or testimony? We believe this would provide greater clarity for self-represented individuals.</li> <li>• In addition, for the same reason, many family law and Probate matters that result in appealable orders do not have</li> </ul>	Please see the response to the comments of the Family Violence Appellate Project above.

# ITC SPR17-01

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<p>“judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . .Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.”</p> <ul style="list-style-type: none"><li>• We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, “electing to use a statement on appeal,” we believe it is intended to state, “electing to use a settled statement.”</li><li>• In APP-014, because family law, probate, and likely other types of cases do not have “plaintiffs” or “defendants,” but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly.</li><li>• Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have “complaints,” but rather “petitions” or “requests for order,” we recommend that “complaint” be changed to “initial document.”</li></ul>	

## ITC SPR17-01

### Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Other comments/suggestions		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness (PAF) By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon	<b>Discretion in Timely Filed Settled Statements</b> The invitation to comment includes a misstatement that, although minor, is worth correcting as it could lead to a misinterpretation of current law regarding timely filed settled statements. The ITC states that a revised Rule 8.137 would “[permit] an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter....” (ITC SPR17-01, Page 2, bullet 1. Emphasis added). This language incorrectly assumes that granting the motion is discretionary. The current rules, however, require that a trial court judge grant a timely filed motion for a settled statement when there is no reporter's transcript.	The committee will use different language to address this issue in its report to the Judicial Council.
San Diego County Bar Association By Michael Pulos	<b>We believe the Appellate Advisory Committee should seek to develop a form motion, similar to the proposed form for the Proposed Settled Statement, APP-014. Because the motion procedure is more complicated than the procedure to be utilized under 8.137(b)(1), some additional guidance should be provided to avoid unnecessary procedural defaults.</b>	The committee will consider this suggestion when it develops its annual agenda for next year.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Develop an information sheet for APP-103, similar to proposed form APP-101-INFO that is attached to SPR-17-04 (Information on Appeal Procedures for Limited Civil Cases).  Overall, it would be helpful for self-represented litigants if the appellate procedure forms and information sheets for both limited and unlimited civil cases are standardized	Current Judicial Council form <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (APP-001) does provide basic information about the appellate process, but it does not currently address options other than a reporter’s transcript for preparing a record of the oral proceedings in the superior court. The committee will consider this suggestion when it develops its annual agenda for next year.



## ITC SPR17-01

### Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Implementation requirements for courts		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<b>Implementation Requirements</b> In the request for comments section of the proposal, courts are asked what their implementation requirements would be if this proposal were to go into effect. The question seems to presume that the proposed revisions to Rule 8.137 would require more involvement by trial court judges. We think that this presumption is incorrect. We would note that revised Rule 8.137 does not change the current mandate to the trial court to grant a properly filed request for settled statement when there is no reporter’s transcript and agree that that duty should not be changed. We also note that the involvement of the trial court will continue to be significant in ensuring the accuracy and completeness of the statement before it is settled.	The inclusion of this question on the invitation to comment was not intended to create any implications about the impact of this proposal on the trial courts. This is a standard question included on all invitations to comment for rule changes.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	<i>What would be implementation requirements be for courts?</i> Minimal. We would need to update the section of the Self-Help Manual and add the new form. Possible creation of a "filed settled statement" docket code, if anyone was interested in tracking these for statistical purposes. More significant change for the Appellate Division and trial court judges since their process will change.  <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.	The committee appreciates this input.
Superior Court of Los Angeles County	<i>What would the implementation requirements be for courts - for example, training staff (please identify position and expected hours of training), revising processes and procedures</i>	The committee appreciates this input.

**ITC SPR17-01**

**Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>Implementation requirements for courts</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><i>(please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>This proposal would require minimal staff training and minimal CMS changes (addition of the same docket code used in limited civil).</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes. The three month effective date is sufficient for implementation.</p>	
<p>Superior Court of Orange County by Civil and Probate Operations Managers</p>	<p>Implementation would require training staff (two legal processing specialists; 15 minutes), revising process and procedures to update appeal worksheet and procedure and possibly update or create a new local form, and no case management system changes.</p> <p>Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.</p>	<p>The committee appreciates this input.</p>
<p>TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).</p>	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources – The proposal will create the need for new and/or revised procedures and possible alterations to case management systems. Staff training, and possibly judicial training, will be required.</li> <li>• Increases court staff workload – In each instance where a</li> </ul>	<p>The committee appreciates this input.</p>

**ITC SPR17-01****Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)**

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

<b>Implementation requirements for courts</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Judicial Officer is required to review a filing, court staff will be required to perform ministerial tasks associated with the processing of filings and orders related to the settlement of the record.</p> <ul style="list-style-type: none"><li>• Cost savings – The proposed changes will result in cost savings for self-represented litigants because they will no longer be required to file in person a motion to use a settled statement instead of a reporter’s transcript or both a reporter’s and a clerk’s transcripts.</li></ul>	

# Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT SPR17-01

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**Title**

Appellate Procedure: Settled Statements in  
Unlimited Civil Cases

**Action Requested**

Review and submit comments by April 28,  
2017

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

Amend California Rules of Court, rule 8.137;  
approve form APP-014; revise form APP-003

**Proposed Effective Date**

January 1, 2018

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Contact**

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

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### Executive Summary and Origin

To make the settled statements procedure in unlimited civil cases less burdensome, this proposal would amend the rule regarding settled statements to remove the requirement for obtaining a court order to use this procedure in certain circumstances and would create a new form for appellants to use in preparing proposed statements. This proposal is based on a suggestion from the Clerk/Executive Officer of one of the Courts of Appeal.

### Background

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is a summary of the trial court proceedings prepared by the appellant and approved by the trial court. Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule currently reflects a basic presumption that court reporters' transcripts will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, an appellant must file a motion asking to use a settled statement and must support this motion with a showing that a reporter's transcript is unavailable to the appellant.

Because court reporters are no longer present to record the proceedings in many civil cases, more appellants are now trying to use the settled statements procedure. This approach has proved problematic because appellants, particularly those who are self-represented, have difficulty navigating the motion procedure and preparing proposed statements. If the proposed statements are not appropriately prepared, this creates burdens for the trial court judges who must attempt to

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

review and certify proposed statements. These problems also affect the Courts of Appeal by delaying or resulting in defaults in these cases.

Statements on appeal, which are essentially the same as settled statements, are also used in appeals to the superior court appellate division. The rules for these appeals do not require the appellant to file a motion to get permission to use a statement on appeal. Furthermore, there is a form to assist litigants, particularly self-represented litigants, in appeals to the appellate division in preparing proposed statements that contain the necessary information.

## **The Proposal**

### **Amendments to rule 8.137**

The Appellate Advisory Committee is proposing amendments to rule 8.137 that are modeled in large part on the rules for statements on appeal in the superior court appellate division. The main substantive changes include:

- Permitting an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter, or (2) if the appellant has received a fee waiver (proposed subdivision (b)(1)). This change is intended to reduce burdens for both appellants and courts;
- Allowing the respondent to pay for a reporter's transcript in cases in which an appellant moves to use a settled statement even though a court reporter did record the proceedings, (proposed subdivisions (b)(2)(B) and (e)(1)(B)). This provision is not currently in rule 8.837; it is modeled on a provision in rule 8.702(d)(2)(B) relating to expedited California Environmental Quality Act Cases appeals. This provision is designed to give respondents the opportunity to avoid the delay and burdens associated with preparation of a settled statement by providing a reporter's transcript when one is available;
- Requiring self-represented appellants to use a proposed statement-on-appeal form, discussed below, unless the trial court authorizes them not to (proposed subdivision (c)). This provision is modeled on one in rule 8.837 and is intended to help appellants prepare proposed statements and help produce proposed statements that are easier for the trial court judge to review;
- Adding provisions from rule 8.837 regarding the contents of proposed statements (proposed subdivision (d)). This provision should also help appellants prepare proposed statements and make it easier for the trial court judge to review proposed statements;
- Adding provisions from rule 8.837 regarding the trial court's review of proposed statements (proposed subdivision (f)). This provision should clarify and simplify the procedure for the trial court and bring consistency to the procedures for statements in limited and unlimited civil cases; and

- Adding a provision designed to clarify what should happen when the statement is finalized (proposed subdivision (h)(3)). This provision is designed to reduce delays in the transmission of the record to the Court of Appeal.

### **Proposed form changes**

This proposal also includes proposed revisions to one existing form and proposes a new form.

*Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) would be revised to reflect the elimination of the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver.

Proposed new form *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is modeled on *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). It is designed to help appellants prepare their initial proposed statement. It includes spaces and prompts to help appellants identify and include necessary information in their statements. By providing a standardized format and prompting the inclusion of required information, the form is also designed to make these proposed statements easier for the trial judge to review.

The committee would particularly appreciate comments about this proposed new form. As noted above, the form is modeled largely on a form used in limited civil cases, which have a narrower range of case types—for example, they do not include family law cases. In addition, the proceedings are typically shorter and simpler than for unlimited civil cases. The committee would appreciate input on whether, given these differences, a form like APP-014 is likely to be helpful in unlimited civil cases, either as proposed or with additional modifications. Please see the Request for Specific Comments box below.

### **Alternatives Considered**

The committee considered recommending only the clarification to the rule about what happens once a statement has been finalized. The committee concluded, however, that additional changes to the procedure would be helpful in reducing barriers for litigants and burdens on the courts. The committee also considered not recommending proposed new form APP-014, but concluded that the better approach would be to seek input from commentators on whether such a form would be helpful.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee's intent in making this proposal is to reduce burdens on litigants and trial courts associated with preparing settled statements in unlimited civil cases. The committee would particularly appreciate comments about whether the proposal is likely to achieve this goal.

## Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Would *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) be helpful to litigants and/or the trial courts?
- What additional items, if any, need to be included on the form?
- Should the form include additional space for the summary of any of the items?
- Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?
- Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment? Note that the appellant will be required to attach a copy of the judgment to the Civil Case Information Statement, which must be filed in the Court of Appeal at approximately the same time as a proposed statement must be filed in the trial court.
- Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

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

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

### Attachments and Links

1. Proposed amended rule 8.137, at pages 5–11
2. Proposed forms APP-003 and APP-014, at pages 12–22

Rule 8.137 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 2. Civil Appeals**

6  
7 **Article 2. Record on Appeal**

8  
9 **Rule 8.137. Settled statement**

10  
11 **(a) Description**

12  
13 A settled statement is a summary of the superior court proceedings that is approved by the  
14 superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a  
15 settled statement as the record of the oral proceedings in the superior court, instead of a  
16 reporter's transcript, and may move to use a settled statement as the record of the written  
17 documents from the superior court proceedings, instead of a clerk's transcript or appendix.

18  
19 **~~(a)~~(b) Motion to use When a settled statement may be used**

20  
21 (1) An appellant may elect in his or her notice designating the record on appeal under  
22 rule 8.121 to use a settled statement as the record of the oral proceedings in the  
23 superior court without filing a motion under (2) if:

24  
25 (A) The designated oral proceedings in the superior court were not reported by a  
26 court reporter; or

27  
28 (B) The appellant has an order waiving his or her court fees and costs.

29  
30 ~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those listed  
31 in (1) must serve and file in superior court with its notice designating the record on  
32 appeal under rule 8.121 a motion to use a settled statement instead of a reporter's  
33 transcript or both a reporter's and a clerk's transcripts.

34  
35 ~~(2)~~(A) The motion must be supported by a showing that:

36  
37 ~~(A)~~(i) A substantial cost saving will result and the statement can be settled  
38 without significantly burdening opposing parties or the court;

39  
40 ~~(B)~~(ii) The designated oral proceedings ~~were not reported or~~ cannot be  
41 transcribed; or



1                   ~~(C)(iii)~~ Although the appellant does not have a fee waiver, he or she is unable  
2                   to pay for a reporter's transcript and funds are not available from the  
3                   Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding~~  
4                   ~~in forma pauperis is deemed unable to pay for a transcript.~~

5  
6                   ~~(3)(B)~~ If the court denies the motion, the appellant must file a new notice  
7                   designating the record on appeal under rule 8.121 within 10 days after the  
8                   superior court clerk sends, or a party serves, the order of denial.

9  
10                  (3) An appellant's notice under (1) or motion under (2) must:

11  
12                  (A) Specify the date of each oral proceeding to be included in the settled statement;

13  
14                  (B) Describe the proceedings specified under (A);

15  
16                  (C) Identify whether each proceeding designated under (A) was reported by a court  
17                  reporter and, if so, for each such proceeding:

18  
19                   (i) Provide the name of the court reporter, if known; and

20  
21                   (ii) Identify whether a certified transcript has previously been prepared by  
22                   checking the appropriate box on *Appellant's Notice Designating Record*  
23                   on Appeal (Unlimited Civil Cases) (form APP-003) or, if that form is not  
24                   used, placing an asterisk before that proceeding in the notice.

25  
26                  (4) If the designated oral proceedings in the superior court were reported by a court  
27                  reporter:

28  
29                  (A) Within 10 days after the appellant serves either a notice under (1) or a motion  
30                  under (2), the respondent may serve and file a notice indicating that he or she  
31                  is electing to provide a reporter's transcript in lieu of proceeding with a settled  
32                  statement. The respondent must also either:

33  
34                   (i) Deposit a certified transcript of all of the proceedings designated by the  
35                   appellant under (3) and any additional proceedings designated by the  
36                   respondent under rule 8.130(b)(3)(C); or

37  
38                   (ii) Serve and file a notice that the respondent is requesting preparation, at  
39                   the respondent's expense, of a reporter's transcript of all proceedings  
40                   designated by the appellant under (3) and any additional proceedings  
41                   designated by the respondent. This notice must be accompanied by either  
42                   the required deposit for the reporter's transcript under rule 8.130(b)(1) or

1 the reporter's written waiver of the deposit in lieu of all or a portion of  
2 the deposit under rule 8.130(b)(3)(A).

3  
4 (B) If the respondent timely deposits the certified transcript as required under (i),  
5 the appellant's motion to use a settled statement will be dismissed. If the  
6 respondent timely files the notice and makes the deposit or files the waiver as  
7 provided under (ii), the appellant's motion to use a settled statement will be  
8 dismissed and the clerk must promptly send the reporter notice of the  
9 designation and of the deposit, waiver, or both and notice to prepare the  
10 transcript, as provided under rule 8.130(d).

11  
12 ~~(b)(c)~~ **Time to file; contents of proposed statement**

- 13  
14 (1) ~~Within 30 days after the superior court clerk sends, or a party serves, an order~~  
15 ~~granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A)  
16 electing to provide a reporter's transcript in lieu of proceeding with a settled  
17 statement, the appellant must serve and file a proposed statement in superior court  
18 within 30 days after filing its notice under (b)(1) or within 30 days after the superior  
19 court clerk sends, or a party serves, an order granting a motion under (b)(2) a  
20 condensed narrative of the oral proceedings that the appellant believes necessary for  
21 the appeal. Subject to the court's approval in settling the statement, the appellant  
22 may present some or all of the evidence by question and answer.  
23  
24 (2) Appellants who are not represented by an attorney must file their proposed statement  
25 on *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014). For good  
26 cause, the court may permit the filing of a statement that is not on form APP-014.

27  
28 **(d) Contents of proposed statement**

29  
30 The proposed statement must contain:

- 31  
32 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. If the condensed  
33 narrative under (3) covers only a portion of the oral proceedings, describes less than  
34 all the testimony, the appellant must state the points to be raised on appeal; the  
35 appeal is then limited to those the points identified in the statement unless the  
36 reviewing court determines that the record permits the full consideration of another  
37 point or, on motion, the reviewing court permits otherwise.  
38  
39 (2) A summary of the trial court's rulings and judgment.  
40  
41 (3) A condensed narrative of the oral proceedings that the appellant specified under  
42 (b)(3).  
43

1 (A) The condensed narrative must include a concise factual summary of the  
2 evidence and the testimony of each witness relevant to the points that the  
3 appellant states under (1) are being raised on appeal. Subject to the court's  
4 approval in settling the statement, the appellant may present some or all of the  
5 evidence by question and answer. Any evidence or portion of a proceeding not  
6 included will be presumed to support the judgment or order appealed from.

7  
8 (B) If one of the points that the appellant states will be raised on appeal is a  
9 challenge to the giving, refusal, or modification of a jury instruction, the  
10 condensed narrative must include any instructions submitted orally and not in  
11 writing and must identify the party that requested the instruction and any  
12 modification.

13  
14 ~~(3)~~(4) An appellant intending to use a settled statement instead of both a reporter's and a  
15 clerk's transcripts must accompany the condensed narrative with copies of all items  
16 required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2), and  
17 may accompany the condensed narrative with copies of any document includable in  
18 the clerk's transcript under rule 8.122(b)(3) and (4).

19  
20 **(e) Respondent's response to proposed statement**

21  
22 ~~(4)~~(1) Within 20 days after the appellant serves the condensed narrative, the respondent  
23 may serve and file either:

24  
25 (A) Proposed amendments to the condensed narrative; or

26  
27 (B) A notice indicating that he or she is electing to provide a reporter's transcript  
28 in lieu of proceeding with a settled statement. The respondent must also either:

29  
30 (i) Deposit a certified transcript of all the proceedings specified by the  
31 appellant under (b)(3) and any additional proceedings designated by the  
32 respondent under rule 8.130(b)(3)(C); or

33  
34 (ii) Serve and file a notice that the respondent is requesting preparation, at  
35 the respondent's expense, of a reporter's transcript of all proceedings  
36 specified by the appellant under (b)(3) and any additional proceedings  
37 designated by the respondent. This notice must be accompanied by either  
38 the required deposit for the reporter's transcript under rule 8.130(b)(1) or  
39 the reporter's written waiver of the deposit in lieu of all or a portion of  
40 the deposit under rule 8.130(b)(3)(A).

1           ~~(5)~~(2) If the respondent serves and files ~~The proposed statement and proposed amendments~~  
2           under (1)(A), they may be accompanied by copies of any document includable in the  
3           clerk’s transcript under rule 8.122(b)(3) and (4).  
4

5 **(e)(f) Settlement, preparation, and certification Review of appellant’s proposed statement**  
6

7           (1) ~~The clerk must set a date for a settlement hearing by the trial judge that is~~ No later  
8           than 10 days after the respondent files proposed amendments or the time to do so  
9           expires, whichever is earlier, and must give the parties at least five days’ notice of  
10           the hearing date a party may request a hearing to review and correct the proposed  
11           statement. No hearing will be held unless ordered by the trial court judge, and the  
12           judge will not ordinarily order a hearing unless there is a factual dispute about a  
13           material aspect of the trial court proceedings.  
14

15           (2) ~~At the hearing, the judge must settle the statement and fix the times within which the~~  
16           appellant must prepare, serve, and file it.  
17

18           (2) The trial court judge may order that a transcript be prepared as the record of the oral  
19           proceedings instead of correcting a proposed statement on appeal if the trial court  
20           proceedings were reported by a court reporter, the trial court judge determines that  
21           doing so would save court time and resources, and the court has a local rule  
22           permitting such an order. The court will pay for any transcript ordered under this  
23           subdivision.  
24

25           (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the  
26           time for requesting a hearing expires, the trial court judge must review the proposed  
27           statement and any proposed amendments filed by the respondent and take one of the  
28           following actions:  
29

30           (A) If the proposed statement does not contain material required under (d), the trial  
31           judge may order the appellant to prepare a new proposed statement. The order  
32           must identify the additional material that must be included in the statement to  
33           comply with (d) and the date by which the new proposed statement must be  
34           served and filed. If the appellant does not serve and file a new proposed  
35           statement as directed, rule 8.140 applies.  
36

37           (B) If the trial judge does not issue an order under (A), the trial judge must either:  
38

39           (i) Make any corrections or modifications to the statement necessary to  
40           ensure that it is an accurate summary of the evidence and the testimony  
41           of each witness relevant to the points that the appellant states under  
42           (d)(1) are being raised on appeal; or  
43

1 (ii) Identify the necessary corrections and modifications, and order the  
2 appellant to prepare a statement incorporating these corrections and  
3 modifications.  
4

5 (4) If a hearing is ordered, the court must promptly set the hearing date and provide the  
6 parties with at least 5 days' written notice of the hearing date. No later than 10 days  
7 after the hearing, the trial court judge must either:  
8

9 (A) Make any corrections or modifications to the statement necessary to ensure  
10 that it is an accurate summary of the evidence and the testimony of each  
11 witness relevant to the points that the appellant states under (d)(1) are being  
12 raised on appeal; or  
13

14 (B) Identify the necessary corrections and modifications and order the appellant to  
15 prepare a statement incorporating these corrections and modifications.  
16

17 (5) The trial court judge must not eliminate the appellant's specification of grounds of  
18 appeal from the proposed statement.  
19

20 **(g) Review of the corrected statement**  
21

22 (1) If the trial court judge makes any corrections or modifications to the proposed  
23 statement under (f), the clerk must serve copies of the corrected or modified  
24 statement on the parties. If under (f) the trial court judge orders the appellant to  
25 prepare a statement incorporating corrections and modifications, the appellant must  
26 serve and file the corrected or modified statement within the time ordered by the  
27 court. If the appellant does not serve and file a corrected or modified statement as  
28 directed, rule 8.140 applies.  
29

30 (2) Within 10 days after the corrected or modified statement is served on the parties, any  
31 party may serve and file proposed modifications or objections to the statement.  
32

33 (3) ~~If the respondent does not object to the prepared statement within five days after it is~~  
34 ~~filed, it will be deemed properly prepared and the clerk must present it to the judge~~  
35 ~~for certification.~~ Within 10 days after the time for filing proposed modifications or  
36 objections under (2) has expired, the judge must review the corrected or modified  
37 statement and any proposed modifications or objections to the statement filed by the  
38 parties. The procedures in (2) or in (f)(3) apply if the judge determines that further  
39 corrections or modifications are necessary to ensure that the statement is an accurate  
40 summary of the evidence and the testimony of each witness relevant to the points  
41 that the appellant states under (d)(1) are being raised on appeal.  
42

1 **(h) Certification of the statement on appeal**

2  
3 (1) If the trial court judge does not order the preparation of a transcript under (f)(2) in  
4 lieu of correcting the proposed statement or order any corrections or modifications to  
5 the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify  
6 the statement.

7  
8 ~~(4)~~(2) The parties<sup>2</sup> may serve and file a stipulation that the statement as originally served  
9 under (c) or as ~~prepared~~ corrected or modified under (f)(3), (f)(4), or (g)(3) is correct.  
10 Such a stipulation is equivalent to the judge's certification of the statement.

11  
12 (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the  
13 certified statement must immediately be transmitted to the clerk for filing of the  
14 record under rule 8.150.  
15

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:  STATE: ZIP CODE: FAX NO.:	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):		COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>		

## 1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a.  A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1)  I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a)  An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b)  An application for a waiver of court fees and costs under rule 3.50 et seq. use Request to Waive Court Fees (form FW-001) to prepare and file this application.
- b.  An appendix under rule 8.124.
- c.  The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d.  An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e.  A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a.  WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. b.  WITH the following record of the oral proceedings in the superior court:
- (1)  A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply)*:
    - (a)  Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
    - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
    - (c)  Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
      - (i)  all of the designated proceedings.
      - (ii)  part of the designated proceedings.
    - (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
  - (2)  An agreed statement. *(Check and complete either (a) or (b) below.)*
    - (a)  I have attached an agreed statement to this notice.
    - (b)  All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
  - (3)  A settled statement under rule 8.137. *(You must check (a), (b), or (c) below.)*
    - (a)  The oral proceedings in the superior court were not reported by a court reporter.
    - (b)  The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
    - (c)  I am requesting to use a settled statement for reasons other than those listed in (a) or (b). *(You must attach the motion required under rule 8.137(a) to this form.)*

**3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

<b>Title of Administrative Proceeding</b>	<b>Date or Dates</b>
---	----------------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

*(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)*

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

<b>Document Title and Description</b>	<b>Date of Filing</b>
---------------------------------------	-----------------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket *(if any)*



CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

**5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

*(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)*

a. I request that the reporters provide *(check one)*:

- (1)  My copy of the reporter's transcript in paper format.
- (2)  My copy of the reporter's transcript in computer-readable format.
- (3)  My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

*(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
------------	-----------------------------

**5. b. Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)						<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b  include  do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).*

Date:

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



\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case**.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If it is not attached to that notice, this form must be filed **no later than 30 days after you file that notice. Or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the Court of Appeal case number (if you know it):

**Court of Appeal Case Number:****1 Your Information**

- a. Name of Appellant (
- the party who is filing this appeal*
- ):

Name: \_\_\_\_\_

- b. Appellant's contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Appellant's lawyer (
- skip this if the appellant does not have a lawyer for this appeal*
- ):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**Information About Your Appeal**

- 2 On (fill in the date): \_\_\_\_\_, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_
  - I filed a notice designating the record on appeal, electing to use a statement on appeal.
  - The Court sent or the other party served me with an order granting my motion to use a settled statement.

**Proposed Statement**

**4 Reasons for Your Appeal**

*Please note, in an appeal, the Court of Appeal can only review a case for whether certain kinds of legal errors were made:*

- *There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.*
- *A “prejudicial error” was made during the trial court proceedings.*

*The Court of Appeal:*

- *Cannot retry your case or take new evidence.*
- *Cannot consider whether witnesses were telling the truth or lying.*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.*

*(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)*

- a.  There was not substantial evidence that supported the judgment, order, or other decision that I indicated in the notice of appeal is being appealed in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- b.  The following error or errors about either the law or court procedure was/were made that caused substantial harm to me. *(Describe each error and how you were harmed by that error.)*

(1) *Describe the error:* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Describe how you were harmed by the error:* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(2) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were/your client was harmed by the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-014, item 4."

**5 The Dispute**

a. In the trial court, I was the (check one):

- Plaintiff (the party who filed the complaint in the case).
- Defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-014, Item 5."

**6 Summary of Any Motions and the Court's Order on the Motion**

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **4** for this appeal?

Yes (fill out b)     No (skip to **7**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **4** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
\_\_\_\_\_

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-014, Item 6b(1)."

(2) Describe the second motion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The motion was filed by the  plaintiff.     defendant.

There  was  was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The trial court  granted this motion.     did not grant this motion.

Trial Court Case Name: \_\_\_\_\_

- 6**
- b.  Other (describe any other action the trial court took concerning this motion): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-014, item 6b(2)."
- (3)  Check here if any other motions were filed that are relevant to the reasons you gave in **4** for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-014, item 6b(3)."

**7 Summary of Testimony and Other Evidence**

- a. Was there a trial in your case?
- No (skip to item **8**)
- Yes (check (1) or (2) and complete items b, c, d, and e)
- (1)  Jury trial
- (2)  Trial by judge only
- b. Did you testify at the trial?
- No
- Yes (Write a complete and accurate summary of the testimony you gave that is relevant to the reasons you gave in **4** for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your testimony or any exhibits you asked to present and whether these objections were sustained.):
- \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-014, Item 7b."
- c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in **4** for this appeal?
- No
- Yes (complete items (1), (2), and (3)):
- (1) The witness's name is (fill in the witness's name): \_\_\_\_\_
- (2) The witness testified on behalf of the (check one):  plaintiff.  defendant.

7 c. (3) This witness testified that *(Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness’s testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-014, Item 7c.”

d.  Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-014, Item 7d.”

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in 4 for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write “APP-014, Item 7e.”

8 **The Trial Court's Findings**

Did the trial court make findings in the case?

No  
 Yes *(describe the findings made by the trial court)*: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Check here if you need more space to describe the trial court’s findings and attach a separate page or pages describing these findings. At the top of each page, write “APP-014, Item 8.”



**9 The Trial Court's Final Judgment**

The trial court issued the following final judgment in this case (*check all that apply and fill in any required information*):

a. I was required to:

Pay the other party damages of (*fill in the amount of the damages*): \$ \_\_\_\_\_

Do the following (*describe what you were ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. The other party was required to:

Pay me/my client damages of (*fill in the amount of the damages*): \$ \_\_\_\_\_

Do the following (*describe what the other party was ordered to do*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  Other(*describe*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-014, Item 9."*

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

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Signature of appellant or attorney*



## 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

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# MEMORANDUM

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Date	Action Requested
May 15, 2017	Please read before May 18 committee meeting
To	Deadline
Members of the Appellate Advisory Committee's Rules Subcommittee	May 18, 2017
From	Contact
Heather Anderson, Supervising Attorney, Legal Services	Heather Anderson 415-865-7691 heather.anderson@jud.ca.gov
Subject	
Record in juvenile appeals	

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### Introduction

As you may recall, earlier this spring, after concluding that a rule proposal could not achieve the necessary results and after working with representatives of the Family and Juvenile Law Advisory Committee, the Appellate Advisory Committee recommended circulating for public comment a proposal to amend Welfare and Institutions Code section 827 to address access to the appellate record in juvenile cases where the appellant is not a party who would ordinarily have access to the juvenile court case file. The Judicial Council's Policy Coordination and Liaison Committee approved the recommendation for circulation and the proposal was circulated for public comment February 27 and April 28, 2017 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials). This memo discusses the public comments received on the proposal.

### Public Comments

Six individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal and two indicated that they agreed with the proposal if amended. Some of the commentators who indicated that they agreed with the proposal also suggested some changes. A chart with the full text of the comments received and staff's draft

responses is attached and the substantive comments are discussed below. Based on these comments, staff recommends that the subcommittee recommend moving forward with this proposal with some changes.

**Identification of records to be provided without court order**

As circulated for public comment, the proposed amendment to section 827 would have authorized an individual who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding, for purposes of that proceeding, to inspect and copy any records in the juvenile case file to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records. The Superior Court of San Diego County, which indicated it agreed with the proposal, raised two concerns about this provision.

First, the court indicated that it might be difficult to identify those records to which the individual was previously granted access by the juvenile court. They therefore suggested some alternate language that would specify particular documents that the individual could access and copy: “any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed.” This type of language was considered, but ultimately rejected, by the working group of members from the Appellate Advisory Committee and Family and Juvenile Law Advisory Committee that helped develop the proposal. That group expressed concern about this approach because there may be some documents, such as probation reports, or parts thereof to which such an individual should not have access. As a potential alternative approach to addressing this concern, the proposed amendments could be modified to clarify that the individual can have access without a court order to any document filed by or served on the individual. Staff has included this possible language in the attached draft of the proposal for the subcommittee’s consideration.

Second, the court expressed concern about the phrase “including the record on appeal that contains such records” because the record on appeal might contain other records or portions thereof to which an individual should not have access. The court suggested that this phrase be changed to “including such records that are made a part of the record on appeal.” This seems consistent with the committee’s intent and so staff has included this possible language in the attached draft of the proposal for the subcommittee’s consideration.

**Notice and opportunity to object when access to additional records is sought**

As circulated for public comment, the proposed amendment to section 827 would have provided that “on order of either the judge of the juvenile court or the Court of Appeal” an individual who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent

in such an appeal or writ proceeding “may inspect and copy any other record or portion thereof in the juvenile case file or appellate record.”

Two commentators – the San Diego Office of County Counsel’s Juvenile Dependency Division (one of the two commentators that agreed with the proposal if amended) and the Superior Court of San Diego County – expressed concern about the fact that this provision did not provide for notice and an opportunity to object to the release of this additional information. This notice and objection procedure is required under section 827 when a person not otherwise entitled to access to the juvenile case file petitions for access. It therefore seems logical that when an individual involved in an appellate proceeding wants access to records to which he or she did not previously have access, the notice and objection requirements should apply. Staff has drafted, for the subcommittee’s consideration, language that would apply these requirements while maintaining the ability of either the juvenile court or the Court of Appeal to accept and rule on petitions for access to these records.

#### Subcommittee Task

Staff has prepared a draft of possible revisions to the proposal for the subcommittee’s consideration. Changes to the proposal are shown in **yellow highlighting**. The subcommittee’s task with respect to this proposal is to discuss the comments received on the proposal and approve or modify staff suggestions for responding to these comments, as reflected in the draft comment chart and draft revisions to the proposal.

#### Attachments

1. Draft revisions to proposal
2. Draft comment chart
3. Invitation to comment

Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

1  
2 **§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality**  
3 **provisions.**  
4

- 5 (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:  
6  
7 (A) Court personnel.  
8  
9 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute  
10 criminal or juvenile cases under state law.  
11  
12 (C) The minor who is the subject of the proceeding.  
13  
14 (D) The minor's parents or guardian.  
15  
16 (E) The attorneys for the parties, judges, referees, other hearing officers, probation  
17 officers, and law enforcement officers who are actively participating in criminal  
18 or juvenile proceedings involving the minor.  
19  
20 (F) The county counsel, city attorney, or any other attorney representing the  
21 petitioning agency in a dependency action.  
22  
23 (G) The superintendent or designee of the school district where the minor is enrolled  
24 or attending school.  
25  
26 (H) Members of the child protective agencies as defined in Section 11165.9 of the  
27 Penal Code.  
28  
29 (I) The State Department of Social Services, to carry out its duties pursuant to  
30 Division 9 (commencing with Section 10000), and Part 5 (commencing with  
31 Section 7900) of Division 12, of the Family Code to oversee and monitor county  
32 child welfare agencies, children in foster care or receiving foster care assistance,  
33 and out-of-state placements, Section 10850.4, and paragraph (2).  
34  
35 (J) Authorized legal staff or special investigators who are peace officers who are  
36 employed by, or who are authorized representatives of, the State Department of  
37 Social Services, as necessary to the performance of their duties to inspect, license,  
38 and investigate community care facilities, and to ensure that the standards of care  
39 and services provided in those facilities are adequate and appropriate and to  
40 ascertain compliance with the rules and regulations to which the facilities are  
41 subject. The confidential information shall remain confidential except for  
42 purposes of inspection, licensing, or investigation pursuant to Chapter 3  
43 (commencing with Section 1500) and Chapter 3.4 (commencing with Section  
44 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or  
45 administrative proceeding in relation thereto. The confidential information may be  
46 used by the State Department of Social Services in a criminal, civil, or

1 administrative proceeding. The confidential information shall be available only to  
2 the judge or hearing officer and to the parties to the case. Names that are  
3 confidential shall be listed in attachments separate to the general pleadings. The  
4 confidential information shall be sealed after the conclusion of the criminal, civil,  
5 or administrative hearings, and may not subsequently be released except in  
6 accordance with this subdivision. If the confidential information does not result in  
7 a criminal, civil, or administrative proceeding, it shall be sealed after the State  
8 Department of Social Services decides that no further action will be taken in the  
9 matter of suspected licensing violations. Except as otherwise provided in this  
10 subdivision, confidential information in the possession of the State Department of  
11 Social Services may not contain the name of the minor.  
12

- 13 (K) Members of children's multidisciplinary teams, persons, or agencies providing  
14 treatment or supervision of the minor.  
15
- 16 (L) A judge, commissioner, or other hearing officer assigned to a family law case  
17 with issues concerning custody or visitation, or both, involving the minor, and the  
18 following persons, if actively participating in the family law case: a family court  
19 mediator assigned to a case involving the minor pursuant to Article 1  
20 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the  
21 Family Code, a court-appointed evaluator or a person conducting a court-  
22 connected child custody evaluation, investigation, or assessment pursuant to  
23 Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in  
24 the family law case pursuant to Section 3150 of the Family Code. Prior to  
25 allowing counsel appointed for the minor in the family law case to inspect the file,  
26 the court clerk may require counsel to provide a certified copy of the court order  
27 appointing him or her as the minor's counsel.  
28
- 29 (M) When acting within the scope of investigative duties of an active case, a  
30 statutorily authorized or court-appointed investigator who is conducting an  
31 investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who  
32 is actively participating in a guardianship case involving a minor pursuant to Part  
33 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting  
34 within the scope of his or her duties in that case.  
35
- 36 (N) A local child support agency for the purpose of establishing paternity and  
37 establishing and enforcing child support orders.  
38
- 39 (O) Juvenile justice commissions as established under Section 225. The  
40 confidentiality provisions of Section 10850 shall apply to a juvenile justice  
41 commission and its members.  
42
- 43 (P) Any other person who may be designated by court order of the judge of the  
44 juvenile court upon filing a petition.  
45

- 1 (2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3),  
2 juvenile case files, except those relating to matters within the jurisdiction of the  
3 court pursuant to Section 601 or 602, that pertain to a deceased child who was  
4 within the jurisdiction of the juvenile court pursuant to Section 300, shall be  
5 released to the public pursuant to an order by the juvenile court after a petition has  
6 been filed and interested parties have been afforded an opportunity to file an  
7 objection. Any information relating to another child or which could identify another  
8 child, except for information about the deceased, shall be redacted from the juvenile  
9 case file prior to release, unless a specific order is made by the juvenile court to the  
10 contrary. Except as provided in this paragraph, the presiding judge of the juvenile  
11 court may issue an order prohibiting or limiting access to the juvenile case file, or  
12 any portion thereof, of a deceased child only upon a showing by a preponderance of  
13 evidence that release of the juvenile case file or any portion thereof is detrimental to  
14 the safety, protection, or physical or emotional well-being of another child who is  
15 directly or indirectly connected to the juvenile case that is the subject of the petition.  
16
- 17 (B) This paragraph represents a presumption in favor of the release of documents when  
18 a child is deceased unless the statutory reasons for confidentiality are shown to  
19 exist.  
20
- 21 (C) If a child whose records are sought has died, and documents are sought pursuant to  
22 this paragraph, no weighing or balancing of the interests of those other than a child  
23 is permitted.  
24
- 25 (D) A petition filed under this paragraph shall be served on interested parties by the  
26 petitioner, if the petitioner is in possession of their identity and address, and on the  
27 custodian of records. Upon receiving a petition, the custodian of records shall serve  
28 a copy of the request upon all interested parties that have not been served by the  
29 petitioner or on the interested parties served by the petitioner if the custodian of  
30 records possesses information, such as a more recent address, indicating that the  
31 service by the petitioner may have been ineffective.  
32
- 33 (E) The custodian of records shall serve the petition within 10 calendar days of receipt.  
34 If any interested party, including the custodian of records, objects to the petition,  
35 the party shall file and serve the objection on the petitioning party no later than 15  
36 calendar days after service of the petition.  
37
- 38 (F) The petitioning party shall have 10 calendar days to file any reply. The juvenile  
39 court shall set the matter for hearing no more than 60 calendar days from the date  
40 the petition is served on the custodian of records. The court shall render its  
41 decision within 30 days of the hearing. The matter shall be decided solely upon the  
42 basis of the petition and supporting exhibits and declarations, if any, the objection  
43 and any supporting exhibits or declarations, if any, and the reply and any  
44 supporting declarations or exhibits thereto, and argument at hearing. The court may  
45 solely upon its own motion order the appearance of witnesses. If no objection is  
46 filed to the petition, the court shall review the petition and issue its decision within

1 10 calendar days of the final day for filing the objection. Any order of the court  
2 shall be immediately reviewable by petition to the appellate court for the issuance  
3 of an extraordinary writ.  
4

5 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile  
6 court pursuant to Section 300 shall be limited as follows:  
7

8 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant  
9 to any other state law or federal law or regulation, the requirements of that state  
10 law or federal law or regulation prohibiting or limiting release of the juvenile case  
11 file or any portions thereof shall prevail. Unless a person is listed in subparagraphs  
12 (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state  
13 law or federal law or regulation without a court order, all those seeking access,  
14 pursuant to other authorization, to portions of, or information relating to the  
15 contents of, juvenile case files protected under another state law or federal law or  
16 regulation, shall petition the juvenile court. The juvenile court may only release the  
17 portion of, or information relating to the contents of, juvenile case files protected  
18 by another state law or federal law or regulation if disclosure is not detrimental to  
19 the safety, protection, or physical or emotional well-being of a child who is directly  
20 or indirectly connected to the juvenile case that is the subject of the petition. This  
21 paragraph shall not be construed to limit the ability of the juvenile court to carry  
22 out its duties in conducting juvenile court proceedings.  
23

24 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall  
25 afford due process, including a notice of and an opportunity to file an objection to  
26 the release of the record or report to all interested parties.  
27

28 (4) A juvenile case file, any portion thereof, and information relating to the content of the  
29 juvenile case file, may not be disseminated by the receiving agencies to any persons  
30 or agencies, other than those persons or agencies authorized to receive documents  
31 pursuant to this section. Further, a juvenile case file, any portion thereof, and  
32 information relating to the content of the juvenile case file, may not be made as an  
33 attachment to any other documents without the prior approval of the presiding judge  
34 of the juvenile court, unless it is used in connection with and in the course of a  
35 criminal investigation or a proceeding brought to declare a person a dependent child  
36 or ward of the juvenile court.  
37

38 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of  
39 paragraph (1) may also receive copies of the case file. In these circumstances, the  
40 requirements of paragraph (4) shall continue to apply to the information received.  
41

42 (6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition  
43 challenging a juvenile court order or who is a respondent in such an appeal or writ  
44 proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy  
45 any records in the juvenile case file that were filed by or served on the individual in  
46 the juvenile court proceedings and any other records or portions thereof to which



1 the individual was previously granted access by the juvenile court, including the  
2 ~~record on appeal that contains any such records or portions thereof that are made a~~  
3 ~~part of the appellate record. and, on order of either the judge of the juvenile court or~~  
4 ~~the Court of Appeal, such individual may inspect and copy~~ The requirements of  
5 paragraph (3) shall continue to apply to any other record or portion thereof in the  
6 juvenile case file or made a part of the appellate record, except that a petition  
7 seeking release may be filed in and release of records ordered by either the juvenile  
8 court or the Court of Appeal. The requirements of paragraph (4) shall continue to  
9 apply to documents received under this paragraph. The Judicial Council shall adopt  
10 rules to implement this paragraph.

11  
12 (b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should  
13 be confidential, it is the intent of the Legislature in enacting this subdivision to provide for  
14 a limited exception to juvenile court record confidentiality to promote more effective  
15 communication among juvenile courts, family courts, law enforcement agencies, and  
16 schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the  
17 potential for drug use, violence, other forms of delinquency, and child abuse.

18  
19 (2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public  
20 school, kindergarten to grade 12, inclusive, has been found by a court of competent  
21 jurisdiction to have committed any felony or any misdemeanor involving curfew,  
22 gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense  
23 listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or  
24 graffiti shall be provided by the court, within seven days, to the superintendent of  
25 the school district of attendance. Written notice shall include only the offense found  
26 to have been committed by the minor and the disposition of the minor's case. This  
27 notice shall be expeditiously transmitted by the district superintendent to the  
28 principal at the school of attendance. The principal shall expeditiously disseminate  
29 the information to those counselors directly supervising or reporting on the behavior  
30 or progress of the minor. In addition, the principal shall disseminate the information  
31 to any teacher or administrator directly supervising or reporting on the behavior or  
32 progress of the minor whom the principal believes needs the information to work  
33 with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to  
34 protect other persons from needless vulnerability.

35  
36 (B) Any information received by a teacher, counselor, or administrator under this  
37 subdivision shall be received in confidence for the limited purpose of rehabilitating  
38 the minor and protecting students and staff, and shall not be further disseminated  
39 by the teacher, counselor, or administrator, except insofar as communication with  
40 the juvenile, his or her parents or guardians, law enforcement personnel, and the

1 juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or  
2 to protect students and staff.  
3

4 (C) An intentional violation of the confidentiality provisions of this paragraph is a  
5 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).  
6

7 (3) If a minor is removed from public school as a result of the court's finding described in  
8 subdivision (b), the superintendent shall maintain the information in a confidential  
9 file and shall defer transmittal of the information received from the court until the  
10 minor is returned to public school. If the minor is returned to a school district other  
11 than the one from which the minor came, the parole or probation officer having  
12 jurisdiction over the minor shall so notify the superintendent of the last district of  
13 attendance, who shall transmit the notice received from the court to the  
14 superintendent of the new district of attendance.  
15

16 (c) Each probation report filed with the court concerning a minor whose record is subject to  
17 dissemination pursuant to subdivision (b) shall include on the face sheet the school at  
18 which the minor is currently enrolled. The county superintendent shall provide the court  
19 with a listing of all of the schools within each school district, within the county, along with  
20 the name and mailing address of each district superintendent.  
21

22 (d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the  
23 instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any  
24 information received from the court shall be kept in a separate confidential file at the  
25 school of attendance and shall be transferred to the minor's subsequent schools of  
26 attendance and maintained until the minor graduates from high school, is released from  
27 juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After  
28 that time the confidential record shall be destroyed. At any time after the date by which a  
29 record required to be destroyed by this section should have been destroyed, the minor or  
30 his or her parent or guardian shall have the right to make a written request to the principal  
31 of the school that the minor's school records be reviewed to ensure that the record has been  
32 destroyed. Upon completion of any requested review and no later than 30 days after the  
33 request for the review was received, the principal or his or her designee shall respond in  
34 writing to the written request and either shall confirm that the record has been destroyed  
35 or, if the record has not been destroyed, shall explain why destruction has not yet  
36 occurred.  
37

38 (2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any  
39 person who transmits or fails to transmit any notice or information required under  
40 subdivision (b).  
41

42 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile  
43 court proceeding, reports of the probation officer, and all other documents filed in that  
44 case or made available to the probation officer in making his or her report, or to the judge,

1 referee, or other hearing officer, and thereafter retained by the probation officer, judge,  
2 referee, or other hearing officer.

3  
4 (f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of  
5 paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian  
6 tribe, reservation, or tribal court when the case file involves a child who is a member of, or  
7 who is eligible for membership in, that tribe.

8  
9 (g) A case file that is covered by, or included in, an order of the court sealing a record  
10 pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or  
11 786.

12  
13  
14

**LEG17-02****Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Appellate Court Clerks Association by Daniel P. Potter Clerk Administrator and President, California Appellate Court clerks Association San Jose, CA	A	The Clerks Association agrees with the proposed amendment to the Welfare & Institutions Code. This change would increase efficiency for the parties to appellate court proceedings as well as court staff.	The committee notes the commentator's support for the proposal; no response required.
2.	Los Angeles County by Alyssa Skolnick Principal Deputy County Counsel Monterey Park, CA	AM	LITIGATION  County agencies, including child welfare and probation agencies are subject to civil lawsuits for various reasons. Unless there is a juvenile court order allowing use of a juvenile files by an attorney representing the county or its agencies in a civil lawsuit, the attorney may not inspect the file. Further, mere inspection of the file without court authorization is a violation of privacy rights and may subject the county or its agencies to liability for any unauthorized inspection. (Gonzalez v. Spencer (9th. Cir. (2003) 336 F. 832.) In Los Angeles County, the juvenile court processes all §827 petitions filed each year to allow inspection of juvenile files where the county or its agencies are parties to a civil case involving a minor. Processing these §827 petitions is very time-consuming, often taking more than a year, which results in significant delay in civil cases. If §827 was amended to allow access by counsel involved in these type of civil cases, then there would be no need for processing by the juvenile court, resulting in streamlined access. The current	The additional changes to Welfare and Institutions Code section 827 suggested by the commentator are beyond the scope of the proposal that was circulated for public comment. The committee will treat them as new suggestions for consideration when the committee develops its agenda for the next committee year.

**LEG17-02**

**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>process requires significant resources from the juvenile courts and county agencies. Further, it causes significant delay in the civil actions, impacting the resources of the civil courts, as well.</p> <p>Section 827 needs to be amended to clarify that an attorney representing the State, political subdivision of the State, or local child welfare and probation agencies is entitled to inspect and receive copies of the case file to investigate or defend against any lawsuit or government claim filed pursuant to Government Code Section 900, et seq. This proposed amendment mirrors State Department of Social Services, Manual of Policies and Procedures Section 19-004.5, governing a government lawyer's ability to access public social services records. This Regulation states:</p> <p>Release of Confidential Information in Conjunction with a Lawsuit: If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to</p>	

**LEG17-02****Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>all files and records relating to the plaintiff. Such files and records may be disclosed to the court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information.</p> <p>CHILD AND FAMILY TEAMS</p> <p>We also recommend that WIC 827 be revised to permit the sharing of information with members of a child and family team, as defined by WIC 16501(a)(4) as part of the State's Continuum of Care Reform. WIC 16501(a)(4) became effective January 1, 2017.</p>	
3.	Orange County Bar Association by Michael L. Baroni President Newport Beach, CA	A	No suggested changes. OCBA will merely add that this modification to Welfare and Institutions Code section 827 is long overdue and critical to efficient appellate practice in appeals taken by relatives and de facto parents who might otherwise be placed in the position of having limited access to appellate relief. That noted, rule 8.409(e) – dealing with the transmission of the appellate record in dependency appeals – may benefit from a minor modification noting that record transmission is subject to the appellants' right to such information under section 827.	The committee notes the commentator's support for the proposal.

**LEG17-02****Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
4.	San Diego Office of County Counsel Juvenile Dependency Division by Candice H. Cohen Senior Deputy County Counsel San Diego, CA	AM	<p>My concerns with amendments to section 827, is that it allows for a greater dissemination of confidential records that were not previously provided pursuant to the original in camera review. There is no procedure to notice the parties and the subject of those records that additional information is being inspected and copied. There is no procedure to sufficiently identify what items are now being made accessible or being requested. The proposed changes do not allow for a hearing if there is opposition to portions of the juvenile case files that have not previously been ordered in a previous 827 hearing.</p> <p>There is a greater fear that records could be produced that an individual wanted kept private and are not relevant to the matter at hand. When the appellant or petitioner is self-represented, the misuse of such materials is more likely, whether out of ignorance or maliciousness.</p>	<p>The committee acknowledges the concern about the absence of requirement for notice and opportunity to object to the release of records to which an individual did not previously have access in the juvenile court proceedings. Based on this and the comments of Superior Court of California, County of San Diego, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of paragraph 3 apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal</p> <p>The committee also acknowledges the concerns about further dissemination of confidential records by those who receive them under this proposed amendment. The proposed amendments specifies that the existing requirements of section 827 prohibiting the dissemination of material from a juvenile case file by anyone receiving that information apply to individuals receiving information under this proposed amendment. However, as with any other release of information from a juvenile case file, this provision cannot guarantee compliance by a recipient</p>
5.	Superior Court of Los Angeles by: Not stated Los Angeles, CA	A	<i>Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?</i>	The committee notes the commentator's support for the proposal; no response required.

**LEG17-02**

**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>This proposal will achieve its stated purpose, of increasing efficiencies and access to justice for the appellants, while reducing work for the court. In treating these appellants as entitled parties, they will be able to submit a Declaration in Support of Access for the appellate transcript, instead of a form JV-570. The form JV-570 necessitates a statutory 21-day notice period to be observed, which requires court clerks to send notices and collect objections from the noticed parties. Reducing the amount of filed form JV-570s will reduce the amount of notices sent by court clerks. Moreover, without having to comply with the statutory notice period, the court will be able to provide the appellant their records faster, which will allow for swifter disposition of the given appeal and permanence for the related child(ren).</p> <p><i>What would the implementation requirements be for courts - for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Any implementation requirements for the court are minimal, if any, because this proposal essentially codifies the court's current procedure for designating the appellate transcript for these types of appellants.</p>	<p>The committee appreciates the commentator's input on these implementation questions</p>



**LEG17-02****Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
6.	Superior Court of California County of San Diego by Mike Roddy Executive Officer San Diego, CA 92101	A	<p>Overall, this is a good suggestion that will increase efficiency; however, it might be hard to know what records the individual was previously granted access to; they may not be marked or separated out. Maybe "inspect and copy any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed" would be more clear. It should also specifically state that any information that is privileged or confidential pursuant to any other state law or federal law or regulation must be redacted or removed.</p> <p>The proposed amendment seems to grant access to anyone who files an appeal or writ, even if it turns out that person does not have standing.</p>	<p>The committee notes the commentator's support for the proposal.</p> <p>The committee acknowledges that some additional tracking may be required to identify documents to which an individual was provided access in the juvenile court proceedings. When the committee was developing the proposal, it considered a variety of different options for identifying the records to which an individual appellant, petitioner, or respondent should have access without a court order. The committee considered language similar to that suggested by the commentator, but concerns were raised that even some documents or portions thereof that are directly related to the hearing might not have been made available to all participants in a hearing. To try to make it easier to quickly identify at most of the relevant documents, the committee has modified the proposal to indicate that, without a court order, a individual can have access to all documents filed by or served on that individual in the juvenile court proceedings.</p> <p>The commentator is correct that the proposal is not drafted to make access to records without a court order dependent upon whether the person has standing to file an appeal or writ. Making access dependent on standing would potentially create difficulties and delay in preparation of the appellate record since standing must be determined by the Court of Appeal. Instead, this amendment focuses on clarifying access to those</p>

**LEG17-02**

**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	Commentator	Position	Comment	Committee Response
			<p>There are also concerns by some in our court about the highlighted language in the proposed amendment.</p> <p>“(6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in the juvenile case file to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records, and, on order of either the judge of the juvenile court or the Court of Appeal, such individual may inspect and copy any other record or portion thereof in the juvenile case file or appellate record. ...”</p> <p>Is it possible there might be documents included in the record on appeal that such an individual should <u>not</u> have access to? Often, before documents are released pursuant to a WIC 827 petition, court staff redacts information which must remain confidential under WIC 827(a)(3)(A), i.e., information that is privileged or confidential under some other state or federal</p>	<p>records in the juvenile court file to that the individual had access to during the juvenile court proceedings. The committee believes that this approach protects the confidentiality of the proceedings by not widening existing access.</p> <p>The committee has modified the proposal as suggested by the commentator.</p>

**LEG17-02**

**Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>law. An example would be the name of the reporting party, which must remain confidential under PC 11167(d).</p> <p>One of our senior clerks, who has extensive experience in preparing records for writs and appeals, confirmed that names of reporting parties are <u>not</u> redacted when the record is prepared; furthermore, the record often contains other documents that should not be disclosed to parties (e.g., psychological evaluations). If a non-party appellant or respondent is given access to the entire record on appeal, s/he will likely obtain information that should not be released to him/her.</p> <p>A possible solution: Change the language from “including the record on appeal that contains such records” to “including such records that are made a part of the record on appeal.”</p> <p>With this language, the appellant or respondent would not receive the <u>entire</u> record on appeal – which could include information that is confidential or privileged under other state and federal laws. Rather, s/he would receive only the documents to which s/he was previously granted access by the court.</p> <p>Finally, should the notice and opportunity to file an objection requirements when the person seeks access to the entire file be spelled out here, or will that be left to the amended rule of court?</p>	<p>Based on this and the comments of the San Diego Office of County Counsel Juvenile Dependency Division, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of paragraph</p>

**LEG17-02****Title of proposal (Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
				3 apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal

# Judicial Council of California

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## INVITATION TO COMMENT LEG17-02

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Title	Action Requested
Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Welf. & Inst. Code, §827	Proposed Effective Date January 1, 2019
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Heather Anderson, 415-865-7691 <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>

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### Executive Summary and Origin

This proposal would amend the statute that specifies who may access and copy records in a juvenile case file to clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The proposal would also clarify that either the juvenile court or the Court of Appeal may permit such individuals to access and copy additional records in the juvenile case file. This proposal is based on a suggestion from the executive officer of a Court of Appeal.

### Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827. This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may inspect and receive copies of a juvenile court case file.<sup>1</sup> These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

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<sup>1</sup> You can access the full text of this section at  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=827.&lawCode=WIC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC).

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

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

Currently, however, some individuals who have been authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation may occur, for example, when the appellant is a family member or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition or 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. In these cases, the juvenile courts and Courts of Appeal are following various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding may receive. Doing so takes time and resources for the persons who are seeking review or who are respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit.

### **The Proposal**

The Appellate Advisory Committee is proposing an amendment to section 827 to provide that persons not otherwise entitled to access the juvenile case file under 827 who file a notice of appeal or petition challenging a juvenile court order or who are a respondent in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The amendment would also provide that an order from either the juvenile court or the Court of Appeal is required for such individuals to access any other item in the juvenile court record.

The committee believes that this proposed amendment appropriately balances the policy considerations favoring confidentiality of juvenile case files against these individuals' need for access to certain records for purposes of effectuating their right to participate in appellate proceedings in these cases. Since the individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections for the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts. The amendment would also clarify the procedure for

providing the individuals with access to any additional records from the juvenile case file in these circumstances.

Please note, to help commentators to see this proposed amendment in context, the full text of section 827, with the proposed amendment incorporated, is attached.

### **Alternatives Considered**

The committee considered several options for possible changes to the California Rules of Court to address this issue, including:

- Specifically requiring appellants to file a petition in the juvenile court requesting access to the juvenile case file and allowing the dismissal of the appeal if they fail to do so;
- Requiring the Court of Appeal to determine, on a case-by-case basis, what items from the juvenile case file to include in the record on appeal in these cases and who can access that record on appeal; and
- Setting the contents of the record on appeal in these cases by rule.

The committee ultimately concluded, however, that none of these approaches, by themselves, was sufficient to address the issue.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee believes that this proposal will reduce burdens on litigants, trial courts, and the Courts of Appeal associated with preparing the record on appeal in these cases.

## Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?
- Does the proposal appropriately identify the individuals who should have access to certain items from the juvenile case file without court order? Should other individuals be included? Is there a better way to identify who should have this access?
- Does the proposal appropriately identify the items from the juvenile case file that should be accessible without court order? Should other items be included?

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

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

### Attachments and Links

1. Proposed amendments to Welfare and Institutions Code section 827, at pages 5–10



Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

1  
2 **§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality**  
3 **provisions.**  
4

- 5 (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:  
6  
7 (A) Court personnel.  
8  
9 (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute  
10 criminal or juvenile cases under state law.  
11  
12 (C) The minor who is the subject of the proceeding.  
13  
14 (D) The minor's parents or guardian.  
15  
16 (E) The attorneys for the parties, judges, referees, other hearing officers, probation  
17 officers, and law enforcement officers who are actively participating in criminal  
18 or juvenile proceedings involving the minor.  
19  
20 (F) The county counsel, city attorney, or any other attorney representing the  
21 petitioning agency in a dependency action.  
22  
23 (G) The superintendent or designee of the school district where the minor is enrolled  
24 or attending school.  
25  
26 (H) Members of the child protective agencies as defined in Section 11165.9 of the  
27 Penal Code.  
28  
29 (I) The State Department of Social Services, to carry out its duties pursuant to  
30 Division 9 (commencing with Section 10000), and Part 5 (commencing with  
31 Section 7900) of Division 12, of the Family Code to oversee and monitor county  
32 child welfare agencies, children in foster care or receiving foster care assistance,  
33 and out-of-state placements, Section 10850.4, and paragraph (2).  
34  
35 (J) Authorized legal staff or special investigators who are peace officers who are  
36 employed by, or who are authorized representatives of, the State Department of  
37 Social Services, as necessary to the performance of their duties to inspect, license,  
38 and investigate community care facilities, and to ensure that the standards of care  
39 and services provided in those facilities are adequate and appropriate and to  
40 ascertain compliance with the rules and regulations to which the facilities are  
41 subject. The confidential information shall remain confidential except for  
42 purposes of inspection, licensing, or investigation pursuant to Chapter 3  
43 (commencing with Section 1500) and Chapter 3.4 (commencing with Section  
44 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or  
45 administrative proceeding in relation thereto. The confidential information may be  
46 used by the State Department of Social Services in a criminal, civil, or

1 administrative proceeding. The confidential information shall be available only to  
2 the judge or hearing officer and to the parties to the case. Names that are  
3 confidential shall be listed in attachments separate to the general pleadings. The  
4 confidential information shall be sealed after the conclusion of the criminal, civil,  
5 or administrative hearings, and may not subsequently be released except in  
6 accordance with this subdivision. If the confidential information does not result in  
7 a criminal, civil, or administrative proceeding, it shall be sealed after the State  
8 Department of Social Services decides that no further action will be taken in the  
9 matter of suspected licensing violations. Except as otherwise provided in this  
10 subdivision, confidential information in the possession of the State Department of  
11 Social Services may not contain the name of the minor.  
12

- 13 (K) Members of children's multidisciplinary teams, persons, or agencies providing  
14 treatment or supervision of the minor.  
15
- 16 (L) A judge, commissioner, or other hearing officer assigned to a family law case  
17 with issues concerning custody or visitation, or both, involving the minor, and the  
18 following persons, if actively participating in the family law case: a family court  
19 mediator assigned to a case involving the minor pursuant to Article 1  
20 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the  
21 Family Code, a court-appointed evaluator or a person conducting a court-  
22 connected child custody evaluation, investigation, or assessment pursuant to  
23 Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in  
24 the family law case pursuant to Section 3150 of the Family Code. Prior to  
25 allowing counsel appointed for the minor in the family law case to inspect the file,  
26 the court clerk may require counsel to provide a certified copy of the court order  
27 appointing him or her as the minor's counsel.  
28
- 29 (M) When acting within the scope of investigative duties of an active case, a  
30 statutorily authorized or court-appointed investigator who is conducting an  
31 investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who  
32 is actively participating in a guardianship case involving a minor pursuant to Part  
33 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting  
34 within the scope of his or her duties in that case.  
35
- 36 (N) A local child support agency for the purpose of establishing paternity and  
37 establishing and enforcing child support orders.  
38
- 39 (O) Juvenile justice commissions as established under Section 225. The  
40 confidentiality provisions of Section 10850 shall apply to a juvenile justice  
41 commission and its members.  
42
- 43 (P) Any other person who may be designated by court order of the judge of the  
44 juvenile court upon filing a petition.  
45

- 1 (2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3),  
2 juvenile case files, except those relating to matters within the jurisdiction of the  
3 court pursuant to Section 601 or 602, that pertain to a deceased child who was  
4 within the jurisdiction of the juvenile court pursuant to Section 300, shall be  
5 released to the public pursuant to an order by the juvenile court after a petition has  
6 been filed and interested parties have been afforded an opportunity to file an  
7 objection. Any information relating to another child or which could identify another  
8 child, except for information about the deceased, shall be redacted from the juvenile  
9 case file prior to release, unless a specific order is made by the juvenile court to the  
10 contrary. Except as provided in this paragraph, the presiding judge of the juvenile  
11 court may issue an order prohibiting or limiting access to the juvenile case file, or  
12 any portion thereof, of a deceased child only upon a showing by a preponderance of  
13 evidence that release of the juvenile case file or any portion thereof is detrimental to  
14 the safety, protection, or physical or emotional well-being of another child who is  
15 directly or indirectly connected to the juvenile case that is the subject of the petition.  
16
- 17 (B) This paragraph represents a presumption in favor of the release of documents when  
18 a child is deceased unless the statutory reasons for confidentiality are shown to  
19 exist.  
20
- 21 (C) If a child whose records are sought has died, and documents are sought pursuant to  
22 this paragraph, no weighing or balancing of the interests of those other than a child  
23 is permitted.  
24
- 25 (D) A petition filed under this paragraph shall be served on interested parties by the  
26 petitioner, if the petitioner is in possession of their identity and address, and on the  
27 custodian of records. Upon receiving a petition, the custodian of records shall serve  
28 a copy of the request upon all interested parties that have not been served by the  
29 petitioner or on the interested parties served by the petitioner if the custodian of  
30 records possesses information, such as a more recent address, indicating that the  
31 service by the petitioner may have been ineffective.  
32
- 33 (E) The custodian of records shall serve the petition within 10 calendar days of receipt.  
34 If any interested party, including the custodian of records, objects to the petition,  
35 the party shall file and serve the objection on the petitioning party no later than 15  
36 calendar days after service of the petition.  
37
- 38 (F) The petitioning party shall have 10 calendar days to file any reply. The juvenile  
39 court shall set the matter for hearing no more than 60 calendar days from the date  
40 the petition is served on the custodian of records. The court shall render its  
41 decision within 30 days of the hearing. The matter shall be decided solely upon the  
42 basis of the petition and supporting exhibits and declarations, if any, the objection  
43 and any supporting exhibits or declarations, if any, and the reply and any  
44 supporting declarations or exhibits thereto, and argument at hearing. The court may  
45 solely upon its own motion order the appearance of witnesses. If no objection is  
46 filed to the petition, the court shall review the petition and issue its decision within

1 10 calendar days of the final day for filing the objection. Any order of the court  
2 shall be immediately reviewable by petition to the appellate court for the issuance  
3 of an extraordinary writ.  
4

5 (3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile  
6 court pursuant to Section 300 shall be limited as follows:  
7

8 (A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant  
9 to any other state law or federal law or regulation, the requirements of that state  
10 law or federal law or regulation prohibiting or limiting release of the juvenile case  
11 file or any portions thereof shall prevail. Unless a person is listed in subparagraphs  
12 (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state  
13 law or federal law or regulation without a court order, all those seeking access,  
14 pursuant to other authorization, to portions of, or information relating to the  
15 contents of, juvenile case files protected under another state law or federal law or  
16 regulation, shall petition the juvenile court. The juvenile court may only release the  
17 portion of, or information relating to the contents of, juvenile case files protected  
18 by another state law or federal law or regulation if disclosure is not detrimental to  
19 the safety, protection, or physical or emotional well-being of a child who is directly  
20 or indirectly connected to the juvenile case that is the subject of the petition. This  
21 paragraph shall not be construed to limit the ability of the juvenile court to carry  
22 out its duties in conducting juvenile court proceedings.  
23

24 (B) Prior to the release of the juvenile case file or any portion thereof, the court shall  
25 afford due process, including a notice of and an opportunity to file an objection to  
26 the release of the record or report to all interested parties.  
27

28 (4) A juvenile case file, any portion thereof, and information relating to the content of the  
29 juvenile case file, may not be disseminated by the receiving agencies to any persons  
30 or agencies, other than those persons or agencies authorized to receive documents  
31 pursuant to this section. Further, a juvenile case file, any portion thereof, and  
32 information relating to the content of the juvenile case file, may not be made as an  
33 attachment to any other documents without the prior approval of the presiding judge  
34 of the juvenile court, unless it is used in connection with and in the course of a  
35 criminal investigation or a proceeding brought to declare a person a dependent child  
36 or ward of the juvenile court.  
37

38 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of  
39 paragraph (1) may also receive copies of the case file. In these circumstances, the  
40 requirements of paragraph (4) shall continue to apply to the information received.  
41

42 (6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition  
43 challenging a juvenile court order or who is a respondent in such an appeal or writ  
44 proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy  
45 any records in the juvenile case file to which the individual was previously granted  
46 access by the juvenile court, including the record on appeal that contains such

1 records, and, on order of either the judge of the juvenile court or the Court of  
2 Appeal, such individual may inspect and copy any other record or portion thereof in  
3 the juvenile case file or appellate record. The requirements of paragraph (4) shall  
4 continue to apply to documents received under this paragraph. The Judicial Council  
5 shall adopt rules to implement this paragraph.  
6

7 (b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should  
8 be confidential, it is the intent of the Legislature in enacting this subdivision to provide for  
9 a limited exception to juvenile court record confidentiality to promote more effective  
10 communication among juvenile courts, family courts, law enforcement agencies, and  
11 schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the  
12 potential for drug use, violence, other forms of delinquency, and child abuse.  
13

14 (2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public  
15 school, kindergarten to grade 12, inclusive, has been found by a court of competent  
16 jurisdiction to have committed any felony or any misdemeanor involving curfew,  
17 gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense  
18 listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or  
19 graffiti shall be provided by the court, within seven days, to the superintendent of  
20 the school district of attendance. Written notice shall include only the offense found  
21 to have been committed by the minor and the disposition of the minor's case. This  
22 notice shall be expeditiously transmitted by the district superintendent to the  
23 principal at the school of attendance. The principal shall expeditiously disseminate  
24 the information to those counselors directly supervising or reporting on the behavior  
25 or progress of the minor. In addition, the principal shall disseminate the information  
26 to any teacher or administrator directly supervising or reporting on the behavior or  
27 progress of the minor whom the principal believes needs the information to work  
28 with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to  
29 protect other persons from needless vulnerability.  
30

31 (B) Any information received by a teacher, counselor, or administrator under this  
32 subdivision shall be received in confidence for the limited purpose of rehabilitating  
33 the minor and protecting students and staff, and shall not be further disseminated  
34 by the teacher, counselor, or administrator, except insofar as communication with  
35 the juvenile, his or her parents or guardians, law enforcement personnel, and the  
36 juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or  
37 to protect students and staff.  
38

39 (C) An intentional violation of the confidentiality provisions of this paragraph is a  
40 misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).  
41

42 (3) If a minor is removed from public school as a result of the court's finding described in  
43 subdivision (b), the superintendent shall maintain the information in a confidential  
44 file and shall defer transmittal of the information received from the court until the  
45 minor is returned to public school. If the minor is returned to a school district other  
46 than the one from which the minor came, the parole or probation officer having

1 jurisdiction over the minor shall so notify the superintendent of the last district of  
2 attendance, who shall transmit the notice received from the court to the  
3 superintendent of the new district of attendance.  
4

5 (c) Each probation report filed with the court concerning a minor whose record is subject to  
6 dissemination pursuant to subdivision (b) shall include on the face sheet the school at  
7 which the minor is currently enrolled. The county superintendent shall provide the court  
8 with a listing of all of the schools within each school district, within the county, along with  
9 the name and mailing address of each district superintendent.  
10

11 (d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the  
12 instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any  
13 information received from the court shall be kept in a separate confidential file at the  
14 school of attendance and shall be transferred to the minor's subsequent schools of  
15 attendance and maintained until the minor graduates from high school, is released from  
16 juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After  
17 that time the confidential record shall be destroyed. At any time after the date by which a  
18 record required to be destroyed by this section should have been destroyed, the minor or  
19 his or her parent or guardian shall have the right to make a written request to the principal  
20 of the school that the minor's school records be reviewed to ensure that the record has been  
21 destroyed. Upon completion of any requested review and no later than 30 days after the  
22 request for the review was received, the principal or his or her designee shall respond in  
23 writing to the written request and either shall confirm that the record has been destroyed  
24 or, if the record has not been destroyed, shall explain why destruction has not yet  
25 occurred.  
26

27 (2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any  
28 person who transmits or fails to transmit any notice or information required under  
29 subdivision (b).  
30

31 (e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile  
32 court proceeding, reports of the probation officer, and all other documents filed in that  
33 case or made available to the probation officer in making his or her report, or to the judge,  
34 referee, or other hearing officer, and thereafter retained by the probation officer, judge,  
35 referee, or other hearing officer.  
36

37 (f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of  
38 paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian  
39 tribe, reservation, or tribal court when the case file involves a child who is a member of, or  
40 who is eligible for membership in, that tribe.  
41

42 (g) A case file that is covered by, or included in, an order of the court sealing a record  
43 pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or  
44 786.  
45  
46