JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
August 28, 2017

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Christy Simons, Attorney, Legal Services

Subject
Review of new and pending suggestions for changes to appellate rules and forms

Action Requested
Please read before August 30 rules subcommittee conference call

Deadline
August 30, 2017

Contact
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Introduction

As we indicated in the e-mail to you about setting the subcommittee meeting, the main purpose of this meeting is to assist the full committee in preparing its proposed annual agenda for the 2017-2018 committee year (November 2017-October 2018). The subcommittee does this by reviewing suggestions received by the committee for changes to the appellate rules and forms (other than those reviewed by the Joint Appellate Technology Subcommittee and the Appellate Division Subcommittee) and making recommendations to the committee about which of those suggestions should be considered/potentially worked on by the committee this year and their prioritization. The full committee will consider these recommendations at its September 11 meeting. The proposed annual agenda for the committee will then be submitted to the Judicial Council's Rules and Project Committee (RUPRO) – the internal Judicial Council committee with oversight responsibility for the Appellate Advisory Committee – in late October for approval of the items the committee may work on for the 2017-2018 committee year.

Suggestions and Prioritization

Attached for your review are tables of items for the subcommittee to consider recommending for possible inclusion in the proposed annual agenda, including:

- Suggestions that remain pending from the committee's 2016-2017 annual agenda;
- New suggestions received by the committee to date this year; and
- Suggestions that the committee deferred last year (please note, as explained below, the subcommittee will not be discussing these suggestions unless a member requests that a particular suggestion be discussed).

If you have additional suggestions for committee projects, please send those to the subcommittee chair, Mr. Kolkey, and to me before the subcommittee meeting and we will distribute them to the subcommittee members.

For the past several years, the committee's rule and form projects have been limited in light of the economic crisis in the courts. These limits reflect concerns both about the economic impact on courts of any proposed modification of a rule or form and about the economic burden on the courts of reviewing and responding to proposals for modifications to rules and forms. In light of these concerns, RUPRO has established the following criteria for advisory committees to consider in determining whether a rule or form proposal is a high priority – priority 1 – and should be developed within the same committee year (for this year, these would be rules and form changes proposed for circulation in spring 2018 to be effective January 1, 2019):

- The proposal is urgently needed to conform to the law;
- The proposal is urgently needed to respond to a recent change in the law;
- A statute or council decision requires the adoption or amendment of rules or forms by a specified date;
- The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue;
- The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or
- The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.

Committees can ask to work on other rule and form proposals within their subject matter areas that do not meet the criteria for priority 1 projects. The criteria for such projects – priority 2 projects – are:

- The proposal is useful, but not necessary, to implement statutory changes; or

- The proposal is helpful in otherwise advancing Judicial Council goals and objectives.

Proposals with priority level 2 are generally considered for circulation the second year after they are approved for inclusion on a committee's annual agenda – so any new priority 2 proposals included on this year's annual agenda would be developed for potential circulation in the spring of 2019 to be effective January 1, 2020. RUPRO has cautioned that committees should expect that new priority 2 proposals may not be approved for the current year due to the ongoing fiscal situation affecting the judicial branch.

You will see in reviewing the tables of suggestions that remain pending from the committee's 2016-2017 annual agenda that there are three pending priority 2 proposals that RUPRO previously approved for inclusion on the committee's annual agenda. RUPRO has indicated that it will review last year's priority level 2 projects on an item-by-item basis and that it would be helpful to know where these projects are in development and what resources have been expended thus far. All of the pending priority 2 projects had January 1, 2019 proposed completion dates and the committee has not yet begun work on them.

In applying RUPRO's criteria for prioritizing rule and form suggestions, it is often important to consider the following:

- Is the problem/issue identified in a suggestion something that arises frequently or infrequently?
- If the proponent suggests that there would be savings in time or money for the courts, what is the likely amount of such savings?
- Are there likely to be costs for the trial courts, appellate courts, or litigants associated with implementing a suggestion?

Often, additional information about these issues helps the subcommittee/committee assess the need for and priority of a particular suggestion. To this end, ***you are encouraged to seek information about these issues from those with whom you work that may have experience in the areas raised in the suggestions***.

In addition to RUPRO's prioritization criteria, there are several other things subcommittee members may want to keep in mind in reviewing/prioritizing these suggestions:

- There are more suggestions for rule and form changes than the committee will be able to work on during the upcoming year. For the proposed annual agenda to realistically represent what projects the committee is actually able to undertake this coming year, the subcommittees and the full committee will need to prioritize among those suggestions that are identified as good ideas, but not urgent. Last year, the committee worked on 12 projects, some of which involved several different suggestions: 5 priority 1 projects (including 1

legislative item) and an additional 7 priority 2 projects. Subcommittee members should assume that during the upcoming year, the committee will be able to take on around that same number of projects, including projects being considered by the Joint Appellate Technology Subcommittee and the Appellate Division Subcommittee.

- Because the combined list of new suggestions and those pending from last year's annual agenda is quite long, as noted above, the subcommittee will not be reviewing items on the "deferred" list (items on pages 22-38) at this time unless a subcommittee member specifically requests that an item be considered for inclusion in the annual agenda.
- In some cases, there are multiple suggestions relating to the same rule or same topic. These can be combined into a single project for purposes of the annual agenda.
- Inclusion of a project on the annual agenda does not mean that the committee is obligated to pursue the suggested rule or form change. As has happened with items in past years, the committee could determine later in the year not to pursue a particular project on its annual agenda. This would be reported to RUPRO in the advisory committee's subsequent annual agenda update.

Rules Subcommittee Task

The subcommittee's task is to review the suggestions in the attached tables and to recommend to the full committee which of them should be:

- Included in the draft annual agenda as priority 1 proposals (urgent proposals with a proposed January 1, 2019 effective date);
- Included in the draft annual agenda as priority 2 proposal (non-urgent proposals that the committee would like to work on this year or next year);
- Not included in the draft annual agenda, but deferred for possible future consideration;
- Referred to a different subcommittee or another judicial council body; or
- Not pursued at all.

APPELLATE RULE AND FORM SUGGESTIONS – 2017-2018

PENDING ITEMS FROM THE COMMITTEE'S 2016-2017 ANNUAL AGENDA

Priority 1 Items

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
1.	***GENERAL*** *– Rule ? – Privacy protection concerns re appellate opinions*	Recently, members of some other Judicial Council Advisory committees, including the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee, have identified situations when there may be privacy concerns about information included in opinions given the ease with which these opinions are now searchable on the web. Examples include: • Victim names or identifying information; • Witness names or identifying information; • Information that a harasser was restrained from revealing. There is a very real concern that fear about what information will become widely and easily available on the internet may cause individuals not to seek restraining orders, not to testify, or not to appeal even when an appeal may be warranted. Some options for addressing these concerns that could be explored include: • Rules requiring the use of alternative naming conventions to protect identities, similar to rule 8.401(a) for juvenile cases that require the use of initials; • Reminders/education about not including victim names or unnecessary sensitive information in opinions; • Clarifying the authority/ability of the reporter of decisions to redact victim names or other such information.	Members of the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee	Priority 1(e) – Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public Last year, the committee recommended adoption of a rule urging justices to consider the use of initials to identify certain individuals in appellate opinions. The privacy subcommittee may consider other rule proposals this year.

Priority 2 Items

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
2.	***GENERAL*** *– Rules 8.204 and 8.360 – Length of briefs*	Word Limit for Briefs. The federal system just concluded a lively debate resulting in a decrease for the permitted length of federal appellate briefs. The same considerations that caused this to be proposed at the federal level apply to California's judicial branch – a new normal of daunting caseloads and decreased funding, and the perception in some quarters that lawyers don't need so many	Mr. Kevin Green, committee member	This was on the committee's 2017 annual agenda as a Priority 2 item with a

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		words to make their case on appeal. The New York Times recently ran this article summing up the debate and FRAP amendments effective December 1. http://www.nytimes.com/2016/10/04/business/dealbook/judges-push-brevity-in-briefs-and-get-a-torrent-of-arguments.html?smprod=nytcore-iphone&smid=nytcore-iphone-share To be clear, I am not stating a position on whether California's limits should be changed. I believe the topic warrants the subcommittee's consideration.		January 1, 2019 completion date.
3.	***CIVIL APPEALS*** *– Rule 8.220 – Failure to timely file brief*	Default Period for the AOB and RB. The default (or grace) period under CRC 8.220(a) for the main Court of Appeal briefs should be eliminated. The federal system has no analog and, to my knowledge, no other state does either. There are at least three good reasons to do away with the default period for Court of Appeal briefs. First, the public fisc favors abolition. Since 2008 when tax revenue plummeted, several rule amendments have eliminated default notices and other mailings to save the judiciary's precious funds. The 15-day default notice for the AOB and RB is another in this line. Court employees should not be burdened with generating notices for what amounts to a built-in extension of time, available to counsel by doing nothing. This draws unnecessarily on tax dollars, both in employee labor and tangible resources, paper and postage. Second, the default period creates uncertainty on scheduling. A party invoking this additional time does not know its true deadline until the default notice issues. This in turn creates uncertainty for any party who must plan a response to that brief, whether respondent or reply. The appellate districts vary widely on when Rule 8.220(a) notices go out. I have seen anywhere from three days to nearly a month. The default period interferes with a reliable briefing schedule on which all parties may rely. There is no 15-day default notice for briefs in the California Supreme Court. Like every other judicial system of which I am aware, in the Court of Appeal, the deadline should be the deadline. Third, in light of generous extensions that already exist, the default period is unnecessary. Parties may stipulate up to 60 additional days on each brief, no leave of court required (this practice, generous to litigants, is also exceptional). If a party needs more time beyond 60 additional days, it may apply for an extension based on good cause.	Mr. Kevin Green, committee member	This was on the committee's 2017 annual agenda as a Priority 2 item with a January 1, 2019 completion date.

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		To be sure, California lawyers are accustomed to the default period, but we were also used to the citation rules until the Supreme Court recently changed them to be more consistent with national practice. By my lights, the default period is in the same vein. It should not endure out of inertia in the face of sounds reasons to eliminate it. In time, I think most would view this as an act of grace.		
4.	***JUVENILE CASES*** *– Rule 5.590 – Advisement of appellate rights*	**DRAFT OUTLINE OF PROPOSAL TO AMEND RULE 5.590(A)** **1) Text of proposed amendment to rule 5.590(a): Amend subdivision to read as follows [only amendment is to *delete* the words, "if present," as in bold below]:** **Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases** . **(a) Advisement of right to appeal** If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing**,** the child, if of sufficient age, and **>,~~[if present]~~,<** the parent or guardian of: . (1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal; . (2) The necessary steps and time for taking an appeal; . (3) The right of an indigent appellant to have counsel appointed by the reviewing court; and . (4) The right of an indigent appellant to be provided with a free copy of the transcript. **2) A description of the problem to be addressed**: The problem is the current rule 5.590(a), read literally, provides parents who are not present at hearings are not entitled to notice of appeal rights. The rule applies	Rosemary Bishop	This was on the committee's 2017 annual agenda as a Priority 2 item with a January 1, 2019 completion date.

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		both to delinquency cases (Welf. and Inst. Code §§ 601,602 et seq.), and dependency cases (Welf. and Inst. Code § 300 et seq.). In delinquency cases, parents have some appellate rights, at least when their own interests are affected. (*In re Michael S.* (2007) 147 Cal.App.4th 1443 and *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 [upholding parent's standing to appeal money judgment against parent for delinquent acts of child]; Cf. *In re Almalik S.* (1998) 68 Cal.App.4th 851 [child not removed from home; mother had no standing to appeal], reasoning rejected in *Michael S., supra,* and *In re Q.N.* (2012) 211 Cal.App.4th 896, 904-905.) Even if they don't have a right to appeal a particular order, they may have an interest in knowing whether their delinquent child has a right to appeal an order. In dependency cases, parents are primary parties and have appeal rights at all stages. (Welf. & Inst. Code §395.) Rule 5.590(a), is not based on any statutory provision or case law. There is no authority, other than this rule, for denying notice of appeal rights to parents who are not present at their dependency hearing. **a) The "if present" limitation on notice is confusing and has been interpreted inconsistently.** Rule 5.590(a) is confusing in the dependency context, and has been interpreted inconsistently. One treatise has interpreted rule 5.590(a), as providing "the court must advise *all parties*, including children who are present and old enough to understand, of [appeal rights]." [Emphasis added.] (Cal. Juvenile Dependency Practice (Cont. Ed. Bar 3rd Ed. 2015) § 10.6 pp. 830-831.) Another treatise simply repeats the language of the rule without analysis. (*See,* 10 Witkin Parent and Child (Supp. 2015) § 700 pp. 614-615.) A third treatise notes the normal rule for waiver of issues on appeal may not be followed where the parent was not provided with "*notice of the right of appeal* or the right to file [a writ]." [Emphasis added.] (Seiser and Kumli 1-2 California Juvenile Courts Practice and Procedure (Matthew Bender 2015) § 2.190.) A recent published decision by the Court of Appeal follows the literal language of rule 5.590(a), and holds parents in dependency cases are not entitled to notice of appeal rights if they are not present at the hearing. (*In re Albert A.* (2016) 243 Cal.App.4th 1220.)		

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		Even the judicial council has characterized rule 5.590 as providing for advisement of appeal rights to all parents. Rule 5.542, enacted in 1991 and amended in 2007, in the context of allowing rehearing requests after a case is heard by a referee, provides: (f) *Advisement of appeal rights—rule 5.590* If the judge of the juvenile court denies an application for rehearing...the judge *must advise, either orally or in writing, the child and the parent or guardian* of all of the following [appeal rights]. (Rule 5.542(f), emphasis added.) This rule references rule 5.590, but does not contain the "if present" limitation on notice that is in rule 5.590(a). Rule 5.590(c), added in January 2016, requires the trial court to provide appellate rights to parties when the court grants a petition to transfer a dependency case to tribal court. The court must advise the parties orally and in writing of the need to appeal before the transfer and obtain a stay. This new provision does not limit such notice to parents who are present at the hearing. **b) Denying notice of appellate rights to parents who are not present at the hearing is inconsistent with the dependency system and public policy.** When a statute grants the right to appeal a decision that affects a fundamental interest [in dependency cases, the right to parent one's child], public policy should be in favor of advising the party of that right. Many parents in the dependency system have limited education and less than average access to legal services or to information about them through such means as the Internet. It is reasonable to shift the burden to the state, which is acting to limit the party's rights, to explain the proceedings and the party's basic remedies. It is true parents, even if not present at a hearing, are generally represented by counsel. Dependency counsel have notoriously unmanageable caseloads and often fewer resources than the court. It is risky to put the sole burden for notification on counsel when a simple form notice could be sent directly to the party. The parent's non-presence at the hearing does not justify withholding notice of appeal rights. Parents who do not appear do not necessarily lack concern for their		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		children or the proceedings. Many other factors—illness, employment, other family obligations, lack of transportation or child care, disruptions in living arrangements, etc.--may explain an absence. Yet the requirement a parent be present to receive notice of basic appellate rights, effectively punishes parents who are not present, without regard to their culpability. Individualized judgments as to parents' culpability should be made by trial courts, in their dispositions on the merits. Rule-makers should not risk distorting the decision-making process by selectively withholding appeal information from certain parties. A decision made at a hearing where the parent is not present, is equally likely to contain errors that need to be remedied on appeal. Absent statutory authority, denial of notice of appellate rights to non-present parents is inconsistent with the statutory purpose of allowing appeals at key stages of dependency proceedings. (Welf. & Inst. Code § 395.) "Notice of all hearings and rights" has been described as a key safeguard for parents in the dependency system. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308.) **3) The proposed solution and alternative solutions**: The proposed solution is to amend the current rule to provide for notice of the right to appeal post-jurisdiction orders, to parents and children of sufficient age, without regard to whether the parents are present at the hearing. This solution is set forth at #1 above: eliminate the clause, "if present," from rule 5.590(a). It is consistent with rule 5.590(b), which governs writ rights and provides for notice to "all parties," as well as to the child's parent or adult relative if present. One alternative solution would be, as suggested by a previous comment in 2010 (see #8 below), to have separate rules or subdivisions governing dependency (§ 300) and delinquency (§§ 601, 602) appeal advisements. The Judicial Council has already acknowledged parents in these two types of proceedings have different appeal rights. (Judicial Council comments in history of 2010 amendments to rule 5.590.) However, rule 5.590 (a)(1) has already been amended to clarify the court is to provide notice only "if there is a right to appeal." Under the current rule, the court may provide notice as applicable to the type of proceeding. It may be unnecessary and more cumbersome to create separate rules. **4) Any likely implementation problems:**		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		Implementation should not be complex. Trial courts are already mailing notice to parents and other parties of writ rights pursuant to rule 5.590(b). The same procedures could be used for notice of appeal rights. In fact, San Diego County uses a local court form that already includes both writ rights and appeal rights. (Form SDSC JUV-026, attached.) This form could be revised for clarity and used by other Counties to implement the change. **5) Any need for urgent consideration**: None, other than the recent published decision in *In re Albert A., supra,* 243 Cal.App.4th 1220, may be leading trial courts to forego notice of appeal rights to parents who are not present at post-jurisdiction hearings. **6) Known proponents and opponents:** Unknown. **7) Any known fiscal impact:** The only cost should be clerical time and postage in sending written notice of appeal rights to parties after jurisdiction hearings. Some counties may already do this, by sending a minute order and appeal rights notice to parties. (See Form SDSC JUV-026, attached.) **8) Any previous action taken by the Judicial Council or an advisory committee:** Unknown. In 2010, in the context of making other amendments to rule 5.590, the Council received one comment at least partially relevant to this issue: One commentator from a district appellate project suggested that rule 5.590 should not require the trial court to tell parents, without qualification, that they always have the right to appeal. They suggested that the rule be redrafted, separating out section 300 and section 601/602 advisements. (Excerpt from history of 2010 amendments.)		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		In response to this comment, the Council did add the language "if there is a right to appeal," to rule 5.590(a) (1). It did not separate section 300 and section 601/602 advisements because that would be a major change that had not been part of the public notice.		

NEW SUGGESTIONS

	Rule/Form	Suggestion/Issue	Source	Other Info
5.	***CIVIL APPEALS**, rule 8.137*	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.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases
6.	***CIVIL APPEALS,** form APP-003*	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. 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.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases

	Rule/Form	Suggestion/Issue	Source	Other Info
7.	***CIVIL APPEALS,*** *Same as #7*	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.	State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases
8.	***CIVIL APPEALS,*** *amend form APP-014*	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.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases
9.	***CIVIL APPEALS****, new form for motions to use a settled statement*	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.	San Diego County Bar Association By Michael Pulos	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases
10.	***Fam/Juv,*** *develop new form for settled statements for family law appeals*	[T]he 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 following items are suggestions to adapt form APP-014 to family law cases instead of using a one-size-fits-all form: 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):" 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):"	State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases AAC responded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with Fam/Juv AC to develop a proposed

	Rule/Form	Suggestion/Issue	Source	Other Info
				form specifically for family law appeals.
11.	***Fam/Juv and Probate/Mental Health****—same as #12*	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 § 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.	Family Violence Appellate Project by Erin Smith San Francisco	Comment on ITC SPR17-01, Settled Statements in Unlimited Civil Cases AAC responded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with Fam/Juv AC to develop a proposed form specifically for family law appeals.
12.	***Criminal appeals,*** *habeas notification procedure*	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 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. 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 as actual confinement, habeas corpus is an appropriate avenue for redress. 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	Curt Harris San Diego, CA	Comment on ITC SPR17-03, Verification of writ Petitions

	Rule/Form	Suggestion/Issue	Source	Other Info
		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. 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 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. 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. 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. Email excerpts, Sacramento County Superior Court website: Sacramento Superior Court case #16HC00347 On Tuesday, February 14, 2017, Chiamparino, Contessa <ChiampC@saccourt.ca.gov> 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 information on the website is obtained from the same system that electronically reports the outcome to the Department of Justice, and is very reliable.		

	Rule/Form	Suggestion/Issue	Source	Other Info
		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. Tess Chiamparino Operations Manager, Criminal Division Sacramento Superior Court 720 9th Street Sacramento, CA 95814 Visit us on the web at www.saccourt.ca.gov On Friday, February 10, 2017, McKee, Leslie <McKeeL@saccourt.ca.gov<mailto:McKeeL@saccourt.ca.gov wrote: Good Morning, This matter was not on the record so there is no transcript to prepare. I'm not familiar with the process of writs so I can't even direct you to the right person. My apologies for not being more helpful. Leslie A. McKee, CSR 12810 Court Reporter, Dept. 13 Sacramento Superior Court x916 874 7263 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. Suzanne M. Slort		

	Rule/Form	Suggestion/Issue	Source	Other Info
		Courtroom Clerk, Department 13 Sacramento Superior Court (916) 874-7786		
13.	***General**, amend rules 8.866, 8.919 to require court reporter to provide appellant with any partially completed transcript*	These rules should include language to require the reporter to provide the appellant with any portion of the transcript prepared and to declare the same when providing the invoice to the clerk for payment.	Superior Court of Los Angeles County	Comment on ITC SPR-06, Payment for Partially Prepared Reporter's Transcripts Committee's response: Rule 8.130, which also addresses the handling of deposits for reporter's transcripts when an appeal is abandoned or dismissed, does not currently include a requirement that the court reporter provide the appellant with the partially completed transcript. The committee's view it would be best to consider whether to add such a requirement to all of the relevant rules at the same time. The proposal that was circulated did not contain any proposed amendments to rule 8.130, so this would be a substantive change to the proposal. This new

	Rule/Form	Suggestion/Issue	Source	Other Info
				requirement would also be a substantive change to the two rules addressed in the proposal. Under rule 10.22, substantive changes to the rules must be circulated for public comment before they are recommended for adoption by the Judicial Council.
14.	***Criminal Appeals,*** *amend rule 10.1028 re time to keep reporter's transcripts and mandate digital copy*	I think the time to keep reporter's transcripts in criminal cases should be changed. As shown below it is 20 years regardless of the sentence. I think that the Reporter's transcripts in Criminal Cases should include a digital copy in addition to the paper copy. I expect it will still be some time before we can mandate a digital copy in all cases. But we should be able to get support for a digital copy NOW for all criminal appeals where the sentence is more than 20 years. Coupling this "mandate" (i.e. rule change) along with a change to how long we must maintain them should help convince the legislature that they should not fight us on this. As in most cases, just a suggestion. Thanks Rule 10.1028 (d) Time to keep other records (1) Except as provided in (2), the clerk may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice. (2) In a criminal case in which the court affirms a judgment of conviction, the clerk must keep the original reporter's transcript or a true and correct electronic copy of the transcript for 20 years after the decision becomes final.	Joseph Lane, Clerk/Executive Officer of the Court, Second Appellate District	Proponent points out that 20 years is not long enough and notes the cost of storing paper. He suggests digital copies of RT.
15.	***Criminal Appeals,*** *amend rule 8.386; procedure for requesting judicial notice in habeas matters*	Rule 8.252 requires the filing of a separate motion and proposed order for judicial notice, i.e., a request cannot be made only in the text of a brief. For criminal appeals, rule 3.366 incorporates rule 8.252 (among others). For habeas petitions, the analog appears to be rule 3.386(e), but literally that applies only after the issuance of an OSC, since the rule is labeled, with emphasis added, "Proceedings if the return is ordered to be filed in the reviewing court." (See also import of rule 8.386(a).) But the wording of the subdivision is, "Rule 8.252(a) governs judicial notice in the reviewing court," which seems to imply that for a habeas proceeding,	Howard C. Cohen, Staff Attorney, Appellate Defenders, Inc., San Diego	

	Rule/Form	Suggestion/Issue	Source	Other Info
		rule 8.252 is applicable – i.e., for the initial petition, for informal responses, etc., prior to the issuance of an OSC. If that is the intent (and it would seem to make sense), then subdivision (e) should be lifted from rule 8.386 and placed elsewhere in Chapter 4 so as to make it applicable to all habeas matters.		
16.	***WRIT PROCEEDINGS**, clarify the verification requirements for public agencies responding to writ petitions*	Here are some of the applicable cases and relevant statutes on the verification requirement for public entities that I pulled from one of our documents for your consideration: Verification of a return to a habeas petition is not necessary, provided the return is being filed by a sworn public officer in his or her official capacity. (Pen. Code, § 1480, subd. (5) ["The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath."].) While returns in habeas cases need not be verified, the law is unsettled whether pleadings filed by a prosecutor either seeking or responding to other types of extraordinary writs need to be verified. (Compare Hall v. Superior Court (2005) 133 Cal.App.4th 908, 914 fn. 9 (2DCA, Div.7) ["[I]n a writ proceeding, as in a civil action, an answer filed by a public entity need not be verified when the answer is used merely to join the issues raised in the petition," relying on Code Civ. Proc., § 446, and citing cases]; Murrieta Valley Unified School District v. County of Riverside (1991) 228 Cal.App.3d 1212, 1223 [4] (4DCA, Div.2) [relying on Code Civ. Proc., § 446 for filing of unverified petition by public entity]; Freemont Union High School District v. Santa Clara County Bd. of Education (1991) 235 Cal.App.3d 1182, 1187 [5] (6DCA) [accord]; Los Angeles County Dept. of Children and Family Services v. Superior Court (Paul C.) (1998) 62 Cal.App.4th 1, 9, fn. 7 (2DCA, Div.4) [same], with Municipal Court v. Superior Court (Sinclair) (1988) 199 Cal.App.3d 19, 25, fn. 1 [5] (1DCA, Div.4) [held that Code Civ. Proc., § 446 authorizing public entities to file unverified pleadings superseded by Code Civ. Proc., §§ 1086, 1089, and Rule 56(a)]; People v. Superior Court (Alvarado) (1989) 207 Cal.App.3d 464, 469-470 [2] (2DCA, Div.3) [same].)	Jeff Laurence, Sr. Assistant Attorney General, Cal. DOJ	Issue regarding whether pleadings filed by a prosecutor/public agencies responding to extraordinary writs (other than habeas petitions) need to be verified. (Verification of a return to a habeas petition is not necessary, provided the return is filed by a sworn public officer in her/his official capacity. (Pen. Code, § 1480, subd. (5).)) Clarify the verification requirements for public agencies responding to writ petitions.
17.	***WRIT PROCEEDINGS**, adopt a new form to provide information on writ proceedings in appellate courts*	I was discussing the above Judicial Council form [APP-150-iNFO] with Colette and was commenting it would be nice if there was a similar form for the appellate courts. Colette advised I may want to forward that comment on to you.	Sandy Green, Supervising Deputy Clerk, 3DCA	Create a form similar to APP-150-INFO (Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases)

	Rule/Form	Suggestion/Issue	Source	Other Info
				for the appellate courts.
18.	***E-filing,*** *amend rule 8.278 re costs to account for electronic filing*	Several lawyers have commented to me regarding whether the cost to prepare an electronic record is a recoverable cost under rule 8.278. Now that they are preparing electronic appendices, and given the complexities in getting the pagination correct in light of the requirement to include an index in every volume, many of the attorneys are paying outside vendors to prepare appendices. It seems to me that such a cost would be recoverable because the rule provides that the "amount the party paid for any portion of the record, whether an original or a copy or both" is recoverable. Looking at rule 8.278 do you think it should be updated to account for electronic filing. For example, are the TrueFiling charges recoverable as "filing fees," or does that only include the appellant's and respondent's fees? Would a substantial charge by an outside vendor to prepare an appendix be a recoverable cost?	Kevin Lane, Clerk/Administrator, 4DCA	
19.	***General,*** *extend time for superior courts to respond to augment orders*	In our staff meeting you mentioned changes to the rules of court. I know you were talking about e-filing, but it occurs to me, I would love to see the time extended for the trial courts to respond to an augment order. Presently we give them 20 days and it's pretty unusual to have an augment in within that time frame. Matter of fact, it's pretty rare that they even get us a request for more time within the 20 day window.	Tori Ellis, Deputy Clerk, 3DCA	Rule 8.155, Augmenting and correcting the record, does not set forth the amount of time for trial courts to comply with an augment order. The only time constraint in the rule applies if a clerk or reporter omits a required or designated portion of the record and a party serves and files a notice in the trial court specifying the omission and asking that it be prepared, certified, and sent to the reviewing court. The clerk or reporter must comply within 10 days. (Rule 8.155(b).)

	Rule/Form	Suggestion/Issue	Source	Other Info
20.	***General,*** *amend rule 8.714 to require notice to court reporter of appeal from an order dismissing or denying a petition to compel arbitration*	In reviewing the new rules while drafting forms, something came to my attention under rule 8.714. Rule 8.713(b)(2) gives a time frame for the due date of the RT, but it does not give a time frame to the trial court clerk to notice the reporter. I thought that perhaps if under rule 8.714(2) it included the notice to the reporter, this would take care of that gap. Then the trial court clerk would have to notice the reporter before sending the notice of appeal packet to the appellate court avoiding delay in RT preparation because the reporter was not promptly noticed. There are many counties where we are currently experiencing a delay in the filing of reporter's transcripts in other appeals, and sometimes the delay is caused by lack of notice. And while I'm adding this, Rule 8.714(1)(A) doesn't include the notice of appeal itself; and Rule 8.714(2)(A) doesn't include the notice of filing of the notice of appeal. I'm not trying to be picky or bothersome, and I realize there was a lot of ground work on this rule. I just thought a possible amendment down the road would avoid delay re the RT filing, and since I noticed that issue, I'm adding the other two items as well.	Sandy Green, Supervising Deputy Clerk, 3DCA	
21.	***General,*** *amend rule 8.254(a) to include deadline for submitting new authorities*	Anytime oral argument approaches, we get last minute letters to the court with new authorities, and many times, the authorities are not new. We usually end up in a last-minute scramble to get these filed and to the panel. If the letter is not in compliance with the rule, we need permission to file the letter, which also presents challenges. Has the committee considered amendments to Rule 8.254(a) to give a time constraint, e.g. 10 days prior to oral argument? Of course, I leave it to your discretion because you may know what your colleagues thoughts are on the matter. I am strictly speaking from the Clerk's Office point of view, but I wanted you to know that this rule presents some challenges for this office.	Collette Bruggman, Assistant Clerk/Administrator, 3DCA	
22.	***General,*** *amend rule 8.500 to add grounds for grant and transfer*	As a longtime California appellate attorney, my interest in court procedure reaches well beyond case-by-case work; ideally, I'd like to do whatever I can to advance appellate justice. Discussing that topic a few years ago, former Supreme Court Justice Cruz Reynoso and I developed a proposal we published last year in the San Francisco Daily Journal. ("A New Ground for Review and Transfer," Aug. 2, 2016.) Taking it a formal step further, I hope the Committee will consider our proposal, as I'll explain below. Background: The proposal seeks to address an overlooked problem: What happens if a Court of Appeal opinion presents no "important question of law" (rule 8.500(b)(1)) but arguably relies on a material factual or legal error, or an unbriefed	Hon. Cruz Reynoso, Associate Justice, Cal. Supreme Court (ret.) and Stephen Greenberg, Attorney, Nevada City	

	Rule/Form	Suggestion/Issue	Source	Other Info
		issue? (By "material" error, we mean one reasonably likely to have affected the appellate result.) Unless the Court of Appeal agrees it has erred and grants rehearing — an extremely rare occurrence — there's no corrective procedure available. But because the appellate process must be meaningful (People v. Howard (1992) 1 Cal. 4th 1132, 1165-1166), it should never end in a decision marred by error or unfairness. Proposal: grounds for grant and transfer. Accordingly, we suggest that the Judicial Council adopt a new Rule of Court — actually, a new subsection of 8.500. In addition to the existing grounds for full review (8.500(b)(1)-(3)), there would be a formal ground for review and transfer: Essentially, if the Court of Appeal opinion was materially erroneous in some way, the Supreme Court may send the case back for reconsideration — and must do so, if the decision violated Government Code Section 68081's mandate. The rules already acknowledge the grant-and-transfer power (rule 8.500(b)(4)); this modification would provide guidance for its use. 1. Current subdivision (b) would continue as is, listing the four bases upon which "[t]he Supreme Court may order review of a Court of Appeal decision": (1) When necessary to secure uniformity of decision or to settle an important question law; (2) When the Court of Appeal lacked jurisdiction; (3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or (4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order. 2. And a new subdivision (presumably (c), with current (c)-(g) becoming (d)-(h)) would identify several "transfer" grounds — three discretionary, one mandatory: (c) Grounds for transfer (1) The Supreme Court may transfer the matter to the Court of Appeal based on grounds including, but not limited to, the following: (A) When the Court of Appeal decision contains one or more material errors or omissions of fact, and the Court of Appeal failed to correct the alleged errors or omissions after a party called the Court of Appeal's attention to them in a petition for rehearing; (B) When the Court of Appeal decision contains one or more material errors or omissions of law, and the Court of Appeal failed to correct the alleged errors or omissions after a party called the Court of Appeal's attention to them in a petition for rehearing;		

	Rule/Form	Suggestion/Issue	Source	Other Info
		(C) When the Court of Appeal decision contains one or more material mischaracterizations or omissions of briefed issues, and the Court of Appeal failed to correct the alleged mischaracterizations or omissions after a party called the Court of Appeal's attention to them in a petition for rehearing. (2) The Supreme Court shall transfer the matter to the Court of Appeal when, in violation of Government Code section 68081, the Court of Appeal decision is based upon an issue that was not proposed or briefed by any party to the proceeding, the court did not afford the parties an opportunity to present their views on the matter through supplemental briefing, and the court denied rehearing. Benefits from proposal: For the Supreme Court. There should be little increase in the number of review petitions filed. But some presumably would include transfer requests, highlighting material errors in the Court of Appeal opinion. Of course, petitioning parties already provide those highlights (see current rule 8.500(c)(2)), and they're likely to be noted in the court's conference memo. The salient difference under the proposed rule: In a limited number of cases, the court should consider whether, even if full review isn't warranted, an error-based transfer is appropriate. And if the court chooses that option, a one-sentence transfer order — ideally, including citations from or references to the petition — will effect an appropriate remand. There's nothing particularly radical about such a procedure — which the court already employs, albeit very rarely and with no identified grounds. In some cases, the Supreme Court will end up receiving subsequent review petitions, following transfers and reconsidered Court of Appeal opinions. But the court already will have examined the record and issues; the additional work should be relatively simple. For the Courts of Appeal. In what likely would be a small percentage of cases, the Courts of Appeal will have to reconsider opinions based on petitions and transfer orders identifying material errors. More work, but it will be (a) confined to cases already briefed, analyzed and argued; and (b) focused on specific points and whether their reconsideration alters the results. And as a policy matter, the Court of Appeal will have the ultimate say in the incidence of grant-and-transfer orders: To the extent appellate opinions avoid material factual and legal errors or correct them upon rehearing, the new procedure won't be invoked. For litigating parties. When an appellate opinion appears to be based on a material error or an unbriefed issue, the losing party should have meaningful recourse even if the case includes no review-worthy issue. And the party benefiting from the error is free to oppose a transfer petition. (Rule 8.500(a)(2).) For society, and the legal profession. Inadequate appellate review "does not advance the cause of justice." (In re Steven B. (1979) 25 Cal.3d 1, 9; see People		

	Rule/Form	Suggestion/Issue	Source	Other Info
		v. Jackson (2014) 58 Cal.4th 724, 792 (conc. & dis. opn. of Liu, J.) [re "the crucial role of appellate review in promoting adherence to the law"].) To the extent California allows an erroneous decision to be the last judicial word in a case, the legal system — and the respect it earns — is arguably diminished. Conclusion: Again, while the state offers two remedial options — petitions for rehearing and review — they're simply insufficient for this purpose. Many or most errors survive the former, and the latter isn't designed as a corrective procedure: The Supreme Court's job isn't to correct appellate error. So the Court of Appeal, unlike its trial counterpart, isn't subject to full evaluation by a higher court. But with a modest modification to the Rules of Court, California can introduce more integrity and accountability into the appellate justice system.		
23.	***General,*** *amend rule 8.500(f)(1) regarding service of a copy of the petition for review in the Supreme Court*	With the Supreme Court going live on e-filing, there is enhanced functionality whereby the Court of Appeal receives a filed/endorsed copy of the petition for review once the Supreme Court has accepted it for filing. As a result, the Court of Appeal no longer needs a separate service copy of the petition for review as required by rule 8.500(f)(1) of the California Rules of Court. The California Appellate Court Clerk's Association (CACCA) is wondering if the Appellate Advisory Committee would look at an amendment to the rule recognizing that the filing of the petition with the Supreme Court satisfies the service requirements for the Court of Appeal.	Collette Bruggman, Assistant Clerk/Administrator, 3DCA	
24.	***Criminal appeals,*** *rules regarding the record in civil commitment cases*	I would like to request that the rules of court for criminal appeals be amended to add a rule for the normal record in civil commitment cases where the patient is entitled to appointed counsel. They include extensions for those found not guilty by reason of insanity (Pen. Code, § 1026 et seq.) and those found incompetent to stand trial (Pen. Code, § 1367 et seq.). It also includes commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962 et seq.), Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.), Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500 et seq.), and Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.). Jeremy Price, a staff attorney at the First District Appellate Project, had unsuccessfully applied to be on this committee. He has suggested a form notice of appeal in civil commitment cases, and I agree this is a good idea. The proposed form is attached. I have also found that there is no clear rule what is part of the normal record on appeal in civil commitment cases. Consequently, records are often inadequate and there are no clear grounds for writing to the superior court clerk to correct the record. My suggestion is to take current rule 8.320, concerning the normal record	Jonathan Grossman, SDAP Staff Attorney	

	Rule/Form	Suggestion/Issue	Source	Other Info
		in criminal cases, and modify it as follows. Subdivision (a) would be changed to describe to what the rule applies. For the clerk's transcript, subdivision (b)(1) would be modified to state the petition instead of the charging document, subdivision (b)(2) would be modified to include admissions or denials, subdivision (b)(8) would omit a reference to a certified of probable cause, subdivision (b)(13) would be added to include any psychological report and any documentary exhibits, current subdivision (b)(13) would become (b)(14) and omit subdivisions (C) through (E). For the reporter's transcript, subdivision (c)(1) would be modified to include the oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication, subdivision (c))(8) would omit a reference to the sentencing hearing, and subdivision (c)(9)(A) would be modified to delete a mention to Penal Code section 995 motions. Subdivision (d) concerning appeals from non-trials would be eliminated, subdivision (e) would become subdivision (d), and subdivision (f) would become subdivision (e). Normal record; exhibits (a) Contents In an appeal in a civil commitment proceeding where the person is entitled to the appointment of counsel, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record. [modified] (b) Clerk's transcript The clerk's transcript must contain: (1) The petition; [modified] (2) Any demurrer or other plea, admission or denial [modified]; (3) All court minutes; (4) All jury instructions that any party submitted in writing and the cover page required by rule 2.1055(b)(2) indicating the party requesting each instruction, and any written jury instructions given by the court; (5) Any written communication between the court and the jury or any individual juror; (6) Any verdict; (7) Any written opinion of the court; (8) The judgment or order appealed from and the commitment order; [modified] (9) Any motion for new trial, with supporting and opposing memoranda and attachments; (10) The notice of appeal; [modified] (11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040; (12) Any application for additional record and any order on the application;		

	Rule/Form	Suggestion/Issue	Source	Other Info
		(13) Any psychological report and any documentary exhibits; [new] (14) And, if the appellant is the defendant: (A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments; and (B) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term. [omitted remainder] (c) Reporter's transcript The reporter's transcript must contain: (1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication; [modified] (2) The oral proceedings on any motion in limine; (3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement; (4) All instructions given orally; (5) Any oral communication between the court and the jury or any individual juror; (6) Any oral opinion of the court; (7) The oral proceedings on any motion for new trial; (8) The oral proceedings of the commitment order or other dispositional; [modified] (9) And, if the appellant is the defendant: (A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge; [omitted Penal Code section 995 motions] (B) The closing arguments; and (C) Any comment on the evidence by the court to the jury. [omitted 8.320(d)] (d) Exhibits Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224. (e) Stipulation for partial transcript If counsel for the defendant and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.		

SUGGESTIONS THE COMMITTEE DEFERRED LAST YEAR

	Rule/Form	Suggestion/Issue	Source	Why Defer
25.	***GENERAL*** *– Rules ?? – Access to appellate courts*	Court Access. I believe the Rules Subcommittee's proposals should be guided in part by the Chief Justice's Access 3D Initiative. I have no specific rule proposals in mind but am willing to review Title 8 of the California Rules of Court to identify rules, or provisions of them, that unduly hinder access or that could be amended to increase ease of access to the appellate courts. California has a high percentage of self-represented parties on appeal. Handing your own appeal without counsel is difficult enough. The rules should not make the exercise any harder than it needs to be.	Mr. Kevin Green, committee member	
26.	***GENERAL*** *– Rule ?? – Copies of out-of-state authorities*	*[Note to committee – this comment was received in response to the recent amendment to rule 8.1115, which included the following amendment to subdivision (c): On request of the court or a party, a copy of an opinion citable under (b) ~~or of a cited opinion of any court that is available only in a computer-based source of decisional law~~ must be promptly furnished to the court ~~and all parties~~ or the requesting party ~~by attaching it to the document in which it is cited or, if the citation will be made orally, by letter within a reasonable time in advance of citation.~~]* My point is that I think, with its focus on *California* cases, the Supreme Court has overlooked the fact that the old version of Rule 8.1115 subdivision (c) covered more than just the cases referred to in subdivision (b). That is, the old version of subdivision (c) covered unpublished *federal* cases. See footnote 8 in Californians for Disability Rights v. Mervyn's LLC (2008) 165 Cal.App.4th 571, 589. (There's a split of authority whether unpublished out-of-state cases can be cited in California state court, but I'll put that aside.) If I cite an unpublished federal case today, I have explicit direction from subdivision (c) and Californians for Disability Rights v. Mervyn's LLC to give the court and opposing party a copy of the case. As of July 1st, I will have no such specific direction. As a practical matter after July 1, I will follow the new subdivision (c) in spirit and offer to give the court and opposing counsel a copy of any unpublished federal or out-of-state case I cite. But the way in which subdivision (c) has been amended the rules no longer give explicit direction on what is to be done when a party cites an unpublished *non*-California case.	Robert G. Scofield Attorney at Law	See also rule 3.1113(i) and invitation to comment on proposal to amend rule 8.1115 at http://www.courts.ca.gov/documents/W14-01.pdf
27.	***GENERAL –*** *Rule 8.163 – Application of presumption from the record*	A recent Court of Appeal decision [available at: http://www.courts.ca.gov/opinions/nonpub/B246970.PDF] appears to reason that since there was no reporter's transcript, the presumption of rule 8.163 (pasted below) comes into play -- even though there was a settled statement. The opinion even says the "situation is analogous to some appeals on the judgment role of	Lisa Jaskol, former committee member	In 2014-2015 annual agenda, this was designated as a Priority 2 project with a January 1, 2017

	Rule/Form	Suggestion/Issue	Source	Why Defer
	when settled statement is used	long ago, where the record was so incomplete 'it was impossible to determine upon what theory the case was tried . . . ." (Page 13.) Yes, the record was deficient, but not because of the lack of an RT. It's was deficient because the superior court approved respondent's deficient settled statement after the appellants were unable to present an acceptable one. So my suggestion for the Appellate Advisory Committee -- and in light of this opinion I think it's urgent: revise the second sentence of Rule 8.163 (pasted below) to insert the words "or an authorized substitute" after "reporter's transcript." Rule 8.163. Presumption from the record The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.		proposed completion date. At its 10/29/15 meeting, the rules subcommittee recommended that this be moved to the deferred list because it appears that most courts have considered alternatives to reporter's transcript in applying presumption
28.	***CIVIL APPEALS*** *- Forms APP-03 and APP-010 - designation record in unlimited civil cases*	See attached annotated copies of these forms	Superior Court of San Diego County – in comments on SPR15-01	Given that these forms will just have been amended effective 1/1/16 and these changes are not urgent, the rules subcommittee recommends deferring these changes
29.	***APPEALS IN CIVIL CASES*** Form APP-002 *Notice of Appeal*	We have attached form APP-002 with our proposed revisions highlighted in yellow. The proposed revisions would add a third section to that form, covering the filing fees and deposit requirements. The new section would parallel and complement the instructions in form APP-001 concerning those fees. Three options are proposed, each with its own check box. The first notes that the notice of appeal is accompanied by the required filing fee and deposit, and specifies those amounts. The second notes that the notice of appeal is accompanied by a Request to Waive Court Fees (form FW-001). The third notes that the party filing the notice of appeal is exempt from filing fees and deposit requirements. We believe that including this information in form APP-002 will provide useful guidance and a helpful checklist for both parties and clerks.	Committee on Appellate Courts, State Bar of California	Was on 2013-2014 annual agenda as Priority 2 – helpful but not urgent. Had 1/2015 completion date but not worked on last year In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.

	Rule/Form	Suggestion/Issue	Source	Why Defer
30.	***GENERAL –*** *Rule 8.25 – Application of overnight delivery rule to supplemental and letter briefs*	Our managing attorney mentioned to me that the clerks in our court have routinely been rejecting as untimely supplemental briefs or letter briefs when the filing party relied on rule 8.25(b)(3) for constructive filing by overnight delivery. Our PJ is posting a general order for our court indicating that supplemental and letter briefs get the benefit of the constructive filing rule in 8.25(b)(3). Apparently our clerks at some point in our history had been instructed (perhaps by our prior managing attorney) that supplemental and letter briefs were not in the list of documents to which the constructive filing rule applied, and thus should be rejected as untimely. Perhaps there is a reason not to allow constructive filing for supplemental or letter briefs, but I can't think of one. And perhaps this interpretation of the rule is overly strained (which I tend to think it is). But maybe the committee should address this hiccup in our next annual agenda. And I'm now wondering why we wouldn't allow constructive filing for *every* document filed in a case.	Justice Ikola, Committee chair	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
31.	***GENERAL –*** *Rule 8.45 et. seq. – Sealed and confidential records*	We urge that the rules be amended to expressly provide that the sealed records be paginated based on where they would have otherwise appeared in the record (e.g., the clerk's transcript, a party's appendix).	Court of Appeal Fourth District in comments on 2013 proposal regarding sealed and confidential records	Was on 2013-2014 annual agenda as Priority 2 - Helpful, but not urgent. Had 1/2016 completion date. In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
32.	***GENERAL –*** *Rule 8.45 et. seq. – Sealed and confidential records*	Court practices vary with respect to the format of sealed records. It would be helpful if the rule specified whether the sealed records should be paginated with the rest of the record or separately.	TCPJAC/CEAC Joint Rules Working Group in comments on 2013 proposal regarding sealed and	Was on 2013-2014 annual agenda as Priority 2 - Helpful, but not urgent. Had 1/2016 completion date. In 2014-2015, the committee placed this on deferred list because it was not

	Rule/Form	Suggestion/Issue	Source	Why Defer
			confidential records	considered a high priority.
33.	***APPEALS IN CIVIL CASES*** Rule 8.124 – Respondent's election to use appendix in lieu of clerk's transcript	As noted in the advisory committee comment, this "election procedure differs from all other appellate rules governing designation of a record on appeal," where the appellant's designation or the parties' stipulation control. In this case, the respondent can impose its view as to how the appellate record should be compiled. Yet, notwithstanding the ability of the respondent to place the burden of preparing a voluminous appendix on the appellant, there is no standard for the superior court to determine whether to allow the respondent's election to trump the appellant's election of the form of the appellate record on appeal. If we are going to maintain this odd exception to the normal right of the appellant to determine the form of the appellate record, there should at least be a standard by which the superior court can determine whether to sustain the appellant's objection to the respondent's election. Otherwise, the superior court is likely to uphold the respondent's election because it relieves the superior court of its burden to prepare the clerk's transcript. Further, it is odd that the form of the record in such circumstances is left with the superior court, even though the appellate court is the tribunal that benefits from, or is inconvenienced by, the form of the record. The process for a clerk's transcript places everything in chronological order; the appendix process may not result in a chronologically ordered record.	Daniel Kolkey, committee member	Was on 2013-2014 annual agenda as Priority 2 - Helpful but not urgent. Had 1/2015 completion date. Proposal prepared, but RUPRO declined to circulate. In 2014-2015, the committee placed this on deferred list because it concluded that issue does not arise very often
34.	***CIVIL APPEALS – Rule 8.124 – Time for respondent's election to use appendix***	We recommend that rule 8.124(a)(1)(B) be amended to allow a respondent to use an appendix if respondent files an election within 10 days after an appellant files a notice designating the record. Currently, rule 8.124(a)(1)(B) provides that a respondent may elect to use an appendix if it files a notice of election "within 10 days after the notice of appeal is filed." As written, the rule forces a respondent to designate an appendix before the respondent knows what kind of record, if any, an appellant has elected, because under rule 8.121 an appellant has 10 days from the date it files its notice of appeal to file a designation of record. The current rule effectively encourages respondents to file what may be unnecessary elections. Our proposed amendment would read as follows: **(a) Notice of election** (1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:	Committee on Appellate Courts, State Bar of California	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121; or (B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after ~~the notice of appeal is filed~~ the appellant serves and files a notice designating the record on appeal under rule 8.121 and no waiver of the fee for a clerk's transcript is granted to the appellant. If a respondent is forced to designate an appendix before an appellant has designated any record at all, it may be that respondents unwittingly are creating records in cases that appellants intend to abandon. If a respondent designates an appendix within 10 days of the date the notice of appeal is filed, and the appellant never designates any record at all, the respondent's early designation may leave local clerks confused and ultimately delay dismissal of the case. If the rule is amended as proposed, it would also allow a respondent to include an election to use an appendix in its counter-designation form, which must be filed within 10 days after the appellant serves and files a notice designating the record. (Cal. Rules of Court, rules 8.122(a)(2), 8.130(a)(3).) That would reduce the amount of paperwork that parties must file and the amount of paperwork that the clerk's office must process.		
35.	***APPEALS IN CIVIL CASES –*** *Rule 8.204 – Length of briefs*	I am forwarding the below e-mail as a potential item for discussion for the next annual agenda. I know the word limits for briefs contained in present rules 8.204(c)(1) and 8.360(b)(1) have been in place for a substantial period of time, and roughly correspond to the page limits previously in place for even longer. And I note that for death penalty appeals (8.630(b)(1)), the page limit was actually increased about five years ago. I'm guessing that was done to reduce the workload of the court in dealing with requests to file oversize briefs. "As chair of the appellate advisory committee, I recommend you address the size of appellate briefs. I particularly see no justification for permitting longer briefs for criminal than for civil cases."	Justice Ikola, committee chair, and Justice Rylaarsdam	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority.
36.	***GENERAL –*** *Rule 8.208 – Request to seal certificate of*	Without the certificate, the presiding justice (or APJ) does not have enough information to determine if he or she should be disqualified for ruling on the application. I know it's a lot of trouble but, under the circumstances, I seems to me to be a good idea to propose a rule change to eliminate the 10-day provision in	Cheryl Shensa, writ attorney, Court of	In 2014-2015, the committee placed this on deferred list because it was not

	Rule/Form	Suggestion/Issue	Source	Why Defer
	interested parties	Rule 8.208(d)(2) and require any party applying to file a certificate under seal to lodge the certificate conditionally under seal along with the application.	Appeal, Fourth Appellate District	considered a high priority.
37.	***PETITIONS FOR REHEARING –*** Rule 8.264 (applies in civil, criminal and juvenile appeals)	As you know, petitions for rehearing are filed in the courts of appeal in the vast majority of cases and consume appreciable court time -- at least in the aggregate. Further, their ubiquity degrades their credibility, which makes them usually futile (but not inexpensive) endeavors for the parties. While effective reform will require some careful thought, reform could include (1) a stricter page limit, (2) a prohibition against reply briefs (I have been served on several occasions with applications for leave to file reply briefs which attach a reply, which is annoying to the practitioner who receives the unauthorized final word and which further consumes the court's time), and (3) some means of limiting the grounds so that a mere repetition of arguments made in the briefs and addressed in the court's opinion is not permitted. Admittedly, this latter point may be difficult to implement in practice; thus, an alternative might include an advisory committee comment. Still, reducing the number of these petitions, and thereby making a petition a more meaningful exercise, is not an impossible dream. After all, they do not appear to be filed with the same frequency in the California Supreme Court.	Daniel Kolkey, committee member	In 2014-2015, the committee placed this on deferred list because it concluded further study was needed
38.	***APPEALS IN CIVIL CASES*** Rule 8.264 – Finality	Amend California Rules of Court, rule 8.264(b)(2) to include: "(C)The denial of the request by a vexatious litigant for permission to file an appeal pursuant to Code of Civil Procedure section 391.7." Reasons for request: Currently the rules do not address the finality of the denial of the request by a vexatious litigant for permission to file an appeal. At a meeting of the Managing Attorneys of the California Courts of Appeal, we discovered that the Courts of Appeal are not treating the finality in the same manner. The Managing Attorneys all agree that a rule addressing the issue is necessary. The Fourth District, Division Two recommends that the denial be final immediately because the order is similar to the denial of a request for transfer of a case within the jurisdiction of the appellate division of the superior court under California Rules of Court, rules 8.1000 et seq. Under California Rules of Court, rule 8.1018(a), the denial of a transfer request is final immediately. When the court denies a request for transfer or for permission to file an appeal, the court does not assume jurisdiction of the matter.	Susan Streble Supervising Appellate Court Attorney California Court of Appeal Fourth District, Division Two	In 2014-2015, the committee placed this on deferred list because it concluded that further information was needed

	Rule/Form	Suggestion/Issue	Source	Why Defer
39.	***APPEALS IN CIVIL CASES*** Rule 8.278 – Costs on appeal	**Should the cost of preparing an "e-brief" be a recoverable cost on appeal:** Rule 8.278 governs the recovery of costs awarded on appeal, and specifies the specific categories of costs that may be recovered. In recent years, several (perhaps the majority) of the appellate court districts in California have begun encouraging parties to appeals to submit an "e-briefs" disk at the conclusion of briefing, containing searchable copies of the record on appeal, the parties' briefs, copies of all decisions cited in the briefs, related motions on appeal (e.g., requests for judicial notice), all hyperlinked to one another. (See, e.g., "Invitation To File Electronic Briefs In The Second District Court Of Appeal"; Invitation To File Hyperlinked CD Documents, Fourth Appellate District, Division One.) Invitations to file e-briefs from the appellate courts typically warn that "Counsel should not assume that the preparation cost, if any, will be recoverable." (Ibid.) Nonetheless, in my firm's experience, some trial courts have been willing to award the cost of e-briefing as a recoverable cost on appeal under the category of "[t]he cost to print and reproduce any brief." (Cal. Rules of Court, rule 8.278(d)(1)(E), emphasis added.) Other trial courts, however, have ruled that the cost of preparing an e-briefs disk does not fall within that category and is not a recoverable cost. Amending the rule to clarify that the cost of preparing an e-brief is a recoverable cost on appeal would encourage the submission of e-briefs, which both the Supreme Court and the Courts of Appeal seem interested in receiving.	John Taylor, former committee member	Was on 2013-2014 annual agenda as Priority 2 - Helpful but not urgent. Had 1/2015 completion date but not worked on last year In 2014-2015, the committee placed this on deferred list because it concluded that cost concerns, raised previously, would likely be raised again. In the spring 2011, the committee considered, but ultimately decided not to pursue, circulating a proposal on this topic. Concerns raised at that time included the potential burden of the cost of electronic briefs on litigants and potential confusion about the difference between these briefs and electronically filed briefs. The group left open the possibility of pursuing a proposal in the future.
40.	***APPEALS IN CIVIL CASES*** Rule 8.278 – Inclusion of hyperlinked briefs in	I would like to reiterate my previous request to make the cost of hyper-linked briefs a recoverable cost on Appeal. Hyperlinked briefs provide a better way for all concerned to prepare and review appellate briefs. As more courts move to an all e-document filing system, the need to provide briefs, as well as other filings that are hyperlinked to the record and	Joseph Lane, committee member	See notes regarding item 34 above

	Rule/Form	Suggestion/Issue	Source	Why Defer
	recoverable costs on appeal	citations, becomes imperative. The cost in preparing hyperlinked briefs is decreasing and will continue to do so, especially as more and more courts either request them or mandate their use. See the attached document of a recent survey of courts requesting hyperlinked briefs. Please note I AM NOT REQUESTING ANY RULES OR RULE CHANGES CONCERNING HYPER-LINKED BRIEFS, JUST THAT THE COST BE A RECOVERALBE COST ON APPEAL.		
41.	***APPEALS IN CRIMINAL CASES*** *– Rule 8.320 – Record on appeal*	Rule 8.320(c)(3) specifically exempts opening statements from inclusion in the normal record on appeal. I would suggest that the language "and any opening statement" be deleted from the rule. Similarly, I would suggest that rule 8.320(c)(9)(B) be amended to provide that in a defendant's appeal, the normal record of the reporter's transcript should include "The opening statements and the closing arguments." There is a twofold justification for the proposed change. First, having reviewed records in criminal appeals for over 30 years, it is my experience that the opening statements often provide useful information to the appellate lawyers and the court. In a substantial number of cases, the parties and the trial judge refer to something said or done during the opening statement. Rather than requiring a motion to augment the record in this situation, efficiency would be served by automatically providing the opening statement. Second, there have been a number of cases where appellate counsel has raised a claim of ineffective assistance of trial counsel based on promises made during opening statement which were not subsequently honored. (See generally People v. Corona (1978) 80 Cal.App.3d 684, 725-726; Harris v. Reed (7th Cir. 1990) 894 F.2d 871, 879.) I have personally worked on such cases. Once again, efficiency is served if the opening statements are made part of the record without the need for the delay attendant to a motion to augment the record. For the most part, opening statements are quite short. As a result, the cost of the rules change will be quite modest since it is likely that most jury trial appeals will have opening statements that are less than 20 pages.	Dallas Sacher, committee member	Was on 2013-2014 annual agenda as priority 2 project. Had 1/2016 completion date. Proposal was circulated for public comment last year. Based on the comments, the committee decided not to recommend adoption of the proposal last year, but to keep the suggestion on the list of deferred items for potential future re-consideration.
42.	***CRIMINAL CASES –*** *Rules 8.304 and 8.850 – Definitions of*	I wanted to bring this opinion filed by our court on 11/14/13 (remittitur issued 2/13/14) to your attention just in case the Advisory Committee Comments need to be updated with this information. Not sure if it would matter or not. Thanks.	Corrine Pochop, former	In 2014-2015, the committee placed this on deferred list because it concluded

	Rule/Form	Suggestion/Issue	Source	Why Defer
	"felony case" and "misdemeanor case"	[*People v. Scott* (2013) 221 Cal.App.4th 525; opinion is available at: http://www.courts.ca.gov/opinions/archive/H037681.PDF. Holding is that a case in which the only felony charge was dismissed at the prosecutor's request and a new complaint charging only a misdemeanor filed before trial was not a "felony case," and thus appellate jurisdiction for defendant's appeal from the judgment of conviction was vested in the appellate division of the superior court]	committee member	that case appears to reflect rare circumstances and rule change most likely unecessary
43.	***APPEALS JUVENILE CASES*** *Rule 8.401 – Confidentiality*	Amend 8.401(b)(2) which allows access to juvenile files to persons "considering filing an amicus brief." Seems like this could compromise confidentiality	Elaine Alexander, former committee member and director of Appellate Defenders	Deferred in 2013-2014 Was not considered high priority Problem seems theoretical at this point; rules subcommittee members were not aware of any issues actually arising with respect to this provision
44.	***PETITIONS FOR REVIEW*** – *Rule 8.500*	In doing some research recently, I came across the advisory committee comment to former rule 28, the predecessor to current rule 8.500 on petitions for review, which made clear that a denial of a grant of review was not to be considered as an expression of the Supreme Court's view on the merits of the judgment sought to be reviewed . Here is the full text of the relevant portion of that former comment: It has long been established in California law that a denial of hearing is not an expression of the Supreme Court on the merits of the cause. (E.g., People v. Davis (1905) 147 Cal. 346, 350; People v. Triggs (1973) 8 Cal.3d 884, 890-91.) Adoption of the new "review" procedure does not affect this legal doctrine, and denial of review will not be an expression of the opinion of the Supreme Court on the correctness of the judgment of the Court of Appeal or on the correctness of any discussion in the Court of Appeal opinion. A specification of issues to be argued, in connection with a grant of review, will not be an expression of the opinion of the Supreme Court on the correctness of the resolution of other issues by the Court of Appeal or on the correctness of any discussion of them in the Court of Appeal opinion.	Committee staff	Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
		Former rule 28 was amended effective January 1, 2003 and the advisory committee comment no longer address the issue of the meaning of a denial of review. The report to the Judicial Council that recommended the changes to rule 28 does not discuss the reasons for the changes to the advisory committee comment that accompanied this former rule. Would it be helpful to add a provision to the advisory committee comment to rule 8.500 to address this issue?		
45.	***PETITIONS FOR REVIEW –*** *Rule 8.508 – Petitions to exhaust state remedies*	California Rules of Court Rule 8.508 now provides for a truncated or abbreviated Petition for Review to Exhaust State Remedies, often used by criminal appellants or petitioners to ensure compliance with federal habeas corpus rules. There is currently an anomaly in this rule, however. Attorneys for criminal defendants generally have an obligation to "exhaust" every federal constitutional issue in an appeal or writ petition. They may believe that a full Petition for Review is merited as to one or more issues, but not all such issues. In that case, under the current rule, the attorney must file a full Petition for Review on each issue, when he or she is only actually seeking review (other than to exhaust) on one or a couple of the issues. My proposal is to amend this rule to permit a the petition to be "to exhaust state remedies" as to some but not all issues, thus saving appointed counsel, and the Supreme Court staff the work involved in working up all issues, when the attorney only believes that one or two of such issues merit a full review work up, and is actually merely seeking to exhaust as to the remainder of the issues. A simply amendment to Rule 8.508, subd. (b) may suffice (inserting "as to certain issues" requiring that the issues on which exhaustion alone is sought be identified on the cover of the Petition, and subd. (c) requiring full service as to a mixed petition.	William Kopeny, committee member	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority. Note: Rule 8.508 was developed by the committee 2003 on the request of the Supreme Court in response to proposals by practitioners representing indigent defendants in criminal appeals.
46.	***ORDERING REVIEW*** Rule 8.512 – Time for ordering review on court's own motion	Rule 8.512(c)(2) sets the time for the Supreme Court to order review on its own motion when a petition for review has been filed. Currently, this rule provides that the Supreme Court may deny the petition but order review on its own motion "within the periods prescribed in (b)(1)." Subdivision (b)(1), in turn, provides that the period for granting a petition for review is generally within 60 days after the last petition for review is filed. Rule 8.512(c)(2) has been interpreted by some as	Supreme Court	Deferred in 2013-2014 Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
		authorizing the court to grant review on its own motion anytime within this 60-day period, even if the court has already denied the petition for review. The court's practice, however, is to order any review on its own motion at the same time as it denies the petition and this is reflected in the fact that under rule 8.272(b)(1), the Court of Appeal clerk must issue a remittitur *immediately* after the Supreme Court denies review (emphasis added). Although not convinced that any change to the rule is necessary, the Supreme Court has asked that the Appellate Advisory Committee consider whether it would be helpful to amend this rule 8.512(c)(2) to clarify that when a petition for review is denied by the Supreme Court, the court must order any review on its own motion at the same time as it denies the petition.		
47.	***APPELLATE COURT ADMIN.*** *Rule 10.1028 – Retention of court records*	At some point I would like to propose amendment of Rule of Court 10.1028(d)(2), which requires retention of "the original reporter's transcript" for a period of 20 years when the court affirms a criminal conviction. Since Code of Civil Procedure section 271(a) requires that an "original transcript" be on paper, the storage costs are substantial. Amending the rule to require retention of a true and correct copy in electronic form would make it much easier for us to receive and use electronic copies as part of the appellate record for the courts that wish to do so, and could generate significant long term cost savings. Even the reporters are now asking about electronic delivery, and we could probably do this with little opposition. Although the statute ultimately needs to be amended, amending the rule would seem to be the far simpler interim solution.	Justice Bruiniers, chair of CTAC	Deferred in 2013-2014 pending determination of whether proposal to amend Code of Civil Procedure section 271(a) would be developed
48.	***COMMITMENT PROCEEDINGS*** Rule ?	There are not currently rules that address civil commitment cases other than LPS cases, such as SVP (Welf. & Inst. Code, § 6600 et seq.), MDO (Pen. Code, § 2666 et seq.), extended detention of youthful offenders (Welf. & Inst. Code, § 1800 et seq.), and extended commitment of persons found not guilty by reason of insanity (Pen. Code, § 1026.5). Should a rule or rules for these cases be developed?	Elaine Alexander, former committee member and director of Appellate Defenders	Deferred in 2013-2014 Was not considered high priority
49.	***APPEALS AND WRITS IN LPS CASES*** Rule ?	A couple of days ago, we published a case called Scott S. v. Superior Court. The case addressed the evidentiary showing an LPS conservator has to make to obtain the right to consent on behalf of the conservatee to a proposed surgical procedure (in this case, the amputation of a toe). The California Style Manual, section 5:13, requires that opinions involving an LPS conservatee use protective nondisclosure when identifying them – thus our caption was "Scott S."	Justice Ikola, committee chair	Deferred in 2013-2014 Issue does not arise very often

	Rule/Form	Suggestion/Issue	Source	Why Defer
		Shortly after filing, however, either our clerk's office or our managing attorney (not sure which) got a call from Ed Jessen noting that our court's online docket identified the conservatee by name, without protective nondisclosure, and was available to the public online. The docket is now "offline," the same as Juvenile cases. However, when a writ petition or an appeal is filed involving an LPS conservatee as a party, or as a real party in interest, unless the filing clerk review the contents of the petition or brief with every filing, they have no other way of knowing that the case involves an LPS conservatee unless the cover of the petition, notice of appeal, or brief uses a protective nondisclosure or otherwise flags the case in some fashion as an LPS case. The cover of the Scott S. petition did not contain any hint that it was an LPS case, except possibly inferentially because the public guardian was the real party in interest. Perhaps one of our future agendas should ask the committee to consider whether a rule should be adopted which would require the cover in an LPS case to include some sort of flag to alert the filing clerk that the appellate court docket should not be made public. I'm not aware of any rule that would currently require this. Not a huge problem – these cases are relatively rare – but I think it's worthy of adding to the list at some point. Thanks.		
50.	***GENERAL RULES*** Rule 2.1040 – Electronic recordings offered into evidence	In a contested probation revocation, a judge overruled a defense objection to the lack of a transcript based on the words "trial judge" in the rule, concluding that the hearing was not a "trial." I would suggest the rule be tweaked to say "superior court" rather than "trial judge." STAFF NOTE: May also want to consider placing rule in a different division of the Rules of Court.	Howard C. Cohen Attorney	Deferred in 2013-2014 Was not considered high priority
51.	***GENERAL – Form ? – Association of counsel***	There should be standard forms to use for . . . association of counsel on appeal. * * * Finally, also to promote efficiency, it makes sense to craft a standard form for associating counsel on appeal. This typically does not require court approval. Under current practice, litigants seek to associate counsel in various ways, including by motion. A standard form would bring greater order to a simple step in an appeal, and reduce the burden on appellate clerks.	Kevin Green, committee member	Deferred in 2013-2014 Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
52.	***APPELLATE DIVISION –*** *Rule 8.817 – Application of overnight delivery rule to briefs in appellate division*	I'm sending a note about a possible rule change involving rule 8.817, which governs service and filing in the Appellate Division. The attached order, issued by the Appellate Division of the Orange County Superior Court, sparked my suggestion. I am appellate counsel for the defendants and appellants in this misdemeanor appeal. An attorney who wanted to file an amicus brief supporting my clients mistakenly relied on rule 8.25(b), believing that her amicus brief would be deemed timely filed if she gave it to Federal Express on the due date. In the attached order, the Appellate Division points out that rule 8.25 applies only to filings in the Court of Appeal and Supreme Court. However, the attorney might have reached the same conclusion even if she had relied on rule 8.817 (pasted below), which applies to the Appellate Division. Subdivision (b)(3) deems a "brief" to be timely filed if it is delivered to an overnight carrier on the due date. However, the attached Appellate Division order says rule 8.817 does not apply to amicus briefs. The Appellate Division order does not explain its conclusion, which seems to be wrong. (The Appellate Division allowed the amicus brief to be filed anyway, however.) Indeed, rule 8.630(e) provides: "Amicus curiae briefs may be filed as provided in rule 8.520(f)." Rule 8.520(f), in turn, is governed by rule 8.25(b), which expressly includes requests to file amicus briefs. Therefore, I wonder if modification of rule 8.817 is in order to clarify that amicus briefs are one kind of "brief" referred to in rule 8.817(b)(3)?	Lisa Jaskol, former committee member	In 2014-2015, the committee placed this on deferred list because it was not considered a high priority. The appellate division agreed with placement on the deferred list.
53.	***APPELLATE DIVISION*** *– Rule ? – Settlement conferences*	The Committee also notes that costs of misdemeanors could be otherwise reduced by providing increased use of diversionary programs for misdemeanors, and by requiring mandatory settlement conferences for appeals of misdemeanors to attempt to resolve some misdemeanor appeals without the costs of transcripts, briefing and Appellate Division hearings.	Committee on Appellate Courts State Bar of California in comments on 2013 Appellate Division rules and forms proposal	The appellate division subcommittee recommends that this be deferred based on concerns that it is unlikely to be reduce costs or be acceptable to the district attorney

54.	***TRANSFER OF APPELLATE DIVISION CASES*** Rule 8.1005	An Appellate Division issued an opinion on appeal at the same time ordered certification [for transfer] to the Court of Appeal. I don't think we anticipated that this would happen. This is proper under Rule 8.1005(d), which says a case can be certified anytime after the Appellate Division receives the record on appeal and before its judgment is final. However, rule 8.1014 says that once the Appellate Division has issued a certification order the only action the Appellate Division can take is to send the record to the Court of Appeal. The effect of this is to foreclose the litigants from filing a petition for rehearing or a request for publication--or, at last, to prevent the Appellate Division from considering and acting upon such matters. Perhaps rule 8.1005(d) should be modified to say "A case may be certified at any time after the record on appeal is filed in the appellate division and before the appellate division has issued its opinion. The case may also be certified after the time for filing a petition for rehearing has passed, or such a petition has been denied, and before the appellate division judgment is final in that court." Or since that would not deal with the publication request issue, rule 8.1014 could be modified to say the appellate division can take no action except to consider a petition for rehearing or a request for publication.	John Hamilton Scott Los Angeles County Public Defender's Office	Deferred in 2013-2014 Issue does not arise very often The appellate division subcommittee agrees that this should be deferred

Items Relating to Juvenile Cases

In 2010, Fam Juv decided to not to pursue any rule or form changes that were not mandated by statute or necessitated by caselaw.The suggestions below were deferred in light of that decision.

	Rule/Form	Suggestion/Issue	Source
55.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 5.590	Rule 5.590 does not specify all of the limitations on the right to appeal. Suggest amending the rule to specify these limitations	Appellate Defenders, Inc.
56.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 5.590	The current advisements of appellate rights that are given do not clearly explain the implications for orders concurrently made with the order setting the hearing under Welfare and Institutions Code section 366.26 or the orders to which the requirements for filing a notice of intent to file a writ petition applies. These should be clarified.	Seth Gorman

	Rule/Form	Suggestion/Issue	Source
57.	***APPEALS & WRITS IN JUVENILE CASES*** Juvenile rules generally	Suggest separating rules relating to juvenile dependency and delinquency proceedings	Committee on Appellate Courts State Bar of California
58.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.400	1. Modify Rule 8.400(1)(B) to add the underscored language: "Actions to free a child from parental custody and control under Family Code section 7800 et seq. OR PROBATE CODE SECTION 1516.5; and" Termination of parental rights under Probate Code section 1516.5 is generally governed by the requirements under Family Code section 7800 et seq., but which standards apply to appeal is not entirely clear. However, such appeals have traditionally been handled under the standards of Rule 8.400. 2. Modify Rule 8.400(1)(C) to add "Actions under Family Code section 7662–7666." In independent or agency adoptions when the parents do not consent to the adoption or relinquish parental rights, termination of the parent's rights occurs under two different schemes, Family Code section 7822/7825 (abandonment or unfitness), and Family Code section 7662–7666 (as to alleged or unknown fathers). Thus, when both parents appeal, one appeal is handled under Rule 8.400's standards and the other under the civil appeal standards. This amendment reconciles the conflict.	Seth Gorman
59.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.403	The provisions in 8.403(b)(2) on appointed counsel in dependency appeals are incomplete and not as helpful as they might be	Appellate Defenders, Inc.
60.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.416	Amend the rule to allow that a motion to augment/correct the record be filed with the respondent's brief or, in the alternative, after 15 days with permission of the Court.	Los Angeles County Office of the County Counsel, by James M. Owens Assistant County Counsel
61.	***APPEALS & WRITS IN JUVENILE***	Suggest amending rule 8.452 to include a provision for extension of time (now seems to be covered by provision of rule 8.450(d)). Alternatively, the extension of time provision could be a stand-alone rule, with reference perhaps to the rules such an extension would apply to. (Suggestions not part of comments on SPR09-10)	D'vora Tirschwell Writ Attorney Court of Appeal First District

	Rule/Form	Suggestion/Issue	Source
	CASES Rule 8.452		
62.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.470	Amend rule 8.470 to include cross-reference to rule 8.490. Note: this suggestion may have been partially addressed by the July 2010 amendments to rules 8.452 and 8.456 that include cross-references to rule 8.490. However, rule 8.470 could still be clarified with respect to writ proceedings.	Joseph Lane Clerk/Executive Officer Court of Appeal, Second Appellate District
63.	***APPEALS & WRITS IN JUVENILE CASES*** Rules 8.480 and 8.482	Rules 8.480, relating to appeals in LPS conservatorship cases, and rule 8.482, relating to appeals in sterilization cases, both currently provide that "except as otherwise provided in this rule, rules 8.304-8.368 and 8.508 govern" these appeals. Is the cross-reference to rule 8.508, which provides for petitions for review to exhaust state remedies in criminal cases for purposes of filing a federal habeas corpus petition, necessary?	Elaine Alexander, former committee member and director of Appellate Defenders
64.	***APPEALS & WRITS IN JUVENILE CASES*** Form JV-800	The language of the current notice of appeal form has led some courts to refuse to consider a claim based on a ruling made at the hearing delineated in the checked box, when the ruling at issue was based on a different code section. Suggest changing the language for line 6 on page 2 of the notice of appeal form from "6. The order appealed from was made under Welfare and Institutions Code section (check all that applies): …" to "6. The order or orders appealed from were made at a hearing under: ...".	Appellate Court Committee of the San Diego County Bar Association
65.	***APPEALS & WRITS IN JUVENILE CASES*** Form JV-820	The notice of intent form should include a box underneath the signature line, next to the attorney box indicating "with client's consent." This would allow the attorney to sign the form with the client's consent if the client is unavailable or otherwise unable to sign the form.	Los Angeles County Counsel, Office of the County Counsel by James Owen Assistant County Counsel