JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
September 6, 2017

To
Members of the Appellate Advisory Committee

From
Christy Simons, Attorney, Legal Services

Subject
Development of committee's proposed 2018 annual agenda, including review of new and pending suggestions for changes to appellate rules and forms

Action Requested
Please read before September 11 committee conference call

Deadline
September 11, 2017

Contact
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Introduction

Under a revised timeline established by the Judicial Council's Rules and Projects Committee (RUPRO), this is the time of year when the committee must develop its proposed annual agenda for the 2018 committee year (November 2017-October 2018). The committee's proposed annual agenda must be submitted to RUPRO for its review. RUPRO will determine what items the committee may work on for the 2018 committee year. RUPRO will meet in late October to review the proposed agendas of the committees that it oversees, including the Appellate Advisory Committee.

Attached are two items that provide background information about the annual agenda process:

- Guidelines for the Annual Agenda Process (Attachment 1) – these guidelines, adopted by RUPRO and the other Judicial Council oversight committees, provide an overview of the annual agenda process. The questions on page 5 of these guidelines may be of particular interest in considering what items to include on the committee's proposed annual agenda.

- An October 2015 letter from Justice Hull, chair of RUPRO (Attachment 2) – this letter provides additional information about the prioritization of rule and form projects on annual agendas. This is particularly important for the committee, since the bulk of the committee's work has historically been developing recommended changes to appellate rules and forms.

Rule and Form Suggestions and Prioritization

Suggestions

The committee's main task in developing its annual agenda is reviewing the recommendations of its rules, appellate division, and joint appellate technology (JATS) subcommittees on new and pending suggestions for changes to the appellate rules and forms. These recommendations are set out in the following the following attachments to this memo:

- Tables of the rules and form suggestions reviewed by the subcommittees (Attachment 3). These tables include all of the new suggestions received by the committee since last October and all of the suggestions that remained pending, either from the committee's 2017 annual agenda or on the list of previously deferred suggestions. These suggestions have been sorted into tables based on the subcommittees' recommended action:
    - Suggestions that were previously designated as Priority 1 projects or that a subcommittee recommends as Priority 1 projects;
    - Suggestions that were previously designated as Priority 2 projects or that a subcommittee recommends as Priority 2 projects;
    - Suggestions that were previously deferred or that a subcommittee recommends be deferred. This means that these suggestions would not be worked on by the committee this year, but will remain on this list for possible consideration by the committee next year. Please note, as explained below, the committee will not be discussing these suggestions at this meeting unless a member requests that a particular suggestion be discussed.
    - Suggestions received this year that a subcommittee recommends not be pursued.

In these tables, items that are new suggestions received this year are identified with yellow highlighting

Prioritization

As the attached letter from Justice Hull (Attachment 2) reflects, 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 new priority 2 rule or form projects included on this year's proposed annual agenda have proposed completion dates of January 1, 2020: they 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 there are several proposals that were previously approved by RUPRO last year as priority 2 projects. These carry-over items have January 1, 2019 proposed completion dates. 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.

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 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 committee members may want to keep in mind in reviewing the rules subcommittee's recommendations:

- 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 committee will need to prioritize among those suggestions that are identified as Priority 2 projects - 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 work on approximately that same number of projects (note that this does not include items 1-3 on the draft agenda, which represent the ongoing charge of the committee, nor new priority 2 items that will not actually be worked on this committee year).
- Because the combined list of new suggestions and those pending from last year's annual agenda is fairly long, as noted above, the committee will not be reviewing items on the "deferred" list at this time unless a committee member specifically requests that an item be considered for possible re-categorization. If you think an item on this "to be deferred" list should be re-categorized as a priority 1 or priority 2 project, should be referred to another group, or should be placed on the list of items the committee will not pursue, please send an e-mail identifying the item so that the committee can discuss this potential re-categorization at the meeting. If an item on the "to be deferred" list is not called out for discussion, it will be presumed all members approve of it remaining on this list.
- 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 happened with at least one item last year, 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.

Committee Task

The committee's task is to review the subcommittees' recommendations, as reflected in the attached draft annual agenda and tables and decide which of them should be:

- Included in the draft annual agenda as priority 1 proposals (urgent proposals that the committee will work on this year);
- 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 subcommittee or another body; or
- Not pursued at all.

GUIDELINES FOR THE ANNUAL AGENDA PROCESS
From the Judicial Council's Executive and Planning Committee, Rules and Projects Committee, and Technology Committee

Introduction

This document provides an overview of the annual agenda process and information to help prepare the Judicial Council internal committees serving as oversight committees—the Executive and Planning Committee (E&P), the Rules and Projects Committee (RUPRO), and the Judicial Council Technology Committee (JCTC)—advisory body chairs, and principal staff for annual agenda review meetings.

Annual Agenda Review Meetings

The Judicial Council governance policies express the council's interest in connecting with the leaders of its advisory bodies and coordinating efforts for the sake of continuously improving access to the courts and the administration and delivery of justice. The annual agenda review meetings serve as substantive conversations in a multi-year process between the oversight committees and the chairs of the advisory bodies to define the key objectives and projects for advisory bodies in order to align them with judicial branch goals, objectives, and desired outcomes.

The oversight committees and the advisory body chairs discuss the best use of each advisory body's resources for the coming year. The oversight committees also identify any overlap in advisory body activities and projects. In these conversations, oversight committees are likely to convey their interest in the fulfillment of the council's strategic goals and operational objectives through the advisory body's objectives and projects. The oversight committees may also see possibilities for synergies and opportunities for collaboration between advisory bodies.

Through the review meetings, E&P, RUPRO, and JCTC provide oversight to the council's advisory bodies to guide them in focusing on matters of importance to the council and on providing the council with valuable advice and policy recommendations. E&P meets to review and approve the annual agendas of advisory bodies whose work focuses on projects and administrative issues. RUPRO meets to review and approve the annual agendas of advisory bodies whose work focuses on rule-making, forms, and legislation. JCTC meets to review and approve the annual agenda of the Court Technology Advisory Committee, the committee over which it exercises oversight. The advisory body chairs and principal staff attend the meetings either in person or by telephone.

Preparing Draft Annual Agendas for Review

Before the annual agenda review meetings, advisory bodies submit their draft annual agendas to their respective oversight committees for review. Using the template approved by the three

oversight committees[1], each advisory body submits, in advance, a proposed annual agenda consistent with its charge, which includes a list of key objectives and a list of related projects that the advisory body intends to either commence or accomplish in the coming year. The annual agenda also contains information relating to any subgroups (e.g., subcommittees) and the status of the previous year's projects.

If the advisory body would like to create a new subgroup, it may request approval from the oversight committee by including "new" before the name of the proposed subgroup and describing its purpose and membership on the annual agenda.[2] The annual agenda template includes a space for this information in the *Subgroups/Working Groups – Detail* section.

Review and Approval of Draft Annual Agendas

Each advisory body's draft annual agenda forms the basis for a conversation during the review meetings about the advisory body's key objectives for the coming year, related projects, and the alignment of those projects with the council's strategic and operational plans. During the meetings, the oversight committees ask questions of the advisory body chairs and engage in conversations to understand the direction and priorities of the advisory bodies. Principal staff are generally included in these meetings to assist with scheduling and to provide further detailed information as needed. Understanding an advisory body's recent history may be helpful, but the focus of the chair and principal staff should be on the advisory body's present and future work. Questions and proposals from the advisory body chair and principal staff asking for the oversight committee's guidance are also welcome and appropriate.

The intended outcome is an understanding between the oversight committee, the advisory body chair, and principal staff of the advisory body's priorities for the coming year, the objectives to be pursued, and the projects to be undertaken. This understanding serves as a foundation for subsequent annual agenda meetings in a continuous effort to enhance mutual support and coordination between the Judicial Council and its advisory bodies.

Following the review meetings, the approved annual agendas are posted on the Serranus website. They are also posted on the advisory bodies' pages of the California Courts website to allow branch stakeholders to be informed of the work of the advisory bodies.

Roles of a Judicial Council Advisory Body and Its Chair

The Judicial Council governance policies, adopted in 2008, state that the advisory bodies:

- Provide policy recommendations and advice to the council on topics specified by the council or the Chief Justice, using the members' individual and collective wisdom.

[1] The annual agenda template was revised before the 2014 committee year to add a column that identifies the end product (e.g., rule amendment) or outcome of each activity.

[2] California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

- Work at the same policy level as the council, developing recommendations that focus on the strategic goals and long-term impacts that align with the judicial branch goals.[3]
- Do not usually implement policy, although the council or the oversight committees may assign policy implementation and programmatic responsibilities.
- Do not speak or act for the council except when formally given that authority for specific and time-limited purposes.
- Are responsible, through staff, for gathering stakeholder perspectives.

The advisory body chair, with the assistance of principal staff, is responsible for developing a realistic annual agenda and discussing appropriate staffing and resources with the Administrative Director. The oversight committees are responsible for reviewing and approving the annual agendas, which provide the advisory bodies with charges specifying what they are to achieve during the coming year. The oversight committees may add or delete specific projects and reassign priorities. The template provides descriptions of priority level 1 and 2 projects that involve rules and forms. This applies to projects approved by RUPRO. Projects of advisory bodies overseen by E&P and JCTC often are other than rule and form proposals. RUPRO offers the following guidance for rule and forms proposals approved by RUPRO:

> An advisory body can expect that a rule or form proposal on its annual agenda that was approved by RUPRO will be circulated for comment. There are limited circumstances in which approval to work on a proposal might not result in approval for public circulation. For example, RUPRO could reasonably not approve for circulation something that it earlier approved for development if there is a significant change in the proposal and the proposal: (1) is much bigger in scope or more complex than described on the annual agenda; (2) has consequences not recognized or anticipated when presented on the annual agenda; or (3) is no longer urgent or needed to avoid inconsistency in the law.

If, after approval of its annual agenda, an advisory body identifies additional or different priorities and projects, because of legislation or other reasons, it may seek approval from its oversight committee to revise its annual agenda. RUPRO has approved a template to be used for this purpose for its advisory bodies, which is available to principal staff on The Hub. In determining whether to give approval to a proposed additional project, the oversight committee considers:

- the new project's urgency;
- whether it is consistent with the advisory body's charge;
- the advisory body's approved annual agenda;
- the Judicial Council's strategic plan; and
- whether it falls within the body's available staff, and other resources.

[3] The Judicial Council's strategic plan can be found at http://www.courtinfo.ca.gov/jc/sp.htm and its operational plan can be found at www.courtinfo.ca.gov/reference/documents/2008_operational_plan.pdf.

Policy Considerations in Reviewing Annual Agendas

Distinction Between Policy Recommendation and Policy Implementation

Because the primary role of advisory bodies is to advise and provide policy recommendations to the Judicial Council, the oversight committees may focus on projects that fall outside of this role. If an advisory body has been directed to implement policy or produce a program, the oversight committee will want to ensure that staff continues to be accountable to the Administrative Director for the satisfactory performance of the implemented policy or program, and that the role of the advisory body is to provide advice to staff. These roles are consistent with the council's governance policies.

For advisory bodies that have policy implementation and programmatic projects, the annual agenda process can clarify for the advisory body the part for which it is responsible (e.g., providing advice and guidance to staff) and the part for which staff is responsible (e.g., performing to the standards and expectations of the Administrative Director).

Preliminary questions about the annual agendas include:

- Which projects give advice or make policy recommendations? (Both are the advisory body's primary role)
- Which projects are policy implementation or programmatic?

An advisory body's *recommendations* of new or revised rules and forms are policy recommendations because they require the weighing of various possibilities and alternatives, and their approval requires a policy decision by the Judicial Council. An advisory body's *recommendations* of specific programs or of specific ways to implement policy are also policy recommendations. As long as an advisory body stays in the realm of making recommendations to the council, it occupies its traditional advisory role.

Under the council's governance policies, however, when the advisory body's project actually produces products or services, such as resource materials, content, or programs, or the advisory body takes final action independent of the council, it is considered to be performing the work of implementation and program delivery. An explicit Judicial Council or oversight committee charge is required for an advisory body to take this action or pursue this type of project. The advisory body's oversight committee may approve the body's involvement with policy implementation or program delivery, but it is important to specify on the annual agenda that a policy implementation project is being approved and to clarify the role and accountability of the advisory body and staff. In particular, the oversight committee's expectations for reviewing final products or introducing new services at the completion of a committee's project should be made clear. That way, oversight committees can ensure that the Administrative Director continues to be accountable to the Judicial Council for staff performance and advisory bodies can proceed with the explicit support of their respective oversight committees. In the event of recommendations to the Judicial Council that result from the advisory body's work, that are subject to the council's approval or adoption, please consult the calendar of Judicial Council

meeting dates and the Executive and Planning Committee's agenda-setting schedule attached to ensure timely delivery of the Judicial Council report.

Judicial Branch Strategic and Operational Plan Goals, Objectives, and Desired Outcomes
The annual agendas require advisory bodies to identify the strategic and operational plan goals achieved by each project. If an oversight committee determines a project that does not appear to align with existing branch priorities, the oversight committee can propose soliciting involvement by a more appropriate entity (e.g., the State Bar). If the annual agenda conversation results in a conclusion that a specific project is attenuated or not covered by branch priorities, the oversight committee and the advisory body chair should discuss and decide whether the project can be modified to meet a judicial branch strategic goal or policy or an operational objective or outcome, or whether that project should be referred to an outside entity.

General Questions and Issues Applicable to Most Annual Agendas

The following are general questions that may be applicable to annual agendas under review:

- Is this a "realistic" list of objectives and projects for the coming year? (Factors may include the number of projects on the list, the varied scope of projects, the impact on the courts if approved, the resources needed, etc.)
- What is the key direction and focus for this advisory body?
- What is the status of previous year's priority level 2 projects? (For priority level 2 projects approved by RUPRO, the expectation that the advisory body can develop the project (typically rules or forms) and that it will be approved for circulation in the second year, absent unusual circumstances.)
- Were there issues/projects that the advisory body worked on during the previous year that were unanticipated? If so, what were they?
- For a project that implements policy or produces a program:
    - What role do the advisory body members play in performing this project? What role do staff play? To whom are staff accountable for the satisfactory and timely completion of this project?
    - Does the advisory body have an explicit Judicial Council or oversight committee charge to pursue this project? If the charge is ambiguous or was issued several years ago, should the oversight committee renew that charge? If so, under what circumstances and conditions should the advisory body pursue this project?
- Does the advisory body gather stakeholder perspectives?
- How does the advisory body intend to obtain information about the cost and training impact on the courts of a particular proposal?
- Does the chair or staff have any concerns about the adequacy of resources to accomplish the projects?

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October 22, 2015

To: Judicial Council Advisory Committee Chairs

Re: Development of Rules and Forms Proposals on Annual Agendas

Dear Advisory Committee Chairs:

The Judicial Council's Rules and Projects Committee (RUPRO) will meet on December 10, 2015, to consider the annual agendas of the advisory committees it oversees. I would like to provide some guidance specifically about rules and forms proposals as your committee develops its annual agenda. RUPRO recognizes the valuable contributions of advisory committees in advancing the administration of justice through the proposals they develop. Due to limited resources, however, not every meritorious proposal can be put forward.

In establishing the priority levels and criteria listed below, RUPRO considered the goal of reducing burdens on courts, the need to be responsive to changes in the law, and the desire to address urgent problems and promote cost savings and efficiencies. The criteria for the two priority levels and the significance of RUPRO approval of annual agenda items for each level are discussed below.

Priority Level 1

The criteria that RUPRO recommends advisory committees consider in determining whether a proposal has a high priority and should be developed and proposed to be effective January 1, 2016, are the following:

(a) The proposal is urgently needed to conform to the law;
(b) The proposal is urgently needed to respond to a recent change in the law;
(c) A statute or council decision requires the adoption or amendment of rules or forms by a specified date;

(d) The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue;
(e) The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or
(f) The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.

There are limited circumstances in which RUPRO's approval to work on a proposal might not result in approval for public circulation. For example, a circumstance that could justify RUPRO not approving for circulation a proposal that it earlier approved to develop is a significant change in the proposal such that the proposal (1) is much bigger in scope or more complex than described on the annual agenda, (2) has consequences not recognized or anticipated when presented on the annual agenda, or (3) is no longer urgent or needed to avoid inconsistency in the law.

Priority Level 2

RUPRO understands that advisory committees and task forces may have new priority level 2 proposals for their 2016 annual agendas. Advisory committees should include any such proposals, but also should expect that the proposals may not be approved for the current year due to the ongoing fiscal situation affecting the judicial branch. A priority level 2 proposal is one that is:

(a) Useful, but not necessary, to implement statutory changes; or
(b) Helpful in otherwise advancing Judicial Council goals and objectives.

Advisory committees can expect that a proposal with priority level 2 may be developed and will be approved for circulation in the second year, absent unusual circumstances. RUPRO will review last year's priority level 2 projects on an item-by-item basis. RUPRO is interested in learning whether the advisory committee considers that last year's priority level 2 projects remain at level 2, are now considered level 1, or are no longer a project the committee wishes to work on in the immediate future. It will also be helpful to know where these projects are in development and what resources have been expended thus far.

Alternatives to rules and forms

In developing proposals to respond to a specific need, advisory committees should consider whether the need could be addressed in other ways, such as developing suggested practices for courts. Advisory committees should consider whether a proposal must have statewide application

as a rule or whether a different solution tailored to specific courts or all courts of a particular size would address the matter.

Pre-review of annual agendas

Each RUPRO member will be assigned an advisory committee annual agenda to pre-review and will be encouraged to talk to its chair and staff before the meeting to best understand the committee's projects.

I want to say again, as I have tried to say in the past, on behalf of the RUPRO committee and the Judicial Council as a whole, we sincerely appreciate the important work that you do. Without the committees, none of our efforts to provide the people of California the best judicial system possible could be realized.

I look forward to our discussion on December 10, 2015 about your committee's proposals.

Sincerely,

Harry E. Hull, Jr.
Chair

HEH/SRM

RECOMMENDATIONS FROM THE RULES, APPELLATE DIVISION, AND JOINT APPELLATE TECHNOLOGY SUBCOMMITTEES REGARDING APPELLATE RULE AND FORM SUGGESTIONS – 2017-2018

SUGGESTIONS A SUBCOMMITTEE RECOMMENDS BE PRIORITY 1 PROJECTS THIS YEAR

	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	This was a priority 1(e) project on last year's agenda– Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public On January 1 of this year, new rule 8.90 recommended by the committee, which urges justices to consider the use of initials to identify certain individuals in appellate opinions, took effect. The privacy subcommittee may consider other rule proposals this year.
2.	***CIVIL APPEALS*** *– rule and form proposals related to rule*	• 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	Advisory Committee on Providing Access and Fairness	Note – all of these suggestions were submitted as comments on ITC SPR17-01, Settled Statements in

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	8.137 – settled statements	the average person could easily understand.	By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	Unlimited Civil Cases. The rules subcommittee recommends that these be on the 2017-2018 annual agenda as a single project with a January 1, 2019 completion date.
	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.		
	CIVIL APPEALS – *form APP-003*	• 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	
	CIVIL APPEALS – *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.	Advisory Committee on Providing Access and Fairness By Hon. Kathleen E.	In its response to the comment, the committee indicated that, rather than trying to modify proposed form APP-014 as suggested, it would be preferable to work

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
			O'Leary and Hon. Laurie D. Zelon, Co-chairs	with Fam/Juv AC to develop a proposed form specifically for family law appeals.
	***FAM/JUV** to take the lead; 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):"	San Diego County Bar Association By Michael Pulos State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Same.
	***FAM/JUV** to take the lead; develop new form for settled statements for family law appeals*	• 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	

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	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.		
3.	***APPELLATE DIVISION***— *Proposed amendments to the rules concerning misdemeanor appeals*	Current rule 8.885(a) requires oral argument to be set in every appeal "[u]nless ordered otherwise." Taken literally, this would require setting oral argument in every case where no issue is raised pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 unless the court issues an order stating otherwise. Some, but not all, courts do set oral argument in this situation. Judge Williams suggests it would clarify the rule to add an amendment that oral argument will not be set when there are no issues. I believe this is good idea and propose the above wording. A related change suggested by Judge Williams is to clarify the procedure for waiving oral argument. Current rule 8.885(d) permits waiver of oral argument but does not specify how. Many appellants appear at argument only to submit the matter. This is frustrating to the judges and opposing counsel who must prepare for an argument that will never happen. Some practitioners in misdemeanor appeals inform the district attorney's office it will not pursue oral argument and the practitioner does not appear. The attorney for the People then informs the court that appellant wishes to waive oral argument and the People do not oppose the request. This system is flawed because the judges still prepare for the oral argument. It is also potentially vulnerable to miscommunication or abuse. I think the proposed amendment would create a clear procedure for waiving oral argument. Striking the phrase "[u]nless ordered otherwise"in subdivision (a) would mean that oral argument would automatically not be set in *Wende* cases. It would also mean that oral argument must remain on calendar if a party objects to the waiver of oral argument. This draws from the rule that exists in court of appeal that a party is entitled to oral argument in all non-*Wende* appeals as a matter of right. (*People v. Brigham* (1979) 25 Cal.3d 283, 285-286.) (1) ORAL ARGUMENT IN MISDEMEANOR APPEALS	Hon. Helen E. Williams, Superior Court of Santa Clara County, Presiding Judge of Appellate Division, and Jonathan Grossman, Sixth District Appellate Program	The appellate division recommends this as a priority 1(e) project– Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		Rule 8.885. Oral argument **(a) Calendaring and sessions** Except in appeals where no issue is raised ~~Unless otherwise ordered~~, all appeals in which the last reply brief was filed or the time for filing this brief expired 45 or more days before the date of a regular appellate division session must be placed on the calendar for that session by the appellate division clerk. By order of the presiding judge or the division, any appeal may be placed on the calendar for oral argument at any session. * * * **(d) Waiver of argument** Parties may waive oral argument by filing notice of waiver of oral argument within 10 days after notice of oral argument is sent. The other party or parties may object within 10 days after the filing of the notice of waiver. The court may vacate oral argument if no objection is made. The court must send notice to the parties when oral argument is vacated.		
4.	***APPELLATE DIVISION***—*amend rules regarding deadlines and finality in appellate division matters*	Conduct a comprehensive review of the rules regarding deadlines and finality of decisions in appellate division matters and harmonize with parallel rules in court of appeal matters. Examples: Usually, a party in the court of appeal has 40 days to prepare a petition for review and 15 days to prepare a petition for rehearing. A party can receive immediate electronic notification of the decision of the court of appeal. An application for certification to transfer the case to the court of appeal is the equivalent to a petition for review for cases in the appellate division, and it is due 15 days after the decision is filed. The deadline for the application for certification and the petition for rehearing are inflexible because the appellate division loses jurisdiction 30 days after the decision is filed. Practitioners and pro per parties in the appellate division have complained there is insufficient time for preparing an application for certification and a petition for rehearing for several reasons. First, for most it is something they are not familiar with, especially an application for certification. Second, most superior courts still notify parties of decisions by mail, which delays receipt of the decision. Third, despite rule 8.887(b) requiring the court clerk to promptly file and send the decision, there have been delays in the mailing of the decision, leaving little or no time for a petition for rehearing or an application for certification. The first and second problems cannot be solved without extending the	Hon. Helen E. Williams, Superior Court of Santa Clara County, Presiding Judge of Appellate Division, and Jonathan Grossman, Sixth District Appellate Program	The appellate division recommends this as a priority 1(e) project–Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		time of finality. The proposed amendment is modest in that it would retain the time limits but would not prejudice the parties due to failures of the court clerk to timely mail the decision. The suggested changes does not affect the time for a petition for transfer filed in the court of appeal after the decision is final under rule 8.1006. A supplemental or alternative solution is to extend the deadlines by 15 days, so that a petition for rehearing and an application for certification is due 30 days after the decision is filed, and the matter is final 45 days after the decision is filed. As for published decisions, if a decision is issued in the court of appeal and then the court decides to publish it, the decision becomes final 30 days after the publication order, not the date of the original decision. This rule is based on the experience that when an opinion is published, more people scrutinize the decision and might suggest changes. By delaying the date of finality to be sufficiently after the publication of the opinion, the court of appeal retains jurisdiction to modify the opinion. In the appellate division, however, an opinion certified for publication is not even posted on the Judicial website for a month or more. With the increased scrutiny, there sometimes arises situations where modifications might be appropriate, but the appellate division has lost jurisdiction. Judge Helen Williams has experienced a problem with this and has suggested modifying the rules so that a decision certified for publication is final 30 days after it is publically posted. I added some language to the rule to reflect Judge William's suggestion. I have noticed another problem with published appellate division cases, which is not addressed in the proposed amendment to the rules. Frequently, the court of appeal will certify the case for transfer after an opinion has been certified for publication. But there does not appear to be a mechanism for alerting the public of this. By contrast, when a decision of the court of appeal is certified for publication, it is widely publicized when review or rehearing has been granted or if the opinion has been ordered depublished. A similar system should be established for published appellate division cases. I did not look into the rules for other matters handled by the appellate division, but if changes are made for misdemeanor appeals, similar changes should be made for other matters handled by the appellate division. **Rule 8.888. Finality and modification of decision** **(a) Finality of decision**		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		(1) Except as otherwise provided in this rule, an appellate division decision, including an order dismissing an appeal involuntarily, is final 30 days after the decision is ~~filed~~ sent by the court clerk. (2) If the appellate division certifies a written opinion for publication or partial publication ~~after its decision is filed and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication~~ the decision is final 30 days after the date the decision is posted on the Judicial website. (3) The following appellate division decisions are final in that court when filed: (A) The denial of a petition for writ of supersedeas; (B) The denial of an application for bail or to reduce bail pending appeal; and (C) The dismissal of an appeal on request or stipulation. **(b) Modification of judgment** (1) The appellate division may modify its decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open. (2) An order modifying a decision must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the ~~filing~~ date of the modification order is sent by the court clerk. **(c) Consent to increase or decrease in amount of judgment** * * * **Rule 8.889. Rehearing** **(a) Power to order rehearing** (1) On petition of a party or on its own motion, the appellate division may order rehearing of any decision that is not final in that court on filing. (2) An order for rehearing must be filed before the decision is final. If the clerk's office is closed on the date of finality, the court may file the order on the next day the clerk's office is open. **(b) Petition and answer** (1) A party may serve and file a petition for rehearing within 15 days after the following is sent by the court clerk, whichever is later: (A) The decision ~~is filed;~~ ~~(B) A publication order restarting the finality period under rule 8.888(a)(2), if the party has not already filed a petition for rehearing~~;		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		(B) ~~(C)~~ A modification order changing the appellate judgment under rule 8.888(b); or (C) ~~(D) The filing of a c~~Consent to dismiss the appeal under rule 8.888(c). (2) A party may serve and file a petition for rehearing within 15 days after a decision certified for publication or partial publication is posted on the Judicial website. (3) ~~(2)~~ A party must not file an answer to a petition for rehearing unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within 8 days after the order is filed unless the court orders otherwise. A petition for rehearing normally will not be granted unless the court has requested an answer. (4) ~~(3)~~ The petition and answer must comply with the relevant provisions of rule 8.883. (5) ~~(4)~~ Before the decision is final and for good cause, the presiding judge may relieve a party from a failure to file a timely petition or answer. * * * **Rule 8.1005. Certification for transfer by the appellate division** **(a) Authority to certify** * * * **(b) Application for certification** (1) A party may serve and file an application asking the appellate division to certify a case for transfer at any time after the record on appeal is filed in the appellate division but no later than 15 days after the following is sent by the court clerk: (A) The decision ~~is filed~~; ~~(B) A publication order restarting the finality period under rule 8.888(a)(2);~~ (B) ~~(C)~~ A modification order changing the appellate judgment under rule 8.888(b); or (C) ~~(D) The filing of a c~~Consent to dismiss the appeal under rule 8.888(c). (2) A party may serve and file an application asking the appellate division to certify a cast for transfer within 15 days after a decision certified for publication or partial publication is posted on the Judicial website. (3) ~~(2)~~ The party may include the application in a petition for rehearing. (4) ~~(3)~~ The application must explain why transfer is necessary to secure uniformity of decision or to settle an important question of law.		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		(5) ~~(4)~~ Within five days after the application is filed, any other party may serve and file an answer. (6) ~~(5)~~ No hearing will be held on the application. Failure to certify the case within the time specified in (c) is deemed a denial of the application. **(c) Time to certify** The appellate division may certify a case for transfer at any time after the record on appeal is filed in the appellate division and before the appellate division decision is final in that court. * * *		

SUGGESTIONS A SUBCOMMITEE RECOMMENDS BE PRIORITY 2 PROJECTS

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
5.	***GENERAL –*** *Modernize Appellate Court Rules for E-Filing and E-Business (JATS)*	a. Review appellate rules to ensure consistent with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business. b. Consider rule modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service). c. Consider potential amendments to rules governing online access to court records for parties, their attorneys, local justice partners, and other government agencies. Some specific rule projects within the scope of this item: • Formatting of electronic reporters' transcripts: This project is underway. A proposal based on a suggestion from the California Court Reporters' Association, was circulated for public comment this spring. The committee review of the public comments is awaiting action on related pending legislation, AB 1450. • Sealed & Confidential Material: This project has not been started. Rules for the handling of sealed or confidential materials that are submitted electronically (previously considered). This was also set aside by JATS in 2016. • Rule amendments re access: This project is underway. An initial draft of possible amendments to address online access to trial court records for parties,	Information Technology Advisory Committee	Overall project was on last 3 annual agendas as Priority 2 – helpful but not urgent. Phases 1 and 2 of this project have been completed. JATS recommends that Phase 3 of this project be included on annual agenda as priority 2 project.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		their attorneys, local justice partners, and other government agencies. The plan is for JATS to review what is ultimately proposed at the trial court level and use that as a base for developing a companion proposal for access to appellate court records. • Bookmarking: This project has not been started. The 2016 trial court rules modernization changes include a new requirement, added to rule 3.1110(f), that electronic exhibits be electronically bookmarked. (It requires that electronic exhibits "include electronic bookmarks with links to the first page of each exhibit and with book mark titles that identify the exhibit number or letter and briefly describe the exhibit.") This issue was set aside by JATS for 2016, to give those courts new to e-filing (or not yet on e-filing) a chance to gain some experience with e-filing before participating in a decision as to what to require. • Exhibits: This project has not been started. Creating a requirement that exhibits submitted in electronic form be submitted in electronic volumes, rather than individually (previously considered, in connection with consideration of bookmarking requirements). This was suggested in a comment by D'vora Tirschwell, a writ attorney at the First District, commenting on the 2016 appellate e-filing rules proposal. • Return of lodged electronic records: This project has not been started. The trial court rule modernization changes made in 2016 amend rules 2.551(b) and 2.577(d)(4) to give the moving party ten days after a motion to seal is denied to notify the court if the party wants the record to be filed unsealed. If the clerk does not receive notification in ten days, the clerk must return the record, if lodged in paper form, or permanently delete it if lodged in electronic form. Rule 3.1302 is amended to allow the court to maintain other lodged materials – and if the court chooses not to do so, to require that they be returned, if on paper, or permanently deleted, if electronic, with a notice of the destruction sent to the party before destruction of the electronic record.		
6.	***GENERAL--*** *Branch and Model Court Privacy Policies on Electronic Court Records and Access in*	(a) Develop a comprehensive statewide privacy policy addressing electronic access to appellate court records and data to align with both state and federal requirements. (b) Develop a model appellate court privacy policy, outlining the key contents and provisions to address within each court's specific policy.	Information Technology Advisory Committee	This project is underway. Staff are preparing an initial draft of the policy for consideration by JATS.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	the Appellate Courts (JATS)			
7.	***GENERAL***— *rules regarding certification of electronic records, electronic signatures, paper copies of electronically filed documents (JATS)*	ITAC is looking at rules to govern certification of electronic records, standards for electronic signatures, and whether parties should have to submit paper copies of documents when filing electronically. (In the trial courts, some changes will require legislation, as there are statutory requirements for the trial courts regarding electronic filing, service and signatures. See Code of Civil Procedure section 1010.6.) As these changes move forward for the trial courts, JATS will offer input on changes that will affect the appellate courts. JATS's work must wait until the project is moved forward by ITAC. In addition, this project may eventually result in rules work to be done by JATS. In future years, after ITAC has resolved these issues for the trial courts, JATS may wish to consider proposing changes to the appellate court rules on these issues.		This project was identified last year.
8.	***GENERAL—*** *input on document management system (JATS)*	Monitor and provide input on implementation of a new document management system in the appellate courts.		This project was identified last year.
9.	***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 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. **Combine this project with a previously deferred item:** 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	Mr. Kevin Green, committee member Justice Ikola,	This was on the committee's 2017 annual agenda as a Priority 2 item with a completion date of January 1, 2019. In 2014-2015, the committee placed this

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
	APPEALS IN CIVIL CASES – *Rule 8.204 – Length of briefs*	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."	former committee chair, and Justice Rylaarsdam	on deferred list because it was not considered a high priority.
10.	***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**:	Rosemary Bishop	This was on the committee's 2017 annual agenda as a Priority 2 item with a completion date of January 1, 2019.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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 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		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		appeal rights if they are not present at the hearing. (*In re Albert A.* (2016) 243 Cal.App.4th 1220.) 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.		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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 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.		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		4) Any likely implementation problems: 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.		
11.	***APPELLATE DIVISION –****Rule 8.851 – Appointment of Counsel for misdemeanor appeals, and form CR-133*	**<u>Possible revision to CRC 8.851(a)</u>** **<u>Concern with current language</u>** CRC 8.851(a) sets forth the standards for appointment of counsel in misdemeanor appeals. The rule speaks only to appeals that are post-conviction, but there is at least one common situation in which a misdemeanor defendant may be involved in an appeal (as appellant or respondent) pre-trial. The proposed revision would broaden the language of the rule to encompass this situation as well as any others that might be created by the Legislature in the future. **<u>Current language</u>** (a) Standards for appointment (1) On application, the appellate division must appoint appellate counsel for a defendant **convicted** of a misdemeanor who: (A) Is subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is likely to suffer significant adverse collateral consequences as a result of the conviction; and (B) Was represented by appointed counsel in the trial court or establishes indigency. (2) On application, the appellate division may appoint counsel for any other indigent defendant **convicted** of a misdemeanor. (3) A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, is a condition of probation, or may be ordered if the defendant violates probation. (Cal. Rules of Court, rule 8.851(a), boldface added.)	Ann Salisbury, Senior Research Attorney Orange County Superior Court and former member of appellate division subcommittee	This was on the committee's 2017 annual agenda as a Priority 2 item with a completion date of January 1, 2019.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		Background When a state provides for a first appeal from a criminal conviction as a matter of right, the state must provide counsel to an indigent defendant. (*Douglas v. California* (1963) 372 U.S. 353, 357.) Failure to do so is a violation of due process and equal protection. (*Id.* at pp. 356-357 ["where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor"].) This holding was extended to appeals from misdemeanor convictions where the sentence included the possibility of incarceration or other "serious consequences." (*In re Henderson* (1964) 61 Cal.2d 541, 543-544.) In addition to an appeal from a judgment of conviction (Pen. Code, § 1466), the Penal Code also allows a pre-trial appeal of an order granting or denying a motion to suppress evidence. (Pen. Code, § 1538.5, subd. (j).) Because there has been no conviction, however, the Rules of Court would not allow an appellate division to appoint counsel for an indigent defendant for such an appeal (whether brought by the defendant or the People). Although a defendant may have the order denying his/her motion reviewed in a post-conviction appeal (Pen. Code, § 1538.5, subd. (m)), it appears that appointment of counsel for a pre-trial appeal pursuant to Penal Code section 1466, subdivision (j), might be mandated. Under the current rule, defendants of means would be able to pursue pre-trial appeals, whereas those defendants with appointed counsel could not, which is a questionable practice. (Cf. *People v. Shipman* (1965) 62 Cal.2d 226, 231-232 [finding a right to appointed counsel to bring a non-frivolous collateral attack on the conviction].) Further, any pre-trial appellate decision would be law of the case[1] for trial and any post-conviction appeal. (See, e.g., *People v. Saucedo* (1974) 42 Cal.App.3d 905, 907.) Thus, absent an appointment of counsel, an indigent defendant might be without counsel at a critical stage of the defendant's case.[2]		

[1] For a discussion of the law of the case doctrine generally, see *People v. Cooper* (2007) 149 Cal.App.4th 500, 524-525.

[2] To the extent that the Public Defender is representing the defendant, one could argue that the Public Defender is obligated to represent the defendant even if there is not an appointment. Government Code section 27706 sets forth the duties of the Public Defender. Subdivision (a) states that "The public defender shall, upon request, give counsel and advice to [an indigent defendant] about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction."

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		Proposed revision (a) Standards for appointment (1) On application, the appellate division must appoint appellate counsel for a defendant accused or convicted of one or more~~a~~ misdemeanors who: (A) Is or may be subject to incarceration or a fine of more than $500 (including penalty and other assessments), or who is or may be likely to suffer significant adverse collateral consequences as a result of being convicted of the misdemeanor allegations~~the conviction~~; and (B) Is or was represented by appointed counsel in the trial court or establishes indigency. (2) On application, the appellate division may appoint counsel for any other indigent defendant accused or convicted of a misdemeanor. (3) A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, is a condition of probation, or may be ordered if the defendant violates probation.		
		Combine with new suggestion to revise form CR-133, Request for Court-Appointed Lawyer in Misdemeanor Appeal: CR-133, Request for Court-Appointed Lawyer in Misdemeanor Appeal only allows a defendant/appellant to utilize it since the form only refers to "appellant" and "appellant's lawyer" rather than simply "defendant" as stated in California Rules of Court, 8.851. If the defendant is the respondent relative to the People's appeal and was represented by a private attorney at trial but is now indigent, wondering if a "universal" form replacing "appellant" with "defendant" would be beneficial? Needless to say, most defendants are appellants, and I note that in the family context, the California Supreme Court left it up to the courts. (See In re Bryce C. (1995) 12 Cal.4th 226, 235 ["We merely hold that appellate courts are not required to appoint counsel for all responding parents, but may, and sometimes must, appoint counsel in specific cases."].)	Milica Novakovic, Staff Attorney, Superior Court of San Diego	The Appellate Division recommends that this suggestion be combined with the existing priority 2 rule project concerning appointment of counsel for misdemeanor appeals

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
12.	***APPELLATE DIVISION - Forms***	Various suggested changes to the following appellate division forms: • APP-102 notice of appeal limited civil case • APP 110 respondent's record designation • APP-104, APP-105, CR-135, CR-136, CR-143, and CR-144, statement of appeal forms • CR-132 notice of appeal misdemeanor • CR-134 notice regarding record on appeal • CR 142 Notice of appeal infraction • Proposed new form for record designation in infraction appeal ***See specific suggestions from LASC attached at the end of this table.*** ***Suggestion regarding APP-105 was received separately:*** Did a little presentation for our civil judges regarding the Statement on Appeal process and the revisions to 8.837 and APP-105. I noted that the rule requires that the trial court order include "the date by which the new proposed statement must be filed and served" (Cal. Rules of Court, rule 8.837 (d)(3)(A)), and also encouraged the trial court judges to similarly include a "due date" in orders under (d)(3)(b)(ii) and orders under (d)(4)(B) so that the statement on appeal process doesn't end up in limbo. However, the revised APP-105 does not include spaces for such "due dates." I realize that this is totally an example of "hindsight is 20-20," but I wanted to let you know in the event you weren't already aware and to suggest the addition of a section perhaps at the bottom of APP-105 – section 3 – stating something like: "Appellant is to comply with any orders in section 2b above by _____ [date]."	Superior Court of Los Angeles County Milica Novakovic Staff Attorney San Diego Superior Court	This was on the committee's 2017 annual agenda as a Priority 2 item with a completion date of January 1, 2019. Same.
13.	***APPELLATE DIVISION*** – *Develop an information sheet for form APP-103*	Develop an information sheet for APP-103, similar to proposed form APP-101-INFO that is attached to SPR-17-04 (Information on Appeal Procedures for Limited Civil Cases). Overall, it would be helpful for self-represented litigants if the appellate procedure forms and information sheets for both limited and unlimited civil cases are standardized.	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

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
14.	***APPELLATE DIVISION –*** *amend rule 8.817 concerning format of motions and applications filed in appellate division*	Rules 2.100-2.118 generally apply to papers filed in the superior court. Rules 8.40, 8.44(b) and (c) and 8.204(a) and (b) apply to papers filed in a reviewing court. The two rules appear to conflict for papers filed in the appellate division. Generally, the appellate rules do not apply because they apply only in cases pending in a reviewing court, and the appellate division is not considered to be a reviewing court under rule 8.10(6). However, rule 8.883 incorporates most of the appellate rules for the filing of briefs, and the rules concerning the filing of extraordinary writ petitions refer to rule 8.883. This creates uncertainty how to format a motion or application in the appellate division. This amendment would make it clear that motions and applications filed in the superior court shall comply with rules 2.100-2.118. My goal is not to impose superior court rules for motions and applications in the appellate division if most courts follow the format of the courts of appeal. What I think is needed is clarity. If the committee would prefer court of appeal rules to apply, that would be just as good. **Rule 8.817. Service and filing** *** * *** **(c) Format** Motions and applications filed in the appellate division shall comply with rules 2.100-2.118.	Jonathan Grossman, Sixth District Appellate Program	
15.	***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	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. The appellate division subcommittee now recommends that this be a priority 2 item.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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)?		
16.	***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	The rules subcommittee recommends that this be on the 2017-2018 annual agenda with a January 1, 2020 completion date.
17.	***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.	Sandy Green, Supervising Deputy Clerk, 3DCA	The rules subcommittee recommends that this be on the 2017-2018 annual agenda with a January 1, 2020 completion date.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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.		
18.	***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	The rules subcommittee recommends that this be on the 2017-2018 annual agenda with a January 1, 2020 completion date.
19.	***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 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)	Jonathan Grossman, SDAP Staff Attorney	The rules subcommittee recommends that this be on the 2017-2018 annual agenda with a January 1, 2020 completion date.

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		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; (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		

	Rule/Form	Suggestion/Issue	Source	Priority/Other Info
		(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.		
20.	***GENERAL*** *– rule 8.252, numbering materials in a request for judicial notice*	The rule requires numbering the materials to be judicially noticed consecutively, starting with page number one. But these materials are attached to a motion and declaration(s) and are e-filed as one document. This makes pagination and referring to those materials in briefs confusing for filers and the courts.	Dan Kolkey, committee member	The rules subcommittee recommends that this be on the 2017-2018 annual agenda with a January 1, 2020 completion date.

SUGGESTIONS A SUBCOMMITTEE RECOMMENDS BE DEFERRED

	Rule/Form	Suggestion/Issue	Source	Why Defer
21.	***WRIT PROCEEDINGS*** *-- clarify the verification requirements for public agencies responding to writ petitions*	[Issue is 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.] 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	The rules subcommittee's view was that the case law appeared addressed this issue, so it is not clear that a rule amendment is needed at this time.

	Rule/Form	Suggestion/Issue	Source	Why Defer
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 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:	***General,*** *amend rule 8.500 to add grounds for grant and transfer*	The rules subcommittee considered this to be an interesting proposal, but not appropriate to pursue at this time.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		(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; (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		

	Rule/Form	Suggestion/Issue	Source	Why Defer
		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 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,*** *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	The rules subcommittee did not view this as requiring immediate attention. They noted that 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, but that this time can be set in the order itself.

	Rule/Form	Suggestion/Issue	Source	Why Defer
24.	***GENERAL***— *consider a fix for link rot*	Background: On our May 17th meeting, Lawrence Striley the Reporter of Decisions gave the appellate court librarians an overview of the solution developed for the Supreme Court. It's an "in-house" solution that required Reporter's staff to upload "target" documents to a special court web server for the Supreme Court as PDFs. Then, there were some special scripts that were developed (I didn't understand that part because it was more about how the backend of their computer systems worked, and he didn't go into too much detail). Then, any citations to the document would be edited to reflect that that an archived version resides at whateverurl.ca.gov/document.pdf. This solution will be rolled out later this year. Unfortunately, though, the Reporter's office will not be doing the same thing for the appellate courts. Lawrence said that while his office would share what they've done with us, we'd have to get a server and implement the solution ourselves. Perma.CC: The possible solution I mentioned during our meeting is called Perma.cc (https://perma.cc/signup/ courts). Lawrence actually said that this would be his #2 choice for the Supreme Court. The Perma "people" were willing to work with his office to hide the specific person submitting the document (like if a J.A. uploaded something) & the date it was originally uploaded (several weeks before the opinion was released). However, he preferred the in-house solution for his office due to how they actually process & post opinions right now. Michigan & Colorado are using Perma.cc & it's free. It was developed by Harvard's Law Library & is sponsored by a group of law libraries around the US. I imagine that the workflow would go something like this at our court: · Draft opinion goes through its process; the J.A. cite checks. · When the J.A. sees a URL cited, they go to the site and create an archived copy of the page. They can do this by saving the page as a PDF, printing the page as a PDF using Adobe distiller, or saving the file in an achievable format if it cannot be preserved as a PDF (some graphics, I suppose). · The JA (or whomever is assigned this task) would upload the document to the Perma.cc site & obtain a URL of the archived copy. · The JA would then change the citation to include an indication that the original URL was archived at the Perma.cc URL. Is this going to be more work for someone? Yes. Will it require training? Yes, in both creating PDFs and uploading the document and the new citation	Holly Lakatos, librarian, 3DCA	JATS did not view this as requiring immediate attention. Future consideration of this suggestion would benefit from the Supreme Court's experience with its chosen solution.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		format. Is it going to be a lot more work? I think it depends on how many URLs are cited. We don't seem to cite many…but I think that we could start doing this for things like loose-leaf reporters that change every year and anything else that is not really permanent or easily accessible…so that would mean that it may possibly be a lot more work for some people. Also, this solution may be something that could be distributed across the workflow so that attorneys, clerks, justices, or anyone else would be able to create & upload the archived copies…depending on how that chambers works.		
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	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

	Rule/Form	Suggestion/Issue	Source	Why Defer
		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.		
27.	***GENERAL –*** *Rule 8.163 – Application of presumption from the record when settled statement is used*	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 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.	Lisa Jaskol, former committee member	In 2014-2015 annual agenda, this was designated as a Priority 2 project with a January 1, 2017 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***	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	Committee on Appellate	Was on 2013-2014 annual agenda as Priority 2 – helpful but

	Rule/Form	Suggestion/Issue	Source	Why Defer
	Form APP-002 *Notice of Appeal*	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.	Courts, State Bar of California	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.
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.

	Rule/Form	Suggestion/Issue	Source	Why Defer
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 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.
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	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
		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: (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.	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.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		"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."		
36.	***GENERAL –*** *Rule 8.208 – Request to seal certificate of interested parties*	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 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.	Cheryl Shensa, writ attorney, Court of Appeal, Fourth Appellate District	In 2014-2015, the committee placed this on deferred list because it was not 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	Susan Streble Supervising Appellate Court Attorney California Court of Appeal	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
		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.	Fourth District, Division Two	
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

	Rule/Form	Suggestion/Issue	Source	Why Defer
				pursuing a proposal in the future.
40.	***APPEALS IN CIVIL CASES*** Rule 8.278 – Inclusion of hyperlinked briefs in recoverable costs on appeal	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 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.	Joseph Lane, committee member	See notes regarding item 34 above
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.	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.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		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.		
42.	***CRIMINAL CASES –*** *Rules 8.304 and 8.850 – Definitions of "felony case" and "misdemeanor case"*	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. [*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]	Corrine Pochop, former committee member	In 2014-2015, the committee placed this on deferred list because it concluded 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	Committee staff	Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
		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. 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	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.

	Rule/Form	Suggestion/Issue	Source	Why Defer
		on the cover of the Petition, and subd. (c) requiring full service as to a mixed petition.		
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 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.	Supreme Court	Deferred in 2013-2014 Was not considered high priority
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	Deferred in 2013-2014 Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
			Appellate Defenders	
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." 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.	Justice Ikola, committee chair	Deferred in 2013-2014 Issue does not arise very often
50.	***GENERAL RULES*** Rule 2.1040 – Electronic recordings	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."	Howard C. Cohen Attorney	Deferred in 2013-2014 Was not considered high priority

	Rule/Form	Suggestion/Issue	Source	Why Defer
	offered into evidence	STAFF NOTE: May also want to consider placing rule in a different division of the Rules of Court.		
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
52.	***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
53.	***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.
54.	***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
55.	***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
56.	***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
57.	***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.

	Rule/Form	Suggestion/Issue	Source
58.	***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
59.	***APPEALS & WRITS IN JUVENILE CASES*** Rule 8.452	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
60.	***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
61.	***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
62.	***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
63.	***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

	Rule/Form	Suggestion/Issue	Source

SUGGESTIONS A SUBCOMMITTEE RECOMMENDS BE REMOVED FROM CONSIDERATION

	Rule/Form	Suggestion/Issue	Source	Why Remove
64.	***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. 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.	Mr. Kevin Green, committee member	This was on the 2016-2017 annual agenda as a priority 2 item with a January 1, 2019 completion date. The rules subcommittee recommends that this item be taken off because members believed that there would be considerable opposition from the bar.

	Rule/Form	Suggestion/Issue	Source	Why Remove
65.	***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 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.	Curt Harris San Diego, CA	Comment on ITC SPR17-03, Verification of writ Petitions This appears to be a problem only in one court and therefore a statewide rule change is not necessary.

	Rule/Form	Suggestion/Issue	Source	Why Remove
		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. 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,		

	Rule/Form	Suggestion/Issue	Source	Why Remove
		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 Courtroom Clerk, Department 13 Sacramento Superior Court (916) 874-7786		
66.	***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. [Note that in response to the comment that made this suggestion, the committee stated "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."	Superior Court of Los Angeles County	The rules subcommittee recommends not pursuing, as the person paying for the transcript can request the partial transcript if so desired.
67.	***Criminal Appeals,** amend rule 8.386; procedure for requesting*	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 8.366 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	Howard C. Cohen, Staff Attorney, Appellate Defenders,	

	Rule/Form	Suggestion/Issue	Source	Why Remove
	judicial notice in habeas matters	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, 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.	Inc., San Diego	
68.	***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	The clerk/ administrators recommend that this suggestion be considered by the group working on the self-help learning center web site
69.	***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	The rules subcommittee recommended not pursuing this, as the advisory committee comment to rule 8.278 indicates the costs for appendixes and fees e-filing are considered recoverable costs.
70.	***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	The rules subcommittee recommended not pursuing this because, in their view, this can be addressed by order or local rule.

	Rule/Form	Suggestion/Issue	Source	Why Remove
71.	***APPELLATE DIVISION –*** *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	The appellate division subcommittee recommends not pursuing for the same reason as the rules subcommittee: the person paying for the transcript can request the partial transcript if so desired.
72.	***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 previously deferred item be removed from consideration based on concerns that, although it is a good idea in theory, it is unworkable in practice.

SUGGESTED CHANGES FROM LOS ANGELES SUPERIOR COURT TO JUDICIAL COUNCIL APPELLATE DIVISION FORMS UNDER REVIEW BY APPELLATE DIVISION

All suggested modifications are reflected in yellow highlighted text below.

1. APP-102 Notice of Appeal/Cross Appeal (Limited Civil Case)

a. **Proposed modification to "Your Information" section:**
Parties filing an appeal often fail to include all the names of the appellants because the language is singular.

① **Your Information**

a. Name of Appellant(s) (all parties filing this appeal):

_____

* * * * * * * * * * * * * * * * * * * *

b. **Proposed modification to "Record Preparation Election" section:**
The language regarding the filing of the Notice Designating Record does not include the requirement to serve the notice, nor does it state the consequence if the notice is not filed timely. Appellant's often check box 4a indicating that they have attached the notice of designation when they have not, leading to confusion when the appellate division is asked by the trial court to dismiss the appeal for lack of compliance and this document indicates that it was attached. Our suggestion is to add a field for the appellant to indicate the date the notice was signed.

④ **Record Preparation Election**

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

a. ☐ I have/My client has completed and served the *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), dated _____ and attached it to this notice of appeal.

b. ☐ I/My client will serve and file the *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must serve and file this notice in the trial court within 10 days of the date I file this notice of appeal, and that if I do not serve and file the notice on time, the court may dismiss my appeal.

2. CR-132 Notice of Appeal (Misdemeanor)

a. **Proposed modification to "Your Information" section:**
Attorneys filing an appeal on behalf of their clients are sometimes both the appellant's lawyer in the trial court *and* the appellant's lawyer for the appeal, but they don't complete the form correctly because the instructions say to "check (1) **or** (2)." They should be guided to check whatever is applicable. (They often check the wrong box even when it should be clear to them that they are only filing the appeal as trial counsel on behalf of their client, or when they know they have been retained to represent the appellant on the appeal!)

The appellant's lawyer contact information should be completed in the designated area only if the appellant has actually retained a lawyer for the appeal already. Trial counsel's contact information may be needed if they file the appeal on behalf of their self-represented client who is incarcerated and the court has no way of contacting the appellant, but there should be a separate place for this information. By inviting the "lawyer filling out this form" to include their contact information and hoping that they "check (1) or (2)" appropriately, we have created the potential for confusion. The appellate division and appeal clerk often find that they are erroneously contacting and sending notices to trial counsel when the appellant is actually in self-represented or has retained other counsel for the appeal.

Also, the appellant's contact information should be indicated as required because if the request for appointed counsel is subsequently denied, the appeal clerk and the appellate division have no address for the self-representing appellant and cannot comply with CRC 8.816. This change is also consistent with the statements recently added to CR-131-INFO regarding the importance of appellants including their current contact information on every form.

① **Your Information**

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

b. Appellant's contact information *(required)*
Street address: _____ _____ _____ _____
Street *City* *State* *Zip*
Mailing address *(if different)*: _____ _____ _____ _____
Street *City* *State* *Zip*
Phone: _____ E-mail *(if available)*: _____

c. Appellant's lawyer *(skip if the appellant does not have a lawyer for this appeal):*
Name: _____ State Bar number: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*
Mailing address *(if different)*: _____ _____ _____ _____
Street *City* *State* *Zip*
Phone: _____ E-mail *(if available)*: _____
Fax *(if available)*: _____

d. The lawyer filling out this form on behalf of the appellant *(check the applicable boxes)*:

(1) ☐ was the appellant's lawyer in the trial court. The appellant is self-represented for this appeal until further notice.

Name of trial lawyer: _____
Address: _____
Phone: _____ Fax: _____

☐ I am a public defender or was appointed by the trial court to represent the defendant/appellant in the trial court proceedings.

(2) ☐ is the appellant's lawyer for this appeal.

* * * * * * * * * * * * * * * * * * * *

b. **Proposed modification to "Record on Appeal" section:**
Box 3a appears to contain erroneous language perhaps copied and pasted from section 2a. The language, "The final judgment of conviction in this case (Penal Code section 1466(2)(1))," should be replaced with the language below. Also, there is a typo in the word "the" at the end of section 3b, and a missing open parenthesis at the beginning of the sentence under Record on Appeal. The suggested language at the end of section 3b is to inform the appellant of the consequences of failing to timely file the notice of election.

3 **Record on Appeal**
(See form CR-131-INFO for information about the record on appeal.)

a. ☐ I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).

b. ☐ I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider

what was said in the trial court in deciding whether an error was made in the trial court proceedings. In addition, if I fail to file the notice on time, the court may appoint new counsel, or dismiss my appeal per rule 8.874.

* * * * * * * * * * * * * * * * * * * *

c. **Proposed modifications to "Court-Appointed Lawyer" section:**
Appellants often complete section 4 of the Notice of Appeal asking for appointed counsel, or file a notice of appeal on pleading paper and include their request for appointed counsel, but fail to complete the Request for Court-Appointed Counsel (CR-133) and/or the MC-210 forms. There is no rule requirement that they must complete these forms in order for their request to be considered. Nor is it a requirement that they file these forms directly with the Appellate Division. This is the real cause of the delay for appointment of counsel. Because of these deficiencies, our Appellate Division requires the trial court appeal clerk to provide a copy of the misdemeanor sentencing minute order with the notice of filing of notice of appeal. This way, the Appellate Division is able to treat the request for counsel on the Notice of Appeal as a formal request in lieu of the CR-133, i.e. by verifying whether the appellant had appointed counsel in the trial court, subject to incarceration, fine, etc. If the MC-210 was required, the Appellate Division finds that they need to contact the appellant and notify him or the trial court that the form is required, which delays the appointment.

Allowing the appellant, or trial counsel, to file the CR-133 and/or MC-210 in the trial court also delays the appointment of counsel because the documents need to be forwarded to the Appellate Division. The trial court appeal clerk only needs to know whether a request was filed, and what that ruling was, in order to determine when the appellant's notice of election is due. There is no value to their having to receive these documents, except maybe as a convenience to the appellant or trial counsel. The appellant, or trial counsel, should be required to file the CR-133 and/or MC-210 in order to request appointed counsel, and they should be required to file the documents directly in the Appellate Division. **These are actually requests for modification of CRC rule 8.851(b)(1) and (3), but they also affect our suggestions to modify the Notice of Appeal (Misdemeanor).**

Since the language in the new CR-133 has changed to add the warning about having to reimburse the trial court for the cost of counsel (and not added in the rules), appellants who only use section 4 in the Notice of Appeal, or their own notice of appeal on pleading paper to apply for appointed counsel, will not be advised of this warning. The language hasn't been added to the Notice of Appeal (Misdemeanor). Our suggestion is to do the following instead of adding this language to the Notice of Appeal (Misdemeanor):

1. Delete all the text in section 4b, thereby removing the possibility of appellants using this section of the Notice of Appeal in lieu of the CR-133, **Or**

2. Modify the text in section 4b and require the appellant to complete the CR-133 in order to have his request heard, and thereby ensuring that the appellant receives this warning about potentially having to reimburse costs. We should state when the MC-210 is applicable and make it a requirement if he wants his request considered. Finally, we should require both documents to be filed directly with the Appellate Division. **And**

3. Modify CRC rule 8.851(b)(1) and (3) to be consistent with these changes.

④ Court-Appointed Lawyer

I/My client ☐ was ☐ was not represented by the public defender or another court-appointed lawyer in the trial court.

I am/My client is *(check (1) or (2)):*

(1) ☐ asking the court to appoint a lawyer to represent me/my client in this appeal. I understand that the appellate division will not consider my request unless I complete a *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and file it with the appellate division or attach it to this notice of appeal. I also understand that if I was not represented by the public defender or another court appointed lawyer in the trial court, I must also complete a *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210)* and file it with the appellate division or attach it to this notice of appeal.

(2) ☐ **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

3. CR-142 Notice of Appeal and Record on Appeal (Infraction)

a. **Proposed modification to "Your Information" section:**
For proposed sections c and d, see the same suggestion as with Notice of Appeal (Misdemeanor) above. In addition, the appellant's contact information in section b should be indicated as required because the majority of infraction appeals are filed by self-representing appellants, and the address is necessary for our compliance with CRC 8.816. Also, this is consistent with the statements recently added to CR-141-INFO regarding the importance of appellants including their current contact information on every form.

(1) Your Information

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

b. Appellant's contact information *(required)*
Street address: _____ _____ _____ _____
Street *City* *State* *Zip*
Mailing address *(if different)*: _____ _____ _____ _____
Street *City* *State* *Zip*
Phone: _____ E-mail *(if available)*: _____

c. Appellant's lawyer *(skip if the appellant does not have a lawyer for this appeal)*:
Name: _____ State Bar number: _____
Street address: _____ _____ _____ _____
Street *City* *State* *Zip*
Mailing address *(if different)*: _____ _____ _____ _____
Street *City* *State* *Zip*
Phone: _____ E-mail *(if available)*: _____
Fax *(if available)*: _____

d. The lawyer filling out this form on behalf of the appellant *(check the applicable boxes)*:

(1) ☐ was the appellant's lawyer in the trial court. The appellant is self-represented for this appeal until further notice.

Name of trial lawyer: _____
Address: _____
Phone: _____ Fax: _____

(2) ☐ is the appellant's lawyer for this appeal.

* * * * * * * * * * * * * * * * * * * *

b. **Proposed modification to "Statement on Appeal" section:**
The word "trial" in the first sentence of section 5 is misspelled. Also, the language "serve and file" with regards to the proposed statement on appeal is inconsistent. It does not appear in section (1), but does appear in section (2). Since the requirement for service by an appellant defendant is limited to when the prosecutor appears in court, it might make sense to just drop the "serve" word here instead of explain under which circumstances it is necessary. Also, the consequence of not filing the proposed statement is not consistent with the rule change in 8.924, which states that if the default relates only to procurement of the record of oral proceedings, the court may proceed on the clerk's transcript only.

5 I want to use the following record of what was said in the trial court proceedings in my case *(check and complete only one—a, b, c, or d):*

a. ☐ **Statement on Appeal**. *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):*

(1) I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Infraction) *(form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm.)

(2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may proceed on the clerk's transcript only.

* * * * * * * * * * * * * * * * * * * *

c. **Proposed modification to "Reporter Transcript" section:**
Appellant needs to clearly understand all their choices for obtaining a reporter transcript and the consequences. The current language only presents partial options and consequences. The change suggested in the last paragraph is to avoid misleading appellants. There is no such thing as a "free transcript." The court is paying for it.

Question: Is there a reason that the $50 fee for the processing of the reporter transcript deposit was not included in the rules for Infraction cases as it was in

Limited Civil cases? (see 8.919(a)(2)(C)(i), (D)(i) and (E)(i)) If it will not be included in the rule, please remove from suggested language below.

⑤ I want to use the following record of what was said in the trial court proceedings in my case *(check and complete only one—a, b, c, or d):*

***

d. ☐ **Reporter's Transcript**. *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete one of the following):*

(1) ☐ **Certified transcripts**. Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will lodge with the trial court an original certified transcript of all the proceedings required by rule 8.918, for the appellate division, that complies with rule 8.144.

(2) ☐ **Payment for reporter's transcript.** Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will pay for the transcripts myself by depositing an amount equal to the estimated cost with the trial court, ***and a fee of $50 for the superior court to hold this deposit in trust***. Alternatively, I will pay the reporter(s) directly and file with the trial court a copy of the written waiver of deposit signed by the reporter(s). I understand that if I do not comply with either of these choices, the transcripts will not be prepared and provided to the appellate division.

(3) ☐ I am asking that the transcripts be prepared at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm. *The court will review this form to decide if you are eligible for the court to pay for the transcripts on your behalf.*

4. APP-110 Respondent's Notice Designating Record on Appeal

a. **Proposed modification to "Reporter Transcript" section:**
Similar proposals are made here as to the respondent in order to make the forms consistent with the rule changes. See same section above in Appellant's designation.

⑤ a. **Reporter's Transcript.** The appellant elected to use a reporter's transcript under rule 8.834 as the record of oral proceedings in the trial court.

(1) ☐ **Designation of additional proceedings to be included in the reporter's transcript.** ~~*(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*~~

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name and contact information of the court reporter who recorded the proceedings.)* ***You must identify any proceeding for which a certified transcript has previously been prepared by placing an asterisk before that proceeding.***

(*)	Date	Department	Description	Court Reporter's Name
	(a)			
	(b)			
	etc.			

Contact information for Court Reporter's listed above:

Court Reporter's Name	Contact Information

☐ *Check here if you need more space to list other proceedings and attach a separate page…..*

***

⑤ a. (continued)

(2) ☐ **Certified Transcripts.** I have attached to this designation an original certified transcript of all the additional proceedings I have designated for the appellate division. The transcript complies

with the format requirements in rule 8.144. I understand that if the appellant has lodged certified transcripts of all the proceedings the appellant designated, I must contact and pay the reporter(s) directly if I wish to receive a copy.

(3) ☐ **Payment for copy of reporter's transcript.** Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will pay for the transcript myself by depositing an amount equal to the estimated cost with the trial court, and a fee of $50 for the superior court to hold this deposit in trust. Alternatively, I will pay the reporter(s) directly and file with the trial court a copy of the written waiver of deposit signed by the reporter(s). I understand that if I do not comply with either of these choices, I will not receive a copy. I request that the reporters provide my copy of the reporter's transcript in:

☐ Paper format only.
☐ Computer readable format only.
☐ Both paper and computer readable format.

(4) ☐ **Transcript Reimbursement Fund Application.** If I find I cannot afford to pay this cost, within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I may file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund. I understand that within 90 days after I file my application, I must file with the trial court a copy of the approval my application to commence the preparation of the transcript. I understand that if I do not comply, I must pay for the transcript myself as described in (3) above, or notify the trial court that I no longer want the additional proceedings I designated to be included in the reporter's transcript. If I fail to do either of these, the appeal will proceed only on the record designated by the appellant.

* * * * * * * * * * * * * * * * * * * *

b. **Proposed modifications to "Transcript From Official Electronic Recording" section:**

This part of the form, and rule 8.835, does not contain a place for the respondent to designate additional proceeding date(s) that were recorded and that they wish to be transcribed. This is an inconsistency in the rules between reporter and electronic recording transcripts that perhaps will be considered in the future.

The form states that payment for the transcript is required "when I receive the clerk's estimate of the costs," but there is no rule supporting when the respondent is to pay within **rule 8.835**. (Companion rules under misdemeanor and infraction appeals do specify how to pay, when to pay, etc.) In the absence of a rule for this, limited civil appeal clerks receive direction only from 8.818(d)(3) regarding fee waivers applicable, and the default rule, 8.842, which states that respondent's failure to procure the record may result in the appeal proceeding on the record designated by the appellant only. (The latter is no consolation to a respondent

who doesn't even have the choice of designating additional proceeding dates.) Since the parties have 10 days to pay for reporter transcripts, and 10 days in misdemeanors and infractions to pay for electronic recording transcripts, wouldn't it make sense to at least modify the form accordingly (as long as 8.835 remains silent about this)?

⑤ a. (continued)

***

b. ☐ **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. *(Check and complete (1) or (2):*

(1) ☐ I will pay the trial court clerk for this transcript myself within 10 days of receipt of the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, I will not receive a copy.

(2) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50-3.58, and 8.818(d)(3).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50-3.58, and 8.818(d)(3). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

5. CR-134 Notice Regarding Record on Appeal (Misdemeanor)

a. **Proposed modification to "Your Information" section:**
The same changes proposed in this same section for the Notice of Appeal (Misdemeanor) are suggested, but less urgent because this form is not the "first document filed" as described in CRC rule 8.816, and therefore does not affect the court's ability to comply with 8.816(a).

* *

b. **Proposed modification to "Reporter Transcript" section:**
Appellant needs to clearly understand their choices for obtaining a reporter transcript and the consequences. The current language only presents partial options and consequences. The word "trial" in the first sentence was misspelled. The change suggested in the last paragraph is to avoid misleading appellants. There is no such thing as a "free transcript." The court is paying for it.

Question: Is there a reason that the $50 fee for the processing of the reporter transcript deposit was not included in the rules for Misdemeanor cases as it was in Limited Civil cases? (see 8.866(a)(2)(C)(i), (D)(i) and (E)(i)) If it will not be included in the rule, please remove from suggested language below.

5 I want to use the following record of what was said in the trial court proceedings in my case *(check and complete only one—a, b, c, or d):*

a. ☐ **Reporter's Transcript**. *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete one of the following):*

(1) ☐ **Certified transcripts**. Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will lodge with the trial court an original certified transcript of all the proceedings required by rule 8.865, for the appellate division, that complies with rule 8.144.

(2) ☐ **Payment for reporter's transcript.** Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will pay for the transcripts myself by depositing an amount equal to the estimated cost with the trial court, ***and a fee of $50 for the superior court to hold this deposit in trust***. Alternatively, I will pay the reporter(s) directly and file with the trial court a copy of the written waiver of deposit signed by the reporter(s). I understand that if I do not

comply with either of these choices, the transcripts will not be prepared and provided to the appellate division.

(3) ☐ I am asking that the transcripts be prepared at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm. *The court will review this form to decide if you are eligible for the court to pay for the transcripts on your behalf.*

* *

c. **Proposed modification to "Statement on Appeal" section:**
The language "serve and file" with regards to the proposed statement on appeal is not consistent as modified in rule 8.869. Also, the consequence of not filing the proposed statement is not consistent with the rule change in 8.874, which states that if the default relates to procurement of the record of oral proceedings, the court may appoint new counsel or dismiss the appeal.

⑤ I want to use the following record of what was said in the trial court proceedings in my case *(check and complete only one—a, b, c, or d):*

***

d. ☐ **Statement on Appeal**. A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. *(Check and complete (1) or (2).):*

(1) I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Misdemeanor) *(form CR-135) to prepare and file this proposed statement. You can get form CR-135 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm.)

(2) I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not serve and file the proposed statement on time, the court may appoint new counsel or dismiss my appeal.

6. LIMITED CIVIL (APP-104), MISDEMEANOR (CR-135), AND INFRACTION (CR-143) FORMS - PROPOSED STATEMENT ON APPEAL

a. Proposed modification to "Instructions" (first page) and "Reminder" (last page)

The language in the "Instructions" and "Reminder" sections relating to what needs to be "served and filed" and the consequence of failing to serve and file these forms are inconsistent with the rules.

APP-104 Proposed Statement on Appeal (Limited Civil Case)

This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be served and filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not serve and file this form on time, the court may dismiss your appeal.**

Add for consistency:

REMINDER: You must serve and file this form, no later than 20 days after you file your notice designating record on appeal. If you do not serve and file this form on time, the court may dismiss your appeal.

CR-135 Proposed Statement on Appeal (Misdemeanor)

This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be served and filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not serve and file this form on time, the court may appoint new counsel or dismiss your appeal.**

REMINDER: You must serve and file this form, no later than 20 days after you file your notice regarding record on appeal. If you do not serve and file this form on time, the court may appoint new counsel or dismiss your appeal.

CR-143 Proposed Statement on Appeal (Infraction)

This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may proceed on the clerk's transcript only.**

REMINDER: You must serve and file this form, no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may proceed on the clerk's transcript only.

7. LIMITED CIVIL (APP-105), MISDEMEANOR (CR-136), AND INFRACTION (CR-144) FORMS – ORDER CONCERNING APPELLANT'S PROPOSED STATEMENT ON APPEAL

On each of these forms, the following proposals are suggested.

a. **Proposed modification to add gap between section 2a and 2b:**
Trial court judges often find, once they are ready to certify the statement on appeal, that the language in 2a doesn't fit the situation and there is no room to modify it, for example, when a statement on appeal has been submitted by appellant's counsel on pleading paper, or when the "statement" to be certified actually consists of several modified documents prepared by the judge or parties, not just the appellant's original proposed statement on appeal. We propose creating a large gap of space (perhaps with some lines) between 2a and 2b where the trial court judge can interlineate its order.

② The court makes the following order:

a. ☐ The court certifies that parts 5 through 9 of the statement as proposed by the appellant are an accurate summary of the evidence and testimony that is relevant to the issues the appellant indicated in item 4 are the reason for this appeal. This statement is ready to be sent to the appellate division.

b. ☐ Corrections are needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the evidence…..

* * * * * * * * * * * * * * * * * * * *

b. **Proposed modification to add a due date to any order for modification, directions to the appeal clerk to send a copy of the court's order to the parties, and adding language in section d about the transcripts being at the court's expense so that it may also be used as notice to prepare transcript.**

(The language below was copied from the Limited Civil version of the form, but the suggested changes are proposed to all versions of these forms, Limited Civil,

Misdemeanor, and Infraction. Disregard the references to "parts 5 through 9," e.g., because they actually appear as "parts 4 through 8" on the infraction form.)

b. ☐ Corrections are needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the evidence and testimony that is relevant to the issues the appellant indicated in item 4 are the reason for this appeal.

(1) ☐ A modified statement is attached to this order. This modified statement must be sent to the parties forthwith.

(2) ☐ The appellant is ordered to prepare a statement incorporating the modifications listed below and to serve the parties and file this modified statement in the trial court by _____ *(date)*. This order must be sent to all the parties forthwith.

(a) _____
_____
_____

***

(3) ☐ More corrections than could be listed above were needed in order for parts 5 through 9 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 4 are the reasons for this appeal. A list of required modifications is attached. The appellant is ordered to prepare a statement incorporating these modifications and serve the parties and file the modified statement in the trial court by _____ *(date)*. This order must be sent to all the parties forthwith.

c. ☐ The proposed statement does not contain the following material required by rule 8.837.
_____
_____
_____

The appellant is ordered to prepare a new proposed statement that includes this material and serve the parties and file the new proposed statement in the trial court by _____ *(date)*. This order must be sent to all the parties forthwith.

d. The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.837(d)(6)(B) that a transcript be prepared as the record of these proceedings at the court's expense. *(Check the court's local rules to make sure the court has a rule providing that this option is available.)*

8. SUGGESTION TO CREATE FORM TO ADDRESS CRC 8.917(F) AND 8.919(F) WHEN A NEW NOTICE OF RECORD ON APPEAL IS POSSIBLE WITH INFRACTION APPEALS

CRC 8.917(f) and 8.919(f) both state that when the appellant receives notice that a transcript (reporter's or electronic recording) cannot be transcribed, the appellant has a number of days to file "a notice with the court stating whether the appellant elects to proceed with or without...", etc. and what their new choice of oral record is. The problem with this (and it was also a problem under the pre-modified rules) is that a Judicial Council form for this does not exist. The majority of our appellants in infraction appeals are self-represented and they do not understand how to write their own notice of election on pleading paper (or any type of paper). We find that if we provide them with the only infraction appeal form that has this language, i.e. the Notice of Appeal and Record on Appeal (Infraction) CR-142, they usually end up botching it by filling out the notice of appeal portion too, which means we now have *two* notices of appeal for the same action.

Is it possible to separate the Notice of Record on Appeal (Infraction) from the Notice of Appeal (Infraction) and have two forms instead of one combined form?

Or, is it possible to create a "supplemental record on appeal (infraction)" form to address these situations? Although this will have drawbacks of its own when litigants think they can use this form to re-elect their choices any time they wish.

In the alternative, can there be an Advisory Committee Comment after this rule that gives permission to infraction appellants to use the CR-134 Notice Regarding Record on Appeal (Misdemeanor) instead of manually writing it or using the CR-142? Although there are some differences in the forms (between misdemeanors and infraction elections) that infraction appellants will not be aware of, and it can be misleading.

MEMORANDUM

September 7, 2017

To: Christy Simons

CC: Hon. Louis Mauro

Fr: Kevin Green

Re: Item 22 – draft Annual Agenda

These are my views on Item 22 in advance of the Appellate Advisory Committee meeting on September 11, 2017.

In a world of perfect justice with unlimited court resources, Item 22 might merit consideration. But the proposal is undermined by several concerns that should cause our Committee not to pursue it. Item 22's grant-and-transfer proposal would expand, detrimentally and dramatically, the California Supreme Court's role in appellate review. And it is grounded on unwarranted distrust of the intermediate courts.

First, most problematic among the concerns, courts of last resort do not engage in error correction. This is not their job. The Courts of Appeal, not the state supreme court, get the specifics of each case under their fingernails to ensure no reversible error occurred.

We all know the California Supreme Court serves a different function, but crucial is that error correction would distract from the high court's focus in our system of justice. The state supreme court should concentrate on resolving splits of authority and California law's most vexing questions, not the minutiae of individual cases in a quest to root out all errors.

If this proposal were adopted, the consequences would be adverse to the judicial system. Losing parties in the Courts of Appeal would be emboldened to present error-correction petitions to the California Supreme Court. No other jurisdiction requires or even encourages its highest court to serve this function. If allowed, these petitions would be little more than a second request for rehearing already

considered by the three-justice panel whose task was to become familiar with the case.

The institutional balance of California's reviewing courts is sound. The respective roles of the highest and intermediate courts would be disrupted, if not upended, by a grant-and-transfer rule that would invite petitions for review seeking error correction (when, after taking a look, there may be no intermediate error to correct).

Second, the lack of precedent for Item 22 reflects the lack of evidence that Court of Appeal opinions are regularly marred by error or unfairness. The proposal cites no empirical support for the notion that the current structure of appellate review is wanting or inadequate. This suggestion unfortunately denigrates the hard work by the Courts of Appeal and their seasoned research attorneys, who resolve hundreds of cases per justice annually – the vast majority of the time, correctly.

Item 22 downplays the losing litigant's remedies at the intermediate level. If a Court of Appeal has erred, the point may be called to its attention in a rehearing petition. Good faith should be presumed (bad faith has not been shown) in how these petitions are considered and resolved. If a Court of Appeal has decided a case based on an unbriefed issue, the California Supreme Court has the authority under its grant-and-transfer power to send the matter back for reconsideration and an opportunity to brief the dispositive point. The latter is rare, for there are published precedents reinforcing the Government Code right.

Virtually every appellate advocate has received an adverse decision that he or she may believe, ardently, should have been resolved the other way based on the law or the facts. But this is law practice in an imperfect world. It does not mean there is a systemic flaw in how California's intermediate courts are dispensing justice. To my knowledge and in my experience, no evidence supports that dubious premise.

Third, the potential upside of adding an express error-correction basis for Supreme Court review is outweighed, substantially, by the burden this would impose on the state's highest court. It would be expected to dig into the factual and legal details of a case, involving no important question of law or division of authority, just to evaluate whether the error-correction court itself erred. As every appellate justice and research attorney knows, a one-sentence order often reflects, behind the scenes, an extensive judicial review. This would be an

imprudent use of the public fisc, especially for a court that must devote approximately one-quarter of its resources to mandatory jurisdiction over death penalty appeals.

Fourth, the proposal is unnecessary. The California Supreme Court already has express grant-and-transfer authority. The court knows when and how to use this power. The grant-and-transfer rule has functioned effectively precisely because it is flexible and not pigeonholed for specific types of cases.

Fifth, Item 22 raises a threshold jurisdictional concern. I am uncertain that this Committee should be considering fundamental changes to grounds for review at the California Supreme Court. If only out of prudence, any such modification is for the state supreme court itself to consider and propose for public comment.

* * *

In an extreme case of Court of Appeal error, which is unusual, the grant-and-transfer rule may be and has been invoked in the manner urged by Item 22. But this is the exception proving the rule. That is, the Courts of Appeal are appropriately entrusted to review trial courts for reversible error and, if the intermediate tribunal itself has stumbled, the aggrieved party may petition for rehearing. This system works well without permitting (in end result, encouraging) additional if not duplicative rehearing requests in the California Supreme Court.

For the reasons identified, I believe – mindful of the respected proponent and idealistic goals animating the proposal – that Item 22 should be removed from the draft Annual Agenda and not pursued by this Committee.