



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
June 26, 2018	Please review before subcommittee meeting on June 29, 2018
To	Deadline
Members of the Rules Subcommittee	June 29, 2018
From	Contact
Christy Simons Attorney, Legal Services	Christy Simons Legal Services
Subject	415-865-7694 phone christy.simons@jud.ca.gov

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#### Introduction

Earlier this spring, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommended circulating for public comment a proposal to approve new forms and revise existing forms for litigants and courts to use in preparing and certifying settled statements.

The Judicial Council's Rules and Projects Committee (RUPRO) approved the recommendation for circulation and the proposal was circulated from April 9 to June 8, 2018 as part of the regular spring comment cycle. (A copy of the invitation to comment is included in your meeting materials.) This memo discusses the public comments received on the proposal and staff's proposed responses to the comments.

#### Public Comments

Eleven organizations submitted comments on this proposal. Four commenters (California Judges Association, Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, Orange County Bar Association, and the Superior Court of San Diego County)

agreed with the proposal. Seven organizations agreed if the proposal is modified (California Department of Child Support Services, Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, Child Support Directors Association, Family Violence Appellate Project, San Diego Bar Association, Superior Court of Los Angeles County, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee). A chart with the full text of the comments organized by form is attached.

This memo summarizes the comments and includes staff responses to certain comments. The discussion of the comments is organized by form and follows the order of the comment chart to facilitate cross-referencing to the actual text of the comment. Where staff has drafted additions or modifications to forms, those proposed changes are hand-written onto the forms attached as part of these materials.

### **Form APP-001-INFO**

#### **California Lawyers Association, Litigation Section, Committee on Appellate Courts**

*Item 13(b) on page 7 of the form.* The commenter points out that this form does not explain that there is an exception to the rule that an appellate court presumes a judgment or order is correct if a statement of decision has been prepared and the record shows that any ambiguity or omission was brought to the trial court's attention. In addition, the form does not explain that some appellate districts may still make the presumption even if a settled statement has been prepared. (See citations in the text of the comment.) The commenter is concerned that many litigants still may not have meaningful access to an appeal because a statement of decision was not prepared in their case, and suggests adding a note of caution to item 13(b) on page 7 of the form to state:

“Please note the type of oral record you choose, including a reporter’s transcript or a settled statement, should be carefully considered as it may have effects on your appeal and you may want to consult with an attorney to determine the best option in your case.”

For the subcommittee’s consideration, staff has drafted a possible addition to this item (see attached form).

This commenter also made suggestions designed to assist survivors of domestic violence in family law proceedings.

*Item 3 on page 2.* This item currently states that an unrepresented appellant must put his or her address, phone number, etc. on any forms that are filed. For safety reasons, the commenter suggests adding language regarding keeping the information private. Staff suggests: “If you want to keep your information private, you may give a different mailing address and telephone number, but be sure to check them regularly to stay informed about your appeal.”

*Item 6 on page 2.* This item includes a list of appealable orders, including orders granting or dissolving or refusing to grant or dissolve and injunction. The commenter suggests clarifying that this includes a domestic violence restraining order. Staff suggests adding language indicating that injunctions include restraining orders and protective orders.

The commenter also suggests adding a note to this item to state: “In addition, some final orders the court makes before the final judgment may be appealed immediately. You should consult an attorney or a court self-help center to determine if your order is final and appealable.”

*Item 9 on page 3.* The commenter suggests adding reference to orders in the item addressing the deadline to serve and file a notice of appeal. Presently the item only refers to judgments as triggering the time frame for serving and filing the notice of appeal. Staff has made an addition to this item (see attached form).

*Item 11 on page 4.* This item includes examples of judgments that are not postponed by filing a notice of appeal. The commenter suggests adding the example of custody matters. Staff has made the addition to this item (see attached form).

*Item 13(b)(1) on page 7.* This item addresses the reporter’s transcript as the record of the oral proceedings. The commenter suggests the following modifications to clarify the section for survivors of domestic violence, noting that some counties provide court reporters in family law and/or Domestic Violence Prevention Act cases: “A court reporter ~~will~~ may not have been present unless you or another party in your case made specific arrangements to have a court reporter present, as some counties do not provide court reporters in all cases.” Staff has made the first edit (changing will to may), but does not recommend adding the second suggested change. This form is used by litigants in all types of unlimited civil proceedings. Court reporters are not automatically provided in the vast majority of civil cases.

Item 2 on page 1, What is an appeal?. The commenter suggests adding a link to a website that identifies the counties included in each appellate district. Staff agrees and will see if such a link can be provided.

*Item 18 on page 12, What is “oral argument?”* In the commenter’s experience, self-represented litigants often do not understand that an appellate oral argument is different from a hearing or a trial, in that no new evidence can be considered. The commenter recommends adding an advisement to this item that an appeal is not a new trial, using the same wording as the advisement contained in item 15, “What is a brief?” Staff recommends modifying the first sentence of item 18 to read: “Oral argument” is ~~the parties’~~ your chance to orally explain ~~their~~ arguments you made in your brief to the Court of Appeal justices. This limits the subject matter to arguments presented in the brief.

### **San Diego County Bar Association, Appellate Practice Section**

*Item 2 on page 1.* The commenter suggests that this section presents a confusing explanation of the requirements to prevail on appeal. The discussion of “prejudicial error” and “no substantial evidence” do not adequately explain appellate concepts and combine the need to prove prejudicial error with the substantial evidence standard of review. Staff has drafted a possible revision to this section, including more information on the court’s standard of review (which may be more information than is necessary or helpful on this information sheet):

#### **Prejudicial error**

The Court of Appeal generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that a prejudicial error was made. A prejudicial error is a mistake about the facts, the law, or court procedures that causes substantial harm to the appellant. Prejudicial error can include things like mistakes made by the judge about the law, incorrect instructions given to the jury, and errors or misconduct by the lawyers or by the jury. The mistakes must have harmed the appellant.

It is very hard to win an appeal. The trial court does not have to prove that its decision was right. You must prove that the trial court made a legal mistake that caused you harm.

#### **How the appellate court reviews the trial court’s decision**

When it reviews a case, the appellate court uses rules or guidelines to determine whether a mistake was made in the trial court. There are different kinds of review guidelines for different kinds of trial court decisions. These guidelines are called “standards of review.” When you (the appellant) argue that the trial court made a legal error, the appellate court looks first at what the standard of review is for the particular kind of decision made in your trial court case.

If you are appealing a decision that involved the trial court’s discretion, meaning that the trial court had the freedom to decide what should be done (such as whether to admit certain evidence in the trial), the appellate court will use the “abuse of discretion” standard. Abuse of discretion occurs when a trial court judge makes a ruling that is arbitrary or absurd. This does not happen very often.

If you are appealing because you think the trial court’s decision is not supported by the evidence, the appellate court will use the “substantial evidence” standard. The appellate court reviews the record to see if there is substantial evidence that reasonably supports the trial court’s decision. If a reasonable fact-finder could have come to the same conclusion as the judge or jury based on the facts in the record, the appellate court will not overturn the trial court’s decision.

The appellate court will use the “de novo” standard if your appeal involves a question of law. Under de novo review, the appellate court does not assume the trial court’s decision was

correct. Instead, the appellate court looks at the issue de novo, meaning from the beginning, as if the trial court had never ruled on it, and exercises its independent judgment.

*Item 3 on page 2.* The commenter suggests clarifying the language of the first sentence to read:

“Individuals may represent themselves in an unlimited civil case. Corporations and similar entities must be represented by a lawyer. Although individuals can represent themselves, appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.”

Staff will make this change if the subcommittee approves the proposed language.

### **Superior Court of California, County of San Diego**

*Item 6 on page 2.* The commenter suggests adding to the list of immediately appealable orders a new bullet point for orders that are made appealable by the Probate Code or the Family Code. Staff has made this addition on the form. (See attached form.)

### **Form APP-003**

#### **California Department of Child Support Services**

#### **Child Support Directors Association, Judicial Council Forms Committee**

*Item 2(b)(3) on page 2 of the form.* This item is for appellants to choose to proceed with a settled statement as the record of the oral proceedings by checking the box. The commenters suggest adding language to inform appellants that they must file form APP-025, *Appellant’s Motion to Use a Settled Statement*, together with form APP-003 to ensure that parties file the right forms and avoid delay.

Staff has added a reference to form APP-025, but since the form is optional, the addition is phrased as “you may use” rather than “you must use” the form.

### **San Diego County Bar Association, Appellate Practice Section**

*Item 2(a) on page 1.* This item requires the appellant to choose whether to proceed with or without “a record of the oral proceedings (what was said) in the superior court.” The commenter suggests that the parenthetical “(what was said)” might be confusing for self-represented litigants who may interpret the phrase as including informal discussions, meet-and-confer sessions, etc. The commenter suggests explaining that “what was said” means argument and testimony offered at the trial or hearing from which the appeal was taken.

Staff suggests modifying the parenthetical to read: (what was said at the trial or hearing).

*Item 4(c) on page 3, Exhibits.* The commenter suggests that this section of the form should reflect the modern trial court practice of courts routinely returning exhibits to the parties following the hearing or trial.

Staff suggests adding the sentence: “If any exhibits identified below were returned to the parties and not kept by the trial court, the party in possession of the exhibit must return it to the trial court within 10 days after service of this notice designating the record on appeal. (See rule 8.122(a)(3).)

The commenter suggests also including a note or a box to check if the party intends to file an exhibit directly with the appellate court. (See rule 8.224(b)(2).) However, this refers to a later request for exhibits, and may not be necessary to include on this form.

Finally, the commenter indicates that the “Description” column for designated exhibits should be revised to accommodate exhibits that are lodged with the trial court as part of a Notice of Lodgement. Specifically, they should be identified separately from numbered trial exhibits. The subcommittee should discuss this point and decide whether, and if so how, to implement the suggestion.

#### **Form APP-014**

#### **California Department of Child Support Services**

#### **Child Support Directors Association, Judicial Council Forms Committee**

These two organizations submitted essentially the same comment requesting that the requirement that an appellant describe how he or she was harmed by the error complained of on appeal. The commenters contend that this requirement will alert self-represented appellants that an error alone is not enough for an appeal; there must be an error causing harm to form a basis for appeal.

This requirement was eliminated from the form because it called for a legal analysis that is not necessary in a settled statement.

The subcommittee should consider whether it wants to recommend restoring some discussion of harm to the form.

#### **San Diego County Bar Association, Appellate Practice Section**

*Item 1 on page 1.* This section, Preliminary Information, asks for the date the notice of appeal was filed, which necessarily means that the notice of appeal is already filed at the time the appellant is drafting his or her settled statement. The commenter questions this requirement because the process of preparing a settled statement often helps the self-represented litigant decide whether or not to appeal a trial court decision. Having a settled statement, the commenter continues, also helps an unrepresented litigant find counsel for the appeal. The commenter recognizes that rule 8.137 states that an appellant wishing to use a settled statement must file a

motion in the trial court with a copy of the record designation, which requires that a notice of appeal already be filed. The commenter suggests that form APP-014 not include “a mandatory reference to the date of filing of a notice of appeal.” They further suggest that the committee consider these issues further, in connection with a broader review of the language of rule 8.137.

In staff’s view, preparing a settled statement before filing a notice of appeal or deciding whether to appeal seems unworkable/infeasible/impracticable. It calls for a lot of work by the parties and the trial court before any appeal is taken. Staff questions why a statement of decision would not better serve this purpose.

In any event, any such revisions to the form or amendments to rule 8.137 are beyond the scope of this proposal.

*Format.* This commenter raises a larger issue with the new form, questioning whether it will be helpful to the parties or the trial court. Briefly, the commenter is concerned that the new format does not help an appellant focus on the factual and legal issues giving rise to the appeal, and could encourage “rambling, argumentative, narrative responses.” The commenter suggests that it would be better to start with a description of the order/judgment being appealed from and the specific ruling that is being appealed. The form should then ask directed and specific questions about the basis for the appeal and ask the appellant to describe the relevant motion, findings, documents, testimony, instruction, etc.

The subcommittee should consider and discuss these comments to determine whether any modifications to the proposed form are appropriate. Generally speaking, a significant reorganization or modification along these lines would be beyond the scope of this proposal and would need to recirculate.

#### **Form APP-014A**

#### **California Department of Child Support Services**

#### **Child Support Directors Association, Judicial Council Forms Committee**

*Item 1(c) on page 2.* The commenters point out that, if there is testimony from more than two additional parties or nonparty witnesses, the appellant will need to attach more than one form APP-014A or other document (since form APP-014A is optional, not mandatory). However, there is no way to indicate how many additional forms are attached. The commenters suggest that this “could lead to confusion when parties or their attorneys review the record as there is no way to distinguish one form APP-014A from another form APP-014A.” The commenters suggest modifying the instructions in the parenthetical, but the proposed revision assumes that form APP-014A is mandatory.

Staff is unclear about the source of the possible confusion. It is not unusual for a form to include attachments. The subcommittee should discuss whether requiring the appellant to indicate how many additional forms are attached or how many pages are attached would address the issue.

**Form APP-022, Order on Appellant's Proposed Settled Statement**

**California Lawyers Association, Litigation Section, Committee on Appellate Courts**

In connection with its comment regarding the presumption that the judgment or order is correct and the doctrine of implied findings (see above suggestion regarding form APP-001-INFO), the commenter also suggests a modification for form APP-022. This form does not explain that there is an exception to the rule that an appellate court presumes a judgment or order is correct if a statement of decision has been prepared and the record shows that any ambiguity or omission was brought to the trial court's attention. In addition, the form does not explain that some appellate districts may still make the presumption even if a settled statement has been prepared. (See citations in the text of the comment.) The commenter is concerned that many litigants still may not have meaningful access to an appeal because a statement of decision was not prepared in their case, and suggests adding a check box on form APP-022 stating: "This settled statement contains the court's decision and the court's factual and legal basis for its decision."

Staff would like the subcommittee's feedback on this comment.

Staff Recommendation

Staff suggestions for a number of the comments are included in the discussion above, but because of the substantive nature of the comments, the subcommittee will need to discuss and decide what responses and modifications to the proposal, if any, it wishes to recommend.

Subcommittee Task

Staff has prepared a draft report to the Judicial Council, which is attached for your review and discussion. The draft report does not yet include the public comments and proposed responses. Staff will draft this section of the report based on the subcommittee's recommendations.

The subcommittee's task is to:

- Review and discuss the public comments received on the proposal, as reflected in the comment chart;
- Discuss and recommend responses to comments, including approving or modifying staff suggestions, as reflected in the comment chart; and



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- Discuss and approve or modify staff's draft recommendation to the full committee regarding adoption of the proposal, as reflected in the draft report to the council.

#### Attachments

1. Draft of report to Judicial Council
2. Forms with hand-written proposed changes
3. Comment chart



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20-21, 2018:

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Title

Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases

Rules, Forms, Standards, or Statutes Affected  
Approve forms APP-0014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014

Recommended by

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

Family and Juvenile Law Advisory Committee

Hon. Jerilyn L. Borack, Co-chair  
Hon. Mark A. Juhas, Co-chair

Agenda Item Type

Action Required

Effective Date

January 1, 2019

Date of Report

June 26, 2018

Contact

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### Executive Summary

To facilitate use of the settled statement procedure in unlimited civil cases, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend adopting new forms and revising existing forms for litigants and courts to use in preparing and certifying settled statements. This proposal is based on comments received last year in response to the Appellate Advisory Committee's invitation to comment on proposed changes to the settled statement rule and forms.

## Recommendation

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2019:

1. Approve *Other Party and Nonparty Witness Testimony and Evidence Attachment (Unlimited Civil Case)* (form APP-014A) to streamline the settled statement form by moving certain testimony and evidence to an attachment;
2. Approve *Information Sheet for Proposed Settled Statement* (form APP-014-INFO) to provide instructions for completing the settled statement form and information about the settled statement process;
3. Approve *Response to Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-020) to assist respondents with responding to and proposing any changes to appellants' proposed settled statements;
4. Approve *Order on Proposed Settled Statement (Unlimited Civil Case)* (form APP-022) to allow the trial court judge to order certification of the statement, the preparation of a reporter's transcript, or modifications or corrections to the appellant's proposed settled statement;
5. Approve *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) to assist appellants who wish to use a settled statement but are not automatically entitled to do so and must seek a court order;
6. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil)* (form APP-003) to be more understandable and easier to complete;
7. Revise *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to conform to content changes in form APP-003;
8. Revoke and replace *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001), relabeled as form APP-001-INFO, to update and expand the existing form; and
9. Revoke *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) and replace with *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to reformat, reorganize, and simplify the form.

The new and revised forms are attached at pages X-XX.

## **Relevant Previous Council Action**

Effective January 1, 2018, the Judicial Council amended California Rules of Court, rule 8.137, the rule regarding settled statements in appeals to the Court of Appeal in unlimited civil cases, to make the settled statement procedure less burdensome for appellants and the courts. Those amendments permit an appellant to use the settled statement procedure without filing a motion in certain circumstances, eliminate the option of using a settled statement as the record of the documents from the trial court proceeding, and add provisions specifying the contents of settled statements and the procedure for the trial court's review. The amendments also allow the respondent to pay for a reporter's transcript in cases in which a court reporter recorded the proceedings but the appellant elects or moves to use a settled statement.

As part of the same proposal, the Judicial Council approved new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help appellants prepare their proposed statements, and revised *Appellant's Notice Designating the Record on Appeal (Unlimited Civil Case)* (form APP-003) to reflect the amendments to rule 8.137 and the availability of new form APP-014.

## **Analysis/Rationale**

### **Background**

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court oral proceedings for an appeal. A settled statement is a summary of the oral proceedings prepared by the appellant, and reviewed and approved by the trial court judge who presided over the proceedings. Because court reporters are no longer present to record the proceedings in many civil cases, reporter's transcripts are unavailable in many civil appeals, and more appellants are now trying to use the settled statement procedure in these cases.

Effective January 1, 2018, the Judicial Council amended rule 8.137 of the California Rules of Court to permit an appellant to use the settled statement procedure without filing a motion if the trial court proceedings were not recorded by a court reporter or the appellant received a fee waiver. The council also approved new, optional *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help litigants prepare their proposed written record of the oral proceedings, and revised *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to conform to the rule change.

The Appellate Advisory Committee received a number of comments on last year's proposal that raised issues and expressed concerns that were beyond the scope of that proposal. Based on these comments, the committee identified several potential projects for future rules cycles, including further simplifying the rule and forms, developing new forms, and working with the Family and Juvenile Law Advisory Committee on whether to develop a separate settled statement form or modify the current form for family law proceedings.

### **Recommended changes**

The Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee recommend new and revised forms to help parties, particularly those who are self-represented,

better understand the settled statement procedure, how to seek a court order to use a settled statement, how to complete the proposed settled statement form, and how to navigate the appeals process generally. The new and revised forms are also intended to reduce the burdens on trial court judges who must review and certify the settled statements.

***New information sheet on appeal procedures.*** Proposed new *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) updates and expands on existing form APP-001 of the same title and is intended to replace that form. This new form is based on the parallel form for use in appellate division cases, *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO). The new form includes the following changes:

- Reformatted to be more user-friendly and easy to follow;
- Relabeled as “-INFO” to signify that it is an information sheet;
- Separate sections addressed to the appellant and the respondent;
- Expanded information on how to serve and file documents;
- A new section on whether a notice of appeal stays enforcement of a judgment;
- An expanded description of the record on appeal and the options for providing a record of the documents and oral proceedings; and
- A new section describing oral argument and subsequent procedures.

***New proposed settled statement form.*** The committees are proposing major changes to existing *Appellant’s Proposed Settled Statement on Appeal* (form APP-014), including:

- Standard formatting consistent with other unlimited civil forms, and the instructions moved to a more comprehensive information sheet, resulting in a shorter settled statement form;
- Removal of the space for describing the dispute so that appellants are not required to summarize information trial court judges already possess or can access through the case file;
- Removal of the requirement that an appellant describe how he or she was harmed by a legal error because such legal analysis is not required in a settled statement;
- Summaries of witness testimony no longer limited to matters that involved a trial. Many family law matters are heard in law-and-motion proceedings and involve witness testimony;
- Space for describing *party* testimony and evidence; an attachment (form APP-014A) has been created for any additional party and *all nonparty* witness testimony and evidence. In many family law proceedings, only the parties testify and present evidence;

- Simplified space for describing motions, now placed after the summaries of testimony and evidence; and
- A new item for summarizing any relevant jury instructions.

Because of the extent of these changes, the committees are proposing revoking the existing form and replacing it with a new version of the form incorporating these changes.

***New attachment for witness testimony and evidence.*** *Other Party and Nonparty Witness Testimony and Evidence Attachment* (form APP-014A) is an attachment for summarizing party testimony and evidence that will not fit in the space on form APP-014, and all nonparty testimony and evidence. The formatting is identical to the party testimony and evidence sections in form APP-014.

***New information sheet on proposed settled statements.*** *Information Sheet for Proposed Settled Statement* (form APP-014-INFO), in plain language format, is consistent with other appellate information sheets. In addition to providing expanded instructions for completing each section of the settled statement form, the information sheet includes definitions of legal terms, the time for filing the form, a description of the process of reviewing and proposing amendments to the settled statement prior to certification, and resources for finding general information on the appeals process.

***New form for responding to an appellant's proposed settled statement.*** *Response to Appellant's Proposed Settled Statement* (form APP-020) will assist the respondent in responding to the appellant's proposed settled statement. The respondent would be able to use the form to indicate agreement with appellant's proposed statement or request amendments.

***New order form.*** *Order on Proposed Settled Statement* (form APP-022) will facilitate the process for trial court judges to order certification of the appellant's proposed settled statement, the preparation of a reporter's transcript, or corrections or modifications to the statement. There is space to specify any necessary corrections and any missing content required by rule 8.137. It also includes space for the court to indicate the date by which the appellant must serve and file a corrected proposed statement.

***New motion form.*** *Appellant's Motion to Use a Settled Statement* (form APP-025) will help appellants who wish to use a settled statement but are not automatically entitled to do so under rule 8.137 and must seek a court order. The form walks the appellant through the requirements for the motion and provides space for the necessary information.

***Revisions to the appellant's record designation form.*** *Appellant's Notice Designating Record on Appeal (Unlimited Civil)* (form APP-003) is revised to be more understandable and easier to complete as suggested in comments on the 2017 proposal. Of note, it includes a notice in the caption advising appellants to read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO).

***Revisions to the respondent’s record designation form.*** *Respondent’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) contains minor revisions to conform to content changes in form APP-003.

**Policy implications**

The committees have identified no policy implications.

**Comments**

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[Heading 2 style] Discuss both internal and external comments and provide sufficient information for the council to consider all realistic options and alternatives to the recommended action. Specify whether the recommended action went through the invitation-to-comment process. If comments address the fiscal or operational impact of the recommended action, please present this information in “Fiscal and Operational Impacts” (below).

*Internal* comments reflect significant points of discussion and divergence of opinion within the advisory group preparing the report. Internal comments can also include unsolicited suggestions submitted to committee members or staff by individuals. *External* comments are received through the invitation-to-comment process or by other means, such as public hearings.

**Alternatives considered**

The committees considered making no changes and, with respect to each proposed new form, not proposing that form. However, based on (1) the complexity and difficulty of the settled statement process for litigants and courts, (2) the increasing number of civil proceedings that are not reported by a court reporter, and (3) the increasing number of self-represented litigants for whom the settled statement process is the only way to create a record of the oral proceedings, the committees concluded that it would be best to propose all of these new forms and modifications to existing forms in an effort to make the process less burdensome.

The Family and Juvenile Law Advisory Committee considered proposing to amend rule 8.137 to delete the requirement that a settled statement must contain a statement of the points the appellant is raising on appeal (rule 8.137(d)(1)). However, in light of the potential far-reaching effects of amending the rule, and to allow sufficient time to consider this and any other potential amendments, the committees decided to include review of the rule in a future rules cycle as part of ongoing work to improve the settled statement process.

The committees also considered keeping form APP-014 in plain language format, but determined that the standard format was preferable, given that other unlimited civil appellate forms are in that format, and presented better options for organizing and presenting streamlined and simplified content.

Finally, the Family and Juvenile Law Advisory Committee considered creating a separate series of settled statement forms for use in family law proceedings. The committees agreed that it was preferable to have one set of forms for settled statements, if possible, because all unlimited civil appeals forms are in the APP series; a separate set of forms for one process in one case type is generally disfavored; and separate forms could create confusion. The Family and Juvenile Law Advisory Committee concluded that separate forms for family law proceedings were unnecessary; the general unlimited civil forms could be modified to work for family law cases as well as for the other unlimited civil case types.

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[Heading 2 style] With the exception of reports presenting technical corrections to rules and forms, every report must present more than one realistic option—e.g., the recommended action, an option to make no change, and one other option that, although realistic, may be less attractive than the recommendation. Develop all of these options/alternatives, briefly comparing and contrasting their pros and cons and their implications.

When discussing alternatives, explain why the committee made the choices it did in considering alternatives proposed by the commenters and generated during the committee’s deliberations. If the proposal that circulated for comment differed significantly from the recommendation presented in your report, say so and explain why. Identify any issues that generated controversy and on which the committee’s deliberations were resolved by a close vote of the membership.

### **Fiscal and Operational Impacts**

The committees anticipate that courts may incur costs to revise forms, add a new order into the case management system, and train staff regarding the new and revised forms. However, the committees expect that the changes will save resources by making the settled statement process easier to understand and access for the parties and less burdensome for the courts.

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[Heading 1 style] Present the most significant actions that the courts, other entities, or Judicial Council staff will need to take to implement the recommendation. In addition, note:

- Any one-time or sustained annual costs associated with implementation, or that there are *no* associated costs;
- Any obstacles to implementation and possible fiscal or operational impacts, including whether funding your proposal could result in funds being taken from another area of court operations;
- Whether your proposal could potentially *reduce* costs for a particular function;
- Whether the alternatives/options that you provided differ from one another significantly in their implementation requirements, costs, or operational impacts; and



- Any comments you received that address the fiscal or operational impact of the recommended action.

### **Attachments and Links**

1. Forms APP-001-INFO, APP-003, APP-010, APP-014, APP-014A, APP-014-INFO, APP-020, APP-022, and APP-025, at pages XX-XX
2. Chart of comments, at pages XX-XX

## APP-001-INFO Information on Appeal Procedures for Unlimited Civil Cases

### GENERAL INFORMATION

#### 1 What does this information sheet cover?

This information sheet tells you about appeals in unlimited civil cases. These are civil cases in which the amount of money claimed is more than \$25,000, as well as other types of cases, such as those filed in family court, probate court, and juvenile court.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the **APPELLANT**, and you should read "Information for the Appellant," starting on page 2. If you received notice that another party in your case is appealing, you are called the **RESPONDENT** and you should read "Information for the Respondent," starting on page 13.

This information sheet does not cover everything you may need to know about appeals in unlimited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should:

- Read rules 8.100–8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).
- Read the local rules and find out about self-help resources for the district in which you filed your appeal at [www.courts.ca.gov/courts-of-appeal.htm](http://www.courts.ca.gov/courts-of-appeal.htm). *Add link that identifies counties in each DCA.*
- Visit the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-appeals.htm](http://www.courts.ca.gov/selfhelp-appeals.htm).

#### 2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In an unlimited civil case, the court hearing the appeal is the Court of Appeal for the district in which the superior court is located. The lower court—called the "trial court" in this information sheet—is the superior court.**

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

It is important to understand that **an appeal is NOT a new trial**. The Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate court's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made.

**The Court of Appeal generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of the following errors was made:**

- **Prejudicial error:** The appellant (the party who is appealing) may ask the Court of Appeal to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). It can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the Court of Appeal presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the Court of Appeal that an error was made and that the error was harmful.
- **No substantial evidence:** The appellant may also ask the Court of Appeal to determine if there was no substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision. The Court of Appeal generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were believable.



**3 Do I need a lawyer to represent me in an appeal?**

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in an unlimited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

*you will need to*

If you decide not to use a lawyer, ~~you must~~ put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed. *if you want to keep your info private, you may give a different mailing address and telephone number but be sure to check them regularly*

**4 Where can I find a lawyer to help me with my appeal?**

*to stay informed about your appeal.*

You have to hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm) in the Getting Started section.

**INFORMATION FOR THE APPELLANT**

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in an unlimited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 13 of this information sheet.

**5 Who can appeal?**

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person’s guardian or conservator).

**6 Can I appeal any decision the trial court made?**

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.1 lists a few types of orders in an unlimited civil case that can be appealed right away. These include orders that:

- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum.
  - Grant a new trial or deny a motion for judgment notwithstanding the verdict.
  - Discharge or refuse to discharge an attachment or grant a right to attach.
  - Grant or dissolve an injunction or refuse to grant or dissolve an injunction, *including a restraining order or a protective order*
  - Appoint a receiver.
  - Are made after final judgment in the case.
  - *Are made appealable by the Probate Code or the Family Code*
- (You can get a copy of Code of Civil Procedure section 904.1 at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

**7 How do I start my appeal?**

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) to prepare a notice of appeal in an unlimited civil case. You can get form APP-002 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).



**8 How do I “serve and file” the notice of appeal?**

“Serve and file” means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (“serve”) the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or send (by mail or electronically) the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**9 Is there a deadline to serve and file my notice of appeal?**

Yes. Generally, in an unlimited civil case, the notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court within **60 calendar days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment <sup>or order</sup> or a file-stamped copy of the judgment <sup>or order</sup>.

If the clerk or a party served neither of these documents, the notice of appeal must be filed within 180 calendar days after entry of judgment (generally, the date the judgment is file-stamped).

**This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the Court of Appeal will not be able to consider your appeal.**

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a “cross-appeal.”

To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 calendar days after the clerk of the superior court mails notice of the first appeal, whichever is later. A party that wishes to cross-appeal may use *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) to file this notice in an unlimited civil case.

**10 Do I have to pay a fee to file a notice of appeal?**

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in an unlimited civil case in the current Statewide Civil Fee Schedule at [www.courts.ca.gov/7646.htm](http://www.courts.ca.gov/7646.htm) (see the “Appeal and Writ Related Fees” section near the end of the schedule.)

If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.



another <sup>affecting</sup> child custody orders  
or

## APP-001-INFO Information on Appeal Procedures for Unlimited Civil Cases

### 11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at [www.leginfo.ca.gov/faces/codes.xhtml](http://www.leginfo.ca.gov/faces/codes.xhtml)). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request.

In most cases, if the trial court denies your request for a stay, you can apply to the Court of Appeal for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

### 12 What do I need to do after I file my notice of appeal?

Within 15 days after the trial court clerk mails a notice that a notice of appeal has been filed in an unlimited civil case, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered. See rules 8.100 and 8.104 of the California Rules of Court.

In addition, since the Court of Appeal justices were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the Court of Appeal for its review.

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing (designate) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal. You can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

You must serve and file this notice designating the record on appeal within 10 calendar days after you file your notice of appeal. “Serving and filing” this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or send (by mail or electronically) the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).



### 13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of the documents filed in the trial court (other than exhibits);
- A record of what was said in the trial court (this is called the “oral proceedings”); and
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court.

Read below for more information about these parts of the record.

#### a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the Court of Appeal:

- A *clerk’s transcript* or an *appendix*,
- The original *trial court file*, or
- An *agreed statement*.

Read below for more information about these options.

#### (1) Clerk’s transcript or appendix

**Description:** A clerk’s transcript is a compilation of the documents filed in the trial court that is prepared by the trial court clerk. An appendix is a compilation of these documents prepared by a party. (Cal. Rules of Court, rule 8.124).

**Contents:** Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript or appendix. These documents are listed in rule 8.122(b) and rule 8.124(b) of the California Rules of Court and in *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003).

**Clerk’s transcript.** If you want any documents other than those listed in rule 8.122(b) to be included in the clerk’s transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-003 to do this. You will need to identify each document you want included in the clerk’s transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you (the appellant) request a clerk’s transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk’s transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk’s transcript.

**Cost:** The appellant is responsible for paying for preparing a clerk’s transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk’s transcript.

You must do one of the following three things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.court.ca.gov/forms](http://www.court.ca.gov/forms). The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial court a copy of a court order showing that your fees in this case have already been waived by the court.

**Completion and delivery:** After the cost of preparing the clerk’s transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk’s transcript to the Court of Appeal for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.



**Appendix:** If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.124 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. The appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief. See (15) for information about the brief.

## (2) Trial court file

**When available:** If the Court of Appeal has a local rule allowing this, and the parties agree, the clerk can send the Court of Appeal the original trial court file instead of a clerk's transcript as a record of documents filed in the trial court (see rule 8.128 of the California Rules of Court).

**Cost:** As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost.

You must do one of the following things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.court.ca.gov/forms](http://www.court.ca.gov/forms). The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial court a copy of a court order showing that your fees in this case have already been waived by the court.

**Completion and delivery:** After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will number the pages and send the file and a list of the documents in the file to the Court of Appeal. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order and number the pages.

## (3) Agreed statement

**Description:** An agreed statement is a summary of the trial court proceedings agreed to by the parties. (See rule 8.134 of the California Rules of Court.)

**When available:** If you and the respondent agree to this, you can use an agreed statement instead of a clerk's transcript as a record of documents filed in the trial court. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript. (See rule 8.122(b) of the California Rules of Court.)

If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a "stipulation"), stating that you are trying to agree on a statement.



Within the next 30 days, you must then file the agreed statement or tell the trial court that you were unable to agree on a statement and file a new notice designating the record.

**b. Record of what was said in the trial court (the “oral proceedings”)**

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the “oral proceedings”). You do not *have* to send the Court of Appeal a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the Court of Appeal to consider what was said in the trial court, the Court of Appeal will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the Court of Appeal will presume there was substantial evidence unless it has a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the Court of Appeal. **If the Court of Appeal does not receive this record, you may forfeit your arguments on appeal, or the Court of Appeal may make presumptions in favor of the judgment or order.**

In an unlimited civil case, you can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to tell the trial court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-003 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

Please note that the type of oral record you choose may affect your appeal. You may want to consult with an attorney to determine the best option in your case.

There are three ways in which a record of the oral proceedings can be prepared for the Court of Appeal:

- If you or the other party arranged to have a court reporter present during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”
- You can use an *agreed statement*.
- You can use a *settled statement*.

Read below for more information about these options.

**(1) Reporter’s transcript**

**Description:** A reporter’s transcript is a written record (sometimes called a “*verbatim*” record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.130 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

**When available:** If a court reporter was present in the trial court and made a record of the oral proceedings, you can choose (elect) to have the court reporter prepare a reporter’s transcript for the Court of Appeal. A court reporter ~~will~~ <sup>may</sup> not have been present unless you or another party in your case made specific arrangements to have a court reporter present. If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

**Contents:** If you elect to use a reporter’s transcript, you must identify by date (this is called “*designating*”) what proceedings you want to be included in the reporter’s transcript. You can use the same form you used to tell the court you wanted to use a reporter’s transcript—*Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003)—to do this.

If you elect to use a reporter’s transcript, the respondent also has the right to designate additional proceedings to be included in the reporter’s transcript. If you elect to proceed





without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the Court of Appeal.

**Cost:** The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at [www.courtreportersboard.ca.gov/consumers/index.shtml#rtf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#rtf).

If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a settled statement, which are described below.

**Completion and delivery:** After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the Court of Appeal and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

## (2) Agreed statement

**Description:** An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. See rule 8.134 of the California Rules of Court.

**When available:** If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter's transcript, if it is available.

**Contents:** An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

**Preparation:** If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 calendar days you must either file the agreed statement or tell the trial court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

## (3) Settled statement

**Description:** A settled statement is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners, referees, hearing officers, and temporary judges).

**When available:** Under rule 8.137 of the California Rules of Court, you can choose (elect) to use a settled statement as the record of the oral



proceedings if (1) the trial court proceedings were not recorded by a court reporter or (2) if you have an order waiving your court fees and costs. Please note that it may take more of your time to prepare a settled statement than to use a reporter's transcript, if it is available.

If you want to use a settled statement as the record of the oral proceedings for reasons other than the two previously mentioned, you must file a motion to ask the trial court for an order. You may use *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) for this purpose. Read rule 8.137 about the requirements of your motion or request for order.

**Contents:** A settled statement must include:

- A statement of the points you (the appellant) are raising on appeal;
- A condensed narrative of the oral proceedings that you specified in the notice designating the record on appeal or motion. The condensed narrative is a summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal; and
- A copy of the judgment or order you are appealing attached to the settled statement.

**Preparing a proposed settled statement:** If you elect to use a settled statement, you must prepare a proposed settled statement. You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to prepare your proposed statement. You can get the form at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

(See rule 8.137 of the California Rules of Court for more information about what must be included in a settled statement and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).)

***Serving and filing a proposed settled statement:***

You must serve and file the proposed statement within 30 days after filing your notice electing to use a settled statement or within 30 days after the trial court clerk sends, or a party serves, the order granting the motion to use a settled statement. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the proposed settled statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed settled statement has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed settled statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).



**Respondent's review:** The respondent has 20 calendar days from the date you serve your proposed settled statement to serve and file either:

- Proposed changes (called “amendments”) to the proposed statement; or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that the respondent is electing to provide a reporter’s transcript instead of proceeding with a settled statement.

**Review of appellant’s proposed settled statement:** If the respondent proposes changes, the trial court judge then reviews both your proposed statement and the respondent’s proposed amendments. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal. For more information, see rule 8.137(f) of the California Rules of Court. See also rule 8.140, which explains the consequences for a party’s failure to make corrections that are ordered to be made to the proposed statement.

**Request for hearing to review proposed settled statement:** No later than 10 days after the respondent files proposed amendments, or the time to do so has expired, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge. A judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceeding. If there is a hearing, see rule 8.137 for more information.

**Additional review procedures:** If there is no hearing after the respondent proposes changes to the settled statement, and if the judge makes any

corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review.

If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. See rule 8.140, which explains the consequences for a party’s failure to make corrections to the proposed statement.

If you or the respondent disagree with anything in the modified or corrected statement, you have 10 calendar days from the date the modified or corrected statement is sent to you to serve and file proposed amendments or objections to the statement. The judge then reviews the modified or corrected statement and any proposed modifications. If the judge decides that further corrections or modifications are necessary, the review process described above takes place again.

**Completion and certification:** If the judge does not order any corrections or modifications to the proposed statement, the judge must promptly certify the statement as an accurate summary of the evidence and testimony of each witness relevant to the issues you indicated you are raising on appeal.

Alternatively, the parties may serve and file a stipulation (agreement) that the statement as originally served or corrected or modified is correct. Such a stipulation is equivalent to the judge’s certification of the statement.

**Sending settled statement to the Court of Appeal:** Once the trial court judge certifies the statement or the trial court receives the parties’ stipulation, the trial court clerk will send the statement to the Court of Appeal as required under rule 8.150 of the California Rules of Court.



### c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the Court of Appeal at the time briefs are filed. (See rule 8.224 for more information about this procedure and see below for information about briefs.)

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript or sent to the Court of Appeal, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

#### 14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal for the district in which the trial court is located. When the Court of Appeal receives the record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

#### 15 What is a brief?

**Description:** A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself.

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil

appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

**Contents and format of briefs:** If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain the legal errors you believe were made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Each brief must be no longer than 14,000 words if produced on a computer, including footnotes. A brief produced on a typewriter must not be longer than 50 pages. The brief must contain a table of contents and a table of authorities. The cover of appellant's opening brief filed in paper form must be green. For other content and formatting requirements for the brief, read rules 8.40 and 8.204 of the California Rules of Court.

Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

**Serving and filing:** You must serve and file your opening brief within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.124. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.



- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 calendar days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension (see rule 8.63 for information about extensions of time). You can use *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) to ask the court for an extension.

**If you do not file your brief by the deadline set by the Court of Appeal, the court may dismiss your appeal.**

### 16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent must respond by serving and filing a respondent's brief. Within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

### 17 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

### 18 What is "oral argument"?

*the* "Oral argument" *you made in your brief* is the parties' chance to orally explain their arguments to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court. Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer. Read rule 8.256 for more information.

### 19 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal's decision.

### 20 What should I do if I want to give up my appeal?

If you do not want to continue with your appeal, you must notify the court. If the record has not yet been filed in the Court of Appeal, file *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court.

If the record has already been filed in the Court of Appeal, file *Request for Dismissal of Appeal (Civil Case)* (form APP-007) in the Court of Appeal.



**INFORMATION FOR THE RESPONDENT**

This part of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in an unlimited civil case. The information may also be helpful to the appellant.

**21 I have received a notice of appeal from another party. Do I need to do anything?**

You do not *have* to do anything, but there may be consequences if you do nothing. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in an unlimited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-lowcosthelp.htm](http://www.courts.ca.gov/selfhelp-lowcosthelp.htm).

**22 If the other party appealed, can I appeal, too?**

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a “cross-appeal.” To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) to file this notice in an unlimited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

**23 Is there a deadline to file a cross-appeal?**

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 60 days after service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court serves notice of the first appeal, whichever is later.

**24 I have received a notice designating the record on appeal from another party. Do I need to do anything?**

You do not *have* to do anything, but there may be consequences if you do nothing. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the Court of Appeal. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record;
- Participate in preparing the record; *or*
- Ask for a copy of the record.

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question **13** above. Then read below for what your options are when the appellant has chosen that form of the record.

**a. Clerk's transcript or appendix**

**Clerk's transcript:** If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript. To do this, within 10 calendar days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) for this purpose.



Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

If you cannot afford to pay this cost, you can ask the trial court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The trial court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

**Appendix:** If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 5–6 for more information about preparing an appendix.

### **b. Reporter's transcript**

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript. You may use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) for this purpose.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit payment for this cost (and a fee for the trial court) or one of the

substitutes allowed by rule 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at [www.courtreportersboard.ca.gov/consumers/index.shtml#trf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#trf).

The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or provide one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

### **c. Agreed statement**

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 40 calendar days after the appellant files its notice of appeal. See rule 8.134 of the California Rules of Court.

### **d. Settled statement**

If the appellant elects to use a settled statement (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed settled statement to review. You will have 20 calendar days from the date the appellant served you this proposed statement to serve and file either:

- Suggested changes (called "amendments") that you think are needed to make sure that the settled statement provides an accurate summary of the evidence and testimony of each witness relevant to the issues the appellant is raising on appeal (see page 10 of this form and rule 8.137 (e)–(h) for more information about the amendment process); or



- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that you are choosing to provide a reporter's transcript, at your expense, instead of proceeding with a settled statement (see rule 8.137(e)(2) for the requirements for choosing to provide a reporter's transcript).

Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal. When the Court of Appeal receives this record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself.

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

The appellant serves and files the first brief, called an “appellant's opening brief.” You must respond by serving and filing a “respondent's brief” within 30 days after the appellant's opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.



- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension. You can use *Application for Extension of Time to File Brief (Unlimited Civil Case)* (form APP-006) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 calendar days to reply to your brief.

## 26 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

“Oral argument” is the parties’ chance to orally explain their arguments to Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to “waive” oral argument. If all parties waive oral argument, the justices will decide the appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court. Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in the appeal or ask the justices if they have any questions you could answer.

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about the appeal. The clerk of the court will send you a notice of the Court of Appeal's decision.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO. NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>03-01-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:  COURT OF APPEAL CASE NUMBER (if known):
RE: Appeal filed on (date):	
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

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

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

- a.  A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section (item 4) on pages 2 and 3 of this form.)
  - (1)  I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
  - (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
    - (a)  An order granting a waiver of court fees and costs under rules 3.50-3.58; or
    - (b)  An application for a waiver of court fees and costs under rules 3.50-3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b.  An appendix under rule 8.124.
- c.  The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate (agree) to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d.  An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

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

I choose to proceed (you must check a or b below):

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

*at the trial or hrg*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. b.  WITH the following record of the oral proceedings in the superior court (*you must check (1), (2), or (3) below*):
- (1)  A reporter's transcript under rule 8.130. (*You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.*) I have (*check all that apply*):
    - (a)  Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit with this notice as provided in rule 8.130(b)(1).
    - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
    - (c)  Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (*check either (i) or (ii)*):
      - (i)  all of the designated proceedings.
      - (ii)  part of the designated proceedings.
    - (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
  - (2)  An agreed statement. (*Check and complete either (a) or (b) below.*)
    - (a)  I have attached an agreed statement to this notice.
    - (b)  All the parties have stipulated (agreed) in writing to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
  - (3)  A settled statement under rule 8.137. (*You must check (a), (b), or (c) below, and fill out the settled statement section (item 6) on page 4.*)
    - (a)  The oral proceedings in the superior court were not reported by a court reporter.
    - (b)  The oral proceedings in the superior court were reported by a court reporter, but I have an order waiving fees and costs.
    - (c)  I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (*You must serve and file the motion required under rule 8.137(b) at the same time that you file this form.*)

You may use Form APP-025, Appellant's Motion to Use a Settled Statement, for this purpose.

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

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

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

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

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

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

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

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

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

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

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

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

See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (13).)

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

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

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

if the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk. (See rule 8.172 within 10 days after service of (a)(3).) the notice designating the exhibit.

See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (6).)

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

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

a. **Format of the reporter's transcript**

I request that the reporters provide (check one):

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

(Code Civ. Proc., § 271.)

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

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

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

See additional pages. *(Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start with number (5).)*

**6. NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

*(You must complete this section if you checked item 2b(3) above indicating you choose to use a settled statement.)* I request that the following proceedings in the superior court be included in the settled statement. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)*

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

See additional pages. *(Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 6," and start with number (5).)*

7. a. The proceedings designated in 5b or 6  include  do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. *(Rule 8.130(a)(2) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.)* Points are set forth:  Below  On a separate page labeled "Attachment 7."

Date:

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



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

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY  <b>DRAFT</b>  <b>01-04-2018</b>  <b>Not approved by the Judicial Council</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER: _____
Re: Appeal filed on (date): _____	COURT OF APPEAL CASE NUMBER (if known): _____
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before you fill out this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

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

The appellant has chosen to use a clerk's transcript under rule 8.122.

- a.  **Additional documents.** (If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)

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

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		

- See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 1(a)," and start with number (4).)

- b.  **Additional exhibits.** (If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those exhibits here.)

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

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

- See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 1(b)," and start with number (4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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1. c.  **Copy of clerk's transcript.** I request a copy of the clerk's transcript. (Check (1) or (2).)
- (1)  I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a)  An order granting a waiver of court fees and costs under rules 3.50–3.58; or
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)

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

The appellant has chosen to use a reporter's transcript under rule 8.130.

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

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

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)						<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 2a(1)," and start with letter (h).)

CASE NAME:

SUPERIOR COURT CASE NUMBER:

2. a. (2) **Deposit for additional proceedings.**I have (*check a, b, c, or d*):

- (a)  Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit with this notice as provided in rule 8.130(b)(1).
- (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c)  Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (*check either (i) or (ii)*):
- (i)  All of the designated proceedings.
- (ii)  Part of the designated proceedings.
- (d)  Attached a certified transcript under rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

- (1)  I request a copy of the reporter's transcript.
- (2)  I request that the reporters provide (*check (a), (b), or (c)*):
- (a)  My copy of the reporter's transcript in electronic format.
- (b)  My copy of the reporter's transcript in paper format.
- (c)  My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

*(Code Civ. Proc., § 271.)*

Date:

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

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



PARTY WITHOUT ATTORNEY OR ATTORNEY: NAME: _____ STATE BAR NO.: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____		<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>03-19-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ OTHER PARENT/PARTY: _____		
<b>APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b> <input type="checkbox"/> Amended <i>(If applicable, specify 1st, 2nd, 3rd, etc. amended form.)</i>		
RE: Appeal filed on (date): _____		SUPERIOR COURT CASE NUMBER: _____  COURT OF APPEAL CASE NUMBER: _____
<p style="text-align: center;"><i>Information sheet for Proposed Settled Statement (Form APP-014-INFO)</i></p> <p><b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b></p> <p style="text-align: center;"><i>You must file this form</i></p>		

*for instructions on completing*

**1. PRELIMINARY INFORMATION**

- a. I am appealing (check one):  an order filed on \_\_\_\_\_  a judgment entered on (date): \_\_\_\_\_
- b. On (date): \_\_\_\_\_, I filed a notice of appeal. A copy of the judgment or order I am appealing is attached.
- c. On (date): \_\_\_\_\_, (check the one that applies):
  - (1)  I filed a notice designating the record on appeal, choosing to use a settled statement.
  - (2)  The court sent me  I was served with \_\_\_\_\_ an order granting my request to use a settled statement.
- d.  On (date): \_\_\_\_\_, the court ordered me to modify or correct my proposed settled statement.

**2. REASONS FOR YOUR APPEAL**

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

- a.  **No substantial evidence.** There was no substantial evidence that supported the judgment or order that I am appealing. *(Explain why you think the judgment or order was not supported by substantial evidence.)*

Attachment 2a

- b.  **Errors.** The following error or errors about either the law or court procedure affected the outcome of the case. *(Describe each error.)*

Attachment 2b

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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**3. SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE**

a. Did any of the parties testify at the trial or hearing?  Yes  No

*(Specify the name of the party who testified and the date on which the party testified. Then, write a complete and accurate summary of what each party said that is relevant to the reasons you gave in item 2 for this appeal (for example, what the party said in response to questions asked by his or her own attorney, the other party (or the attorney), and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.)*

(1) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_

Summary:

Attachment 3a(1)

- (a) Did a party (or attorney) make an objection to this party's testimony?  No  Yes (Specify in item 3b.)
- (b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3c.)
- (c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3d.)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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3. a. (2) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_  
 Summary: \_\_\_\_\_

Attachment 3a(2)

- (a) Did a party (or attorney) make an objection to this party's testimony?  No  Yes (Specify in item 3b.)
- (b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3c.)
- (c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge did not allow to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3d.)

(3) Was there testimony from other parties?  No  Yes  
 (If you answered yes, fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A).)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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3. b. **Objections to a party's testimony relevant to the appeal**

*(Indicate which party's testimony was objected to and specify the objection. Also indicate whether the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement) and include any explanation given by the court.)*

Attachment 3b

c. **Exhibits (documents, records, or other materials) relevant to the appeal allowed to be used as evidence to support or disprove a party's testimony.** *(Write a complete and accurate summary of the exhibits presented by each party. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the exhibits.)*

Attachment 3c

d. **Exhibits (documents, records, or materials) relevant to the appeal not allowed to be used as evidence to support or disprove a party's testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the items.)*

Attachment 3d

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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4. SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE

Was there testimony from another party or nonparty witnesses that is relevant to the reasons for the appeal?

- No (Skip to item 5.)
- Yes (Fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A.)

5. TRIAL COURT'S FINDINGS

- a. Did the judge make findings at the hearing or trial in the case?  No  Yes (Complete item 5b.)  
(A judge makes a "finding" when he or she decides that something is a fact, is true, or is relevant.)
- b. What are the findings that the judge made that are relevant to the reasons for the appeal?

Attachment 5

6. SUMMARY OF MOTIONS

- a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a motion or motions?  
 Yes (Fill out b.)  No (Skip to item 7.)
- b. Describe the motion. (State which party made the motion. Then, write a complete and accurate summary of what was said (any testimony and arguments) and what the court decided (whether the court granted or denied the motion).)

Attachment 6

7. SUMMARY OF JURY INSTRUCTIONS

- a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a jury instruction or instructions?  
 Yes (Fill out b.)  No (Skip to item 8.)
- b. Identify the jury instruction and the party that requested it. (Summarize what the parties said (arguments or objections) and what the court decided (whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified it before giving it to the jury). Describe any modifications the court made to the instruction.)

Attachment 7

8. ORDER OR JUDGMENT YOU ARE APPEALING

Attach a copy of the order or judgment you are appealing.

Date:

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



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

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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### OTHER PARTY AND NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE ATTACHMENT

Use this form as an attachment to *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) if other parties or non party witnesses provided testimony relevant to the reasons you are appealing the order or judgment in the case.

- Specify the name of any other party or nonparty witnesses who testified at the trial or hearing and other information specified below.
- Write a complete and accurate summary of what each person said that is relevant to the reasons for this appeal (for example, in response to questions asked by any of the parties (or attorneys) and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.

#### 1. SUMMARY OF TESTIMONY AND EVIDENCE

- a. Name: \_\_\_\_\_  a party  a nonparty witness in the case  
 testified on behalf of (*specify*):  petitioner/plaintiff  respondent/defendant  other parent/party  
 on (*date*): \_\_\_\_\_.

Summary:

Attachment 1a

- (1) Did a party (or attorney) make an objection to this person's testimony?  No  Yes (*Specify in item 2.*)
- (2) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove the testimony?  No  Yes (*Specify in item 3.*)
- (3) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove the testimony?  No  Yes (*Specify in item 4.*)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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b. Name: \_\_\_\_\_  a party  a nonparty witness in the case  
 testified on behalf of (specify):  petitioner/plaintiff  respondent/defendant  other parent/party  
 on (date): \_\_\_\_\_

Summary:

- Attachment 1b
- (1) Did a party (or attorney) make an objection to this person's testimony?  No  Yes (Specify in item 2.)
- (2) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove the testimony?  No  Yes (Specify in item 3.)
- (3) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove the testimony?  No  Yes (Specify in item 4.)

c. Was there testimony from other parties or other nonparty witnesses?  No  Yes

(If you answered yes, fill out and attach to this form another Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A) or provide information in another document, such as Attachment to Judicial Council Form (form MC-025), labeled as Attachment 1c.)

*and indicate the total number of pages attached: \_\_\_\_\_.*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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2. **Objections to the other party's or nonparty witness's testimony relevant to the appeal**  
*(Indicate which person's testimony was objected to and specify the objection. Also indicate whether the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement) and include any explanation given by the court.)*

.."

Attachment 2

3. **Exhibits (documents, records, or other materials) relevant to the appeal allowed to be used as evidence to support or disprove the testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the exhibits.)*

Attachment 3

4. **Exhibits (documents, records, other materials) relevant to the appeal not allowed to be used as evidence to support or disprove the testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the items.)*

Attachment 4



**APP-014-INFO****Information Sheet for Proposed Settled Statement****1 What information does this form provide?**

This information tells you how to fill out *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014). It includes:

- Instructions for appellant to complete form APP-014; and
- Definitions of legal terms, deadlines for filing and serving form APP-014, and the process for asking the court to certify your proposed settled statement for use in the Court of Appeal.

This information is also helpful for respondents who are completing *Response to Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-020).

More information for the appellant and respondent about the settled statement process is found in *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO). Read items 13b(3) and 24d.

**2 Where can I find general information about the appeals process?**

For general information about the appeals process, read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) (family law cases are one type of unlimited civil case). To learn more, you may also:

- Visit the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-appeals.htm](http://www.courts.ca.gov/selfhelp-appeals.htm).
- Find out about self-help resources for the district in which you filed your appeal, at [www.courts.ca.gov/courts\\_of\\_appeal.htm](http://www.courts.ca.gov/courts_of_appeal.htm).
- Read rules 8.100–8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).
- Consult with a lawyer. Find a lawyer through your local bar association, the State Bar of California at [www.calbar.ca.gov](http://www.calbar.ca.gov), or the Lawyer Referral Services at 1-866-442-2529.

**3 What is a settled statement?**

A settled statement is a summary of the oral (spoken) trial court proceedings that is approved by the trial court judge who conducted those proceedings. The Court of Appeal will rely on this statement in deciding your case.

The appellant is responsible for preparing a proposed settled statement.

**4 When can I use a settled statement?**

You may use a settled statement as the record of the oral (spoken) trial court proceedings for an appeal if:

- The trial or hearing was not reported by a court reporter; or
- You have an order waiving your court fees and costs; or
- The court orders that you can use a settled statement instead of a court reporter's transcript.

**5 What must be included in a proposed settled statement?**

The proposed settled statement must include all of the following:

- A statement of the reasons for your appeal (see item **10**);
- A summary of the evidence and testimony of each witness that relates to the reasons for your appeal; and
- A copy of the judgment or order being appealed (must be attached to the settled statement).

You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to prepare your proposed settled statement.

**6 What is the deadline to file the form?**

File the original form in the trial court:

- At the same time you file *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) or within **30 days** of that date;  
**OR**
- Within 30 days of the date that the court sends, or a party serves, an order granting your motion to use a settled statement, if applicable.

**7 What is the meaning of these words that are found in form APP-014 and this information sheet?**

**Evidence:** Any proof legally presented at a hearing or trial through witnesses, records, or exhibits.

**Substantial evidence:** Evidence that is reasonable, believable, and of solid value. It is not just any evidence. The focus is on the quality—not the quantity—of evidence needed to support a legal conclusion.

**Findings:** A decision by a judge that something is a fact or is true or is relevant.

**Judgment:** The final determination of the rights of the parties in an action or proceeding.

**Objection.** A formal protest made by a party about what a party or witness says at the trial or hearing or about any exhibits or other evidence that the other side tries to introduce during a trial or hearing.

**Order.** A decision made by a judicial officer on an issue that is raised by a party in a lawsuit.

**Rulings on objections.** A ruling is a judge's decision on a party's objection to a witness's testimony, exhibits, or other evidence at the trial or hearing. The judge can "sustain" the objection or "overrule" the objection.

If the judge *sustains* the objection, the judge is agreeing with the objection and will not consider that part of the testimony or evidence that is being objected to.

If the judge *overrules* the objection, the judge is disagreeing with the objection, and will allow the evidence to be introduced.

**8 How do I complete the caption (the top part of the form)?**

**Name and contact information.** If you have a lawyer for the appeal, your lawyer will fill out the form. If you do not have a lawyer for the appeal, write your name and provide your contact information in the first part of the caption.

**Court address.** Complete the address for the superior court where your case is filed.

**Party names.** Write the names of the parties in the case. *Note for Domestic Violence Restraining Order cases:* If you are appealing a Domestic Violence Restraining Order, write your name next to Plaintiff/Petitioner if you are the Protected Person on the restraining order. Write your name next to Defendant/Respondent if you are the Restrained Person on the restraining order.

**Amended statement.** If the court ordered you to amend (make changes to) a proposed settled statement, check the box under the name of the form. Then, on the line that follows the check box, write whether this is the first, second, third, fourth, etc. time you are amending the proposed settled statement.

**Filing date of notice of appeal.** Finally, fill in the date your appeal was filed, as well as the superior court case number and Court of Appeal case number.

**9 How do I complete item 1, "Preliminary Information"?**

In item 1 of form APP-014, check the boxes that apply and provide the dates requested.

**10 How do I complete item 2, "Reasons for Your Appeal"?**

In item 2 of APP-014, describe the errors (mistakes) you believe were made at the hearing or trial. For example:

*No substantial evidence*

You might argue that there was no substantial evidence that supported the judgment or order that you are appealing. (See item **7** of this information sheet for the definition of substantial evidence.)

**APP-014-INFO**

**Information Sheet for Proposed Settled Statement**

*Error*

You might argue that an error or errors about the law or court procedure affected the outcome of the trial or hearing. This can include an argument that the court made a ruling that is based on a mistake about the facts of the case or about the law.

Before you complete this item, you should understand that the Court of Appeal will reverse the order or judgment you are appealing only if the error affected the outcome of the case. (“Reverse” means to change the trial court’s decision.)

If you need more space to describe the reasons for your appeal, check the box labeled, “Attachment 2a” and/or “Attachment 2b.” Then attach a separate page or pages (you can use form MC-025) to continue describing the reasons for your appeal).

YOUR ARGUMENTS/REASONS CAN BE BECAUSE:	
<input checked="" type="checkbox"/>	There was no substantial evidence that supported the judgment or order.
<input checked="" type="checkbox"/>	There was an error or errors about either the law or court procedure.  Examples are that the court: (1) misinterpreted the law; (2) wrongly ruled on an objection; or (3) gave an incorrect jury instruction.

YOUR ARGUMENTS/REASONS CANNOT BE TO:	
<input checked="" type="checkbox"/>	Present your case all over again to the Court of Appeal;
<input checked="" type="checkbox"/>	Present new evidence or new witnesses to the Court of Appeal;
<input checked="" type="checkbox"/>	Generally complain about the judge or a lawyer; or
<input checked="" type="checkbox"/>	Explain to the Court of Appeal that a witness did not tell the truth at the trial.

**11 How do I complete item 3, “Summary of the Parties’ Testimony and Other Evidence”?**

Indicate in item 3 of form APP-014 if a *party* in the case gave testimony at the trial or hearing. Item 3 provides space to summarize the testimony that is relevant to the reasons you gave in item 2 for this appeal.

After summarizing the testimony, indicate if there were any objections to the testimony and exhibits relevant to the appeal that the judge allowed, or did not allow, to be used as evidence to support or disprove the party’s testimony. If you answer yes to any of the questions following each party’s testimony, complete the corresponding item on page 4.

If you need more space to describe the testimony or evidence, check the box below the summary of the testimony (for example, “Attachment 3a(1)”). Then, attach a separate page or pages (you can use form MC-025) to continue the summary. Label the attachment “APP-014, Attachment 3a(1)” if you are continuing to summarize the testimony of the party named in item 3a(1).

If more than two parties provided testimony, complete *Other Party and Nonparty Witness Testimony and Other Evidence Attachment (Unlimited Civil Case)* (form APP-014A) and attach it to form APP-014.

**12 How do I complete item 4, “Summary of Nonparty Witness Testimony and Other Evidence”?**

If nonparty witnesses (persons other than the parties in the case) provided testimony at the trial or hearing that is relevant to the reasons for your appeal, you will need to provide the information and attach it to form APP-014.

You may use *Other Party and Nonparty Witness Testimony and Other Evidence Attachment (Unlimited Civil Case)* (form APP-014A) for this purpose.



**13 How do I complete item 5, "Trial Court's Findings"?**

Indicate if the judge made any findings (decisions about the facts or the law) that are relevant to your reasons in item 2 of form APP-014 for this appeal.

(See item **7** for the definition of findings.)

If you need more space to describe the trial court's findings, check the box "Attachment 5." Then, attach a separate page or pages (you can use form MC-025) to continue the summary. Label the attachment "APP-014, Attachment 5."

**14 How do I complete item 6, "Summary of Motions"?**

If the trial court's ruling on a motion is relevant to your reasons in item 2 of form APP-014 for this appeal, describe the motion. Include which party made the motion, what was said by the parties and the court about the motion, whether the trial court granted or denied the motion, and what the court said in ruling on the motion.

**15 How do I complete item 7, "Summary of Jury Instructions"?**

If one of your reasons in item 2 of form APP-014 for this appeal is a challenge to a jury instruction, indicate which instruction you are challenging and which party requested it. Also state whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified the instruction before giving it to the jury. If an instruction was given orally rather than in writing, provide the language of the oral instruction. And if an instruction was modified, describe how the instruction was modified.

**16 Attach order or judgment and make copies**

When you have finished your proposed settled statement:

- Attach a copy of the order or judgment you are appealing;
- Make one copy of the proposed settled statement and attachments for each party in your case; and
- Keep a copy for your records.

**17 Have all parties in the case served**

Have each party in your case served with a copy of the complete proposed settled statement with attachments.

For information about serving your documents:

- See *Information Sheet for Proof of Service* (form APP-009-INFO); and
- Go to the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**18 File the proof of service forms with the court**

You can file the forms in person, by mail, or e-filing (if available) in the court that made the order or judgment you are appealing.

Ask the court clerk to stamp the extra copy for your records to show that the original was filed.

**19 Respondent's options**

The respondent has 20 calendar days from the date you serve your proposed settled statement to serve and file either:

- Proposed amendments (changes) to the proposed settled statement. Use *Response to Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-020) to request changes; or
- A notice choosing to provide a reporter's transcript instead of a settled statement. This option is available if the oral proceedings in the trial court were reported by a court reporter.

**20 Review process**

If the respondent proposes changes, the trial court judge then reviews both your proposed settled statement and the respondent's proposed amendments.

If the proposed settled statement does not need any corrections or modifications, the trial court judge will certify the statement as an accurate summary of the testimony and evidence relevant to the reasons for the appeal.

*Changes made to the settled statement*

If corrections or modifications are needed, and the judge makes the amendments to the statement, the amended statement will be sent to you and the respondent for your review.

If the judge orders you (the appellant) to make the corrections or modifications to the statement, you must serve and file an amended proposed settled statement within the time ordered by the judge.

*Resolving disagreements*

If you or the respondent disagree with anything in the amended proposed settled statement, the parties have 10 calendar days from the date the amended statement is sent to serve and file proposed amendments to the amended proposed settled statement.

The judge then reviews any proposed amendments and decides if any further changes to the proposed settled statement are necessary.

If corrections and modifications are needed, the process of review and proposing amendments as described in this section must be repeated.

**21 Certification**

Once the trial court judge decides that no further changes are needed, the judge will certify the statement as an accurate summary of the testimony and evidence relevant to the reasons for the appeal. The trial court clerk will send the settled statement to the Court of Appeal.

PARTY WITHOUT ATTORNEY OR ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:  STATE:                      ZIP CODE:  FAX NO.:	FOR COURT USE ONLY  <b>DRAFT-                  NOT APPROVED BY THE                  JUDICIAL COUNCIL                  03-20-2018</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		SUPERIOR COURT CASE NUMBER:
<b>RESPONSE TO APPELLANT'S PROPOSED SETTLED STATEMENT                  (UNLIMITED CIVIL CASE)</b> <input type="checkbox"/> Amended (If applicable, specify 1st, 2nd, 3rd, etc. amended form.)		COURT OF APPEAL CASE NUMBER:
<p><b>Notice: Use this form to prepare a response to Appellant's Proposed Settled Statement (form APP-014). For more information, read Information on Appeals Procedures in Unlimited Civil Cases (form APP-001-INFO) and Information Sheet for Proposed Settled Statement (form APP-014-INFO).</b></p> <p><b>Important! Do not use this form if you elect to provide a reporter's transcript instead of proceeding with a settled statement.</b></p>		

**1. SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE**

- a.  I do not request changes to item 3 of Appellant's Proposed Settled Statement (Unlimited Civil Case) (form APP-014).
- b.  I request the following changes to item 3 of Appellant's Proposed Settled Statement (Unlimited Civil Case) (form APP-014) (specify):

c.  I request the above changes for the following reasons (specify):

Attachment 1

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
---	----------------------------	-----------------------------

**2. SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE**

- a.  I do not request changes to item 4 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014).
- b.  I request the following changes to item 4 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

- c.  I request the above changes for the following reasons (*specify*):

Attachment 2

**3. TRIAL COURT'S FINDINGS**

- a.  I do not request changes to item 5 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014)
- b.  I request the following changes to item 5 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

- c.  I request the above changes for the following reasons (*specify*):

Attachment 3

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
---	----------------------------	-----------------------------

4. SUMMARY OF MOTIONS

- a.  I do not request changes to item 6 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014).
- b.  I request the following changes to item 6 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

c.  I request the above changes for the following reasons (*specify*):

Attachment 4

5. SUMMARY OF JURY INSTRUCTIONS

- a.  I do not request changes to item 7 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014).
- b.  I request the following changes to item 7 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

c.  I request the above changes for the following reasons (*specify*):

Attachment 5

Date:

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



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





PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
---	----------------------------	-----------------------------

2. c. (2) Court orders (continued):

(c)

(d)

(e)

(3)  *Additional corrections required.* More corrections than could be listed above were needed in order for the settled 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 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 and file the modified statement.

d.  *Material required for the proposed settled statement to comply with rule 8.137.*

(1)  The proposed settled statement does not contain the following material required by rule 8.137.

(2) The appellant is ordered to prepare a new proposed settled statement that includes this material.

e.  The new proposed settled statement must be served and filed by (date):

f.  Other orders are specified below:

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

  
 SIGNATURE OF TRIAL COURT JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.:

NAME:

FIRM NAME:

STREET ADDRESS:

CITY: STATE: ZIP CODE:

TELEPHONE NO.: FAX NO.:

E-MAIL ADDRESS:

ATTORNEY FOR (name):

**DRAFT**

**03-21-2018**

**Not approved by  
the Judicial Council**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

**APPELLANT'S MOTION TO USE A  
SETTLED STATEMENT (UNLIMITED CIVIL CASE)**

SUPERIOR COURT CASE NUMBER:

RE: Appeal filed on (date):

COURT OF APPEAL CASE NUMBER (if known):

- INSTRUCTIONS TO APPELLANT**
- Use this form to request a court order to use a settled statement instead of a reporter's transcript of the trial court oral proceedings for an appeal.
  - Serve and file this motion at the same time that you file your notice designating the record on appeal.
  - File both forms in the superior court, not the Court of Appeal.

**NOTICE OF HEARING**

1. TO (name(s)): \_\_\_\_\_  
 Petitioner  Respondent  Other Parent/Party  Other (specify): \_\_\_\_\_

**2. A COURT HEARING WILL BE HELD AS FOLLOWS:**

a. Date: \_\_\_\_\_ Time: \_\_\_\_\_  Dept.: \_\_\_\_\_  Room: \_\_\_\_\_  
 b. Address of court  same as noted above  other (specify): \_\_\_\_\_

3. **WARNING to the person served with this motion:** The court may make the requested order without you if you do not file a response opposing the motion, serve a copy on the other party or parties at least nine court days before the hearing, and appear at the hearing.

**4. PROCEEDINGS**

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

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
a.					<input type="checkbox"/> Yes <input type="checkbox"/> No
b.					<input type="checkbox"/> Yes <input type="checkbox"/> No
c.					<input type="checkbox"/> Yes <input type="checkbox"/> No
d.					<input type="checkbox"/> Yes <input type="checkbox"/> No

Additional proceedings are listed on a separate page or pages. (At the top of each page, write "Attachment 4" and begin with letter e.)

**APPELLANT'S MOTION TO USE A  
SETTLED STATEMENT (UNLIMITED CIVIL CASE)**

CASE NAME:

SUPERIOR COURT CASE NUMBER:

**5. REASON FOR ALLOWING USE OF SETTLED STATEMENT**

You must support your motion to use a settled statement by showing one or more of the following:

a.  A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court (*explain*):

b.  The oral proceedings requested in item 4 cannot be transcribed because:

c.  I do not have a fee waiver, but I am unable to pay for the reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)) (*explain*):

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)
  
(SIGNATURE OF APPELLANT OR ATTORNEY)

## SPR18-04

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	AM	<p>The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the forms with potential impacts to the Department and its stakeholders is set forth below</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.</p> <p>“See comments on specific provisions below.”</p>	
2.	California Lawyers Association, Family Law Section, Executive Committee	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with the proposed changes.	
3.	California Lawyers Association, Litigation Section, Committee on Appellate Courts	Am	<p>The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association supports this proposal but suggests some modifications, as noted below in response to the Invitation to Comment’s request for specific comments.</p> <p>Yes, the new and revised forms make the complex settled statement process more understandable for litigants, especially self-represented litigants. In particular, we believe that domestic violence survivors, a population</p>	

## SPR18-04

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>that is overwhelmingly self-represented in family court, will be able to navigate the settled statement forms, given the new layout, questions, and structure of the documents. However, there is a concern that these forms may mislead self-represented litigants into thinking that the alternatives to a reporter's transcript may lead to greater success in their appeal. Thus, as suggested below, we encourage the Judicial Council to make two changes to avoid this potential problem.</p> <p><b>• Would the forms work well in all types of unlimited civil cases?</b></p> <p>APP-014, APP-020, APP-014A, and APP-022 will work in family law cases, including domestic violence restraining order cases.</p> <p>“See comments on specific forms below.”</p>	
4.	California Judges Association by Lexi Howard, Legislative Director	A	<p>CJA supports the proposed new and revised forms and thinks will make the settled statement process less burdensome for court participants, especially considering, as indicated in the Invitation to Comment, “(1) the complexity and difficulty of the settled statement process for litigants and the courts, (2) the increasing number of civil proceedings that are not reported by a court reporter, and (3) the increasing number of self-represented litigants for whom the settled statement process is the</p>	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>			
<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
		<p>only way to create a record of the oral proceedings.”</p> <p>By providing detailed guidance to litigants and courts, the new and revised forms appear to fulfill these goals. The invitation to comment includes the following proposed forms:</p> <ol style="list-style-type: none"> <li>1. Information on Appeal Procedures for Unlimited Civil Cases (APP-001-INFO) (the settled statement discussion is on pages 13-15)</li> <li>2. Appellant’s Notice Designating Record on Appeal (APP-003)</li> <li>3. Respondent’s Notice Designating the Record on Appeal (APP-010)</li> <li>4. Appellant’s Proposed Settled Statement (APP-014)</li> <li>5. Information Sheet for Proposed Settled Statement (APP-014-INFO)</li> <li>6. Response to Appellant’s Proposed Settled Statement (APP-020)</li> <li>7. Order on Appellant’s Proposed Settled Statement (APP-022)</li> <li>8. Appellant’s Motion to Use A Settled Statement (APP-025)</li> </ol> <p>Creating a settled statement is not an ideal way of preparing the record of the oral proceedings. Even with the assistance of the new and revised forms, settled statements are burdensome, time-consuming, and vulnerable to error. The need for a settled statement often signals a litigant’s lack of representation, sophistication, or funds –</p>	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			otherwise, the litigant would have arranged for a court reporter to record the proceedings. Many self-represented litigants will likely have difficulty completing the new and revised forms because, as the forms become more comprehensive and provide more guidance, they necessarily become more complicated. Given the complexity of rule 8.137 and the lack of other options such as court-provided court reporters or electronic recording of court proceedings, however, the new and revised forms for preparing settled statements can only improve the process for the courts and litigants.	
5.	Child Support Directors Association of California, Judicial Council Forms Committee, by Ronald Ladage, Chair	AM	The Child Support Directors Association’s Judicial Council Forms Committee (Committee) has reviewed the proposal identified above. The Committee’s feedback is set forth below.  Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.  See comments on specific forms below.	
6.	Family Violence Appellate Project by Shuray Ghorishi, Senior Attorney	A	Family Violence Appellate Project (“FVAP”) greatly appreciates the opportunity to comment on the above-listed rules. FVAP was founded in 2012 to ensure the safety and well-being of domestic abuse survivors and their children by helping them obtain effective appellate representation. FVAP is the only organization in	



**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>California dedicated to appealing cases on behalf of low-and moderate-income domestic abuse survivors and their children. Since its inception, FVAP has screened over 1,000 requests for assistance, has represented appellants and respondents in 42 appeals and writs, and has filed amicus curiae briefs in 12 cases that raised significant issues of statewide concern for domestic abuse survivors. Our work has, to date, resulted in 31 published appellate decisions interpreting the Domestic Violence Prevention Act and other California Family Code sections designed to protect survivors of domestic abuse and their children.</p> <p>FVAP supports the letter submitted by the Committee on Appellate Courts of the California Lawyers Association, Litigation Section.</p>	
7.	Orange County Bar Association by Nikki P. Miliband, President	A	No specific comments submitted.	
8.	San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to comment on the Appellate Advisory Committee's proposed new and changed forms. As your Committee may know, the APS has long supported measures that provide greater access to justice for unrepresented litigants. Through participation in the San Diego Appellate Self-Help Workshop--a program that uses volunteer appellate practitioners to educate <i>prose</i> litigants on	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
 All comments are verbatim unless indicated by an asterisk (\*).

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>appellate rules and procedures-our members witness firsthand that efforts to demystify the appellate process yield positive results for the unrepresented parties, the courts, and practitioners. From our experience, we offer the following with the hope that it will assist the Committee in achieving its stated purpose of helping parties- in particular self-represented litigants better understand the settled statement procedure.</p> <p>In conclusion, the APS commends the Appellate Advisory Committee for their dedication to the goal of simplifying the settled statement process. We appreciate the opportunity to comment and hope that the thoughts we provide will further assist the Committee in its work.</p> <p>See comment on specific forms below.</p>	
9.	Superior Court of California, County of Los Angeles	AM	<p><b>Suggested Modifications:</b></p> <p><b>Remove all references to family law.</b>                      The forms included in SPR18-04 should be used for unlimited civil and NOT for family law. Family law has unique statutory requirement for findings. There are no juries in a family law case so the references to juries are extraneous. These forms are not adequately tailored to meet the needs of the family law discipline. No action should be taken to implement for family until the Judicial Council refines the forms</p>	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
 All comments are verbatim unless indicated by an asterisk (\*).

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>			
<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
		<p>and tailors them for family law.</p> <p><b>Request for Specific Comments:</b></p> <p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>For unlimited civil, yes, very clear for litigant and easier for staff. No for family law.</p> <p><b>Would the forms work well in all types of unlimited civil cases?</b></p> <p>Yes, but not for family law.</p> <p><b>Does moving nonparty testimony and evidence to an attachment improve the form APP-014?</b></p> <p>Yes, it would be helpful.</p> <p><b>Would the proposal provide cost savings? If so, please quantify?</b></p> <p>In the long run it may save time, but we do not see any cost savings.</p> <p><b>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management</b></p>	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
 All comments are verbatim unless indicated by an asterisk (\*).

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><b>systems.</b></p> <p>Minimal training will be required, employees will need to become familiar with the new forms.</p> <p>The addition of new forms will require coding in the case management systems and can be accomplished within a 3 month period, except for the processing of Form APP-022, Order on Appellant's Proposed Settled Statement (Unlimited Civil Cases) which is a mandatory use form. This court will authorize proposed orders to be submitted electronically via e-filing applications and will route the form electronically to judicial officers for review. This form will likely require additional time to implement through automated processes and may require training for processing through electronic workflows.</p> <p><b>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation.</b></p>	
10.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the stated purpose? Yes.</p> <p>Q: Would the forms work well in all types of unlimited civil cases?</p>	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>Yes.</p> <p>Q: Does moving nonparty testimony and evidence to an attachment improve form APP-014? Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. No.</p> <p>Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Updating internal procedures, modifying/creating filings in case management system, and training staff.</p> <p>Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>See comment on specific forms below.</p>	
11.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, Joint Rules Subcommittee	AM	The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources. Courtroom and counter clerks will need to be trained on the forms, but this can be done in the normal course of training.</li> <li>• Increases court staff workload. There would be a significant impact to self-help staff, which typically does not assist self-represented litigants on appellate procedures. In addition to training, self-help staff would likely have to develop long-term services and use existing resources to help self-represented litigants with appellate processes, particularly in family law cases.</li> </ul> <p>Suggested Modifications: Include a “glossary of terms” used in the proposed forms.</p>	

**SPR18-04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
 All comments are verbatim unless indicated by an asterisk (\*).

<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
<p>California Lawyers Association, Litigation Section, Committee on Appellate Courts</p>	<p>As APP-001-INFO correctly identifies, a general principle of appellate law is that an appellate court will presume that the judgment or order is correct and imply any findings in favor of the prevailing party at trial to uphold the order. Yet, this form does not explain the general exception to this rule that appellate courts will not make this presumption if a statement of decision has been prepared and the record shows that any omission or ambiguity in that decision was brought to the attention of the trial court by the appealing party. The form further does not explain that some appellate districts may still make this presumption even if the settled statement has been prepared. (Compare <i>A.G. v. C.S.</i> (2016) 246 Cal.App.4th 1269, 1282 [“[T]he use of a settled statement in lieu of a reporter’s transcript does not negate the doctrine of implied findings where the parties waived a statement of decision.”] with <i>In re Marriage of Condon</i> (1998) 62 Cal.App.4th 533, 550, fn. 11 [doctrine of implied findings does not apply where statement of decision is waived, and a settled statement including the court’s factual and legal basis is used in place of a reporter’s transcript]; <i>In re Marriage of Seaman &amp; Menjou</i> (1991) 1 Cal.App.4th 1489, 1494, fn. 3 [same]; <i>In re Marriage of Fingert</i> (1990) 221 Cal.App.3d 1575, 1580 [same].)</p> <p>As a result, while the new and revised forms make it easier for self-represented litigants to navigate the intricate settled statement process, there are nevertheless concerns that many litigants still will not have meaningful access to an appeal because a statement of decision was not prepared in their case. (See <i>A.G. v. C.S.</i>, <i>supra</i>, 246 Cal.App.4th 1269 [applying the doctrine of implied findings to affirm a custody order because the settled statement used by the parties did not “contain an express statement by the trial court that it complied with the</p>	

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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Form APP-001-INFO		
Commenter	Comment	Committee Response
	<p>procedures required for adopting a statement of decision and that the settled statement serves as the court’s statements of decision”].)</p> <p>The appellate court will not apply the doctrine of implied findings when the record clearly demonstrates what the trial court did; and, in our experience, the best way to demonstrate that is with a reporter’s transcript. Because the election of a settled statement, therefore, may have practical consequences for a litigant to obtain meaningful relief on appeal, we encourage the Judicial Council to add the following:</p> <p>1. Inset in APP-001-INFO: <b>“Please note the type of oral record you choose, including a reporter’s transcript or a settled statement, should be carefully considered as it may have effects on your appeal and you may want to consult with an attorney to determine the best option in your case.”</b></p> <p>However, we encourage the following amendments to APP-001-Info to make this form more understandable for survivors of domestic violence with proceedings in family court:</p> <p><b>Under #3, “Do I need a lawyer to represent me in an appeal”:</b> It presently states: “you must put an address, telephone number, fax number (if available).…” Due to safety concerns, survivors of domestic violence may need to keep their information private. Therefore, we suggest adding: “If you want to keep your information private, you may give a different mailing address and telephone number instead, but you should make sure to regularly check the address and telephone number provided to stay informed regarding your appeal.”</p>	



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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><b>Under #6, “Can I appeal any decision the court made?”:</b>                      Self-represented litigants may not be able to identify that an “injunction” includes a domestic violence restraining order. We encourage the following addition to the fourth bullet point:                      “Grant or dissolve an injunction or refuse to grant or dissolve an injunction (<i>including a domestic violence restraining order</i>).” (See <i>Nakamura v. Parker</i> (2007) 156 Cal.App.4th 327, 332 [a domestic violence restraining order is appealable under Code of Civil Procedure section 904.1(a)(6)].) In addition, since family law dissolution matters often include final orders of the court before the dissolution judgment that may be appealed as collateral orders, such as child and spousal support orders, we encourage the following addition at the end of the list of CCP 904.1 exceptions: <i>“In addition, some final orders the court makes before the final judgment may be appealed immediately. You should consult an attorney or a court self-help center to determine if your order is final and appealable.”</i></p> <p><b>Under #9, “Is there a deadline to serve and file my notice of appeal?”:</b> It presently states that the deadline to file the Notice of Appeal is triggered by the service of a “‘Notice of Entry’ of the trial court judgment or a file-stamped copy of the judgment.” However, the deadline also is triggered by service of file-stamped copies of final orders, e.g., fully adjudicated custody orders. Therefore, we suggest adding “<i>or order</i>” after the word “judgment” both times, it appears in this section.</p> <p><b>Under #11, p. 4, “If I file a notice of appeal, do I still have to do what the trial court ordered me to do?”:</b> In addition to stating the examples of payment of money or delivery of property, we encourage the Judicial Council to add custody matters on the list of examples.” (See Code Civ. Proc., § 917.7</p>	

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>[stating that custody matters are not stayed on appeal].)  <b>Page 7, under “(1) Reporter’s Transcript...when available”:</b> We recommend a change to the following sentence: “A court reporter will not have been present unless you or another party in your case made specific arrangements to have a court reporter present.” The sentence will not be accurate in all cases and may confuse some survivors of domestic violence, as it is the practice of some counties to provide court reporters in family law and/or Domestic Violence Prevention Act (“DVPA”) matters. Further, to the extent, a litigant has a concern about whether a court reporter was present, the sentence that follows provides clear instruction on what the litigant should do; it states: “If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.” We suggest the sentence be amended to read: “A court reporter <i>may</i> not have been present unless you or another party in your case made specific arrangements to have a court reporter present, <i>as some counties do not provide court reporters in all cases.</i>”</p> <p>Furthermore, we encourage the following to provide more clarity to APP-001-Info:</p> <p><b>Under #2, “What is an appeal?”:</b> We recommend that a website link be inserted that identifies the counties included in each appellate district.</p> <p><b>#18, p. 12, “What is ‘oral argument’?”:</b> In our experience low-income self-represented litigants do not understand that an appellate “oral argument” is different than a “hearing or trial” such that no new evidence can be considered. In #15 (“what is a brief?”) there is an advisement that an appeal is not a new</p>	

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<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>trial. We also suggest that such advisement be included in the Oral Argument section. The following could be added:  <i>“Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or testimony of new witness, so you will not be able to present any new evidence at oral argument.”</i></p>	
<p>San Diego County Bar Association, Appellate Practice Section                      by Robert M. Shaughnessy, Chair</p>	<p><b><u>I. Information on Appeal Procedures Unlimited Cases (Proposed APP-001 INFO)</u></b></p> <p>Without reservation, we support the new information form. We think it is beneficial and, on the whole, accurately explains the appellate process in plain and clear terms. However, we provide the following comments and suggested modifications to help ensure the form meets the goal of assisting the self-represented litigant.</p> <p style="padding-left: 40px;"><b>A. Page 1, Column 2: Confusing discussion of the requirements necessary for prevailing on appeal</b></p> <p style="padding-left: 40px;">We find confusing the explanation of the requirements to prevail on an appeal. The two categories-"prejudicial error" and "no substantial evidence"-do not appear to effectively describe the applicable appellate concepts. They also appear to confuse the discreet topics of (1) standard of review; and (2) the general need to establish prejudicial error. Additionally, the description is not written in a simple manner and we believe it would be confusing when read by a self-represented litigant.</p>	

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>We suggest restructuring this discussion into a short, simple, explanation of standards of review, followed by the explanation that a court will not overturn a judgment absent the finding of error that prejudiced the appellant's case in the trial court.</p> <p><b>B. Page 2, Column 1: Confusing wording in section 3 entitled, "Do I need a lawyer to represent me in an appeal?"</b></p> <p>The first sentence of this section states in part, "if you are an individual (rather than a corporation, for example) .... " This phrase may confuse the self-represented party. We suggest changing the language of the first paragraph of this section to read:</p> <p>Individuals may represent themselves in an unlimited civil case. Corporations and similar entities must be represented by a lawyer. Although individuals are allowed to represent themselves, appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.</p>	
<p>Superior Court of California,                      County of San Diego                      by Mike Roddy, Executive Officer</p>	<p><b><u>Additional suggestion:</u></b>  <b>Page 2 of the APP-001-INFO form</b> (Item 6) – Our Court suggests adding to the list an order that is appealable that is issued by the Probate or the Family Code as another example. The examples currently listed are generally geared toward a civil case and are not the typical orders that one may appeal from in another case type such as family or probate.</p>	

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Form APP-003		
Commenter	Comment	Committee Response
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	The Department recommends an addition to this form. Specifically, parties must check the box Form APP-003, Part 2b(3), to indicate they wish to proceed with a settled statement under rule 8.137 as part of the record of the oral proceedings in the superior court. The Department recommends that Part 2b(3) indicate that Form APP-025 - Appellant's Motion to Use a Settled Statement, must be filed simultaneously with Form APP-003. Providing this additional instruction on the_ form would help ensure that the parties file all the appropriate forms with the court, thereby avoiding any delays in the proceedings.	
Child Support Directors Association's Judicial Council Forms Committee by Ronald Ladage, Chair	In order to make it easier for self-represented litigants to use this form, along with the correct motion, we suggest adding the form number to the language in item 2.b.(3)(c) such that it should read:  “(You must serve and file the motion (form APP-025) required under rule...)”	
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	We generally support the idea of a revised form APP-003. This form has long been seen by APS members as overly complicated and unwieldy for both practitioners and unrepresented litigants. We support the Committee's goals of both simplifying and updating the form to assist parties and address recent changes in the law. But we note some areas where the form falls short of these aspirations, and so we offer the following additional constructive comments.  <b>A. Page 1: The proposed new parenthetical "(what was said)" may be too broad</b>	

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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<b>Form APP-003</b>	
	<p>The new proposed parenthetical "(what was said)" on Page 1, Section 2 (Record of Oral Proceedings in the Superior Court) might confuse unrepresented parties, who may read far too much into the phrase when trying to ascertain what must be designated as the record of oral proceedings. For example, the term may be misconstrued to include matters discussed with opposing parties or opposing counsel, including "meet and confer" settlement, or informal discussions over tangential and immaterial matters. We believe the parenthetical would offer more guidance if it explained "what was said" means argument and testimony offered at the trial, or the hearing, from which the appeal was taken.</p> <p><b>B. Page 3: Discussion of "Exhibits" should reflect the modern trial court practice, and should accommodate designation of lodged exhibits</b></p> <p>First, the "Exhibits" section should recognize and reflect the modern practice of trial courts routinely returning exhibits to parties following the hearing or trial. For example, the form could include a note that if the exhibits relevant to the appeal were returned to the parties and not kept by the trial court, then the party designating the inclusion of the exhibits must return them to the trial court within 10 days after service of the notice designating the exhibit. (See Cal. Rule of Court, Rule 8.122(a)(3).) The Notice should also include a note or a box to check if the party seeking the inclusion of a returned exhibit intends to file the exhibit directly with the appellate court. (See e.g., Rule of Court, rule 8.224(b)(2).)</p> <p>Second, the "Description" of exhibits should be revised to accommodate exhibits that are lodged with the trial court as part of a Notice of Lodgment. In other words, they should be</p>

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<b>Form APP-003</b>		
	identified separate from numbered trial exhibits. It is awkward and difficult to identify lodged exhibits merely by number in the section referring to "Exhibits."	

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<b>Form APP-014</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	There is a proposal to remove the requirement on Form APP-014 that an appellant describe how he or she was harmed. The Department recommends keeping this requirement in place as currently contained on Form APP-014, Page 3, Parts 3b.(2)-(3). This information is useful in appellate cases, especially with self-represented parties. It can also alert parties that error alone is not grounds for appeal; rather, there must be harm resulting from the error to form a basis for an appeal.	
Child Support Directors Association's Judicial Council Forms Committee by Ronald Ladage, Chair	Regarding the changes to form APP-014, we recommend the form be amended for the appellant to add and describe the harm the errors caused. Although, it may not be required for a settled statement, it will assist the self-represented litigants to identified that there must be an error causing harm to form a basis of an appeal.	
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	As with the forms discussed above, we support the idea of forms and revisions designed and intended to increase access to justice for unrepresented litigants. Thus, we support the concept of a proposed settled statement form to assist parties and the courts with the preparation of a usable settled statement. Again, we offer the following comments to assist the Committee in meeting its stated purposes.  First, we question the requirement (on page 1 of the form) that a party must file a notice of appeal before seeking a settled statement from the trial court. Many times, the process (and result) of obtaining a settled statement helps the self-represented litigant decide whether or not to appeal a trial court decision. Also, the procurement of a settled statement often helps an unrepresented litigant obtain paid or pro-bono appellate counsel, who can then assist the party with evaluating	



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<b>Form APP-014</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>the costs, timing, and likely success of the contemplated appeal. However, the current language of California Rule of Court 8.137 states that a party must file a motion in the trial court with a copy of the record designation. (See Cal. R. Court 8.137(a)(1).) This language implies that a motion for a settled statement can only be filed after a notice of appeal is filed. We believe it would be more helpful to the litigants, as well as the trial and reviewing courts, if a notice of appeal was not required, and instead litigants could promptly obtain a settled statement shortly after the challenged ruling or judgment, while memories are fresh, notes are available, and the time for review allows an unrepresented party to seek the advice of appellate counsel before filing a notice of appeal. We therefore suggest that the proposed form need not include a mandatory reference to the date of filing of a notice of appeal. We further suggest that the Committee consider these issues further, in connection with a broader review of the language in Rule 8.137(a).</p> <p>Second, we see significant potential problems with the new format. We have doubts whether it will be helpful to a trial court or to the opposing party. For example, starting with questions about the parties' testimony does not appear to be the most effective way of seeking the relevant "settled statement" because the party's testimony is not necessarily relevant to the potential appellate issues. In many cases the testimony holds very little relevance to the issue giving rise to the appeal. Perhaps of more concern to opposing parties, this proposed format may encourage unrepresented parties to present rambling, argumentative, narrative responses. The proposed structure does not encourage a clear non-argumentative statement of the oral testimony, nor does it allow the parties to dispassionately identify the factual and legal issues arising from</p>	

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<b>Form APP-014</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>the challenged ruling.</p> <p>We believe it is better to start with a description of the order/judgment appealed ---- from, and what specific ruling is being appealed. Currently, this does not appear until page 5 of the proposed form. The form should then ask directed and specific questions of the party, such as: "Are you appealing based upon your disagreement with a particular ruling on the admissibility of a document? A party's oral testimony? A ruling on a motion? A jury instruction? A jury verdict form? And "If so, describe the motion, ruling, document, testimony, instruction, or verdict form, and the nature of any oral argument or testimony relevant ( or connected to) to the decision that you are challenging." In this way, the form would direct the party requesting the settled statement to focus on the relevant proceedings rather than encourage a potentially rambling and unhelpful submission.</p>	

## SPR18-04

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<b>Form APP-014A</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	<p>Proposed Form APP-014, Page 5, Part 4 requires parties to submit Form APP-014A if there was testimony from another party or nonparty witness that is relevant to the reasons for the appeal. Form APP-014A only provides two sections to fill out information regarding such witnesses. At the bottom of Page 2, Part 1c., Form APP-14A indicates if there was additional testimony from other parties or nonparty witnesses, another Form APP-014A should be filled out and attached. This could lead to confusion when parties and/or their attorneys review the record as there is no way to distinguish one Form APP-014A from another Form APP-014A. The Department recommends that Part 1 c. be modified by removing what is stated in parenthesis and instead instructing as follows:</p> <p>If you answered yes:</p> <ol style="list-style-type: none"><li>(1) Fill out and attach to this form additional Other Party and Nonparty Witness Testimony and Evidence, Attachment (form APP-014A) as needed.</li><li>(2) Please indicate the total number of APP-014A forms attached, including this form.</li></ol> <p>This will alert parties that multiple APP-014A will need to be reviewed when the information cannot be provided in a single form.</p>	

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<b>Form APP-014A</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Child Support Directors Association's Judicial Council Forms Committee by Ronald Ladage, Chair	In order to clarify that there is additional testimony from other parties or non-party witnesses, the Committee suggest the form provide for the total number of additional forms attached. Below is sample language:  Please indicate the total number of APP-014A forms attached, including this form.	

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>Form APP-022</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
<p>California Lawyers Association,                      Litigation Section, Committee on                      Appellate Courts</p>	<p>As APP-001-INFO correctly identifies, a general principle of appellate law is that an appellate court will presume that the judgment or order is correct and imply any findings in favor of the prevailing party at trial to uphold the order. Yet, this form does not explain the general exception to this rule that appellate courts will not make this presumption if a statement of decision has been prepared and the record shows that any omission or ambiguity in that decision was brought to the attention of the trial court by the appealing party. The form further does not explain that some appellate districts may still make this presumption even if the settled statement has been prepared. (Compare <i>A.G. v. C.S.</i> (2016) 246 Cal.App.4th 1269, 1282 [“[T]he use of a settled statement in lieu of a reporter’s transcript does not negate the doctrine of implied findings where the parties waived a statement of decision.”] with <i>In re Marriage of Condon</i> (1998) 62 Cal.App.4th 533, 550, fn. 11 [doctrine of implied findings does not apply where statement of decision is waived, and a settled statement including the court’s factual and legal basis is used in place of a reporter’s transcript]; <i>In re Marriage of Seaman &amp; Menjou</i> (1991) 1 Cal.App.4th 1489, 1494, fn. 3 [same]; <i>In re Marriage of Fingert</i> (1990) 221 Cal.App.3d 1575, 1580 [same].)</p> <p>As a result, while the new and revised forms make it easier for self-represented litigants to navigate the intricate settled statement process, there are nevertheless concerns that many litigants still will not have meaningful access to an appeal because a statement of decision was not prepared in their case. (See <i>A.G. v. C.S.</i>, <i>supra</i>, 246 Cal.App.4th 1269 [applying the doctrine of implied findings to affirm a custody order because the settled statement used by the parties did not “contain an</p>	

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)

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Form APP-022		
Commenter	Comment	Committee Response
	<p>express statement by the trial court that it complied with the procedures required for adopting a statement of decision and that the settled statement serves as the court's statements of decision"].)</p> <p>The appellate court will not apply the doctrine of implied findings when the record clearly demonstrates what the trial court did; and, in our experience, the best way to demonstrate that is with a reporter's transcript. Because the election of a settled statement, therefore, may have practical consequences for a litigant to obtain meaningful relief on appeal, we encourage the Judicial Council to add the following:</p> <p>2. Adding a checked box on APP-022 stating: <b>"This settled statement contains the court's decision and the court's factual and legal basis for its decision."</b></p>	