JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 28, 2019

To
Appellate Advisory Committee; Family & Juvenile Law Advisory Committee

From
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Subject
Access to Juvenile Case Files in Appellate Court Proceedings

Action Requested
Please Review

Deadline
N/A

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Introduction

In 2017, the Appellate Advisory Committee, after consultation with the Family and Juvenile Law Advisory Committee, recommended that the Judicial Council sponsor legislation to amend the statute that specifies who may access and copy records in a juvenile case file to clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceedings, access and copy those records to which they were previously given access by the juvenile court.

This legislation, Assembly Bill 1617 (AB 1617), added new paragraph (a)(6) to Welfare and Institutions Code section 827 (section 827) and took effect on January 1, 2019.[1] New paragraph (a)(6) of section 827 authorizes a person who is not otherwise authorized to access the case file under section 827(a)(1)(A)-(P), to access the case file for purposes of the appeal or writ if they have previously been granted access under section 827(a)(1)(Q) by the juvenile court after filing a petition for access.[2] New paragraph (a)(6) also requires the Judicial Council to adopt rules to implement the paragraph.

This memorandum describes the issue giving rise to the proposal and the new statutory provision. It addresses the work done by a working group convened to address changes to the rules of court and Judicial Council forms to implement the legislation.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827. This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statute identifies those who may inspect and receive copies of a juvenile court case file.[3] These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law, among others.

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceeding is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

However, some individuals who were authorized to participate in juvenile proceedings and had the right to seek review of certain orders in those proceedings or who had a right to respond to an

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[1] All further code references are to the Welfare and Institutions Code and all rule references are to the California Rules of Court unless otherwise indicated.

[2] See California Rules of Court, rule 5.552 regarding the procedure for filing a petition for access to juvenile case files. The petition must identify the specific records and explain why they are being sought.

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

appeal or petition seeking such review were not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation occurred, for example, when the appellant was a relative or other person who filed a petition seeking de facto parent status and was appealing the denial of that petition or who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence, such as a change in visitation, and was appealing the denial of that petition.

In these situations, the juvenile courts and Court of Appeal were following various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding could receive. Doing so took time and resources for the persons who sought review or who were respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also resulted in delays and, particularly when the appellant or petitioner was self-represented, procedural dismissals of these appeals without consideration of their merit.

The legislative proposal

The amendment to section 827 proposed by the Appellate Advisory Committee provided that persons not otherwise entitled to access the juvenile case file under 827 who file a notice of appeal or writ petition challenging a juvenile court order or who are a respondent or real party in interest in such an appellate proceeding may, for purposes of the appellate proceeding, access and copy those records to which they were previously given access by the juvenile court.

The legislative proposal was developed after consultation with the Family and Juvenile Law Advisory Committee. The two committees formed an ad hoc joint working group to develop the proposed statutory amendment. The goal in drafting the proposed amendment was to appropriately balance the policy considerations favoring confidentiality of juvenile case files against the need for access to certain records by individuals for purposes of effectuating their right to participate in appellate proceedings in these cases. The proposal developed by the joint working group and recommended by the committee would not dilute the confidentiality protections for the child because it would only provide access without a court order to those records to which an individual was already privy in the juvenile court proceedings. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts.

New section 827(a)(6) provides:

> An individual other than a person described in subparagraphs (A) to (P), inclusive, of paragraph (1) who files a notice of appeal or petition for writ challenging a juvenile court order, or who is a respondent in that appeal or real party in interest in that writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any

> records in a juvenile case file to which the individual was previously granted access by the juvenile court pursuant to subparagraph (Q) of paragraph (1), including any records or portions thereof that are made a part of the appellate record. The requirements of paragraph (3) shall continue to apply to any other record, or a portion thereof, in the juvenile case file or made a part of the appellate record. The requirements of paragraph (4) shall continue to apply to files received pursuant to this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

The Proposal

Although AB 1617 speaks only to permitting an individual, who was not authorized to access the juvenile case file but who was granted access to certain records by the juvenile court, to have the same access to those records in the appellate court, implementing this provision raises a number of issues regarding these individuals and the limited record on appeal to which they are entitled.

A joint working group comprised of members from the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee was formed to develop rules for implementing the legislation. The working group met on January 10 and January 17, 2019.

The working group reviewed the rules for juvenile appeals and writs, and proposed rule changes to account for these parties with limited access to the juvenile case file and the limited record on appeal to which they are entitled. One issue in particular requires further consideration: how to alert the juvenile court clerk that an appellate proceeding will require preparation of a limited record. The options include: (1) requiring the appellant to include a notice with the notice of appeal stating that the proceeding includes a party who is not authorized to access the normal record; (2) requiring that such party provide the notice with its first filing; or (3) requiring the juvenile court clerk to determine from the case file that the proceeding involves such a party. The Riverside superior court suggests requiring that a party with a section 827 order granting access to specific records attach that order to its notice of appeal (or to its first filing if that party is the respondent).

In addition, working group members suggested revisions to Judicial Council juvenile forms and the creation of a new juvenile Information Sheet to help avoid delays that can occur when an appellant does not seek timely access to the case file.

Revised rule amendments

The attached rules document includes all of the juvenile appeals and writs rules so the advisory bodies can consider the rule amendments in context. Proposed amendments are underlined and highlighted in yellow. Please consider whether Advisory Committee Comments explaining any

of the amendments or providing more information would be helpful. ***[Staff notes and questions are presented in brackets in bold and italicized text.]***

General provisions (rules 8.400-8.402)
Rule 8.400, Application: Revise to add definitions to the title of the rule and a new subdivision (b) containing definitions of "designated person" and "limited record," and clarifying the scope of records included in a juvenile case file. Working group members felt that new terms and definitions were necessary to avoid lengthy repetition in the rules.

A "designated person" means a person authorized by order of the juvenile court upon filing a petition under Welfare and Institutions Code section 827(a)(1)(Q) to inspect and copy specified records a juvenile case file and who is a party to the appeal or writ proceeding. "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding which contains the documents in a juvenile case file that the juvenile court has ordered be made available under Welfare and Institutions Code section 827(a)(1)(Q). The definition of "juvenile case file" clarifies that it includes the records listed in rule 5.552(a), including reporters' transcripts.

Rule 8.401, Confidentiality: Revise language to subdivision (b) to specify that access to the record on appeal by designated persons is limited to the limited record.

Appeals (rules 8.405-8.416)
Rule 8.405, Filing the Appeal: Add a requirement to subdivision (a) that an appellant who is a designated person must attach to the notice of appeal any juvenile court order granting access to specified records in the juvenile case file. Revise language of subdivision (b) regarding the superior court clerk's duties to address the preparation of the reporter's transcript for a limited record, and to identify any designated person in the notification of the filing of the notice of appeal.

Rule 8.407, Record on Appeal: Add subdivision (f) regarding a limited record for designated persons to specify that a designated person is authorized to receive only the limited record. Also add limiting language to subdivision (c), which addresses applications in the superior court for additions to the normal record on appeal.

Rule 8.408, Record in multiple appeals in the same case: Add a sentence to clarify that if a case with multiple appeals involves a designated person, a limited record must also be prepared.

Rule 8.409, Preparing and sending the record: Add new subdivision (f) to provide instructions for the clerk and the reporter regarding preparing a limited record for a designated person and sending that record to all parties. Add limiting language to subdivisions (c) and (e) regarding new subdivision (f). Add an Advisory Committee Comment specifying that there is no

requirement to prepare a limited record if party is not authorized to access records in the juvenile case file under section 827.

The working group considered how best to create a limited record to address the pagination of the limited record and how the limited record could be cited on appeal. The working group considered two options: (1) creating a separate limited record that would be a separate citable document provided to all parties; or (2) redacting the portions of the normal record to which the designated person was not granted access by the juvenile court. The working group sought feedback from court clerks who will be preparing these records as to which option they would prefer. Ten counties responded, with 8 preferring option (1) and 2 preferring option (2).[4] Most of the clerks felt that redacting the record would be too burdensome and preferred to prepare a separate limited record. Subdivision (f) therefore requires that a separate limited record be prepared and a copy sent to the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal.

Rule 8.410, Augmenting and correcting the record in the reviewing court: Add language to include a limited record. Augmentation or correction of a limited record by a reviewing court can only include documents or transcripts to which the designated person has been granted access by the juvenile court.

Rule 8.412, Briefs: Add (a)(4) to clarify that a designated person's brief must support any reference to the limited record with a citation to volume and page number of the limited record. This mirrors a provision in rule 8.204 that is referenced in this rule and applies to parties using the normal record. Also add (a)(5) to account for cases involving designated persons and the situation in which a party's brief refers to matter in the normal record that is not also part of the limited record. ***[Staff question: Is paragraph (a)(5) appropriate? It does not state a rule or a requirement; rather, it is guidance and may be better as an advisory committee comment, if it is included at all.]***

Rule 8.416, Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule: Include references to designated persons and limited records.

Writs (rules 8.450-8.456)

Rule 8.450, Notice of intent to file writ petition challenging order setting hearing under section 366.26: Amend subdivision (e) to require the party filing a notice of intent to file a writ petition

[4] Counties that responded include: Amador, Calaveras, Del Norte, El Dorado, Inyo, Los Angeles, Riverside, Santa Cruz, Solano, and Sutter. Riverside and Santa Cruz preferred option 2 because it would be easier to cite to a single record. All other counties preferred option 1, because preparing a redacted version of the record would be too difficult.

and a request for the record to also request a limited record if any party is a designated person. ***[Staff note: Is this the best way to alert the superior court clerk that a limited record will have to be prepared? Is it appropriate to require the party filing the notice of intent to determine whether any other party is a designated person?]*** Amend subdivisions (h), preparing the record, and (i), sending the record, to include designated person and limited record provisions.

Rule 8.452, Writ petition to review order setting hearing under section 366.26: Amend subdivision (b) regarding contents of the memorandum to add a paragraph clarifying that the summary of significant facts in a designated person's memorandum is limited to matters in the limited record and that references to these matters must be supported by citations to the limited record.

Rule 8.454, Notice of intent to file writ petition under section 366.28: Same as for rule 8.450. Amend subdivision (e) to require the party filing a notice of intent to file a writ petition and a request for the record to also request a limited record if any party is a designated person. ***[Staff note: Is this the best way to alert the superior court clerk that a limited record will have to be prepared? Is it appropriate to require the party filing the notice of intent to determine whether any other party is a designated person?]*** Amend subdivisions (h), preparing the record, and (i), sending the record, to include designated person and limited record provisions.

Rule 8.456, Writ petition under section 366.28: Same as for rule 8.452. Amend subdivision (b) regarding contents of the memorandum to add a paragraph clarifying that the summary of significant facts in a designated person's memorandum is limited to matters in the limited record and that references to these matters must be supported by citations to the limited record.

Addressing Designated Persons and the Limited Record in the Juvenile Court

The working group considered how to help ensure that potential designated persons are aware of the requirement to get access to the case file through an approved 827 petition. An issue that will likely recur is that parties to appellate proceedings who are not entitled to access the juvenile case file under section 827 will not be aware of the requirement to file a petition in the juvenile case file and will therefore seek access to records in the juvenile case file after the appeal has commenced. This could create delays which the legislation intended to avoid, and could create a difficult situation for the juvenile court.[5]

[5] New subdivision (a)(6) of section 827 states that the individual not authorized to access the case file, may inspect and copy any records in the case file to which the individual was "previously granted access." It could be argued that this language requires that the petition process under section 827 be resolved prior to the commencement of the appeal.

There may be ways to help alleviate this problem by amending JV forms to provide notice of requirements under section 827. Below are listed proposed changes to forms to provide notice of the need to request access to the juvenile case file prior to the appeal:

Proposed Information Sheet JV-291

Information Sheet-Right to Appeal for a Nonparty-Requirement to Request Access to Juvenile Record (form JV-291): A new JV form information sheet is proposed to provide information on the right to appeal for nonparties such as relatives and de facto parents, and of the requirement to request access to the juvenile case file through a petition under section 827(a)(1)(Q).

This form will be referenced in the notice proposed on other JV forms and provide a reference for nonparties who may have a right to appeal and notify them of the requirement to request access to records in the juvenile case file for purposes of an appeal. The form emphasizes that an appeal by nonparties to a dependency or delinquency case is available only in limited circumstances.

Notify Potential Designated Persons Through JV Forms

A short notice referencing the right to appeal, and the JV-291 Information Sheet mentioned above can be added to forms typically used by nonparties in a dependency or delinquency case. The notice would read as follows:

> "If you are not the parent of the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-*Information Sheet – Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal. "

The notice is recommended for the following forms that are often used by nonparties in dependency and delinquency cases, including a notice of appeal:

- JV-285-*Relative Information*
- JV-290-*Caregive Information Form*
- JV-295-*De Facto Parent Request*
- JV-321-*Request for Prospective Adoptive Parent Designation*
- JV-325-*Objection to Removal*
- JV-800-*Notice of Appeal*
- JV-820-*Notice of Intent to File Writ Petition*

In addition, a new checkbox if proposed be added to JV-800-*Notice of Appeal* and JV-820-*Notice of Intent to File Writ Petition,* to indicate whether the appellant or writ petitioner is a "designated party," and if so, to attach the court order on form JV-574-*Order After Hearing* (the form used for the juvenile court to order a release of records under section 827(a)(1)(Q)), to the

form. Doing so was the recommendation of the Riverside Court clerk mentioned above, and will alert the clerk that a limited record needs to be prepared.

The amended forms are attached to this proposal.

Amend Form JV-570-Request for Disclosure

Form JV-570-*Request for Disclosure of Juvenile Case File* is the mandatory form used to request disclosure of the juvenile case file. It requires the petitioner to describe in detail the records being requested and why the records are needed. Additional guidance for petitioners regarding appellate proceedings could be provided here. Item 6 requires that the petitioner state the reason for the request, and lists typical reasons for the request including pending civil, criminal, or juvenile court cases. A new option could be added that specifies the request is for a pending or anticipated appellate court case. This option could also require the petitioner to list the specific juvenile court hearing dates related to the appeal and that they are requesting the reports admitted for that hearing and the transcripts.

Committee Task

The committee's task is to review the proposal, provide feedback on the draft rules and forms, and determine whether to recommend that the proposal be circulated for public comment.

Attachments

1. Cal. Rules of Court, rules 8.400-8.474, at pp. 10-48.
2. JV-291-*Information Sheet-Right to Appeal for a Nonparty-Requirement to Request Access to Juvenile Record*
3. JV-285-*Relative Information.*
4. JV-290-*Caregive Information Form.*
5. JV-295-*De Facto Parent Request.*
6. JV-321-*Request for Prospective Adoptive Parent Designation*.
7. JV-325-*Objection to Removal.*
8. JV-570-*Request for Disclosure of Juvenile Case File.*
9. JV-800-*Notice of Appeal.*
10. JV-820-*Notice of Intent to File Writ Petition.*

Title 8. Appellate Rules

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

Chapter 5. Juvenile Appeals and Writs

Article 1. General provisions

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 1, General Provisions; adopted effective July 1, 2010.

Rule 8.400. Application
Rule 8.401. Confidentiality

Rule 8.400. Application and Definitions

(a) The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5;

(2) Appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

(3) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

(b) In addition to the definitions and use of terms in rule 8.10, the following apply to the rules in this chapter:

(1) "Designated person" means a party to the appeal or writ proceeding who is not otherwise authorized to access the juvenile case file under section 827 and who has been granted access to inspect and copy specified records in a juvenile case file by order of the juvenile court after filing a petition under Welfare and Institutions Code section 827(a)(1)(Q).

(2) "Limited record" means the record prepared for a designated person for purposes of the appeal or writ proceeding which contains the records in the juvenile case file to

which the designated person has been granted access by order of the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(3) "Juvenile case file" includes the records listed in rule 5.552(a).

Rule 8.401. Confidentiality

(a) References to juveniles or relatives in documents

To protect the anonymity of juveniles involved in juvenile court proceedings:

(1) In all documents filed by the parties in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.

(2) In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.

(3) In all documents filed by the parties and in all court orders and opinions in proceedings under this chapter, if use of the full name of a juvenile's relative would defeat the objective of anonymity for the juvenile, the relative must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity for the juvenile, the initials of the relative may be used.

(Subd (a) adopted effective January 1, 2012.)

(b) Access to filed documents

(1) Except to the extent limited under (2) or as provided in ~~(2)~~ (3)–(4), the record on appeal and documents filed by the parties in proceedings under this chapter may be inspected only by the reviewing court and appellate project personnel, the parties including their attorneys, and other persons the court may designate.

(2) Only the limited record on appeal may be inspected and copied by a party who is a designated person.

~~(2)~~(3) Filed documents that protect anonymity as required by (a) may be inspected by any person or entity that is considering filing an amicus curiae brief.

~~(3)~~(4) Access to records that are sealed or confidential under authority other than Welfare and Institutions Code section 827 is governed by rules 8.45–8.47 and the applicable statute, rule, sealing order, or other authority.

**Add Advisory Committee Comment?

(c) Access to oral argument

The court may limit or prohibit public to oral argument.

Article 2. Appeals

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 2, Appeals; renumbered effective July 1, 2010; adopted as Article 1 effective January 1, 2007.

Rule 8.403 Right to appointment of appellate counsel and prerequisites for appeal
Rule 8.404. Stay pending appeal
Rule 8.405. Filing the appeal
Rule 8.406. Time to appeal
Rule 8.407. Record on appeal
Rule 8.408. Record in multiple appeals in the same case
Rule 8.409. Preparing and sending the record
Rule 8.410. Augmenting and correcting the record in the reviewing court
Rule 8.411. Abandoning the appeal
Rule 8.412. Briefs by parties and amici curiae
Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

Rule 8.403. Right to appointment of appellate counsel and prerequisites for appeal

(a) Welfare and Institutions Code section 601or 602 proceedings

In appeals of proceedings under Welfare and Institutions Code section 601 or 602, the child is entitled to court-appointed counsel.

(b) Welfare and Institutions Code section 300 proceedings

(1) Any judgment, order, or decree setting a hearing under Welfare and Institutions Code section 366.26 may be reviewed on appeal following the order at the Welfare and Institutions Code section 366.26 hearing only if:

(A) The procedures in rules 8.450 and 8.452 regarding writ petitions in these cases have been followed; and

(B) The petition for an extraordinary writ was summarily denied or otherwise not decided on the merits.

(2) The reviewing court may appoint counsel to represent an indigent child, parent, or guardian.

(3) Rule 5.661 governs the responsibilities of trial counsel in Welfare and Institutions Code section 300 proceedings with regard to appellate representation of the child.

Advisory Committee Comment

The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

Subdivision (b)(1). Welfare and Institutions Code section 366.26(*l*) establishes important limitations on appeals of judgments, orders, or decrees setting a hearing under section 366.26, including requirements for the filing of a petition for an extraordinary writ and limitations on the issues that can be raised on appeal.

Rule 8.404. Stay pending appeal

The court must not stay an order or judgment pending an appeal unless suitable provision is made for the maintenance, care, and custody of the child.

Rule 8.405. Filing the appeal

(a) Notice of appeal

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

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

(3) If the appellant is a designated person as defined in rule 8.400, the appellant must attach the juvenile court's order under section 827(a)(1)(Q), if one exists, to the notice of appeal.

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

(b) Superior court clerk's duties

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

(A) Send a notification of the filing to:

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

(ii) The attorney of record for each party;

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

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

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

(vi) The reviewing court clerk; and

(B) Notify the reporter by telephone and in writing to prepare a reporter's transcript and any limited reporter's transcript and deliver it or them to the clerk within 20 days after the notice of appeal is filed.

(2) The notification must show the name of the appellant, the date it was sent, the number and title of the case, and the date the notice of appeal was filed, and must identify the appellant as a designated person if the appellant attached a juvenile court

order under section 827(a)(1)(Q) granting access to specified records in the juvenile case file. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) The name of the party that each attorney represented in the superior court; and

(C) The name, address, telephone number and e-mail address of any unrepresented party.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Advisory Committee Comment

Subdivision (a). *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Rule 8.406. Time to appeal

(a) Normal time

(1) Except as provided in (2) and (3), a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.

(2) In matters heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 60 days after the referee's order becomes final under rule 5.540(c).

(3) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 5.542, a notice of appeal from the referee's order must be filed within 60 days after that order is served under rule 5.538(b)(3) or 30 days after entry of the order denying rehearing, whichever is later.

(b) Cross-appeal

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 20 days after the superior court clerk sends notification of the first appeal, whichever is later.

(c) No extension of time; late notice of appeal

Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(d) Premature notice of appeal

A notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.

Advisory Committee Comment

Subdivision (c). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

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

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

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

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

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

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

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

(b) Normal record: reporter's transcript

The reporter's transcript must contain any oral opinion of the court and:

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

(A) Jurisdiction;

(B) Disposition;

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

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

(i) On detention; and

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

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

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

(c) Application in superior court for addition to normal record

Except as provided in (f):

(1) Any party or Indian tribe that has intervened in the proceedings may apply to the superior court for inclusion of any oral proceedings in the reporter's transcript.

(2) An application for additional record must describe the material to be included and explain how it may be useful in the appeal.

(3) The application must be filed in the superior court with the notice of appeal or as soon thereafter as possible, and will be treated as denied if it is filed after the record is sent to the reviewing court.

(4) The clerk must immediately present the application to the trial judge.

(5) Within five days after the application is filed, the judge must order that the record include as much of the additional material as the judge finds proper to fully present the points raised by the applicant. Denial of the application does not preclude a motion in the reviewing court for augmentation under rule 8.155.

(6) If the judge does not rule on the application within the time prescribed by (5), the requested material–other than exhibits–must be included in the clerk's transcript or the reporter's transcript without a court order.

(7) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (5) or (6).

(d) Agreed or settled statement

To proceed by agreed or settled statement, the parties must comply with rule 8.344 or 8.346, as applicable.

(e) Transmitting exhibits

Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the reviewing court as provided in rule 8.224.

(f) Limited record for designated persons

A limited record for a designated person as defined in 8.400(b)(1) may contain only those records in a juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person is authorized to receive only the limited record.

Advisory Committee Comment

Rules 8.45–8.47 address the appropriate handling of sealed or confidential records that must be included in the record on appeal. Examples of confidential records include records of proceedings closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (a)(4). Examples of the documents that must be included in the clerk's transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries regarding a child under the Indian Child Welfare Act (*Indian Child Inquiry Attachment* [form ICWA-010(A)]), any *Parental Notification of Indian Status* (form ICWA-020), any *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) sent, any signed return receipts for the mailing of form ICWA-030, and any responses received to form ICWA-030.

Subdivision (b). Subdivision (b)(1) provides that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This provision is intended to achieve consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Subdivision (b)(1)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing disposition order. The rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a disposition order.

Subdivision (b)(1)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

Rule 8.408. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal. If an appeal involves a designated person, a limited record must also be prepared as provided in 8.409(f).

Rule 8.409. Preparing and sending the record

(a) Application

This rule applies to appeals in juvenile cases except cases governed by rule 8.416.

(b) Form of record

The clerk's and reporter's transcripts must comply with rules 8.45–8.47, relating to sealed and confidential records, and with rule 8.144.

(Subd (b) amended effective January 1, 2015; adopted effective January 1, 2014.)

(c) Preparing and certifying the transcripts

Except to the extent limited under (f), ~~W~~within 20 days after the notice of appeal is filed:

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

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript

(d) Extension of time

(1) The superior court may not extend the time to prepare the record.

(2) The reviewing court may order one or more extensions of time for preparing the record, including a reporter's transcript, not exceeding a total of 60 days, on receipt of:

(A) A declaration showing good cause; and

(B) In the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(e) Sending the record

(1) Except to the extent limited under (f), ~~W~~when the transcripts are certified as correct, the court clerk must immediately send:

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

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

(i) The appellant;

(ii) The respondent;

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

(iv) The child.

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

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

(f) Limited record

(1) Application

If the appellant or the respondent is a designated person as defined in 8.400(b)(1), the clerk and the reporter must prepare, and the clerk must send, a separate limited record as defined in 8.400(b)(2) that includes only those records and transcripts in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q). A designated person may receive a copy of the limited record only, and may not receive a copy of any records to which the designated person has not been granted access by the juvenile court.

(2) Preparing and certifying the transcripts in a limited record

Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare, in compliance with 8.74and 8.144, and certify as correct an original of the clerk's transcript for a limited record and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript for a limited record and the same number of copies as (1) requires of the clerk's transcript.

(3) Sending the limited record

(A) When the transcripts for a limited record are certified as correct, the court clerk must immediately send:

(i) The original transcripts for a limited record to the reviewing court, noting the sending date on each original; and

(ii) One copy of each transcript for a limited record to the appellate counsel for the following, if they have appellate counsel:

(I) The appellant;

(II) The respondent;

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

(IV) The child.

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

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

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Subdivision (b). Examples of confidential records include records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (e). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form. Subsection (1)(B) clarifies that when a child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912(a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

Subdivision (f). If a party is not otherwise authorized to access records in the juvenile case file under Welfare and Institutions Code section 827, and has not been granted access to any records in the juvenile case file by the juvenile court under section 827(a)(1)(Q) at the time the record on appeal is being prepared, there is no limited record to be prepared. To obtain access to records, and thus meet the definition of a designated person, the party must file a petition in the juvenile court.

Rule 8.410. Augmenting and correcting the record in the reviewing court

(a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record or the limited record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409(e) except as limited by 8.409(f).

(b) Augmentation or correction by the reviewing court

(1) Except as limited by (3), ~~O~~on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(4) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under 8.409(e) and 8.409(f).

(5) The reviewing court may order a limited record augmented or corrected only to include records to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

Rule 8.411. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal. The abandonment must be authorized by the appellant and signed by either the appellant or the appellant's attorney of record. In a Welfare and Institutions Code section 300 proceeding in which the child is the appellant, the abandonment must be authorized by the child or, if the child is not capable of giving authorization, by the child's CAPTA guardian ad litem.

(b) Where to file; effect of filing

(1) If the record has not been filed in the reviewing court, the appellant must file the abandonment in the superior court. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) If the record has been filed in the reviewing court, the appellant must file the abandonment in that court. The reviewing court may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) If the abandonment is filed in the superior court, the clerk must immediately send a notification of the abandonment to:

(A) Every other party;

(B) The reviewing court; and

(C) The reporter if the appeal is abandoned before the reporter has filed the transcript.

(2) If the abandonment is filed in the reviewing court and the reviewing court orders the appeal dismissed, the clerk must immediately send a notification of the order of dismissal to every party.

Advisory Committee Comment

The Supreme Court has held that appellate counsel for an appealing minor has the power to move to dismiss a dependency appeal based on counsel's assessment of the child's best interests, but that the motion to dismiss requires the authorization of the child or, if the child is incapable of giving authorization, the authorization of the child's CAPTA guardian ad litem *(In re Josiah Z.* (2005) 36 Cal.4th 664).

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

(1) Rule 8.200 governs the briefs that may be filed by parties and amici curiae.

(2) Except as provided in (3) and (4), rule 8.204 governs the form and contents of briefs. Rule 8.216 also applies in appeals in which a party is both appellant and respondent.

(3) Rule 8.360 (b) governs the length of briefs.

(6) A designated person's brief must support any reference to a matter in the limited record by a citation to the volume and page number of the limited record where the matter appears.

(7) If an appeal involves a designated person, and the brief of a party who is not a designated person refers to juvenile case records that are not in the limited record, the designated person may petition the juvenile court for access to those records and may request that the reviewing grant an extension under subdivision (c).

(b) Time to file

(1) Except in appeals governed by rule 8.416, the appellant must serve and file the appellant's opening brief within 40 days after the record is filed in the reviewing court.

(2) The respondent must serve and file the respondent's brief within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file any reply brief within 20 days after the respondent's brief is filed.

(4) In dependency cases in which the child is not an appellant but has appellate counsel, the child must serve and file any brief within 10 days after the respondent's brief is filed.

(5) Rule 8.220 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days.

(c) Extensions of time

The superior court may not order any extensions of time to file briefs. Except in appeals governed by rule 8.416, the reviewing court may order extensions of time for good cause.

(d) Failure to file a brief

(1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party's counsel or the party, if not represented, in writing that the brief must be filed within 30 days after the notice is sent and that failure to comply may result in one of the following sanctions:

(A) If the brief is an appellant's opening brief:

(i) If the appellant is the county, the court will dismiss the appeal;

(ii) If the appellant is other than the county and is represented by appointed counsel on appeal, the court will relieve that appointed counsel and appoint new counsel;

(iii) If the appellant is other than the county and is not represented by appointed counsel, the court will dismiss the appeal.

(B) If the brief is a respondent's brief, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(2) If a party fails to comply with a notice under (1), the court may impose the sanction specified in the notice.

(3) Within the period specified in the notice under (1), a party may apply to the presiding justice for an extension of that period for good cause. If an extension is granted beyond the 30-day period and the brief is not filed within the extended period, the court may impose the sanction under (2) without further notice.

(e) Additional service requirements

(1) A copy of each brief must be served on the superior court clerk for delivery to the superior court judge.

(2) A copy of each brief must be served on the child's trial counsel, or, if the child is not represented by trial counsel, on the child's guardian ad litem appointed under rule 5.662.

(3) If the Court of Appeal has appointed counsel for any party:

(A) The county child welfare department and the People must serve two copies of their briefs on that counsel; and

(B) Each party must serve a copy of its brief on the district appellate project.

(4) In delinquency cases the parties must serve copies of their briefs on the Attorney General and the district attorney. In all other cases the parties must not serve copies of their briefs on the Attorney General or the district attorney unless that office represents a party.

(5) The parties must not serve copies of their briefs on the Supreme Court under rule 8.44(b)(1).

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) calls litigants' attention to the fact that a different rule (rule 8.416(e)) governs the time to file an appellant's opening brief in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Subdivision (c). Subdivision (c) calls litigants' attention to the fact that a different rule (rule 8.416(f)) governs the showing required for extensions of time to file briefs in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a) Application

(1) This rule governs:

(A) Appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code section 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq.; and

(B) Appeals from judgments or appealable orders in all juvenile dependency cases of:

(i) The Superior Courts of Orange, Imperial, and San Diego Counties; and

(ii) Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have agreed and have adopted local rules providing that this rule will govern appeals from that superior court.

(2) In all respects not provided for in this rule, including appeals involving designated persons and limited records as defined in rule 8.400, rules 8.403–8.412 apply.

(b) Form of record

(1) The clerk's and reporter's transcripts and any transcripts for a limited record must comply with rules 8.45–8.467, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144.

(2) In appeals under (a)(1)(A), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.]," whichever is appropriate.

(3) In appeals under (a)(1)(B), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

(c) Preparing, certifying, and sending the record

(1) Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and, if any party is a designated person, an original of the clerk's transcript for a limited record and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of

counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and, if any party is a designated person, an original of the reporter's transcript for a limited record and the same number of copies as (A) requires of the clerk's transcript.

(2) When the clerk's and reporter's transcripts, and any transcripts for a limited record, are certified as correct, the clerk must immediately send:

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

(B) One copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i) The appellant;

(ii) The respondent;

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

(iv) The child.

(C) If any party is a designated person as defined in rule 8.400(b)(1), one copy of only the transcripts for the limited record to the designated person as provided in rule 8.409(f).

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

(d) Augmenting or correcting the record

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) An appellant must serve and file any motion for augmentation or correction within 15 days after receiving the record. A respondent must serve and file any such motion within 15 days after the appellant's opening brief is filed.

(3) The clerk and the reporter must prepare any supplemental transcripts within 20 days, giving them the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by (c).

(e) Time to file briefs

(1) To permit determination of the appeal within 250 days after the notice of appeal is filed, the appellant must serve and file the appellant's opening brief within 30 days after the record is filed in the reviewing court.

(2) Rule 8.412(b) governs the time for filing other briefs.

(f) Extensions of time

The superior court may not order any extensions of time to prepare the record or to file briefs; the reviewing court may order extensions of time, but must require an exceptional showing of good cause.

(g) Failure to file a brief

Rule 8.412(d) applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 15 days.

(h) Oral argument and submission of the cause

(1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

(2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.

Advisory Committee Comment

Subdivision (c). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Subdivision (g). Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g) to address a failure to timely file a brief in all termination of parental rights cases and in dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision, appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a late brief, but instead would have the standard 15-day grace period that is given in civil cases. The intent of this revision is to balance the need to determine the appeal within 250 days with the need to protect appellants' rights in this most serious of appeals.

Subdivision (h). Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period other than 15 days after the appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed." (*Id*., Subd 8.416(e).)

Article 3. Writs

Title 8, Appellate Rules—Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 3, Writs; renumbered effective July 1, 2010; adopted as Article 2 effective January 1, 2007.

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26
Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26
Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights
Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Application

Rules 8.450–8.452 and 8.490 govern writ petitions to review orders setting a hearing under Welfare and Institutions Code section 366.26.

(b) Purpose

Rules 8.450–8.452 are intended to encourage and assist the reviewing courts to determine on their merits all writ petitions filed under these rules within the 120-day period for holding a hearing under Welfare and Institutions Code section 366.26.

(c) Who may file

The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.450–8.452. Trial counsel is encouraged to seek assistance from or consult with attorneys experienced in writ procedure.

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 8.450–8.452. The reviewing court may extend any time period but must require an exceptional showing of good cause.

(e) Notice of intent

~~(1)~~ A party seeking writ review under rules 8.450–8.452 must file in the superior court a notice of intent to file a writ petition and a request for the record. The party must also file a request for the limited record if any party is a designated person as defined in rule 8.400(b).

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be authorized by the party intending to file the petition and must be signed by that party or by the attorney of record for that party.

(4) The date of the order setting the hearing is the date on which the court states the order on the record orally, or issues an order in writing, whichever occurs first. The notice of intent must be filed according to the following timeline requirements:

(A) If the party was present at the hearing when the court ordered a hearing under Welfare and Institutions Code section 366.26, the notice of intent must be filed within 7 days after the date of the order setting the hearing.

(B) If the party was notified of the order setting the hearing only by mail, the notice of intent must be filed within 12 days after the date the clerk mailed the notification.

(C) If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside California but within the United States, the notice of intent must be filed within 17 days after the date the clerk mailed the notification.

(D) If the party was notified of the order setting the hearing by mail, and the notice was mailed to an address outside the United States, the notice of intent must be filed within 27 days after the date the clerk mailed the notification.

(E) If the order was made by a referee not acting as a temporary judge, the party has an additional 10 days to file the notice of intent as provided in rule 5.540(c).

(f) Premature or late notice of intent to file writ petition

(1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is premature if filed before an order setting a hearing under Welfare and Institutions Code section 366.26 has been made.

(2) If a notice of intent is premature or late, the superior court clerk must promptly:

(A) Mark the notice of intent "Received [date] but not filed;"

(B) Return the marked notice of intent to the party with a notice stating that:

(i) The notice of intent was not filed either because it is premature, as no order setting a hearing under Welfare and Institutions Code section 366.26 has been made, or because it is late; and

(ii) The party should contact his or her attorney as soon as possible to discuss this notice, because the time available to take appropriate steps to protect the party's interests may be short; and

(C) Send a copy of the marked notice of intent and clerk's notice to the party's counsel of record, if applicable.

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately send a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The mother, the father, and any presumed and alleged parents;

(E) The child's legal guardian, if any;

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

(G) The probation officer or social worker;

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

(I) The grandparents of the child, if their address is known and if the parents' whereabouts are unknown; and

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

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk sent the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the order setting the hearing only by mail, the clerk must include the date that the notification was mailed.

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript and, if any party is a designated person, any reporter's transcript for a limited record, of the oral proceedings at each session of the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a)~~.~~; and

(3) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a clerk's transcript for a limited record in accordance rule 8.409(f) that contains only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, except as limited by (3), the superior court clerk must immediately send:

(1) The original transcripts and any original transcripts for a limited record to the reviewing court by the most expeditious method, noting the sending date on each original, ~~and~~

(2) One copy of each transcript and one copy of any transcript for a limited record to each counsel of record and any unrepresented party, by any means as fast as United States Postal Service express mail~~.~~; and

(3) Only a limited record as provided in (h) to any party who is a designated person.

(j) Reviewing court clerk's duties

(1) The reviewing court clerk must immediately lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction of the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.452(c)(1) will expire.

Advisory Committee Comment

Subdivision (d). The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].) It may constitute exceptional good cause for an extension of the time to file a notice of intent if a premature notice of intent is returned to a party shortly before the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

Subdivision (e)(4). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (f)(1). A party who prematurely attempts to file a notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is not precluded from later filing such a notice after the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

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

(a) Petition

(1) The petition must be liberally construed and must include:

(A) The identities of the parties;

(B) The date on which the superior court made the order setting the hearing;

(C) The date on which the hearing is scheduled to be held;

(D) A summary of the grounds of the petition; and

(E) The relief requested.

(2) The petition must be verified.

(3) The petition must be accompanied by a memorandum.

(b) Contents of the memorandum

Except as limited by (4):

(1) The memorandum must provide a summary of the significant facts, limited to matters in the record.

(2) The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(4) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must support any reference to a matter in the limited record by a citation to the limited record.

(c) Serving and filing the petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must serve a copy of the petition on:

(A) Each attorney of record;

(B) Any unrepresented party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The child's Court Appointed Special Advocate (CASA) volunteer;

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

(F) If the court sent the notice of intent to file the writ petition to an Indian custodian, tribe, or Bureau of Indian Affairs, then to that Indian custodian, tribe of the child, or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) Any response must be served on each of the people and entities listed above and filed:

(A) Within 10 days—or, if the petition was served by mail, within 15 days—after the petition is filed; or

(B) Within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 8.410 governs any augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 300 pages, within 7 days; or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within 5 days after the petition is filed or an order to show cause has issued, whichever is later.

(3) A party must attach to its motion a copy, if available, of any document or transcript that the party wants added to the record. The pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

(4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(5) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(6) The clerk must certify and send any supplemental transcripts as required by rule 8.450(h). If the augmentation or correction is ordered, the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

(f) Stay

The reviewing court may stay the hearing set under Welfare and Institutions Code section 366.26, but must require an exceptional showing of good cause.

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

(i) Filing, modification, finality of decision, and remittitur

Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

Advisory Committee Comment

Subdivision (d). Subdivision (d) tracks the second sentence of former rule 39.1B(*l*). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Subdivision (h). Subdivision (h)(1) tracks former rule 39.1B(o). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a) Application

Rules 8.454–8.456 and 8.490 govern writ petitions to review placement orders following termination of parental rights entered on or after January 1, 2005. "Posttermination placement order" as used in this rule and rule 8.456 refers to orders following termination of parental rights.

(b) Purpose

The purpose of this rule is to facilitate and implement Welfare and Institutions Code section 366.28. Delays caused by appeals from court orders designating the specific placement of a dependent child after parental rights have been terminated may cause a substantial detriment to the child.

(c) Who may file

The petitioner's trial counsel, or, in the absence of trial counsel, the party, is responsible for filing any notice of intent and writ petition under rules 8.454–8.456. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedure.

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 8.454–8.456. The reviewing court may extend any time period, but must require an exceptional showing of good cause.

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file in the superior court a notice of intent to file a writ petition and a request for the record. The party must also file a request for the limited record if any party is a designated person as defined in rule 8.400(b).

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be authorized by the party intending to file the petition and signed by the party or by the attorney of record for that party.

(4) The notice must be served and filed within 7 days after the date of the posttermination placement order or, if the order was made by a referee not acting as a temporary judge, within 7 days after the referee's order becomes final under rule 5.540(c). The date of the posttermination placement order is the date on which the court states the order on the record orally or in writing, whichever first occurs.

(5) If the party was notified of the posttermination placement order only by mail, the notice of intent must be filed within 12 days after the date that the clerk mailed the notification.

(f) Premature or late notice of intent to file writ petition

(1) A notice of intent to file a writ petition under Welfare and Institutions Code section 366.28 is premature if filed before a date for a posttermination placement order has been made. The reviewing court may treat the notice as filed immediately after the posttermination order has been made.

(2) The superior court clerk must mark a late notice of intent to file a writ petition under section 366.28 "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice to the party's counsel of record, if applicable.

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately send a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's legal guardian if any;

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

(G) The probation officer or social worker;

(H) The child's Court Appointed Special Advocate (CASA) volunteer, if any; and

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

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk sent a copy of the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the post placement order only by mail, the clerk must include the date that the notification was mailed.

(h) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) Immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; ~~and~~

(2) If any party is a designated person, immediately notify each court reporter by telephone and in writing to prepare a reporter's transcript for a limited record of the oral proceedings at each session of the hearing that resulted in the order under review, and to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q), and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed;

~~(2)~~ (3) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.409(a);

~~(3)~~ (4) If any party is a designated person, within 20 days after the notice of intent is filed, prepare a clerk's transcript for a limited record that includes only those records in the juvenile case file to which the designated person has been granted access by the juvenile court under Welfare and Institutions Code section 827(a)(1)(Q).

(i) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; ~~and~~

(2) One copy of each transcript to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child, except that a copy must not be sent to any parties who are designated persons, by any means as fast as United States Postal Service express mail~~.~~; and

(3) One copy of the limited record as provided in (h)(2) and (4) to any party who is a designated person.

(j) Reviewing court clerk's duties

(1) The reviewing court clerk must promptly lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction over the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 8.456(c)(1) will expire.

Advisory Committee Comment

Subdivision (f)(2). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

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

(a) Petition

(1) The petition must be liberally construed and must include:

(A) The identities of the parties;

(B) The date on which the superior court made the posttermination placement order;

(C) A summary of the grounds of the petition; and

(D) The relief requested.

(2) The petition must be verified.

(3) The petition must be accompanied by a memorandum.

(b) Contents of memorandum

Except as limited by (4):

(1) The memorandum must provide a summary of the significant facts, limited to matters in the record.

(2) The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(4) If the petitioner is a designated person, the summary of significant facts in the memorandum is limited to matters in the limited record. The memorandum must

support any reference to a matter in the limited record by a citation to the limited record.

(c) Serving and filing the petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must serve the petition on:

(A) Each attorney of record;

(B) Any unrepresented party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's Court Appointed Special Advocate (CASA) volunteer;

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

(G) If the court sent the notice of intent to file the writ petition to an Indian custodian, tribe, or Bureau of Indian Affairs, then to that Indian custodian, tribe, or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) Any response must be served on each of the people and entities listed in (1) and filed:

(A) Within 10 days–or, if the petition was served by mail, within 15 days–after the petition is filed; or

(B) Within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 8.410 governs augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 300 pages, within 7 days; or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within 5 days after the petition is filed or an order to show cause has issued, whichever is later.

(3) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. The pages of the attachment must be consecutively numbered, beginning with the number one. If the reviewing court grants the motion, it may augment the record with the copy.

(4) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.122 and 8.130.

(5) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(6) The clerk must certify and send any supplemental transcripts as required by rule 8.454(i). If the augmentation or correction is ordered, the time to file any petition or response is extended by the number of additional days granted to augment or correct the record.

(f) Stay

A request by petitioner for a stay of the posttermination placement order will not be granted unless the writ petition shows that implementation of the superior court's placement order pending the reviewing court's decision is likely to cause detriment to the child if the order is ultimately reversed.

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.

(5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(i) Right to appeal other orders

This section does not affect the right of a parent, a legal guardian, or the child to appeal any order that is otherwise appealable and that is issued at a hearing held under Welfare and Institutions Code section 366.26.

Article 4. Hearing and Decision

Division 1, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 5, Juvenile Appeals and Writs—Article 4, Hearing and Decision, renumbered effective January 1, 2011.

Rule 8.470. Hearing and decision in the Court of Appeal
Rule 8.472. Hearing and decision in the Supreme Court
Rule 8.474. Procedures and data

Rule 8.470. Hearing and decision in the Court of Appeal

Except as provided in rules 8.400–8.456, rules 8.252–8.272 govern hearing and decision in the Court of Appeal in juvenile cases.

Rule 8.472. Hearing and decision in the Supreme Court

Rules 8.500–8.552 govern hearing and decision in the Supreme Court in juvenile cases.

Rule 8.474. Procedures and data

(a) Procedures

The judges and clerks of the superior courts and the reviewing courts must adopt procedures to identify the records and expedite the processing of all appeals and writs in juvenile cases.

(b) Data

The clerks of the superior courts and the reviewing courts must provide the data required to assist the Judicial Council in evaluating the effectiveness of the rules governing appeals and writs in juvenile cases.

JV-291-INFO Right to Appeal for a Nonparty–Requirement to Request Access to Juvenile Record

In very limited circumstances, a person who is not the child, parent or guardian in a dependency or delinquency case has the right to appeal decisions made by the juvenile court. These individuals however are not entitled to access information in the juvenile court case file for purposes of appeal unless they get approval from the juvenile court. The purpose of this information sheet is to inform those individuals who are not the child, parent or guardian, who may have the right to appeal, of the requirement to request access to the juvenile court record by filing a JV-570-*Request for Disclosure of Juvenile Case File*.

1 When would I have the right to appeal?

To have a right to appeal, the person must have had a legal right that was aggrieved by the judgment of juvenile court. In the vast majority of cases, only the child, parent, or guardian will have the right to appeal a juvenile court ruling. However, the law also protects those individuals that have a compelling relationship to the child in certain situations.

The following individuals might have a right to appeal:

- A relative of the child, in the limited situation where the placing agency does not assess their home for placement sometime before a hearing to terminate parental rights.
- Someone who has cared for the child and requested de facto parent status and the request was denied.
- Someone who requested a change of court order through a section 388 petition (JV-180).
- A sibling to the child who made a request to the juvenile court for visitation for example, or for an exception to adoption based on preserving the sibling relationship.
- A prospective adoptive parent when the child is removed from their home.

2 If I appeal, what additional steps must I take?

If you believe that you might have a right to appeal, or if you anticipate that you may need to appeal an order of the juvenile court, you will need to request access to the record with the juvenile court. To make this request, file the JV-570-*Request for Disclosure of Juvenile Case File*. You will need to provide a copy of this form to all interested parties to the case if you know their names and addresses, including the child, parents, and social worker.

On the request form, specify the reason that you are requesting a release of the records. You can say you are requesting the release to have access to the record on appeal. You will need to explain to the court why you think you should be given access to the records and which records you are requesting. You should indicate you are requesting the record and transcripts relating to the dates of the hearings related to the issue you are appealing, and that you are requesting the transcript as well.

When you file the notice of appeal on the form JV-800 *Notice of Appeal-Juvenile* or form JV-820 *Notice of intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26*, you will need to attach the court's order indicating which records the court has granted you access. Doing so will alert the clerk that you are entitled to access the case file and will ensure that a record on appeal will be prepared for you. The court's order is made on form JV-574 *Order After Judicial Review*.

It is recommended that you consult with an attorney when considering whether you should appeal a case and request access to the juvenile court record.

JV-285 Relative Information

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out the *Confidential Information* (form JV-287) and do not write your address or telephone number below.

Social worker fills in court name and street address:

Superior Court of California, County of

Social worker fills in child's name and date of birth:

Child's Name:

Date of Birth:

Social worker fills in case number:

Case Number:

1 Your name: _____

Your Address: _____

_____

Your telephone number: _____

☐ *Check here if contact information is confidential and form JV-287 is attached.*

2 Your relation to the child: ☐ maternal ☐ paternal

☐ grandparent ☐ brother/sister ☐ aunt/uncle ☐ cousin

☐ family friend

☐ tribal extended family member

☐ other *(specify):* _____

3 Child's name: _____

4 ☐ I would like to talk to the judge at the next court hearing.

Please fill in as much of the following information as you know. If you need more space to respond to any section on this form, attach additional pages as needed and check the box at item 12.

5 Information about the child's medical, dental, and general physical health:

_____

_____

6 Information about the child's emotional and behavioral health:

_____

_____

7 Information about the child's education:

_____

_____

8 Other information that might be helpful to the court:

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

Below are some things you might do to help the child. You can pick some or none of the things listed below. It is up to the social worker and the court whether you will be asked to do these things.

9 I want to

- ☐ telephone the child.
- ☐ write letters to the child.
- ☐ take the child on outings.
- ☐ take the child to/from school.
- ☐ take the child to visits with brothers or sisters.
- ☐ take the child to therapy.
- ☐ take the child to family gatherings.
- ☐ help the social worker make a case plan for the child.
- ☐ take the child to visits with parents.
- ☐ take the child to medical appointments.
- ☐ supervise the child during visits with brothers and sisters.
- ☐ watch the child after school.
- ☐ have the child live with me.
- ☐ other *(describe):* _____

You can also help the parents. For example, you might help with transportation, housing, visits, or child care. It is up to the social worker and the court whether you will be asked to do these things.

10 I want to help the ☐ father ☐ mother
(Describe): _____

11 Other relatives who might be able to help the child:

a. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

b. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

c. Name: _____ Relationship to child: _____
Contact information: _____
or ☐ I want to keep the contact information confidential and ask that the child's social worker get this information from me.

12 ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
Number of pages attached: _____

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
CHILD'S NAME: HEARING DATE AND TIME:	
CAREGIVER INFORMATION FORM	CASE NUMBER:

To the current caregiver, preadoptive parent, community care facility, or foster family agency caring for the child: You may submit written information to the court and you may attend review and permanency hearings. You may use this optional form to provide written information to the court. Please type or print clearly in ink and submit the original and eight copies of the form to the court clerk's office at least five calendar days (or seven calendar days if filing by mail) before the hearing. Be aware that other individuals involved in the case have access to this information. See form JV-290-INFO for instructions on how to complete this form and file it with the court.

1. a. Child's name:
   b. Child's date of birth: c. Child's age:
2. **Caregiver Information** *(Answer only if you are a caregiver, skip #3.):*
   a. Name of caregiver:
   b. Type of caregiver: ☐ Foster parent ☐ Relative ☐ Legal guardian ☐ Preadoptive parent ☐ Nonrelative extended family member ☐ Other *(specify):*
   c. The child has been living in my home for *(specify):* years months.
3. **Agency or Facility Information** *(Answer only if you are an Agency or Facility, skip #2.):*
   a. Name of agency or facility:
   b. Address:
   c. Telephone number:
   d. Type of facility: ☐ Foster family agency ☐ Community care agency ☐ Other *(specify):*
   e. The child has been placed with our agency/facility for *(specify):* years months and in the current home for (specify): years months.
   f. Name of person completing form: Title:
   g. Hours per week the person completing this form spends with the child *(specify):* hours/week.
   h. The information on this form consists of
      (1) ☐ the observations and recommendations of the person filling out this form.
      (2) ☐ the observations and recommendations of a group or team made up of the following individuals *(specify):*
4. **Current Status of Child's Medical, Dental, and General Physical and Emotional Health**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of doctors):*
5. **Current Status of Child's Education**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows *(do not include the names of schools):*

Form Approved for Optional Use
Judicial Council of California
JV-290 [Rev. January 1, 2020]

Welfare and Institutions Code, §§ 366.21(c), (d); 16010(f)(3);
Cal. Rules of Court, rule 5.534(m)
www.courtinfo.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. **Child's Special Education Status**
   a. ☐ The child is a specila education student. Date of last Individualized Education Plan (IEP):
   b. ☐ The child is not a special education student.
   c. ☐ I do not know the child's special education status.

7. **Current Status of Child's Adjustment to Living Arrangement**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

8. **Current Status of Child's Social Skills and Peer Relationships**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

9. **Current Status of Child's Special Interests and Activities**
   a. ☐ There is no new or additional information since the last court hearing.
   b. ☐ There is new or additional information since the last court hearing, as follows:

10. **Other Helpful Information**
    a. ☐ There is no new or additional information since the last court hearing.
    b. ☐ There is new or additional information since the last court hearing, as follows:

11. **Recommendation for Disposition *(Outcome)***
    a. ☐ I have no recommendation for disposition *(outcome).*
    b. ☐ I am recommending the following disposition *(outcome).*

12. ☐ If you need more space to respond to any section on this form, please check this box and attach additional pages.
    Number of pages attached:

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CAREGIVER OR FACILITY/AGENCY STAFF PERSON WHO HAS COMPLETED THIS FORM)

JV-295 De Facto Parent Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

1 My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: _____

2 I am/We are asking that I/we be appointed de facto parent(s) of

(Child's name): _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print your name *Signature of person requesting de facto parent status*

Date: _____ _____ ▶ _____

Type or print attorney's name *Signature of attorney (if applicable)*

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: _____

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

JV-321 Request for Prospective Adoptive Parent Designation

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

After filling out this form, bring it to the clerk of the court. If you want to keep an address or telephone number confidential, do not write the information on this form. Instead, fill out Form JV-322, Confidential Information—Prospective Adoptive Parent.

Fill in court name and street address:

Superior Court of California, County of

1 Information about the person or persons you want to be designated as prospective adoptive parents:

a. Name: _____

b. Name: _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

2 If you are not a person in **1**, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ other
(specify role): _____

c. Street address: _____

d. City: _____ State: _____ Zip: _____

e. Telephone number: _____

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Street address of child's attorney: _____

c. City: _____ State: _____ Zip: _____

d. Telephone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
or ☐ Telephone number is confidential.

5 The child has lived with the person from *(date):* _____ to the present.
In order for the person in **1** *to become a prospective adoptive parent, the child must be living with that person now.*

6 Date of Welfare and Institutions Code section 366.26 hearing: _____
The person in **1** *should not file this form with the court until a Welfare and Institutions Code section 366.26 hearing has been scheduled.*

7 ☐ The person in **1** is committed to adopting the child.

Child's name: _____ **Case Number:**

8 The person in **1** has *(check all that apply):*

a. ☐ Applied for an adoptive home study
b. ☐ In a case in which tribal customary adoption is the permanent plan, been identified by the Indian child's tribe as the prospective adoptive parent.
c. ☐ Cooperated with an adoptive home study
d. ☐ Signed an adoptive placement agreement
e. ☐ Requested de facto parent status
f. ☐ Been designated by the juvenile court or the licensed adoption agency as the adoptive parent
g. ☐ Discussed a postadoption contact agreement with the social worker, child's attorney, child's Court Appointed Special Advocate (CASA) volunteer, adoption agency, or court
h. ☐ Worked to overcome any impediments that have been identified by the California Department of Social Services or the licensed adoption agency
i. ☐ Attended any of the classes required of prospective adoptive parent
j. ☐ Taken other steps toward adopting the child *(explain):* _____

If you need more space, attach a sheet of paper and write "JV-321, Item 8—Steps Toward Adoption" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 8is true and correct, which means if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____
Type or print your name *Sign your name*

_____ ▶ _____
Type or print your name *Sign your name*

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

JV-325 Objection to Removal

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Fill in case number:

Case Number:

If you do not agree with the removal, you can request a court hearing by filling out this form. The following people can object to removal: a current caregiver, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court. If you want to keep an address or a phone number confidential, fill out form JV-322, Confidential Information—Prospective Adoptive Parent, *and do not write the address or phone number on this form.*

If you are a caregiver or the child and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are the child's attorney and you requested the hearing, you must provide notice of the hearing to all other participants.

1 Information about the caregiver or caregivers:

a. Name: _____

b. Name: _____

c. Address: _____

d. Phone number: _____

2 If you *(the person objecting to the removal)* are not the caregiver, fill out below.

a. Name: _____

b. I am the ☐ child ☐ child's attorney ☐ child's identified Indian tribe ☐ child's identified Indian custodian ☐ child's CASA program

_____

c. Address: _____

d. Phone number: _____

3 If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney: _____

b. Address of child's attorney: _____

c. Phone number of child's attorney: _____

4 ☐ The child is 10 years of age or older. Child's telephone number: _____
☐ Confidential phone number in court file

5 ☐ The child has an identified Indian tribe *(specify tribe):* _____
Phone number of tribe: _____

6 ☐ The child has a Court Appointed Special Advocate (CASA) volunteer.
Phone number of CASA program, if known: _____

7 ☐ The caregiver or caregivers have been designated by the judge as the child's prospective adoptive parent or parents.

Child's name: _____

Case Number:

8 ☐ The caregiver or caregivers may meet the definition of prospective adoptive parent or parents. Form JV-321, *Request for Prospective Adoptive Parent Designation,* will be filed with this objection and request for hearing.

9 The social worker should not remove the child from the caregiver's home because *(give reasons):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

If you need more space, attach a sheet of paper and write "JV-325, Item 9—Reasons to Not Remove Child" at the top. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

NOTICE

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

What if I am deaf or hard of hearing?

Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

JV-570 Request for Disclosure of Juvenile Case File

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

If you are requesting a court order to obtain the juvenile case file of a child who is alive, fill out all items on this form, and file it with the court. You must also fill out and file Proof of Service—Request for Disclosure *(form JV-569).*

If you are a member of the public requesting the juvenile case file of a child who is deceased, you can:

a. *Fill out items 1–4 and 7 on this form and file it with the court. You must then provide a copy of this form to the Custodian of Records of the county child welfare agency, who will then provide notice of this request.*

Or

b. *Do not complete the form and request the juvenile case file from the child welfare agency under Welfare and Institutions Code section 10850.4.*

(1) Your name: _____

Relationship to child *(if any):* _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any) (name, address, telephone numbers, and State Bar number):* _____

_____

_____

(2) Name of child *(if known):* _____

(3) Child's date of birth *(if known):* _____

(4) a. ☐ A petition regarding the child in (2) has been filed under
- ☐ Welfare and Institutions Code section 300
- ☐ Welfare and Institutions Code section 601
- ☐ Welfare and Institutions Code section 602 or

b. ☐ I believe the child in (2) died as a result of abuse or neglect. Approximate date of death: _____

Note: You must provide a copy of this form to all interested parties if you know their names and addresses.

Your name: _____ **Case Number:**

5 The records I want are: *(Describe in detail. Attach more pages if you need more space.)*

_____

_____

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 5.

6 The reasons for this request are:

a. ☐ Civil court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

b. ☐ Criminal court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

c. ☐ Juvenile court case pending in *(name of county):* _____
Case number: _____ Hearing date: _____

d. ☐ Appeal of a juvenile court order in the child's case by a nonparty.
☐ I am requesting access to the transcripts and the reports and evidence considered at the following hearings that resulted in the order I am appealing or will consider appealing:
List hearing dates: _____

e. ☐ Other *(specify):* _____
Case number: _____ Hearing date: _____

7 I need the records because: *(Describe in detail. Attach more pages if you need more space.)*

_____

_____

_____

_____

_____

_____

_____

_____

☐ Continued on Attachment 7.

8 I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct. This means that if I lie on this form, I am guilty of a crime.

Date:

_____ ▶ _____

Type or print your name *Sign your name*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.
- If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

   e. ☐ If not the child, legal guardian, parent, or their attorney, the court's order under Welfare and Institutions Code section 827 (a)(1)(Q) on form JV-574 *Order after Judicial Review,* if one exists, is attached.

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

4. Items 5 through 7 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. Jan 1, 2020]

Cal. Rules of Court, rule 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. Appellant is the
   a. ☐ child
   b. ☐ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ child's tribe
   i. ☐ other *(state relationship to child or interest in the case):*

6. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
   ☐ Continued in Attachment 5.

7. The order appealed from was made under Welfare and Institutions Code *(check all that apply):*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26 **(California Rules of Court, Rule 8.450)**	CASE NUMBER:

NOTICE

The juvenile court has decided it will make a permanent plan for this child that may result in thetermination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Noticeof Intent. Please see page 2 for your specific deadline for filing this form.

If you are not the parent to the child, the child, or the child's legal guardian, in very limited circumstances, a right to appeal may exist. Please see form JV-291-INFO – *Right To Appeal For A Nonparty – Requirement To Request Access To Juvenile Record* for further information on the requirements for an appeal.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ parent *(name):*
   b. ☐ guardian
   c. ☐ County welfare agency
   d. ☐ child
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.
   b. List all known dates of the hearing that resulted in the order:
7. The hearing under Welfare and Institutions Code section 366.26 is set for *(date, if known):*
8. ☐ If not the child, legal guardian, parent, or their attorney, the court's order under Welfare and Institutions Code section 827(a)(1)(Q) on form JV-570 *Order after Judicial Review,* if one exists, is attached.

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY

The *Notice of Intent to File Writ Petition* must be signed by the person who intends to file the writ petition or by the attorney of record.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Approved for Optional Use
Judicial Council of California
JV-820 [Rev. Jan 1, 2020]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26
(California Rules of Court, Rule 8.450)

Welfare and Institutions Code, § 366.26;
Cal. Rules of Court, rule 8.450
www.courts.ca.gov

APPELLATE CASE TITLE:	APPELLATE CASE NUMBER:

WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
- The court may order a legal guardianship for the child.
- The court may order a permanent plan of placement of the child with a fit and willing relative.
- The court may order a permanent plan of placement of the child in a foster home.

The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION

HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450-8.452

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

SEE WELF. & INST. CODE, §§ 248-252; CAL. RULES OF COURT, RULES 5.538, 5.540

SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC Sp-__

Title
CEQA: New Fees for Expedited Review

Proposed Rules, Forms, Standards, or Statutes
Adopt rule 3.2240 and amend rules 3.2200, 3.2220-3.2223, and 8.700-8.703

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, chair
Civil and Small Claims Advisory Committee,
Hon. Ann I. Jones, chair

Action Requested
Review and submit comments by April __, 2019

Proposed Effective Date
July 1, 2019

Contact
Anne Ronan, anne.ronan@jud.ca.gov
415-865-8933

Christy Simons, christy.simons@jud.ca.gov
415-865-7694

Executive Summary and Origin

The Judicial Council has previously, as mandated by the Legislature, adopted rules and established procedures that implemented a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act ("CEQA") challenging certain projects that have been certified for streamlined procedures, including "environmental leadership projects", "Sacramento arena projects," and capitol building annex projects." (See Cal. Rules of Court, rules 3.2200 et seq. and 8.700 et seq.) This proposal will implement recently enacted Assembly Bills 734, 987, and 1826, which mandate that the Judicial Council amend these rules to include "Oakland sports and mixed use projects" (relating to a new baseball park), the Inglewood NBA arena project, and additional projects related to the capitol building annex projects. The proposal will also implement the new statutory provisions requiring the council to, by rule of court, set out a new fee to be paid by a project applicant for expedited CEQA review in a proceeding challenging an Oakland ballpark or Inglewood arena project, and amend the rule implementing similar provisions in environmental leadership cases. The required rule amendments are to be in place by July 1, 2019.

Background

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to "environmental leadership projects." Under

that legislation, challenges to such projects were to be brought directly to the Court of Appeal with geographic jurisdiction over the project, and that court was to complete its review within 175 days. (§ 21185. [1]) Project applicant who sought to have their projects certified for various streamlined processes, including this expedited review, were required to agree to pay the costs of the Court of Appeal, in an amount to be determined by Judicial Council rule. (§ 21183(f).) AB 900 required the Judicial Council to adopt rules of court to implement this expedited review procedure and it did so, adopting rule 8.497. A year later, however, the Superior Court of Alameda County held that the provision in AB 900 requiring that a petition for writ relief be filed only and directly to the Court of Appeal is unconstitutional. The trial court's decision was never challenged.

In 2013, the Legislature again addressed the question of expedited CEQA review by the courts in environmental leadership cases, as well as in cases relating to a new sports arena in Sacramento. Senate Bill 743 (Stats. 2013, ch. 386). SB 743 replaced the statutory provisions relating to the time for the Court of Appeal to act on environmental leadership cases with a requirement that the Judicial Council adopt rules that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Resources Cde, § 21185). SB 743 similarly provided for an expedited review process for projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento (SB 743, § 7; adding § 21168.6.6).[2]

The Legislature did not provide any discrete time frames in which both the actions and proceedings in the trial court and proceedings in the Courts of Appeal were to be resolved, but only a single time period of 270 days for completion of the proceedings in the trial courts and Courts of Appeal, along with a mandate for the council to adopt implementing rules. (§§21185 and 21168.6.6)[3]

In 2014, the Judicial Council adopted rules 3.2220-3.2231 and 8.700 - 8.705[4] to implement the expedited review process.[5] In developing those rules, the committees determined, among other things, that there was a distinction made in the Legislature's delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided that for the Sacramento arena cases the expedited procedures to be established by the Judicial Council will apply "*notwithstanding any other law* (emphasis added)." (§ 21168.6.6(c)). There was no similar provision in the statutes enacted regarding environmental leadership cases. (§21185). For this

[1] All statutory references hereafter are to the Public Resources Code unless otherwise noted.
[2] SB 743 also addressed the constitutional issue raised by the Superior Court of Alameda County's decision by eliminating the requirement that a CEQA challenge to a leadership project be brought directly in the Court of Appeal.
[3] No change was made to the requirement that the project applicant in environmental leadership cases pay for the Court of Appeal costs, but the new statute did not add a similar provision in the Sacramento arena cases, and did not provided for payment of trial court costs in either category.
[4] The existing rule providing for payment of costs to the Court of Appeal was at that time renumbered as rule 8.705.
[5] The 2014 report to the Judicial Council is available at: http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf

reason, the committees concluded that the council was authorized to adopt rules "notwithstanding the provisions" of the Public Resources Code or the Code of Civil Procedure in relation to expediting the review of the Sacramento arena cases, and so the rules for those cases require earlier service of the petition than required by statute.[6]).

In 2015 Senate Bill 836 added provisions similar to those enacted by SB 743. That bill required that the Judicial Council adopt rules to implement the expedited review procedures for resolution of CEQA challenges to "capitol building annex projects" within 270 days from the date of certification of the administrative record. (§21189.51). The council amended the rules at that time to include the capitol building projects, which were adopted by the council effective July 2016.

The Proposal

New projects eligible for expedited review

In three bills passed last year, the Legislature has once again expanded the type of projects which the Governor can certify as "streamlined", and for which the trial courts and Courts of Appeal must provide expedited CEQA review:

- Assembly Bills 734[7] adds "Oakland Sports and Mixed Use Projects", which is comprised of projects own or developed by the Oakland Athletics in a certain area in Oakland, including a baseball park and adjacent residential, retail, commercial, cultural, entertainments and recreational uses, which meets certain requirements set out in the statute (Oakland baseball project). (See new §21168.6.7.)

- Assembly Bill 987[8] adds projects located in Inglewood, California, comprised of an NBA arena plus related parking and access infrastructure, office space, sports medicine clinic, and retail, restaurants, community, and hotel spaces, which meet certain statutory requirements (Inglewood arena project). (See new § 21168.6.8.)

- Assembly Bill 1826[9] expands the statutes providing expedited review of the capitol building annex project to include work related to that project, such as parking or visitor facilities, as well as a new state office building close to the capitol (expanded capitol annex project). (See amended §§ 21189.50—21189.53, and Gov. Code, § 9125.)

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[6] See rule 3.2236. The rules for the other cases include an incentive for earlier service in those cases, rather than mandating it. See rule 3.2222(d).
[7] Assembly Bill 734 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734
[8] Assembly Bill 987 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987
[9] Assembly Bill 1826 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987

The proposed amended rules are intended to satisfy the requirement of the new legislation by adding these new projects to the list of projects to which the existing rules for expedited CEQA review apply, and incorporating them by reference where appropriate in those rules.
The new statutes regarding the Oakland baseball project and the Inglewood arena both include an identical provision mandating the expedited review:

> Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(See new §§ 21168.6.7(c) and 21168.6.8(f).)

Although rules referenced in the statutes are trial court rules only, not rules relating to courts of appeals, the proposed amendments have been made to both trial court and appellate rules. Because the statute also states that any action relating to the environmental impact report "including any potential appeals therefrom" must be completed within the 270 days, it appears that the provision is intended to encompass appeals as well as trial court proceedings, even though the rules referenced in the new statute apply only to trial court proceedings.

It should be noted that the amended rules in the proposal do *not* include the rules directed solely to the Sacramento arena projects, even though those rules (rules 3.2235-3.2237) are included in the rules cited in the statutes.[10] As noted above, those rules were adopted only for cases on Sacramento arena projects because of the provision in that statute that the expedited procedures shall apply "notwithstanding any other law". While a similar provision is included in AB 987,[11] the Inglewood arena statute, there is no such provision in AB 734, the Oakland ballpark statute. But because both statutes use identical provisions in mandating the expedited review and direct that the same rules apply to both projects, it appears the Legislature intended for the review for projects from both areas to be the same. Therefore, because the special service rules could not be applied to the Oakland ballpark cases, they have not been applied to either.[12]

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[10] The committee note that the Sacramento arena project has been completed for some time, and there are no pending projects that these rules durrently apply to.
[11] Section 21168.6.8(e): Notwithstanding any other law, the procedures set forth in subdivision (f) shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification of any environmental impact report for the project that is certified pursuant to this section or the granting of any project approvals.
[12] Because the council had previously concluded that the special service rules should not be amended to apply to the original capitol annex project cases, the committee has not considered applying them to the expanded cases under the expanded capitol annex statute, AB 1875.

New Fee for Expedited Review

The Oakland ball park statute[13] and the Inglewood arena statute[14] include nearly identical provisions requiring that, before the Governor certifies a project for streamlining (including the expedited court review), the project applicant must agree to pay for "any additional costs incurred by the courts in hearing and deciding any case subject to this section". The statutes provide that the costs be determined by the council. These provisions (set out in the footnotes) are similar to the provision for the environmental leadership cases, contained in section 21182(e).[15] The primary differences is that the earlier provision provides for payment of "the costs of the Court of Appeal. . . in hearing and deciding" the expedited case, and the new law provides for payment of "any additional costs incurred by the courts in hearing and deciding" such a case. (Emphasis added.) The new law also provides for payment of costs to the trial court as well as appellate court.

The new proposal includes new amounts for the Oakland ballpark and Inglewood arena projects: $130,000 at the trial court level, to be paid by the project developer within ten days of the filing of the petition, and $100,000 at the appellate level, to be paid within 10 days of the filing of a notice of appeal. It also amends the current amount to be paid at the Court of Appeal in environmental leadership cases from $100,000 to $175,000. As discussed below, in developing these proposed amounts, the committees looked to the existing fee for streamlined environmental leadership cases, the experiences in the one case that has been litigated under those rules, and the provision in the new statutes that amount is for "additional" costs incurred by the courts in providing the expedited procedures.

The current environmental leadership rule originally adopted by the council in 2012[16] provides for payment of a fee of $100,000 by the project developer at the time a notice of appeal is filed, as well as payment of the costs of any special master or contract personnel retained to work on the case. As stated in the report to the council on the original rule, that $100,000 amount was determined as follows:

> This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys, and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in the act's expedited review

[13] Oakland--Section 21168.6.8(d)(6): The project applicant agrees to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.

[14] Inglewood--Section 21168.6.9(b)(6): The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.

[15] Environmental leadership--Section 21182(f): The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.

[16] See rule 8.705. Originally adopted as rule 8.497, the rule has been renumbered since but is otherwise unchanged.

procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:

- 108 hours by the justice assigned to prepare a draft decision;
- 10 hours by each of the other two justices on the panel;
- 230 hours by research attorneys; and
- 31 hours by judicial assistants. [17]

It turns out that the estimates made in 2012 fell far short of reality. In late 2016, the Judicial Council submitted a legislatively required report on how AB 900 (the environmental leadership statute) had fared in the courts, and the impact it had on judicial administration At that time (and through the current time), a single case had been tried and appealed under the environmental leadership project rules, a challenge to the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (the Warrior's Mission Bay project). The details of the timing of that case, in which the Court of Appeal decision was issued 327 days after the case was initially filed, [18] are set out in a report to the Legislature and have been reviewed in more detail in preparation for this recommendation. But after that delay, the courts moved quite expeditiously, as required under the expedited procedures. The report to the Legislature describes the work entailed as follows:

> The Mission Bay project CEQA case is extremely large and complex. The administrative record filed in both the trial court and the Court of Appeal comprises 56 volumes—more than 168,000 pages. The joint appendix filed in the Court of Appeal is 1,514 pages in length. The petitioners' petition for writ of mandate filed in the trial court included three separate causes of action raising multiple issues regarding the approval of the Mission Bay project. The petitioners' brief filed in the Court of Appeal, First Appellate District also raised multiple issues. Many of the issues raised in this case involve highly technical questions that require specialized expertise to evaluate.

Because this same volume and level of complexity may be expected from the Oakland ballpark and Inglewood arena projects, the committees looked to the amount of work incurred by the courts on the Mission Bay case to determine an appropriate fee to assess in these cases.

- The CEQA judge at Superior Court of San Francisco County reported that he spent 5 hours a day on the case (he could not spend full time due to other commitments at the court) as well as 15 hours each weekend throughout the time the case was at the trial court. This means that 740 hours (the equivalent of 92 working days) were expended on

[17] Judicial Council of CA, *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178– 21189.3* (April 11, 2012). The report may be viewed at http://www.courts.ca.gov/documents/jc-20120424-itemA1.pdf

[18] At the time of the report, oral argument had not yet been held. However it was held shortly thereafter, and the Court or Appeal issued its opinion on November 29, 2016. The work on the case was not completed within the 270 days for several reasons, but primarily because of time expended on petitioner's efforts at the trial court and Third District Court of Appeal to keep the case in Sacramento (where initially filed) rather than in San Francisco (where it was ultimately ruled on). Per the case dockets in attached Appendix C, it took 64 days between the time of filing and when the case was eventually received in the San Francisco Superior Court. The court time expended in those 64 days by the Superior Court of Sacramento County and the Third District Court of Appeal was not taken into consideration in developing the amount of the new fee.

the case by the judicial officer, rather than the 108 hours estimated in 2012. (The total number of work days that could occur under the time frame for the trial court proceedings in the expedited rules, if no continuances granted, is 95, so it appears that all the time was needed and used.) In addition, two research attorneys worked full time on the case while it was in the trial court (88 work days), resulting in well over 1000 hours of research attorney time.[19]

- At the Court of Appeal, First Appellate District, the Mission Bay case took precedence over all other cases assigned to the division handling this case, including juvenile dependency cases. The court assigned two research attorneys to work on this case, rather than the usual single attorney. These attorneys will have worked on this case essentially on a full-time basis for a total of three months, which is not typical. The over 900 hours of research time at the Court of Appeal is also significantly more than the 240 hours originally estimated in establishing the $100,000 fee in the leadership cases.

The fee for environmental leadership cases (which is the category under which the Mission Bay case was certified for streamlining) is solely for the costs incurred by the Court of Appeal on such a case, and is to cover all those costs. As calculated by Judicial Council staff based on time reported by the court, the time of the primary justice assigned to the case along with the time of the research attorneys alone came to approximately $160,000.[20] For that reason, and considering the committees have decided that the amount to be paid for the costs incurred by the Court of Appeal in environmental leadership cases should be increased to $150,000.

In considering how to address the "additional" costs incurred by the courts to handle the expedited CEQA procedures in the Oakland ballpark and Inglewood arena projects, the committees considered how the courts would be able to handle such enormous cases in such a short period of time. It appears that in order to comply with the extremely shortened timeline, it would be necessary for a court to take the case out of the normal processing system and assign personnel to it full time. The committees determined that one way to value that time is to look at the cost of an assigned judge (in the case of the Court of Appeal, a retired appellate justice), who could either handle the CEQA case or handle the other cases that the CEQA judge would not be able to handle during that period, and the cost of at least one full time additional research attorney for period in which the case would be active in each court.

Under the rules, the time period allocated to each court's handling of an expedited CEQA case is approximately 135 calendar days. This period equals 19.2 weeks. Considering time for holidays during that period, this results in approximately 91 work days at the trial court and the same at the Court of Appeal. (Note that the Mission Bay trial court judge estimates that he spent the equivalent of 92 work days on the case, so very close to this projection.)

[19] NOTE—JUDGE TING IS CHECKING ON RESEARCH ATTORNEY TIME AND THIS FIGURE AND THE ONE IN THE CHART MAY NEED TO BE ADJUSTED)
[20] CHART TO BE ATTACHED SHOWING NUMBERS USED FOR THIS CALCULATION

- In the trial court, the cost of an assigned judge for 91 days would be $69,160 and the cost of a trial court research attorney for that time would be $61,968. Based on these figures, the committees propose that the additional cost charged for the expedited review by the trial court should be $130,000. (See proposed rule 3.2240). In addition, as permitted by the statute, the rules allows for costs for any special master required for the matter to be charged directly to the project developer, as is currently provided in the environmental leadership cases.

- Because the appellate court in the Mission Bay case reported spending somewhat less time than the trial court, the committees looked at the cost of an assigned appellate justice for 60 days, which would be $54,940, and the cost of an appellate court research attorney for that same time, which would be $48,180. Based on these figures, the committees propose that the additional cost charged for the expedited review by the Court of Appeal should be $100,000. (See proposed rule 8.705(2).)

Other amendments

At the time it was circulated in 2012, a couple of comments received on the proposal for the $100,000 fee for expedited CEQA review by the Court of Appeal in environmental leadership cases was that the rule should clarify that this is not a recoverable cost. The Appellate Advisory Committee declined to include this provision at the time,[21] but noted that, if this issue was not addressed by the Legislature, the committee would consider the possibility of circulating a new proposal regarding this issue in the future. The committees are now including such a rule in this proposal. See, proposed rules 3.2240(4) and 8.

Alternatives Considered

Because the new rules and fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

The committees considered a different method of determining the costs to be paid: by requiring the posting of a $100,000 deposit, calculating the court's actual costs for hearing and deciding that particular case at the conclusion of the case, and requiring payment of these costs at the end of the case. The committee ultimately decided against this approach, however, because of the administrative burden associated with calculating and collecting these costs in each case, particularly in determining what would be considered "additional" costs.

Fiscal and Operational Impacts

Implementing the new legislation requiring expedited review of CEQA challenges to new project types may generate costs and operational impacts for both the trial courts and the Courts of Appeal in

[21] The committee noted in its report to the council at that time that such a provision had not been included in the rule as circulated and was a sufficiently substantive change that the committee could not recommend it without further circulation.

which the proceedings governed by these statutes are filed. The committees do not anticipate that this rule proposal will result in any additional costs to the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is it appropriate or necessary to include the provision that the new fees are not recoverable (see rule 3.2240(4) and rule 8.705(5))?

Attachments and Links

1. Proposed amended and new Rules of Court, rules 3.2220-3.2235, 3.2228 and 8.700-8.705
2. Appendix A (chart of cost estimates **TO BE ADDED]**

Rules 3.2220-3.2235 and rules 8.700-8.705 of the California Rules of Court would be amended, and rule 3.2238 adopted, effective July 1, 2019, to read:

Chapter 2. California Environmental Quality Act Proceedings Under Public Resources Code Sections 21168.6–21168.8, 21178–21189.3, and 21189.50–21189.57

Article 1. General Provisions

Rule 3.2200. Application

Except as otherwise provided in chapter 2 of the rules in this division, which govern actions under Public Resources Code sections 21168.6–21168.8, 21178–21189.3, and 21189.50–21189.57, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as set forth in division 13 of the Public Resources Code.

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

(1) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(2) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(3) An "Oakland sports and mixed use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(4) An "Inglewood arena project" means a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

~~(3)~~(5) A "capitol building annex project" means a state capitol building annex project, annex project related work, or state office building project as defined by Public Resources Code section 21189.50.

(6) A "streamlined CEQA project" means any project within the definitions stated in (1) through (5)

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for ~~the Sacramento arena project, a leadership project, or a capitol building annex project~~ a streamlined CEQA project. Except as otherwise provided in Public Resources Code sections 21168.6–21168.8, 21178–21189.3, and 21189.50–21189.57 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) Complex case rules

***

Rule 3.2221. Time

(a) Extensions of time

***

(b) Extensions of time by parties

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the performance of the act has been stipulated to be extended, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6–21168.8, ~~and~~ 21185, and 21189.51. Any such stipulation must be approved by the court.

(c) Sanctions for failure to comply with rules

If a party fails to comply with any time requirements provided in these rules or ordered by the court, the court may issue an order to show cause as to why one of the following sanctions should not be imposed:

(1)-(2) ***

(3) If the failure to comply is by respondent or a real party in interest, removal of the action from the expedited procedures provided under Public Resources Code sections 21168.6.6~~(c) (d),~~--21168.6.8, 21185, and 21189.51, and these rules; or

(4) ***

Rule 3.2222. Filing and service

(a)-(c) ***

(d) Service of petition in action regarding ~~leadership project, and capitol building annex project~~ streamlined CEQA project

If the petition or complaint in an action governed by these rules and relating to ~~a~~ leadership project, ~~or~~ a capitol building annex project, or an Oakland ballpark project is not personally served on any respondent public agency, any real party in interest, and the Attorney General within three court days following filing of the petition, the time for filing petitioner's briefs on the merits provided in rule 3.2227(a) and rule 8.702(e) will be decreased by one day for every additional two court days in which service is not completed, unless otherwise ordered by the court for good cause shown.

(e) ***

Rule 3.2223. Petition

In addition to any other applicable requirements, the petition must:

(1) On the first page, directly below the case number, indicate that the matter is ~~"Sacramento Arena CEQA Challenge," or an "Environmental Leadership CEQA Challenge," or a "Capitol Building Annex Project"~~ a "Streamlined CEQA Project";

(2) State ~~either~~ one of the following:

(A) The proponent of the project at issue provided notice to the lead agency that it was proceeding under Public Resources Code section 21168.6.6, 21168.6.7, or 21168.6.8 (whichever is applicable) and is subject to this rule; or

(B) The project at issue was certified by the Governor as a leadership project under Public Resources Code sections 21182–21184 and is subject to this rule; or

(C) The project at issue is a capitol building annex project as defined by Public Resources Code section 21189.50 and is subject to this rule;

(3) If the project is an Oakland ballpark project or an Inglewood arena project, provide notice that the person or entity that applied for certification of the

project for streamlined review must make the payments required by rule 3.2240 and, if the case goes to the Court of Appeal, by rule 8.705.

~~(3)~~(4) If a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must, if the matter goes to the Court of Appeal, make the payments required by Public Resources Code section 21183(f); and

~~(4)~~(5) ***

Article 3. Trial Court Costs in Certain Streamlined CEQA Projects

Rule 3.2240. Trial Court Costs in Oakland Ballpark and Inglewood Arena Projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7 and 21168.6.8 regarding payment of trial court costs with respect to cases concerning certain streamlined CEQA projects:

(1) Within 10 days after service of the petition or complaint in a case concerning an Oakland ballpark project or Inglewood arena project, the person who applied for certification of the project as streamlined project must pay a fee of $130,000 to the court.
[STAFF NOTE: a provision may be added to address earmarking the funds to be used on expedited CEQA projects]

(2) If the court incurs any of the following costs, the person who applied for certification of the project must also pay, within 10 days of being ordered by the court, the following costs or estimated costs:

(A) The costs of any special master appointed by the court in the case; and

(B) The costs of any contract personnel retained by the court to work on the case.

(3) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(4) Any fee or cost paid under this section is not a recoverable cost.

Chapter 11. Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21168.6.6–21168.8, 21178–21189.3, and 21189.50–21189.57.

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

(1) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(2) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means the entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute as described in section 21168.6.6(j)(1).

(3) The "Oakland sports and mixed use project" or "Oakland ballpark project" means a project as defined in Public Resources Code section 21168.6.7 and certified by the Governor under that section.

(4) The "Inglewood arena project" means all a project as defined in Public Resources Code section 21168.6.8 and certified by the Governor under that section.

~~(3)~~(5) A "capitol building annex project" means a state capitol building annex project, annex project related work, or state office building project as defined by Public Resources Code section 21189.50.

(6) A "streamlined CEQA project" means any project within the definitions stated in (1) through (5)

(b) Proceedings governed

The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the granting of any project approvals for a ~~environmental leadership development project, the Sacramento arena project, or a capitol building annex~~ streamlined CEQA project.

Rule 8.702. Appeals

(a) Application of general rules for civil appeals

***

(b) Notice of appeal

(1) ***

(2) *Contents of notice of appeal*

The notice of appeal must:

(A) State that the superior court judgment or order being appealed is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to ~~the Sacramento arena project, or a leadership project, or a capitol building annex~~ a streamlined CEQA project; and

(C) If the judgment or order being appealed pertains to a leadership project, an Oakland ballpark project, or an Inglewood arena project, provide notice that the person or entity that applied for certification of the project as ~~a leadership~~ such a project must make the payments required by rule 8.705.

(c)-(e) ***

(f) Briefing

(1)-(3) ***

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6–8, ~~(c) (d),~~ 21185, and 21189.51 for the duration of the stipulated extension.

(5) ***

(g) Oral argument

***

Advisory Committee Comment

Subdivision (b). It is very important to note that the time period to file a notice of appeal under this rule is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena project, and that in a case regarding ~~a leadership project or capitol building annex~~ any other streamlined CEQA project, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate the judgment.

Rule 8.703. Writ proceedings

(a) Application of general rules for writ proceedings

***

(b) Petition

(1) ***

(2) *Contents of petition*

In addition to any other applicable requirements, the petition must:

(A) State that the superior court judgment or order being challenged is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to the Sacramento arena project, ~~or~~ a leadership project, ~~or~~ a capitol building annex project, Inglewood arena project, or Oakland ballpark project; and

(C) If the judgment or order pertains to a leadership project, Inglewood arena project, or Oakland ballpark project, provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by 8.705.

Rule 8.705. Court of Appeal costs in leadership and streamlined CEQA projects

In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8, and 21183, regarding payment of the Court of Appeal's costs with respect to cases concerning ~~leadership~~ certain streamlined CEQA review projects:

(1) Within 10 days after service of the notice of appeal or petition in a case concerning a leadership project, the person who applied for certification of the project as a leadership project must pay a fee of $~~100,000~~150,000 to the Court of Appeal.

(2) Within 10 days after service of the notice of appeal or petition in a case concerning an Oakland ballpark project or Inglewood arena project, the person who applied for certification of the project must pay a fee of $100,000 to the Court of Appeal.

[STAFF NOTE: an additional provision may be added to earmark the funds in (1) and (2) for use in these cases]

(~~2~~ 3) If the Court of Appeal incurs any of the following costs, the person who applied for certification of the project must also pay, within 10 days of being ordered by the court, the following costs or estimated costs:

(A) The costs of any special master appointed by the Court of Appeal in the case; and

(B) The costs of any contract personnel retained by the Court of Appeal to work on the case.

(~~3~~ 4) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

(5) Any fee or cost paid under this section is not recoverable as costs.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
January 30, 2019

To
Members of the Appellate Advisory Committee's Rules Subcommittee

From
Sarah Abbott, Attorney, Legal Services

Subject
Civil commitment cases—rule for the normal record on appeal and form notice of appeal

Action Requested
Please read before February 4, 2019 Rules Subcommittee conference call

Deadline
February 4, 2019

Contact
Sarah Abbott
415-865-7687
Sarah.abbott@jud.ca.gov

Introduction

Item 9 on the Appellate Advisory Committee's annual agenda this year is to consider whether to develop (1) a California Rule of Court[1] setting forth the required contents of the normal record on appeal for civil commitment cases and (2) a form notice of appeal for civil commitment cases.[2] This is a priority 2(b) project with a proposed January 1, 2020 completion date. Attached for the subcommittee's review are a draft rule and draft form. This memorandum discusses the proposed rule and form as well as alternatives that the subcommittee may wish to consider.

[1] All further references to "rule" or "rules" are to the California Rules of Court.

[2] The project summary states that civil commitment cases include extensions for those found not guilty by reason of insanity (Pen. Code, § 1026 et seq.) and those found incompetent to stand trial (Pen. Code, § 1367 et seq.), as well as commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962 et seq.), the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.), the Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500 et seq.), and the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.). It appears that most of the listed types of civil commitment proceedings are typically connected to a criminal proceeding and are cases in which the petitioner / defendant is entitled to appointed counsel. As discussed further below, the subcommittee may wish to consider whether it would be appropriate to include any other types of civil commitment proceedings within the scope of the new rule and/or new form, or to exclude some of these listed case types from the new rule and/or new form.

Background

The California Rules of Court provide specific direction as to what should be included in the normal record on appeal in many types of cases. In particular, rule 8.120 governs the normal record in *civil appeals*, rule 8.320 governs the normal record in *criminal appeals*, rule 8.407 governs the normal record in *juvenile appeals and writs*, and rule 8.610 governs the normal record in *death penalty appeals*. For appeals to a superior court appellate division, rule 8.860 governs the normal record in *misdemeanor appeals*, rule 8.910 governs the same in *infraction appeals*, and rule 8.957 governs the record in *small claims appeals*. Additionally, rule 8.480 governs the record on appeal from *orders establishing conservatorships* under Welfare and Institutions Code section 5350 et seq. (the Lanterman-Petris-Short or "LPS" Act)[3] and rule 8.388 governs the contents of the record in appeals from *orders granting relief by writ of habeas corpus*.[4] However, there is no clear rule as to what constitutes the normal record on appeal in civil commitment cases. Perhaps due to the absence of a directly applicable rule, appellate records in civil commitment cases may be inadequate but there is no clear ground for asking the clerk of the superior court to correct the record.

Likewise, the Judicial Council publishes several form notices of appeal, including *Notice of Appeal-Felony (Defendant*) (CR-120); *Notice of Appeal (Misdemeanor)* (CR-132), *Notice of Appeal and Record on Appeal (Infraction)* (CR-142), *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (APP-102), *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (APP-002), *Notice of Appeal (Small Claims)* (SC-140), and *Notice of Appeal (Juvenile)* (JV-800).[5] However, there is no form notice of appeal specific to civil commitment cases. It has been suggested that a form notice of appeal for civil commitment cases could help simplify the process for litigants and court staff.

New Rule Governing the Normal Record in Civil Commitment Appeals

Suggestion

Jonathan Grossman of the Sixth District Appellate Program and a current member of the Appellate Advisory Committee suggests the adoption of a new rule of court governing the contents of the normal record on appeal in civil commitment cases "where the person is entitled to appointed counsel"[6]—including commitments under the Mentally Disordered Offenders Act,

[3] Rule 8.480 states that, except as otherwise provided, rules 8.304 through 8.368 (including rule 8.320, governing the normal record in criminal appeals) govern appeals from orders establishing LPS conservatorships.

[4] The subcommittee should consider whether a new rule governing the normal record on appeal in civil commitment cases would extend to appeals of orders granting habeas relief in civil commitment cases, which appear to be currently governed by rule 8.388.

[5] The council also publishes a form *Petition for Writ of Habeas Corpus—Penal Commitment* (HC-003) and *Petition for Writ of Habeas Corpus—LPS Act* (HC-002).

[6] The suggestion does not specify the significance of making the rule only applicable to civil commitment cases where a right to counsel attaches, though it appears that this may be intended to limit the scope of the suggested rule to the types of civil commitment proceedings that typically stem from criminal proceedings. With respect to commitments under the LPS Act, generally the right to counsel does *not* attach in "involuntary detention and

the LPS Act, the Developmentally Disabled Persons Act, and the Sexually Violent Predators Act, as well as extensions for those found not guilty by reason of insanity and those found incompetent to stand trial. Mr. Grossman believes that such a rule would provide needed guidance to litigants and the courts and ensure that appellate records in such cases are complete.

Mr. Grossman suggests that the new rule be based on existing rule 8.320, governing the contents of the normal record on appeal in criminal cases and requiring that the record contain a clerk's transcript and reporter's transcript as specified in the rule. However, to make the rule appropriate for civil commitment appeals, he suggests that the following modifications to rule 8.320 be incorporated into a new rule governing the normal record in civil commitment appeals:

> **Rule [~~8.320~~]. Normal record; exhibits**
>
> **(a) Contents**
>
> In an appeal in a civil commitment proceeding where the person is entitled to the appointment of counsel,[7] ~~If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial,~~ the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.
>
> **(b) Clerk's transcript**
>
> The clerk's transcript must contain:
>
> (1) The petition~~The accusatory pleading and any amendment~~;

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treatment" matters under Welfare & Institutions Code sections 5150, 5200, 5250, 5260, and 5270.17, but *does* attach in confinement proceedings under section 5300. Thus, including a reference to the right to counsel appears to be one way to indicate that the rule is intended to apply to LPS confinement proceedings under section 5300 but not to shorter detentions under other provisions of the LPS Act. However, as noted below, proceedings under section 5300 do not necessarily stem from criminal proceedings, so if the intent is that the scope of the rule be limited to civil commitments stemming from criminal proceedings, the rule should likely not apply to commitments under this code section.

[7] As initially suggested, the new rule would not expressly list the types of proceedings to which it would apply. The subcommittee should consider whether it believes further specificity is needed. If so, staff suggests altering the first sentence of the proposed rule by including language such as the following:

> In an appeal in a civil commitment proceeding where the person is entitled to the appointment of counsel (including extensions for those found not guilty by reason of insanity (Pen. Code, § 1026 et seq.) and those found incompetent to stand trial (Pen. Code, § 1370 et seq.), determinations to continue outpatient treatment or return to confinement (Pen. Code, § 1600 et seq.), extended detention of dangerous persons (Welf. & Inst. Code, § 1800 et seq.), as well as commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962 et seq.), and the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5300 et seq.) [*NOTE: Inclusion of this code section is questionable because confinement under the LPS Act does not necessarily stem from a criminal proceeding and appears to be addressed by existing rule 8.480. This reference should perhaps be omitted.*], the Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500 et seq.), and the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.)), the record must contain . . .

(2) Any demurrer or other plea, admission or denial; [8]

(3) All court minutes;

(4) All jury instructions that any party submitted in writing and the cover page required by rule 2.1055(b)(2) indicating the party requesting each instruction, and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written opinion of the court;

(8) The judgment or order appealed from and ~~any abstract of judgment or~~the commitment order;

(9) Any motion for new trial, with supporting and opposing memoranda and attachments;

(10) The notice of appeal ~~and any certificate of probable cause filed under rule 8.304(b)~~; [9]

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

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

(13) Any psychological report and any documentary exhibits;

(1~~3~~4) And, if the appellant is the defendant: [10]

(A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments; and

~~(B) If related to a motion under (A), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;~~

[8] This language seems focused on the criminal context, and it might be more clear to require "Any other pleading" to cover objections or other responses to the petition.

[9] A certificate of probable cause for the initial detention and treatment may be an appropriate part of the appellate record if it was considered by the trial court in the later commitment proceeding, so the subcommittee should consider whether it agrees with the suggested edits to this subsection.

[10] Parties to civil commitment proceedings are not "defendants" per se, so the subcommittee should consider whether there is a better way to phrase this or if this subsection can be omitted.

(BC) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term.; [11]

~~(D) The probation officer's report; and~~

~~(E) Any court-ordered diagnostic or psychological report required under Penal Code section 1203.03(b) or 1369.~~ [12]

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication ~~plea other than a not guilty plea~~; [13]

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) All instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings of the commitment order or other dispositional hearing ~~at sentencing, granting or denying of probation, or other dispositional hearing~~;

(9) And, if the appellant is the defendant: [14]

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge ~~and motions under Penal Code section 995~~;

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[11] Civil commitments are generally predicated on an individual's current and future dangerousness and/or inability to provide for his or her needs. It is unclear that evidence in prior juvenile or criminal proceedings would be directly relevant on appeal.

[12] The subcommittee should consider whether this deletion is appropriate because it appears that such reports might be relevant if they address relevant risk factors. On the other hand, subsection (13) may encompass these reports.

[13] It appears that the word "response" might be clearer than "admission or submission." Also, it appears that a "motion for involuntary medication" would be outside of the scope of the rule, which is directed to civil commitments. Therefore, it appears that this phrase should be omitted.

[14] Parties to civil commitment proceedings are not "defendants" per se, so the subcommittee should consider whether there is a better way to phrase this.

(B) The closing arguments; and

(C) Any comment on the evidence by the court to the jury.

~~**(d) Limited normal record in certain appeals**~~

~~If the People appeal from a judgment on a demurrer to the accusatory pleading, or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial, the normal record is composed of:~~

~~(1) *Clerk's transcript*~~

~~A clerk's transcript containing:~~

~~(A) The accusatory pleading and any amendment;~~

~~(B) Any demurrer or other plea;~~

~~(C) Any written motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;~~

~~(D) The judgment or order appealed from and any abstract of judgment or commitment;~~

~~(E) Any court minutes relating to the judgment or order appealed from and:~~

~~(i) If there was a trial in the case, any court minutes of proceedings at the time the original verdict is rendered and any subsequent proceedings; or~~

~~(ii) If the original judgment of conviction is based on a guilty plea or nolo contendere plea, any court minutes of the proceedings at the time of entry of such plea and any subsequent proceedings;~~

~~(F) The notice of appeal; and~~

~~(G) If the appellant is the defendant, all probation officer reports and any court-ordered diagnostic report required under Penal Code section 1203.03(b).~~

~~(2) *Reporter's transcript*~~

~~(A) A reporter's transcript of any oral proceedings incident to the judgment or order being appealed; and~~

~~(B) If the appeal is from an order after judgment, a reporter's transcript of:~~

~~(i) The original sentencing proceeding; and~~

~~(ii) If the original judgment of conviction is based on a guilty plea or nolo contendere plea, the proceedings at the time of entry of such plea.~~

(de) Exhibits

> Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.
>
> **(ef) Stipulation for partial transcript**
>
> If counsel for the defendant and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

Proposed Rule

It appears that basing a new rule governing the normal record in civil commitment appeals on existing rule 8.320 governing the normal record in criminal appeals, with appropriate modifications, makes significant sense. While civil commitment cases are not "criminal" per se, many or most of these matters stem from criminal proceedings and requiring a similar record on appeal would likely be helpful to trial court staff tasked with compiling such records. Additionally, rule 8.480 governing LPS conservatorship appeals—which are perhaps somewhat similar to (and, in some cases, may overlap with) civil commitment appeals—refers back to the rules governing criminal appeals, including rule 8.320, though it contains somewhat different requirements for the normal record on appeal.[15] Staff therefore recommends that the subcommittee recommend adoption of a new rule of court based on existing rule 8.320 as suggested by Mr. Grossman.

If the subcommittee agrees that rule 8.320 should be used as a starting point for drafting a new rule, the subcommittee should carefully review the suggested modifications to existing rule 8.320 included in the proposed new rule (highlighted in yellow above) to ensure that they are appropriate and necessary in the context of civil commitment cases. Additionally, based on staff's conversations with Judicial Council mental health law subject matter experts, some additional modifications may be appropriate. These are discussed in footnotes 7–14 above and should also be considered.

Though the initial suggestion does not address the issue, the subcommittee should also consider *where* within the appellate rules a new rule governing the normal record on appeal in civil commitment cases should be placed. The appellate rules are generally organized into divisions (Supreme Court /Court of Appeal, appellate division, and small claims) and then divided into chapters by subject matter (e.g., civil, criminal, juvenile, conservatorship, miscellaneous writs). However, given the varying contexts in which the issue of civil commitment may arise, civil commitment appeals do not fall neatly into any one of the existing divisions or chapters of the appellate rules. Three possible locations for the placement of a new rule governing the record in civil commitment appeals are potentially appropriate.

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[15] For example, rule 8.320(b) requires that the clerk's transcript contain written communications between the court and the jury, motions for new trial, and transcripts of video recordings, while rule 8.480(b) does not. Additionally, rule 8.320(c) contains detailed requirements for the reporter's transcript, while rule 8.480(c) simply requires that the transcript "contain all oral proceedings" except voir dire and opening statements.

As one alternative, the new rule could be located in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 1 (Criminal Appeals), Article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals, by creating a new rule 8.321governing civil commitment proceedings. This placement appears to be the best option and would likely make clear that the rule is intended to cover only appeals of civil commitment proceedings stemming from criminal proceedings (in which case the rule should likely *not* apply to appeals of commitments under Welfare & Institutions Code section 5300, which do not necessarily stem from criminal charges). However, the subcommittee may wish to consider whether placement of a rule governing civil commitments in the chapter governing "criminal appeals" would lead to any confusion due to fact that civil commitments are technically not criminal proceedings.

Alternatively, the subcommittee could recommend amending title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals) to expand the scope of the chapter to also apply to civil commitment appeals by renaming it "Conservatorship and Civil Commitment Appeals." A new rule 8.483 could be added immediately following the existing rules governing LPS conservatorship appeals contained in that chapter. However, though issues of conservatorship and civil commitment may both arise in some cases, adding a rule governing the normal record in civil commitment appeals to an existing chapter of the rules governing LPS conservatorship appeals could be confusing, because there is not always overlap of the issues. If the subcommittee decides that the new rule should be located together with rules governing conservatorship appeals rather than criminal appeals, staff suggests that a new subsection (g) could be added to the end of rule 8.320 to reference the new rule governing the record in civil commitment appeals, to ensure that litigants and courts are aware of the separate rule.

As a third alternative, the subcommittee could recommend adding a new chapter 13 to division 1 of the appellate rules, directed specifically to appeals in civil commitment proceedings, and add a new rule 8.718 under this new chapter. This might be more consistent with the overall structure of division 1, which contains separate chapters for various types of appeals. However, it would require creating a new chapter containing a single rule, which is not recommended. *Given the foregoing considerations, members of the subcommittee should consider where best to locate the new rule within the appellate rules structure.*

Alternatives Considered

As discussed above, the proposal stemmed from a suggestion to create a new rule governing the normal record in civil commitment appeals by starting with the language of rule 8.320 (governing the normal record in criminal appeals) and modifying it appropriately for civil commitment cases. Alternatively, the subcommittee should consider whether it would be more appropriate to instead start with language of rule 8.480 (governing LPS conservatorship appeals) and instead modify that language as appropriate for civil commitment appeals. As noted above, rule 8.480 contains requirements for the clerk's transcript and reporter's transcript that differ from the requirements in rule 8.320, as well as from the new rule governing civil commitment appeals as proposed. These requirements appear to be somewhat more simple and straightforward than those of rule 8.320, though insight from subcommittee members as to

whether these requirements are appropriate in the context of civil commitment would be helpful. *If the subcommittee believes that rule 8.480 is a more appropriate starting point for the new rule, it should consider what modifications to the requirements of rule 8.480 would be appropriate for appellate records in civil commitment cases.*

Additionally, with respect to placement of the new rule, the subcommittee should consider whether it agrees with the proposal to add a new rule to the chapter governing criminal appeals, or whether it believes there is a better location for the placement of a new rule governing the record on appeal in civil commitment cases (such as amending the title and adding a new rule to the chapter governing LPS conservatorship appeals, or adding a new chapter 13 to division 1 of the appellate rules and including a new rule in that chapter).

Finally, the subcommittee should consider whether any new rule should include an explicit definition of "civil commitment proceeding," either in the rule itself or in an advisory committee comment, to ensure that there is no confusion as to what type of proceedings the rule applies to. If so, the subcommittee should discuss what an appropriate definition would include, and in particular whether the rule should apply to all types of civil commitment cases or some limited subset thereof. For example, and as noted above, it appears questionable whether LPS civil commitments under Welfare & Institutions Code section 5300 et seq. should be included within the scope of the rule, and it appears likely that commitments under Welfare & Institutions Code section 1800 and Penal Code section 1600 et seq. should be included.

New Form Notice of Appeal for Civil Commitment Appeals

Suggestion

Based on a suggestion from a staff attorney at the First District Appellate Project, Mr. Grossman also proposes that a new form notice of appeal be developed for civil commitment proceedings. He has provided a suggested draft form that appears to be based in part on form *Notice of Appeal–Felony (Defendant)* (CR-120). The suggested draft form is a helpful starting point, and staff has modified it to comport with the Judicial Council's standard formatting and style guidelines. As discussed below, other substantive modifications may be appropriate and are reflected in the proposed form attached to this memorandum for the subcommittee's review.

Proposed Form Notice of Appeal

The caption of the suggested draft form labeled it as a *Notice of Appeal—Involuntary Civil Commitments* but the footer designated it as a *Notice of Appeal—Civil Commitments/Mental Health.* Staff believes that *Notice of Appeal—Involuntary Civil Commitment* is the clearer name, and this is now reflected in both places on the proposed form. However, the subcommittee should consider which of these form names is more appropriate, or whether some other name would better reflect the appropriate usage of the form. For example, form HC-003, apparently intended for use in many of the same types of "civil commitment" proceedings under consideration in this proposal, is entitled *Petition for Writ of Habeas Corpus—Penal Commitment*.

Additionally, the caption of the suggested draft form initially indicated that it could be used for appeals relating to Penal Code sections 1026.2 (application for release due to restoration to sanity), 1026.5 (petition for extended commitment), 1370 (competence determinations), 1600 *et seq*., (outpatient status for mentally disordered and developmentally disabled offenders) and 2960 *et seq*. (mentally disordered offenders) as well as Welfare & Institutions Code sections 5350 (LPS conservatorship), 6500 *et seq*. (developmentally disabled offenders), and 6600 *et seq*. (sexually violent predators). This list differs somewhat from the scope of the proposed new rule of court governing the normal record on appeal in civil commitment cases. The subcommittee should consider whether it intends for the scope of the new rule and the new form to be parallel so that they work in tandem. Staff believes a parallel scope would provide clarity and avoid confusion for litigants, counsel, and the courts. The proposed form should thus be used for appeals stemming from the same code sections to which the new rule will presumably also apply, namely:

- extensions for those found not guilty by reason of insanity (Pen. Code, § 1026, *et seq*.);
- extensions for those found incompetent to stand trial (Pen. Code, § 1370, *et seq*.);
- determinations to continue outpatient treatment or return to confinement (Pen. Code, § 1600, *et seq*.);
- commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962, *et seq*.);
- extended detention of dangerous persons (Welf. & Inst. Code, § 1800, *et seq*.);
- commitments under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5300, *et seq*.)[16];
- commitments under the Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500, *et seq*.); and
- commitments under the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600, *et seq*.).

Staff has included an item in the proposed form listing the case types to which it would apply in a check box form similar to form HC-003. *The subcommittee should consider whether it believes this is needed, and if so whether the list of case types to which the form would apply is appropriate and, if so, whether any case types should be added or removed from the list.*

Further, item 2 of the suggested draft form includes check-boxes asking whether the appeal comes after a "jury or court trial," "contested hearing," "stipulated judgment," or "other (specify)." The inclusion of "stipulated judgment" in this list may be confusing for litigants because, in most contexts, stipulated judgments are not appealable.[17] *Staff thus believes it would be clearer to remove "stipulated judgment" from the list in item 2, but has left it in the proposed*

[16] As discussed above in connection with the proposed rule of court, it is questionable whether the new rule or form should be applicable to LPS conservatorship appeals, which are not civil commitment orders and are subject to a separate rule of court (rule 8.480) governing their appeal.

[17] Cf. *Norgart v. Upjohn Co*. (1999) 21 Cal. 4th 383, 401 (1999) (stipulated judgment may be appealable if it appears from the record that the parties consented to judgment "for the mere purpose of hastening an appeal, and with no intention to waive an exception thereto.").

form for the subcommittee's consideration. If a civil commitment matter was initially decided by stipulated judgment, this can be indicated by checking "other" and providing an explanation.

Though not raised by the initial suggestion, the subcommittee should also consider what category designation a new form notice of appeal for civil commitment cases should bear (i.e., APP, CR, CIV, MC, etc.) Because civil commitment appeals are not technically criminal in nature, it is somewhat questionable whether CR would be the appropriate designation. However, if the corresponding rule of court is to be placed with the criminal appellate rules and the intention is for the rule and form to apply to only those civil commitments stemming from criminal proceedings, then CR may be the most appropriate moniker. The APP designation is generally used for civil appeals but could also be appropriate for use with this form notice of appeal. Staff believes that MC could also be an appropriate designation given the unique subject matter of civil commitment proceedings, but locating this notice of appeal within the miscellaneous forms it could make the form more difficult for litigants to locate. *Staff has used the CR designation for the draft proposed form, but the subcommittee should consider what it believes to be the most appropriate category designation for this new form.*

Alternatives Considered

The subcommittee should consider whether it believes that a form notice of appeal specific to civil commitment appeals is necessary or advisable.

The subcommittee may also wish to consider whether expanding the scope of an existing form notice of appeal, or adding an instruction to an existing form so that the form may also be used in civil commitment appeals, would suffice. Staff has reviewed all existing form notices of appeal and believes it would be clearer to create a new form than to use any of the pre-existing form notices of appeal.

It has been also been suggested that the new form notice of appeal might be used for appeals of other types of orders relating to civil commitment proceedings, such as: Welfare & Institutions Code sections 5275 (judicial review of detention by certification), 5300 (petition for order of additional intensive treatment), 5326.7 (proceeding to administer convulsive treatment; determination that patient lacks capacity to consent), and 5332–5334 (*Riese* hearing, involuntary psychotropic medication). This would expand the scope of the new form notice of appeal well beyond the scope of the proposed rule of court, and staff believes this could create confusion for litigants and courts and would be inadvisable. *However, the subcommittee should consider whether it believes it would be appropriate and/or helpful to include any additional types of proceedings within the scope of a new form notice of appeal.* If so, then the name of the form should be modified to reflect this broader usage.

Finally, consideration might be given to whether the scope of a new form notice of appeal for civil commitment cases should be consistent with the form *Petition for Writ of Habeas Corpus—Penal Commitment (Mental Health)* (HC-003). That form may be used by petitioners held pursuant to Penal Code sections 1026 (not guilty by reason of insanity), 1026.5(b) (extended commitment), 1370 (incompetent to stand trial), 2684 (prisoners transferred to state hospital),

2962 (mentally disordered offender), and former Welfare & Institutions Code section 6300 (mentally disordered sex offender or "MDSO"). It differs from the proposed new form in that it applies to prisoners transferred to state hospitals and does not apply to those held under Welfare & Institutions Code sections 6500 et seq. and 6600 et seq.

Issues for the subcommittee's consideration

Issues that the subcommittee may want to consider in reviewing the draft proposed rule and form:

1. Does the subcommittee wish to recommend moving forward with circulating a new rule of court governing the normal record on appeal in civil commitment cases?

    a. If so, should the new rule be based on rule 8.320 (governing the normal record in criminal appeals), as modified, or would it be better to base the new rule on rule 8.480 (governing LPS conservatorship appeals)?
    b. Should the new rule should be placed in criminal appeals or conservatorship appeals or a new chapter 13 of division 1 of the appellate rules?
    c. Should a definition of "civil commitment case" should be included within the text of the new rule, or in an advisory committee comment, to provide clarity as to what types of proceedings the rule applies to?

2. Does the subcommittee wish to recommend moving forward with circulating a new form notice of appeal for civil commitment cases?

    a. If so, does the subcommittee agree with contents of the proposed form?
    b. Should use of the proposed form notice of appeal be limited to the same proceedings as specified in the proposed rule of court, or should the form be drafted so that it may be used in a wider range of appeals?

Rules Subcommittee Task

The subcommittee's task is to analyze this proposal and:

- Approve the proposal as presented and recommend to the full committee that it seek approval from RUPRO to circulate the proposal for public comment;
- Modify the proposal and recommend to the full committee that it seek approval from RUPRO to circulate the modified proposal for public comment;
- Recommend to the full committee that it reject the proposal; or
- Ask staff or committee members for further information/analysis.

Rule 8.321 of the California Rules of Court would be added, effective January 1, 2020, to read:

Rule 8.321. Normal record; exhibits

(a) Contents

In an appeal in a civil commitment proceeding where the person is entitled to the appointment of counsel, [1] the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any demurrer or other plea, admission or denial; [2]

(3) All court minutes;

(4) All jury instructions that any party submitted in writing and the cover page required by rule 2.1055(b)(2) indicating the party requesting each instruction, and any written jury instructions given by the court;

(5) Any written communication between the court and the jury or any individual juror;

(6) Any verdict;

(7) Any written opinion of the court;

(8) The judgment or order appealed from and/or the commitment order;

(9) Any motion for new trial, with supporting and opposing memoranda and attachments;

(10) The notice of appeal; [3]

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[1] The subcommittee should consider whether it believes further specificity is needed. If so, staff suggests altering the first sentence of the proposed rule to include the following parenthetical language:

> (including extensions for those found not guilty by reason of insanity (Pen. Code, § 1026 et seq.) and those found incompetent to stand trial (Pen. Code, § 1370 et seq.), determinations to continue outpatient treatment or return to confinement (Pen. Code, § 1600 et seq.), extended detention of dangerous persons (Welf. & Inst. Code, § 1800 et seq.), as well as commitments under the Mentally Disordered Offenders Act (Pen. Code, § 2962 et seq.), and the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5300 et seq.), the Developmentally Disabled Persons Act (Welf. & Inst. Code, § 6500 et seq.), and the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq.)),

[2] This language seems focused on the criminal context, and it might be more clear to require "Any other pleading" to cover objections or other responses to the petition.

[3] Existing rule 8.320 also requires "any certificate of probable cause filed under rule 8.304(b)." The suggestion is that this requirement be omitted, but a certificate of probable cause for the initial detention and treatment may be an appropriate part

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

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

(13) Any psychological report and any documentary exhibits;

(14) And, if the appellant is the defendant: [4]

(A) Any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments; and

(B) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term. [5]

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication; [6]

(2) The oral proceedings on any motion in limine;

(3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) All instructions given orally;

(5) Any oral communication between the court and the jury or any individual juror;

(6) Any oral opinion of the court;

(7) The oral proceedings on any motion for new trial;

(8) The oral proceedings of the commitment order or other dispositional hearing;

(9) And, if the appellant is the defendant: [7]

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of the appellate record if it was considered by the trial court in the later commitment proceeding, so the subcommittee should consider whether it agrees with the suggested edits to this subsection.

[4] Parties to civil commitment proceedings are not "defendants" per se, so the subcommittee should consider whether there is a better way to phrase this or if this subsection can be omitted.

[5] Civil commitments are generally predicated on an individual's current and future dangerousness and/or inability to provide for his or her needs. It is unclear that evidence in prior juvenile or criminal proceedings would be directly relevant on appeal.

[6] It appears that the word "response" might be clearer than "admission or submission." Also, it appears that a "motion for involuntary medication" would be outside of the scope of the rule, which is directed to civil commitments. Therefore, it appears that this phrase should be omitted.

[7] Parties to civil commitment proceedings are not "defendants" per se, so the subcommittee should consider whether there is a better way to phrase this.

(A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;

(B) The closing arguments; and

(C) Any comment on the evidence by the court to the jury.

(d) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

(e) Stipulation for partial transcript

If counsel for the defendant and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*): PETITIIONER'S DATE OF BIRTH:	**DRAFT** **1-23-2019** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
(Select one) ☐ In the Matter of , Petitioner ☐ People of the State of California vs. , Defendant	
NOTICE OF APPEAL—INVOLUNTARY CIVIL COMMITMENT	CASE NUMBER:

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

1. Petitioner/Defendant appeals from a judgment rendered or an order of commitment made by the superior court.
   NAME of Petitioner/Defendant:

   DATE of the order or judgment:
2. This appeal is:
   a. ☐ After a jury or court trial.
   b. ☐ After a contested hearing.
   c. ☐ Other (specify):

3. Petitioner was admitted to the treatment facility on *(date)*: and is currently being held pursuant to:
   - ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
   - ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
   - ☐ Penal Code, § 1600 et seq. (return to confinement)
   - ☐ Penal Code, § 2962 et seq. (Mentally Disordered Offenders)
   - ☐ Welf. & Inst. Code, § 1800 et seq. (extended detention of dangerous persons)
   - ☐ Welf. & Inst. Code, § 5300 et seq. (Lanterman-Petris-Short Act)
   - ☐ Welf. & Inst. Code, § 6500 et seq. (Developmentally Disabled Persons Act)
   - ☐ Welf. & Inst. Code, § 6600 et seq. (Sexually Violent Predators Act)
   - ☐ Other *(specify):* _____
4. ☐ Petitioner/Defendant requests that the court appoint an attorney for this appeal. Petitioner/Defendant ☐ was ☐ was not represented by an appointed attorney in the superior court.
5. Petitioner/Defendant's mailing address is: ☐ same as in attorney box above.
   ☐ as follows:

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER/DEFENDANT OR ATTORNEY)

JUDICIAL COUNCIL OF CALIFORNIA

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

MEMORANDUM

Date
January 22, 2019

To
Rules Subcommittee

From
Christy Simons
Attorney, Legal Services

Subject
Juvenile Law: Advisement of Appellate Rights

Action Requested
Please review before the February 4, 2019 subcommittee meeting

Deadline
February 4, 2019

Contact
Christy Simons
Legal Services
415-865-7694 phone
christy.simons@jud.ca.gov

Introduction

Item 2 on the committee's annual agenda this year is to consider whether to recommend amending the rule regarding advisement of appellate rights in juvenile cases. The annual agenda item contains three suggestions: (1) remove the requirement that parents must be present at a hearing to receive advisement of their appellate rights, (2) add additional hearing types from which there is a right of appeal; and (3) correct an error in an advisory committee comment.[1] The rule as currently written provides that, after making its disposition order, the court must advise parents of their appellate rights if they are present at the hearing. Based on input from the Family and Juvenile Law Advisory Committee (Fam/Juv), the proposal would delete from the rule the "if present" limitation on providing this notice, but would not require advisement of appellate rights from other post-disposition orders. This memo discusses the proposal, its history, and feedback from Fam/Juv.

[1] This suggestion was received several years ago and deferred. Staff could find no error in the advisory committee comments to rule 5.590. This suggestion will not be further addressed.

The Suggestions

1. The "If Present" Limitation

Background

Rule 5.590 of the California Rules of Court governs advisement of the right to review in Welfare and Institutions Code section 300, 601, or 602 cases (i.e., juvenile dependency and delinquency cases). Subdivision (a) of the rule provides: "If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of:" the right to appeal, if there is one; the steps and timing of an appeal; and an indigent appellant's rights to appointed counsel and a free copy of the transcript.[2]

In 2016, the Fourth District Court of Appeal considered a due process challenge to this rule in *In re Albert A*. (2016) 243 Cal.App.4th 1220. The court concluded that a parent does not have a fundamental due process right to be advised of the right to appeal. Rather, the right to an advisement of appellate rights rests solely in the language of the rule itself.

Following this decision, counsel for mother in *Albert A*., Rosemary Bishop, contacted the Appellate Advisory Committee (AAC) and the Family and Juvenile Law Advisory Committee (Fam/Juv) and suggested amending rule 5.590(a) to remove the requirement that a parent be present at a hearing in order to receive an advisement of appellate rights:

Ms. Bishop explained that the problem with the current rule is that it only requires the court to provide notice of appellate rights to parents or guardians if they are present at the hearing. Parents and guardians who are not present are not entitled to notice of their appeal rights. She states that this is particularly impactful in dependency cases where parents are parties and have appeal rights at all stages of the proceedings. (See Welf. & Inst. Code, § 395.) She also states that the rule does not derive from statute or case law; there is no other authority for denying notice of appeal rights to parents who are not present at a dependency hearing.

Ms. Bishop pointed out that other rules providing for parental advisement of appellate rights do not limit notice to parents who are present at the hearing. (See rules 5.542(f), 5.590(b) and (c).)[3]

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[2] Subdivision (b) addresses advisement of the requirement for a writ petition to preserve appellate rights when the court orders a hearing under section 366.26.

[3] See rule 5.542(f) [judge must advise, "either orally or in writing, the child, parent or guardian" of appellate rights following denial of an application for rehearing of a proceeding heard by a referee]; rule 5.590(b) [advisement of requirement for writ petition to preserve appellate rights must be sent by the clerk to any party not present at the

She also argues that public policy favors advising a party of the right to appeal a decision that affects a fundamental interest (in dependency cases, the right to parent one's child).

Prior Consideration of the "If Present" Limitation

Consideration and Action by the Family and Juvenile Law Advisory Committee in 2017

Fam/Juv considered the suggestion to delete the requirement that a parent be present at the hearing at its January 12, 2017 meeting. Fam/Juv declined to pursue a rule amendment but instead proposed notifying parents and guardians that they may not be advised of their appellate rights if they do not attend the court hearing by placing a notice to this effect on certain forms. Staff to Fam/Juv presented this proposal to AAC at its January 30, 2017 meeting. AAC suggested also exploring the option of developing a notice regarding appellate rights that could be served on parents and guardians with the trial court's order.

Fam/Juv's proposal circulated for public comment. Following approval by the Judicial Council, certain JV forms were revised effective January 1, 2018, to include the following language in a box at the end of the forms:

> **For Your Information**
>
> You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

Staff indicated that Fam/Juv would monitor future opportunities to revise other forms to include this advisement. Fam/Juv does not plan to recommend its inclusion on delinquency forms in light of parents' limited options for appealing in those cases.

Consideration by the Appellate Advisory Committee in early 2018

In working on this item for the 2018 rules cycle, the subcommittee reviewed the advisement added to several JV forms and considered whether that action was sufficient to address the concerns expressed in Ms. Bishop's suggestion. If the subcommittee wished to propose further action, the options included: (1) adding the same general advisement to other forms used in juvenile proceedings; (2) developing a notice providing specific information on appellate rights that would be sent by the clerk with juvenile court orders; and (3) amending rule 5.590(a) to delete "if present."

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hearing within one day of the court's order]; rule 5.590(c) [advisement of appellate rights must be provided orally and in writing to all parties when the court grants a petition transferring a case to tribal court].

The subcommittee felt it was important for parents and guardians to be advised of their appellate rights, particularly in juvenile dependency cases. There are any number of reasons why a parent may not be present at a hearing, including reasons related to the court's dependency jurisdiction, medical issues, transportation issues, etc. The subcommittee agreed that a parent's presence or absence at a hearing should not determine whether the parent learns of his or her appellate rights, and agreed that further action on the proposal was appropriate.

The subcommittee decided it would like to pursue amending the rule and developing a written notice for parents, subject to working on this project together with Fam/Juv. The subcommittee was mindful that Fam/Juv has a much better understanding of process and procedures in juvenile proceedings, including any impacts on the juvenile court and potential difficulties with drafting a notice. In addition, traditionally, Fam/Juv has taken the lead with respect to modifications to the rules in Title 5 and the forms used in the trial court proceedings, while AAC has taken the lead with respect to modification of the rules in Title 8 and forms used in appeals or writ proceedings.

Staff for both committees discussed this subcommittee's recommendation to take further action. Fam/Juv suggested a small group meeting of members from both committees as a next step. However, there was insufficient time to move forward with a proposal during the 2018 rules cycle. The subcommittee recommended to the AAC that the project be deferred in order to work together with Fam/Juv on a proposal for 2019. The AAC approved the recommendation at its February 27, 2018, meeting.

2. References to Other Hearing Types and Orders

The suggestion to amend rule 5.590(a) to expand the proceedings in which parents must be advised of their right to appeal was received from court staff at the Second District Court of Appeal.

The proponent notes that rule 5.590 only requires the juvenile court to advise the parent, guardian, and child of the right to seek review in two situations: (1) at disposition on an original, supplemental, or subsequent petition under subdivision (a); and (2) upon the setting of a hearing under Welfare and Institutions Code section 366.26 (notice of requirement to seek writ review to preserve appellate rights). However, the statutory right to appeal in juvenile cases, which includes judgment and post-judgment orders, is broader than the rule. (See Welf. & Inst. Code, §§ 395 (dependency), 800 (delinquency).) The proponent suggests that, to implement the statutory right to appeal, the juvenile court should be required to notify the parent, guardian, and child of the right to seek review of all post judgment orders, including the order made at the section 366.26 hearing, but not including the order setting the section 366.26 hearing.

Input from Fam/Juv

In December 2018, Fam/Juv considered the suggestions for amending rule 5.590. With respect to the rule's requirement that a parent be present at the hearing to receive an advisement of appellate rights, by a small majority, Fam/Juv supported the amendment to remove that requirement. Those who did not support the change expressed concern that the amendment is not necessary because the parent's attorney should be providing the advisement, i.e., parents not being advised of their appellate rights is a training issue, not a rule issue. Committee members also wanted to be sure any burden of sending a notice would not fall on county counsel. Although expressing some reservations, the committee agreed with moving the proposal forward to the public comment process.

Regarding expanding the hearing types and orders referenced in the rule, Fam/Juv members were concerned that this would expand the court's responsibility where, again, it is an attorney training issue. Members also objected to any rule amendment that would require the court to decide which orders are appealable and which are not, and provide advisements accordingly. This would impose a considerable burden on the court and could result in appeals by parties claiming the court did not inform them of their appellate rights. The committee agreed that it would not be possible to wordsmith a rule to encompass all orders and circumstances, and that trying to do so would create major problems. The committee considered the idea of developing a form with check boxes for the court to use to determine whether to give an appellate rights advisement, but only as a way to help the courts to cope with such a rule change. Finally, the committee also questioned whether this was a solution in search of a problem. Nothing in the rule prohibits the court from providing appellate rights advisements following other hearings, but mandating it in the rule would be a significant change. At the conclusion of the discussion, there was no support for attempting to amend the rule in this way: all members voted either no or took no position.

The Proposal

Based on input from Fam/Juv, this proposal would amend rule 5.590(a) only to remove the requirement of a parent's presence at the hearing.

Rule text

Rule 5.590(a) would be amended as follows:

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a) Advisement of right to appeal

If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and~~, if present,~~ the parent or guardian of:

(1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal;
(2) The necessary steps and time for taking an appeal;
(3) The right of an indigent appellant to have counsel appointed by the reviewing court; and
(4) The right of an indigent appellant to be provided with a free copy of the transcript.

Notice

The subcommittee has also discussed possibly developing a notice for the court to send with its order and findings to explain the right to appeal. The San Diego Superior Court has developed a form entitled Certificate of Service of Order and Findings and Explanation of Right of Rehearing and Appeal Rights, which could serve as a model. A copy of this form is attached at page 9. It explains (1) the right to seek rehearing of findings and orders pursuant to Welfare and Institutions Code section 252, and (2) the right of appeal, including the information specified in rule 5.590(a)(1)-(4). Notably, it appears that the court uses this form for more findings and orders than those following a disposition hearing—an indication that at least one court does not read rule 5.590(a) so narrowly as to only provide advisement of appellate rights following the disposition hearing.

If the subcommittee approves providing this content in a notice, staff will draft a form. The subcommittee should decide whether the form should also function as a certificate of service of the findings and order and the explanation of rehearing and appeal rights, and consider what other information, if any, should be included.

Subcommittee task

The subcommittee's task is to review this memo, the draft amended rule, and the San Diego Superior Court's form and:

- Decide whether to accept the recommendation from Fam/Juv that the proposal not seek to expand the hearing types specified in the rule;
- Discuss any proposed modifications to the rule text;

- Decide whether to include a form notice explaining appellate rights and, if so, what the content should be;
- Recommend that AAC recommend to RUPRO that an invitation to comment be circulated; or
- Recommend that AAC not move forward with the proposal.

Attachments

1. Cal. Rules of Court, rule 5.590, at p. 8
2. San Diego Superior Court form Certificate of Service of Order and Findings and Explanation of Right of Rehearing and Appeal Rights, at p. 9
3. December 5, 2018 memo from Daniel Richardson to Family and Juvenile Law Advisory Committee, at pp. 10-15

Title 5. Family and Juvenile Rule3

Division 3. Juvenile Rules

Chapter 5. Appellate Review

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a) Advisement of right to appeal

If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and~~, if present,~~ the parent or guardian of:

(1) The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal;

(2) The necessary steps and time for taking an appeal;

(3) The right of an indigent appellant to have counsel appointed by the reviewing court; and

(4) The right of an indigent appellant to be provided with a free copy of the transcript.

(b) – (c) * * *

Advisory Committee Comment

Subdivision (a). The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, and *In re Sean R.* (1989) 214 Cal.App.3d 662). The right to appeal in Welfare and Institutions Code section 300 (juvenile dependency) cases is established by Welfare and Institutions Code section 395 and case law (see, for example, *In re Aaron R.* (2005) 130 Cal.App.4th 697, and *In re Merrick V.* (2004) 122 Cal.App.4th 235).

Subdivision (b). * * *

CERTIFICATE OF SERVICE OF ORDER AND FINDINGS AND EXPLANATION OF RIGHT OF REHEARING AND APPEAL RIGHTS

State of California}
County of San Diego} ss.

☐ Copy provided ☐ on date of order, ☐ on _____ to: ☐ Minor ☐ Mother ☐ Father ☐ County Counsel
☐ Minor's Attorney ☐ Mother's Attorney ☐ Father's Attorney ☐ Social Worker/Probation Officer ☐ Other _____

AND/OR

☐ I, Clerk of the Superior Court of California, County of San Diego, do hereby certify that: I am not a party to the cause referred to herein; on the date shown below, I served the findings and order as indicated on the reverse side hereof, together with an explanation of the right of a minor, parent, guardian or the county welfare department to seek a review of the order and findings under the provisions of Section 252 of the Welfare and Institutions Code, via electronic transmission or by placing true copies thereof in sealed envelopes, with postage thereon fully prepaid, in the United States Postal Service at San Diego, California, addressed as follows:

Dated: _____ by _____ Deputy

EXPLANATION OF RIGHT TO SEEK REVIEW OF ORDER AND FINDINGS

Section 252 of the Welfare and Institutions Code states:

"At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee [or commissioner], a minor or his or her parent or guardian or, in cases brought pursuant to Section 300, the county welfare department may apply to the juvenile court for a rehearing. That application may be directed to all or to any specified part of the order or findings, and shall contain a statement of the reasons the rehearing is requested. If all of the proceedings before the referee [or commissioner] have been taken down by an official reporter, the judge of the juvenile court may, after reading the transcript of those proceedings, grant or deny the application. If proceedings before the referee [or commissioner] have not been taken down by an official reporter, the application shall be granted as of right. If an application for rehearing is not granted, denied, or extended within 20 days following the date of its receipt, it shall be deemed granted. However, the court, for good cause, may extend the period beyond 20 days, but not in any event beyond 45 days, following the date of receipt of the application, at which time the application for rehearing shall be deemed granted unless it is denied within that period. All decisions to grant or deny the application, or to extend the period, shall be expressly made in a written minute order with copies provided to the minor or his or her parent or guardian, and to the attorneys of record."

If the application for rehearing is directed to a specified part of the order or findings, this should be indicated in the letter of application.

All rehearings of matters heard before a referee or commissioner are conducted by a Judge of the Juvenile Court.

APPEAL RIGHTS

(Welf. & Inst. Code §§ 395, 800; Cal. Rules of Court, Rule 5.585)

I. A judgment in a proceeding under Section 300, 601, or 602 of the Welfare and Institutions Code may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment. A judgment or subsequent order entered by a referee or commissioner shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

II. If you have the right to appeal to the Court of Appeal from a judgment, order, or decree of this court, you must file your notice of appeal within 60 days of the making of the judgment, order, or decree or, in matters heard by a referee or commissioner, within 60 days after the order becomes final under Sections 249 through 254 of the Welfare and Institutions Code and Rule 5.540 of the California Rules of Court. The notice of appeal must be filed in this court, not in the Court of Appeal. The notice must clearly state that you are appealing, what you are appealing from, and whether you are appealing from the entire judgment, order, or decree or just part of it. The notice of appeal must be signed by you or your attorney.

III. If you appeal and do not have the money to hire a lawyer, the appellate court will appoint a lawyer to represent you on appeal. If you cannot afford to pay for a copy of the transcript, the court will provide you with a free copy. You must keep the appellate court advised of your current mailing address. After you file the notice of appeal, the appellate court will contact you to see whether you have a right to a free lawyer.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
December 5, 2018

To
Family and Juvenile Law Advisory Committee

From
Daniel Richardson, Attorney Center for Family Children & the Courts

Subject
Juvenile Law-Advisement of Appellate Rights

Action Requested
Please Review

Deadline
N/A

Contact
Daniel Richardson, Center for Families, Children & the Courts

415-865-7619 phone
daniel.richardson@jud.ca.gov

The Appellate Advisory Committee is seeking input from the Family and Juvenile Law Advisory Committee on a proposal to amend the requirements of California Rule of Court 5.590 that juvenile courts provide certain appellate advisements. The Appellate Advisory Committee specifically seeks input on the following issues:

- Whether the rule should include an advisement of appellate rights for post-disposition orders? As currently written, the rule only requires that an advisement of appellate rights be given after a disposition hearing. However, the statutory right to appeal is not limited to disposition orders (Welf. & Inst. Code, § 395(a)(1)). The Appellate Advisory Committee would like to consider proposing that the rule provide for an appellate advisement to all post-disposition orders.

- Whether the limitation that the court must only advise parents who are present at the hearing of their appellate rights should be removed from the rule? Subdivision (a) of the rule currently requires that a parent be present to be advised of their appellate rights. To promote greater awareness of appellate rights and to better track the scope of the statutory

right to appeal, the Appellate Advisory Committee would like to propose that parents and guardians be advised of their appellate rights whether they are present for the hearing or not.

These items are discussed below in further detail. The Appellate Advisory Committee (AAC) would like to ensure that the Family & Juvenile Law Advisory Committee (F&JC) agrees with the proposal before proceeding.

1. Post disposition Appealable Orders

As currently written, the language of rule 5.590(a) [1] only requires that the court advise the parents and the child of their appellate rights after a disposition hearing after a contested hearing on an issue of fact or law on a petition under 300, 601, 602, or a supplemental or subsequent petition. The rule therefore requires that to be advised of appellate rights, there must be a contested jurisdiction hearing on a 300, 342, 387, 601 or 602 petition, and then an advisement is only required at disposition.

Staff at the Judicial Council recently received a request from an attorney with a California Appellate Project, requesting that the rule be amended to require that that the juvenile court be required to notify the parent, guardian, and child of the right to seek review by appeal not only of the disposition of a 300, 342, 387, 601, or 602 petition, but of all postjudgment orders, with the exception of the order setting a section 366.26 hearing, which is addressed in subdivision (b) of the rule.

The attorney argued that the duty to advise a party of the right to appeal in rule 5.590(a) does not track the scope of the statutory right to appeal. Under section 395, all postjudgment orders are directly appealable without limitation.[2] As a result of these broad statutory terms, juvenile dependency law does not abide by the normal prohibition against interlocutory appeals. *In re S.B.* (2009) Cal.4th 529, 532 [citing cases].[3] And as a consequence of section 395, unappealed disposition or post disposition orders are final and binding and may not be attacked on an appeal from a later appealable order. *Id.*

[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court.

[2] Dependency appeals are governed by section 395, which provides in relevant part: "A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment...." This statute makes the dispositional order in a dependency proceeding the appealable "judgment." Therefore, all subsequent orders are directly appealable without limitation. *In re A.A.*, 243 Cal. App. 4th 1220, 1234.

[3] Only "findings" are appealable however. *In re L.B.* (2009) 173 Cal.App.4th 562, 565

The rule currently limits the advisement to just the disposition hearing, which does not address all the other hearings which will have appealable orders. Only two post disposition hearings require an advisement of appellate rights: (1) the setting of a section 366.26 hearing (rule 5.590(b)); and (2) after a selection and implementation hearing under section 366.26 (rule 5.725(h)).

The AAC therefore seeks F&JC input on whether the language of rule 5.590(a) should be expanded to require appellate advisement at any postjudgment order. Possible language as follows:

> If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order and subsequent post disposition orders, other than orders covered in (b) must advise, orally or in writing, the child, if of sufficient age, and, ~~if present,~~ the parent or guardian of:

This would require the juvenile court to determine when an appealable order is being made, which could occur at a status review hearing, an interim hearing, or a hearing on a section 388 motion. The change would not capture all other "aggrieved parties," such as de facto parents and relatives, who may have a right to appeal because it still would only applies to the child, parents and guardians.

Courts of Appeal have held that the failure to advise a parent who was present at the hearing of their appellate rights as required by rule 5.590(a) was a special circumstance constituting an excuse for failure to timely appeal. *In re A.O.* (2015) 242 Cal.App.4th 145. The requirement of the juvenile court to advise parents, children and guardians would be expanded, and the failure to do so could constitute a special circumstance to consider an untimely appeal. Many juvenile courts do already have a practice to provide an appellate advisement after hearings besides the disposition order.

2. Parent's Presence

In 2016, the F&JC and the AAC received a suggestion to amend California Rule of Court 5.590(a), requesting that the council remove the requirement that a parent be present in order to receive an advisement of appellate rights. A 2016 published opinion found that based on the language in rule 5.590(a), there is no right to the advisement of appellate rights under the rule unless the parent is present at the hearing. *In re Albert A.* (2016) 243 Cal.App.4th 1220, 1237. In response to this decision, staff was contacted by the appellate attorney who represented the appellant on the case. She requested the committee consider removing the words "if present" from rule 5.590(a).

At its meeting on January 12, 2017, the F&JC considered a proposal to remove the language "if present" from the rule and voted to not remove the language. While many committee members agreed with the proposal, the committee determined that advising parents of appellate rights when they weren't present was an unnecessary burden for the courts. The committee elected to notify parents that they will not be advised of their appellate rights if they do not attend the court hearing by placing a notice on certain Judicial Council forms that were at the time the subject of proposed amendments through a pending RUPRO proposal and invited further input from the AAC.

Although the AAC did not advocate for amending the rule at their meeting on January 30, 2017, the AAC has subsequently further considered the issue and, in light of the several suggestions for amendments to the rule, would like to propose removing the requirement that a parent be present to be advised of their appellate rights. The AAC would like to pursue the proposal in order to promote greater awareness for parties of their appellate rights. While the AAC understands that the F&JC previously concluded that a rule amendment was not necessary, the AAC is seeking the input of F&JC into whether it could now support a proposal to remove the language "if present" from the rule. The AAC would like to proceed with the agreement of the F&JC. The proposed changed language of rule 5.590(a) would read as follows:

> **(a) Advisement of right to appeal-**If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) must advise, orally or in writing**,** the child, if of sufficient age, and ~~if present~~ the parent or guardian of: ***

The language "if present" as it relates to parents and guardians has been in the rule since its inception and has not since been altered. Rule 5.590, originally adopted in 1973 as rule 251, was initially focused on ensuring children would be advised of their appellate rights. The rule was adopted in response to a request by the Board of Governors that a rule be adopted requiring juvenile court judges and referees to advise minors, and their parents or guardians, of the minors' appeal rights. While the focus of the rule initially was concerned with ensuring minors were advised of their appellate rights, the rule has over time been expanded to include an advisement of a parent's appellate rights.

Much has changed for the families in dependency courts since the inception of the rule and the "if present" requirement. There has been a substantial shift towards greater recognition of the fundamental rights of families to due process and the maintenance of familial bonds. When the rule was enacted in 1973, a parent's due process rights in dependency was still in its embryonic

stage. Due process rights of parents have evolved since 1973, but the rule as it relates to advisement of appellate rights to parents has remained unaltered.[4]

Along with the significant changes in the dependency scheme since 1973 came more expansive appellate rights and appealable issues. Under section 395, all subsequent orders to disposition are directly appealable without limitation. As a result of these broad statutory terms, juvenile dependency law does not abide by the normal prohibition against interlocutory appeals. *In re S.B.* (2009) Cal.4th 529, 532 [citing cases].[5] And as a consequence of section 395, unappealed disposition or postdisposition orders are final and binding and may not be attacked on an appeal from a later appealable order. *Id.*

The parent's presence is a requirement that rests entirely within the Judicial Council's rule making discretion. As interpreted by the court of appeal in *In re Albert*, the right to an advisement of appellate rights rests in the language of the rule itself, and not as a fundamental due process right. *In re Albert, supra.* at p. 1238-39. The court in *In re Albert* failed to find any authority to support the argument that due process entitled a parent to an advisement of appellate rights if they were not present at the hearing. *Id.* As the court of appeal noted, the advisement of a parent's right to appeal from a disposition order has always been predicated on presence at the jurisdictional hearing, despite numerous opportunities for the Judicial Council to provide otherwise. *Id.* In a separate case, the same appeals court found that the failure to advise a parent

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[4] The rule was enacted shortly after the US Supreme Court in *Stanley v. Illinois* found that a parent had a due process right to hearing on parental fitness. *Stanley v. Illinois* (1972) 405 U.S. 645. And in 1981, the US Supreme Court ruled that the heightened standard of proof clear and convincing evidence of parental unfitness was required when considering terminating parental rights. *Santosky II v. Kramer*, (1981) 455 U.S. 745. The *Santosky* court found that the balance of private interests strongly favored heightened procedural protections when a court is severing a parent's fundamental right to their custody of their children. *Id.* at p. 760.

In 1982, California adopted the federal law Public Law 96-273, which established a more structured framework for the protection of abused, neglected and abandoned children as dependents of the juvenile court and for services to the family. This included regular review hearings every six months. Pursuant to the new federal law, California mandated active efforts to keep children in their home if possible, to reunify families if removal proved necessary, and to select permanent plans, including adoption, in a timely fashion if families could not be reunified.

Further changes to the dependency scheme were established in 1987 when SB 243 was enacted. Parents were now entitled to court-appointed counsel to represent them through the proceedings if they cannot afford counsel. (Section 317(b)). Appointment of counsel previously had been a matter of juvenile court discretion. *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, p. 248 fn. 4. SB 243 also brought termination of parental rights for dependent children within the dependency process, eliminating the need to file a separate Civil Code section 232 proceeding. In addition, six-month review hearings carried with them a presumption that the minor would be returned to parental custody unless the department of social services carried the burden that the minor would be at risk if returned home.

Further, notice of all hearings and rights has been described as key safeguard for parents in the dependency system. *In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308. And new subdivisions were added to 5.590(b) in 2009 that include a requirement that an advisement of appellate rights be given in writing if it cannot be done orally when the court is setting a section 366.26 hearing.

[5] Only "findings" are appealable however. *In re L.B.* (2009) 173 Cal.App.4th 562, 565

who was present at the hearing of their appellate rights as required by rule 5.590(a) was a special circumstance constituting an excuse for failure to timely appeal. *In re A.O.* (2015) 242 Cal.App.4th 145.

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INVITATION TO COMMENT

SPR19-__

Title
Appellate Procedure: Word limits for petitions for rehearing in unlimited civil cases

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 8.204

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Christy Simons, Attorney

Action Requested
Review and submit comments by June 7, 2019

Proposed Effective Date
January 1, 2020

Contact
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Executive Summary and Origin

To establish limits on the length of petitions for rehearing that reflect the limited scope of the procedure, the Appellate Advisory Committee proposes reducing the maximum length of petitions and answers by amending the rule that governs the content and form of briefs in the Court of Appeal. Currently, the rule sets forth maximum limits for briefs produced on a computer of 14,000 words and 50 pages for briefs produced on a typewriter. These limits apply to all briefs, including briefs on the merits of the issues raised on appeal. The proposal would provide lower limits of 7,000 words and 25 pages. This proposal arises out of suggestions from appellate practitioners, including a current committee member, that the committee consider reducing word limits for civil briefs in the Court of Appeal.

Background

Until 2002, Court of Appeal briefs were subject only to a page limit: "Excluding tables and indices, a brief shall not be longer than 50 pages, whether the brief is typewritten or proportionally spaced." (Cal. Rules of Court, rule 15(e) [2001, repealed].)

In 2002, as part of a project to rewrite and reorganize the appellate rules, a word count was added as an alternative to a page count.[1] The amended rule was based on the federal appellate rules, as explained in the 2001 report summary: "Length of brief measured by word count. Revised rule

[1] Judicial Council of Cal., staff rep., *Revision of Rules on Appeal: First Installment, Rules 1-18* (July 3, 2001), [insert hyperlink].

14(c)(1), which governs the maximum permissible length of a brief, is derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer."[2]

The permissible length of Court of Appeal briefs is now governed by rule 8.204(c), which provides the limits of 14,000 words[3] and 50 pages.

Rehearing in the Court of Appeal is governed by rule 8.268. Subdivision (b)(3) provides that "[t]he petition and answer must comply with the relevant provisions of rule 8.204." Thus, petitions for rehearing are subject to the 14,000 word and 50 page limits.

The Proposal

This proposal would amend rule 8.204 to reduce the word limit to 7,000 words and the page limit to 25 pages for petitions for rehearing and answers to those petitions. The proposal is intended to encourage brevity and concise, focused arguments, eliminate repetition, and set length limits that reflect the limited purpose of petitions for rehearing. Such petitions are appropriate to raise particular issues such as the court's opinion contains a material omission or misstatement of fact or a material misstatement of the law, or the opinion is based on an issue that was not raised or briefed by the parties, or the court lacked subject matter jurisdiction. Conversely, a petition for rehearing is not an opportunity to reargue the case, raise arguments the parties did not address, or generally argue that the court reached the wrong result. In addition, the court is familiar with the case, so no summary of the factual and procedural background in the petition is needed. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee is proposing new limits of 7,000 words and 25 pages to reduce by 50 percent the permissible length of these briefs. The committee expects that this will assist courts by reducing the time it takes for judicial officers to review these petitions. For litigants, the reduced limits may also save them time, effort, and expense. In the rare instance when longer briefing may be necessary, rule 8.204 provides, and will continue to provide, that, "[o]n application, the presiding justice may permit a longer brief for good cause."

Alternatives Considered

The committee considered whether to propose reduced limits for other types of briefs in unlimited civil appeals. The topic is timely because the United States Supreme Court is currently considering reducing the length of briefs filed in that court. However, the committee recognizes

[2] *Id*., at p. 20.

[3] In 2016, FRAP 32 was amended to reduce the 14,000 word limit to 13,000, based on what the committee notes to the rule explain as a revision to the conversion ratio: "When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page." (FRAP, rule 32, Com. Notes on Rules–2016 Amend.)

that the topic is complex and implicates a number of competing concerns. More research and data would be needed to support any such proposal in the future.

The committee also considered not proposing any change to the length of briefs. The committee rejected this option because the benefits of reducing the length of petitions for rehearing—reducing time spent by justices to review them and resources expended by the parties to prepare them—seem clear, and any downsides—a possible increase in applications to file an overlong brief—seem minimal.

Fiscal and Operational Impacts

There are no fiscal or operational impacts, and no costs of implementation other than informing courts and litigants of the new rule amendment.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 8.204, at p. 4

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and form of briefs

(a)–(b) * * *

(c) Length

(1) Except as provided in (5), ~~A~~a brief produced on a computer must not exceed 14,000 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief..

(2) Except as provided in (5), ~~A~~a brief produced on a typewriter must not exceed 50 pages.

(3) The tables required under (a)(1), the cover information required under (b)(10), the Certificate of Interested Entities or Persons required under rule 8.208, a certificate under (1), any signature block, and any attachment under (d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by rule 8.216 must not exceed double the limits stated in (1) or (2).

(5) A petition for rehearing or an answer to a petition for rehearing produced on a computer must not exceed 7,000 words, including footnotes. A petition or answer produced on a typewriter must not exceed 25 pages.

~~(5)~~(6) On application, the presiding justice may permit a longer brief for good cause.

(d) * * *