



# JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY  
COMMITTEE

[www.courts.ca.gov/aac.htm](http://www.courts.ca.gov/aac.htm)  
[aac@jud.ca.gov](mailto:aac@jud.ca.gov)

## APPELLATE ADVISORY COMMITTEE

### OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

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**Date:** July 17, 2018  
**Time:** 12:00 PM  
**Location:** Judicial Council of California  
455 Golden Gate Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94102  
**Call-In Number** 1-877-820-7831 / passcode: 5846649

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Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

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#### **I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))**

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##### **Call to Order and Roll Call**

##### **Chair's Report**

##### **Approval of Minutes**

Approve minutes of the February 27, 2018 Appellate Advisory Committee meetings.

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#### **II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))**

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##### **Public Comment**

Members of the public requesting to speak during the public comment portion of the meeting must place the speaker's name, the name of the organization that the speaker represents if any, and the agenda item that the public comment will address, on the public comment sign-up sheet. The sign-up sheet will be available at the meeting location at least one hour prior to the meeting start time. The Chair will establish speaking limits at the beginning of the public comment session. While the advisory body welcomes and encourages public comment, time may not permit all persons requesting to speak to be heard at this meeting.

**Written Comment**

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to [aac@jud.ca.gov](mailto:aac@jud.ca.gov) or mailed or delivered to Appellate Advisory Committee, Judicial Council of California, 455 Golden Gate Avenue, 5<sup>th</sup> Floor, San Francisco, California, 94102, attention: Christy Simons. Only written comments received by 12:00 PM on Monday, July 16, will be provided to advisory body members prior to the start of the meeting.

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**III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-12)**

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**Item 1**

Legislative Update

**Item 2**

Update from the Privacy Subcommittee.

**Item 3**

Rules Modernization: Sealed and Confidential Records (Action Required)

Review public comments on proposed amendments to the rules regarding sealed and confidential records, including provisions for the disposition of lodged electronic records.

**Item 4**

Finality in Appellate Division Matters (Action Required)

Review public comments on proposed amendments to the rules regarding deadlines and finality to address issues with the timeliness of notice of decisions.

**Item 5**

Appellate Division Forms (Action Required)

Review public comments on proposed revisions to several notice of appeal and record on appeal forms to make corrections and clarify these forms.

**Item 6**

Settled Statement Forms (Action Required)

Review public comments on proposed new and revised forms to facilitate and simplify the settled statement procedure in unlimited civil cases (joint proposal with the Family and Juvenile Law Advisory Committee).

**Item 7**

Liaison Reports

- Hon. Richard Huffman and Ms. Adetunji Olude, Center for Judicial Education and Research
- Hon. Kent M. Kellegrew, Trial Court Presiding Judges Advisory Committee

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**IV. ADJOURNMENT**

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**Adjourn**



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## APPELLATE ADVISORY COMMITTEE

### MINUTES OF OPEN MEETING

02/27/2018

10:00 AM

Judicial Council of California  
455 Golden Gate Avenue, 3<sup>rd</sup> Floor  
San Francisco, California 94102

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**Advisory Body Members Present:** Hon. Louis R. Mauro (Chair), Hon. Kathleen M. Banke (Vice-chair), Ms. Laura Arnold, Mr. Kevin K. Green, Mr. Jonathan D. Grossman, Hon. Adrienne M. Grover, Hon. Richard D. Huffman (by phone), Hon. Kent M. Kellegrew, Mr. Daniel M. Kolkey, Mr. Jeffrey Laurence, Ms. Heather J. MacKay, Ms. Mary McComb, Mr. Jorge Navarrete, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy M. Schooley, Hon. Stephen D. Schuett, Hon. M. Bruce Smith, and Ms. Mary-Christine Sungaila (by phone)

**Advisory Body Members Absent:** Hon. Leondra R. Kruger, Ms. Sheran L. Morton

**Others Present:** Ms. Christy Simons (Lead Staff), Ms. Sarah Abbott, Ms. Heather Anderson (by phone), Ms. Andrea Jaramillo (by phone), Ms. Ingrid Leverett, Mr. Dan Pone (by phone), and Mr. Jay Harrell

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#### OPEN MEETING

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##### Call to Order and Roll Call

The chair called the meeting to order at 10:00 a.m. Roll was called.

##### Chair's Report

Justice Mauro provided an update regarding activities of the Information Technology Advisory Committee, including the document management system for the appellate courts, recommendations of the Futures Commission regarding technology, and technology-related initiatives that JATS will be working on, such as remote access and digitizing records.

##### Approval of Minutes

The advisory body reviewed and approved the minutes of the September 11, 2017, and October 16, 2017, Appellate Advisory Committee meetings.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1-12)

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##### Item 1

Legislative Update (information)

Mr. Dan Pone provided an update on the budget and information on the role of Governmental Affairs and the Judicial Council in taking a position on legislation or sponsoring legislation. He also described GA's role in providing technical assistance in the drafting of bills.

**Item 2**

Update from the Privacy Subcommittee (information)

Justice Banke provided an update regarding recent education programs and the web site pilot program. The Privacy Subcommittee will resume activity in the coming months.

**Item 3**

Settled Statement Forms (action required)

The committee considered whether to recommend circulation of proposed new and revised forms to facilitate and simplify the settled statement procedure in unlimited civil cases (joint proposal with the Family and Juvenile Law Advisory Committee). The committee discussed several modifications to form APP-014, including adding sections to describe relevant motions and jury instructions. The committee also discussed, regarding summaries of objections to testimony and evidence on forms APP-014 and APP-014A, modifying the instructions to require appellants to specify the objection and the basis for the court's ruling. The committee started to review form APP-014-INFO, but ran out of time. The meeting will be continued for the purpose of completing review of this proposal.

**Action: The advisory committee approved recommending that the following forms, as modified, be circulated for public comment, pending approval of the remaining forms: APP-003, APP-010, APP-014, and APP-014A.**

**Item 4**

Rules Modernization: Sealed and Confidential Records (action required)

The committee considered whether to recommend circulation of proposed amendments to the rules regarding sealed and confidential records, including provisions for the disposition of lodged electronic records. The committee discussed adding a provision to rule 8.45 requiring that sealed and confidential records be transmitted in a secure manner that preserves confidentiality. The committee also discussed adding provisions addressing the situation of an appeal from a trial court's order denying a motion or application to seal a record.

**Action: The advisory committee approved recommending the proposal as amended for circulation, with authority to approve final additional provisions delegated to Justice Mauro, Justice Banke, and Mr. Kolkey.**

**Item 5**

Finality in Appellate Division Matters (action required)

The committee considered whether to recommend circulation of proposed amendments to the rules regarding deadlines and finality to address issues with the timeliness of notice of decisions. A committee member identified a correction to the background discussion in the invitation to comment,

and a revision to rule 8.888(a)(2) to provide that the finality period runs from the date the publication order is *sent*, rather than the date it is filed.

**Action: The advisory committee approved recommending the proposal as modified for circulation.**

**Item 6**

Appellate Division Forms (action required)

The committee considered whether to recommend circulation of proposed revisions to several appellate division notice of appeal and record on appeal forms to make corrections and clarify these forms. Committee members suggested an organizational change to section 5d of form CR-142 and several wording and punctuation changes.

**Action: The advisory committee approved recommending the proposal as modified for circulation.**

**Item 7**

Rules Modernization: Electronic Exhibits (action required)

The committee considered whether to defer this proposal regarding bookmarking and volumes for electronic exhibits and expand the scope to address the formatting of electronic documents generally.

**Action: The advisory committee approved deferring the proposal.**

**Item 8**

Advisement of Parental Appellate Rights in Juvenile Cases (action required)

The committee considered whether to defer this proposal to amend the rule regarding the advisement of appellate rights in juvenile cases and/or develop a notice explaining appellate rights that would accompany juvenile court orders.

**Action: The advisory committee approved deferring the proposal.**

**Item 9**

Oral Argument in Misdemeanor Appeals (action required)

The committee considered whether to defer this proposal to amend the rules regarding oral argument when no issues are raised and to establish a procedure for waiving oral argument.

**Action: The advisory committee approved deferring the proposal.**

**Item 10**

Appointment of Counsel in Misdemeanor Appeals (Action Required)

The committee considered whether to defer this proposal to amend the rule regarding appointment of appellate counsel to authorize courts to appoint counsel for preconviction misdemeanor defendants and to revise the form for requesting court-appointed counsel.

**Action: The advisory committee approved deferring the proposal.**

**Item 11**

Input to the Information Technology Advisory Committee on the Privacy Resource Guide (action required)

The committee considered and provide input on the draft appellate provisions to this handbook that is being developed to assist trial and appellate courts.

**Action: Committee members will provide any feedback to Patrick O'Donnell.**

**Item 12**

Liaison Reports

The liaison reports were deferred.

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**A D J O U R N M E N T**

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The meeting was suspended at 3:20 p.m. and continued to March 5, 2018.

Approved by the advisory body on enter date.



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## APPELLATE ADVISORY COMMITTEE

### MINUTES OF CONTINUED OPEN MEETING

03/05/2018 (continued from 02/27/2018)

3:00 PM

Judicial Council of California  
455 Golden Gate Avenue, 3<sup>rd</sup> Floor  
San Francisco, California 94102

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**Advisory Body Members Present:** Hon. Louis R. Mauro (Chair), Ms. Laura Arnold, Mr. Kevin K. Green, Mr. Jonathan D. Grossman, Hon. Adrienne M. Grover, Mr. Daniel M. Kolkey, Ms. Heather J. MacKay, Ms. Mary McComb, Mr. Jorge Navarrete, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy M. Schooley, and Hon. M. Bruce Smith

**Advisory Body Members Absent:** Hon. Kathleen M. Banke (Vice-chair), Hon. Richard D. Huffman, Hon. Kent M. Kellegrew, Hon. Leondra R. Kruger, Mr. Jeffrey Laurence, Ms. Sheran L. Morton, Hon. Stephen D. Schuett, and Ms. Mary-Christine Sungaila

**Others Present:** Ms. Christy Simons (Lead Staff)

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#### OPEN MEETING

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##### Call to Order and Roll Call

The chair called the continued meeting to order at 3:00 p.m. Roll was called.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1-12)

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##### Item 3

Settled Statement Forms (action required)

The committee continued its consideration of whether to recommend circulation of proposed new and revised forms to facilitate and simplify the settled statement procedure in unlimited civil cases (joint proposal with the Family and Juvenile Law Advisory Committee). The committee completed its review of form APP-014-INFO and identified corrections and wording changes to clarify the form. The committee also reviewed form APP-001-INFO, and discussed a number of changes to the text to make the form easier to understand and more helpful. The committee discussed minor modifications and corrections to forms APP-020, APP-022, and APP-025 to ensure consistency across the settled statement forms.

**Action:** *The advisory committee approved recommending that the following forms, as modified, be circulated for public comment, along with the forms approved on February 27, 2018: APP-001-INFO, APP-014-INFO, APP-020, APP-022, and APP-025.*



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**ADJOURNMENT**

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The meeting was adjourned at 4:33 p.m.

Approved by the advisory body on enter date.



## JUDICIAL COUNCIL OF CALIFORNIA

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
July 10, 2018	For Your Information
To	Deadline
Court of Appeal Presiding Justices and Clerks Members, Administrative Presiding Justices Advisory Committee	N/A
Members, Appellate Advisory Committee	Contact
	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov
From	
Daniel Pone, Attorney	
Subject	
Report of Legislation of Interest to Appellate Courts	

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Attached you will find two charts reflecting actions of the 2017–2018 legislative session. The first chart consists of legislation of potential interest to the appellate courts. The second consists of legislation that is responding to California appellate and Supreme Court decisions.

These and other bills can be found on the Internet at <http://leginfo.legislature.ca.gov/>.

DP/yc-s

Attachments

cc: Martin Hoshino  
Millicent Tidwell

## 2017–18 LEGISLATION AFFECTING THE CALIFORNIA APPELLATE COURTS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
<b>SB 378</b>	<b>Portantino</b>	<p><b>Alcoholic beverages: licenses: emergency orders</b></p> <p>Authorizes the Department of Alcoholic Beverage Control (department) to temporarily suspend or condition an alcohol license upon showing evidence that such action is urgent and necessary to protect against an immediate threat to health or safety, and specifies due process protections that must be provided to the licensee. Among other things, provides that a temporary restraining order or preliminary injunction issued under the bill’s provisions shall be subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure. Specifies that the review shall be limited to a determination of whether the department abused its discretion, based upon a review of the record, in the issuance of the temporary restraining order or preliminary injunction. Provides that such review by the superior court shall not be construed as giving the superior court jurisdiction over any other matter or aspect of a case, as specified. Provides further that the decision of the superior court following review of the temporary restraining order or preliminary injunction shall not be considered by the department or the Alcoholic Beverage Control Appeals Board in connection with any final decision of the department or the review of any such final decision of the department. [As amended June 29, 2017.]</p>	<p>Assembly Appropriations Committee—suspense file.</p> <p>Two-year</p>

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

**2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS**

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
AB 194	Patterson	<p><b>Victim restitution: probation: jurisdiction</b>                      States legislative intent to abrogate the holdings in <i>Hilton v. Superior Court</i> (2014) 239 Cal.App.4th 766, and <i>People v. Waters</i> (2015) 241 Cal.App.4th 822. 2) Provides that the court retains jurisdiction to impose or modify restitution for a period of five years following the date of sentencing, or until termination of probation or mandatory supervision, whichever is longer. [As amended March 2, 2017.]</p>	Senate Public Safety Committee  Two-year
AB 702	Lackey	<p><b>Driving under the influence: chemical tests</b>                      Modifies California law as it relates to refusal to submit to a chemical test due to suspicion of driving under the influence (DUI) to comply with the Supreme Court's ruling in <i>Birchfield v. North Dakota</i>, (2016) 136 S. Ct. 2160. The Supreme Court considered whether a state can criminalize a refusal to take a blood test, absent a warrant, through an implied consent law. <i>Birchfield v. North Dakota</i>, (2016) 136 S. Ct. 2160, at 2173. The court ruled that the Fourth Amendment permits warrantless breath tests for drunk driving, but does not permit warrantless blood tests. The court determined that the breath tests is barely a physical intrusion, as opposed to the blood test which can even leave DNA samples with the government. [As amended July 5, 2017.]</p>	Assembly Appropriations Committee—Suspense file.  Dead
AB 1617	Bloom	<p><b>Juvenile case files: inspection</b>                      Clarifies that parties 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, petition the courts to access and copy those records to which they were previously given access by the juvenile court. Clarifies that either the juvenile court may authorize such individuals to access and copy additional records in the juvenile case file. [As amended June 27, 2018.]</p>	Senate Appropriations Committee

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
AB 1626	Irwin	<p><b>Real estate brokers: dual agency</b> States the finding of the Legislature that the decisional law of this state regarding the responsibilities of Associate Licensees and Supervising Licensees in dual agency transactions requires further clarity in response to the holding in <i>Horiike v. Coldwell Banker</i>, 1 Cal.5th 1024. Describes when dual agency exists and specifies, with respect to certain provisions of existing law, some of the duties of licensees in conducting dual agency transactions. Revises the mandatory disclosure form used in dual agency transactions to make the terms in the form consistent with the above ruling by the California Supreme Court. [As amended March 30, 2017.]</p>	<p>Assembly Judiciary Committee  Dead</p>
AB 1694	Committee on Judiciary	<p><b>Civil rights</b> Seeks to clarify existing law and avoid legal confusion by explicitly identifying the Ralph Civil Rights Act in the Civil Code, thus distinguishing it from its Civil Code neighbor, the Unruh Civil Rights Act. According to the author, “[a]s the Second [District] Court of Appeal noted in <i>Stamps v. Superior Court</i> (2006)[136 Cal.App.4th 1441], a lack of clarity about whether the Ralph Act is part of the Unruh Act has been a source of confusion among some courts and litigants about, for example, the applicable statute of limitations. While hardly the most pressing issue in the state, this bill will simply follow the court’s suggestion to appropriately identify the Ralph Act.” [As amended June 5, 2017.]</p>	<p>NOTE: January 12, 2018 amendments removed the prior contents of this bill.</p>

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## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
AB 2376	Stone	<p><b>Civil actions: provisional remedies: injunctions</b></p> <p>Existing law provides that a citizen resident or corporation who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid, a tax in a county, town, city, or city and county may maintain an action to obtain a judgment restraining and preventing an illegal expenditure of, waste of, or injury to the estate, funds or other property of the political subdivision, as specified. The California Supreme Court in <i>Weatherford v. City of San Rafael</i> (2017) 2 Cal.5th 1241 held that this tax was not restricted to payment of a property tax. This bill would instead allow any resident of the county, town, city, or city and county to maintain an action under those circumstances. The bill would further clarify that a tax that funds the defendant government is sufficient to confer standing as a taxpayer, including, but not limited to, an income tax, a sales tax initially paid by a consumer to a retailer, a property tax, or a business license tax. The bill would define “resident” for these purposes to mean a person who lives, works, owns property, or attends school in the jurisdiction of the defendant government. [As amended July 5, 2018.]</p>	Senate Floor

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
AB 2803	Limón	<p><b>Public nuisance: residential lead-based paint</b>            Among other things, this bill would provide that residential lead-based paint that affects the health of a considerable number of persons constitutes a public nuisance. Under the bill, a party may be subject to liability for public nuisance if that party promoted lead-based paint for a particular use with actual or constructive knowledge that such use would cause health hazards sufficiently serious to render that use unreasonable, as specified. The bill would provide that, in an action seeking solely abatement of residential lead-based paint, causation may be established without presenting evidence that a particular party caused a particular lead-based paint to be applied in a particular residence, as specified. The bill also contains legislative findings and declarations in support of its provisions, including the following:</p> <ul style="list-style-type: none"> <li>▪ In 2006, a California appellate court found that lead-based paint in residences may constitute a public nuisance and that lead pigment paint manufacturers may be held liable for public nuisance if they promoted lead-based paint for residential use with sufficient knowledge of the health hazards that would result to render their promotions unreasonable (<i>County of Santa Clara v. Atlantic Richfield Co.</i> (2006) 137 Cal.App.4th 292).</li> <li>▪ Based on extensive evidence presented at trial, a California judge in 2010 found that certain lead pigment paint manufacturers caused lead-based paint to be applied on certain residential surfaces by promoting that paint for use on those surfaces even though they knew about the serious health harms to children that would result (<i>County of Santa Clara v. Superior Court</i> (2010) 50 Cal.4th 35).</li> <li>▪ A California appellate court in 2017 unanimously affirmed that finding by the judge (<i>People v. Conagra Grocery Products Company</i> (2017) 17 Cal.App.5th 51).</li> </ul> <p>[As amended April 23, 2018.]</p>	Senate Appropriations Committee

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
AB 3109	Stone	<p><b>Contracts: waiver of right of petition or free speech</b></p> <p>Among other things, provides that a provision in a contract or settlement agreement entered into after January 1, 2019, that restricts specified rights of one of the parties is void and unenforceable. Makes the following Legislative findings and declarations:</p> <ul style="list-style-type: none"> <li>▪ The California Supreme Court, in finding a noncompetition agreement void and unenforceable, held that state law “evinces a settled legislative policy in favor of open competition and employee mobility” (<i>Edwards v. Arthur Anderson LLP</i> (2008) 44 Cal.4th 937, 946).</li> <li>▪ Although the court held a noncompetition agreement void and unenforceable, the same principle should hold true for “no rehire” provisions in settlement agreements that impose substantial constraints on a person’s ability to engage in a lawful profession, trade, or business. This same principle is embodied in Section 16600 of the Business and Professions Code, which provides, subject to certain exceptions, that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is, to that extent, void.</li> <li>▪ The intent of the Legislature in enacting subdivision (b) of Section 1670.11 of the Civil Code is to follow the reasoning of the United States Court of Appeal for the Ninth Circuit in <i>Golden v. California Emergency Physicians Medical Group</i> (2015) 782 F.3d 1083, which held that Section 16600 of the Business and Professions Code applies to any contract that restrains a person from engaging in a lawful profession, trade, or business, and is therefore not restricted to noncompetition agreements. It is also the intent of the Legislature to follow the court’s reasoning that an agreement need not completely preclude a person from engaging in a lawful profession, trade, or business in order to be void and unenforceable, but that any agreement that imposes a restraint of a substantial character on a person’s ability to engage in a lawful profession, trade, or business is void and unenforceable. [As amended May 31, 2018.]</li> </ul>	NOTE: June 19, 2018 amendments removed the Legislative findings and declarations.

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## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
<b>AB 3247</b>	<b>Committee on Judiciary</b>	<b>Arbitration: agreements: enforcement</b> Changes the word "revocation" to "rescission" in a section of the California Arbitration Act that, according to the Assembly Judiciary Committee, is in accordance with the court's observation and reasoning in <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> (2000) 24 Cal. 4th 83, 98 n.4. [As amended April 30, 2018.]	To the Governor
<b>SB 143</b>	<b>Beall</b>	<b>Sentencing: persons confined to a state hospital</b> Among other things, states the intent of the Legislature in enacting this act to allow people who are committed to the State Department of State Hospitals upon a conviction for an offense that would otherwise fall within the resentencing provisions of Section 1170.126 or 1170.18 of the Penal Code, as enacted by Proposition 36 of the 2012 statewide general election or Proposition 47 of the 2014 statewide general election, to petition the original committing court for relief under those sections. States further that this act is intended to nullify the holding in <i>People v. Dobson</i> , 245 Cal.App.4th 310 (2016). [As amended February 21, 2017.]	Assembly Appropriations Committee—Suspense file.  Dead

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
SB 378	Portantino	<p><b>Alcoholic beverages: licenses: emergency orders</b>                      Authorizes the Department of Alcoholic Beverage Control (department) to temporarily suspend or condition an alcohol license upon showing evidence that such action is urgent and necessary to protect against an immediate threat to health or safety, and specifies due process protections that must be provided to the licensee. Among other things, provides that a temporary restraining order or preliminary injunction issued under the bill’s provisions shall be subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure. Specifies that the review shall be limited to a determination of whether the department abused its discretion, based upon a review of the record, in the issuance of the temporary restraining order or preliminary injunction. Provides that such review by the superior court shall not be construed as giving the superior court jurisdiction over any other matter or aspect of a case, as specified. Provides further that the decision of the superior court following review of the temporary restraining order or preliminary injunction shall not be considered by the department or the Alcoholic Beverage Control Appeals Board in connection with any final decision of the department or the review of any such final decision of the department. [As amended June 29, 2017.]</p>	Assembly Appropriations Committee  Two-year
SB 899	Pan	<p><b>Workers’ compensation</b>                      Specifies that apportionment of permanent disability in the Workers’ Compensation system cannot be based on race, gender, or national origin. Note: The bill is intended to abrogate, at least in part, the Court of Appeal’s recent decision in <i>City of Jackson v. Workers’ Compensation Appeals Board (Rice)</i> (2017) 11 Cal.App.5th 109. [As amended July 2, 2018.]</p>	Assembly Floor

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
<b>SB 1053</b>	<b>Beall</b>	<p><b>Presentation of claims: local public entities: childhood sexual abuse</b>                      This bill seeks to abrogate the recent decision of the Fifth District Court of Appeal in <i>Big Oak Flat-Groveland Unified School District et al. v. The Superior Court Of Tuolumne County</i>, which held that the Legislature exempted specified childhood sexual abuse claims from the claim presentation requirement of the Government Tort Claims Act, but permitted local public entities to impose their own claim presentation requirements. This bill would prohibit local public entities from imposing their own claim presentation requirements in such cases. [As amended May 24, 2018.]</p>	To the Governor
<b>SB 1276</b>	<b>Moorlach</b>	<p><b>Civil proceedings: expert testimony</b>                      Expressly abrogates the holding of the California Supreme Court in <i>People v. Sanchez</i> (2006) 63 Cal. 4th 665, as it applies to proceedings under the Family Code by providing in these proceedings that evidence of a statement used to support the opinion of an expert is not inadmissible as hearsay if the court, in its discretion, determines that the statement is reliable, and would require the court to consider certain factors in making its determination. The bill would also authorize in proceedings under the Family Code that a witness, before testifying in the form of an opinion, be examined with regard to the factors considered by the court to determine the reliability of a statement. [As amended April 30, 2018.]</p>	Senate Judiciary Committee  Dead

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council's Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

## 2017–18 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of July 6, 2018
SB 1300	Jackson	<p><b>Unlawful employment practices: discrimination and harassment</b></p> <p>Among other things, provides that an employee in specified employment actions alleging that a defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring is not required to prove that the employee endured harassment or discrimination and specifies that it suffices for the employee to show that the employer knew that the conduct was unwelcome to the plaintiff, that the conduct would meet the legal standard for harassment or discrimination if it increased in severity or become pervasive, and that the defendant failed to take all reasonable steps to prevent the same or similar conduct from recurring. Makes various Legislative declarations regarding the purpose and intent of the bill, including the following:</p> <ul style="list-style-type: none"> <li>▪ The existence of a hostile work environment depends upon the totality of the circumstances and a discriminatory remark, even if not made directly in the context of an employment decision or uttered by a nondecisionmaker, may be relevant, circumstantial evidence of discrimination. In that regard, the Legislature affirms the decision in <i>Reid v. Google, Inc.</i> (2010) 50 Cal.4th 512 in its rejection of the “stray remarks doctrine.”</li> <li>▪ The legal standard for sexual harassment should not vary by type of workplace. It is irrelevant that a particular occupation may have been characterized by a greater frequency of sexually related commentary or conduct in the past. In determining whether or not a hostile environment existed, courts should only consider the nature of the workplace when engaging in or witnessing prurient conduct and commentary is integral to the performance of the job duties. The Legislature hereby declares its disapproval of any language, reasoning, or holding to the contrary in the decision <i>Kelley v. Conco Companies</i> (2011) 196 Cal.App.4th 191.</li> <li>▪ Harassment cases are rarely appropriate for disposition on summary judgment. In that regard, the Legislature affirms the decision in <i>Nazir v. United Airlines, Inc.</i> (2009) 178 Cal.App.4th 243 and its observation that hostile working environment cases involve issues “not determinable on paper.” [As amended June 27, 2018.]</li> </ul>	Assembly Appropriations Committee

NOTE: This cumulative table is current through 07.06.18. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at (916) 323-3121. Bills can be found on the Internet at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

Oral presentation provided at the meeting.

# JUDICIAL COUNCIL OF CALIFORNIA

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## MEMORANDUM

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Date	Action Requested
July 11, 2018	Please read before committee meeting
To	Deadline
Members of the Appellate Advisory Committee	July 17, 2018
From	Contact
Ingrid Leverett Attorney, Legal Services	Ingrid Leverett (415) 865-8031 phone Ingrid.Leverett@jud.ca.gov
Subject	
Rules modernization: sealed and confidential records, lodged records	

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### Introduction

In February, the Appellate Advisory Committee circulated for public comment a proposal to amend California Rules of Court rules 8.45, 8.46 and 8.47, which govern sealed and confidential records that are submitted in reviewing courts. If adopted, the proposal would establish procedures for handling materials that are submitted electronically. Specifically, the proposed amendments would:

- Amend rule 8.46(d)(7), rule 8.46(f)(3)(D), rule 8.47(b)(3)(D), and rule 8.47(c)(2)(D) to provide for the disposition of a lodged electronic record when the court denies a motion or application to seal. The moving party would have 10 days after the denial of the application or motion to seal in which to direct the clerk to file a lodged record unsealed. Otherwise, the clerk must return the lodged record to the moving party if it is in paper form or delete the lodged record if it is in electronic form.
- Amend rule 8.45(d)(1) and rule 8.46(f)(3)(B) to add language requiring that sealed, conditionally sealed, and confidential records be transmitted to the reviewing court in a secure manner that preserves the confidentiality of the record. This requirement currently appears in rule 8.46(d)(3) and rule 8.47.

- Add new subdivision (e) to rule 8.46 to clarify procedures for transmitting, conditionally sealing, and returning or deleting a record that is the subject of a challenge to a trial court order denying a motion or application to seal.
- Amend rule 8.46(f)(2)(B) and (f)(3)(B), and rule 8.47(b)(3)(C)(ii) to clarify the procedure for lodging an unredacted version of a record in connection with an appellate filing by requiring that the confidential material within the record be identified as such in the filing.
- Amend rule 8.46 and rule 8.47 with other minor changes in language and punctuation intended to clarify the rules.

The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 9 through June 8, 2018, as part of the regular spring cycle.

The Joint Appellate Technology Subcommittee (JATS) met on July 2, 2018 to review the public comments concerning this proposal and to consider any appropriate modifications. This memo discusses the public comments received on the proposal and JATS' recommendations for responding to these comments.

#### Public Comments

Five organizations submitted comments on this proposal. Two bar associations and one superior court agreed with the proposed rule amendments. Two child support organizations agreed with the proposal if modified. Both raised the same substantive issue and recommend that the same additional language be added. A chart with the full text of the comments received and draft responses is attached.

The two commenters who agreed with the proposal if modified suggest that the proposed new subdivision (e) to rule 8.46 could potentially be construed as expanding the right to appeal evidentiary rulings and providing for a stay of the proceedings during the pendency of such an appeal. The commenters suggest adding language clarifying that the new subdivision (e) is not intended to expand availability of appellate review: "This paragraph is not intended to expand the scope of relief available but only to prescribe the manner of which confidential records are maintained."

#### JATS Recommendation

New subdivision (e) of rule 8.46 provides:

Notwithstanding the provisions in (d)(1)-(2), when an appeal or original proceeding challenges an order denying a motion or application to seal a record, the appellant or petitioner must lodge the subject record labeled as conditionally

under seal in the reviewing court as provided in (d)(3)-(5), and the reviewing court must maintain the record conditionally under seal during the pendency of the appeal or original proceeding. Once the reviewing court's decision on the appeal or original proceeding becomes final, the clerk must (1) return the lodged record to the lodging party if it is in paper form, or (2) permanently delete the lodged record if it is in electronic form.

Although a rule of court cannot expand appellate jurisdiction, JATS agreed that the first sentence of subdivision (e) could be read to suggest that litigants have broader opportunities for review of orders denying a motion or application to seal a record. To clarify that this is not the intent, JATS considered adding language to the text of the rule, either the language suggested by the commenters or other language. JATS also considered whether to address the issue in an Advisory Committee Comment.

Because this is a point of clarification, JATS recommends revising the proposal to add an Advisory Committee Comment clarifying that subdivision (e) does not expand the scope of available appellate relief, as follows:

#### **Advisory Committee Comment**

**Subdivision (e).** This subdivision is not intended to create appellate jurisdiction or to expand the availability of existing appellate remedies for any person aggrieved by a court's denial of a motion or application to seal a record.

Committee's task

Staff has prepared a draft of the report to the Judicial Council concerning this proposal, which is attached for your review and discussion. The draft report reflects JATS' recommendation that the proposal be revised as noted above.

The committee's task is to:

- Discuss the public comments received on the proposal; and
- Discuss and approve or modify JATS' suggestions for responding to the comments, including whether to add an Advisory Committee Comment to rule 8.46, as reflected in the draft comment chart and draft report to the Judicial Council; and
- Discuss and approve or modify JATS' draft recommendation to the advisory committee regarding adoption of the proposal, as reflected in the draft report to the Judicial Council.

Attachments

1. Draft of report to Judicial Council
2. Text of proposed amendments to rules 8.45-8.47
3. Comment chart with draft committee responses





## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 21, 2018:

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Title	Agenda Item Type
Rules Modernization: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47	January 1, 2019
Recommended by	Date of Report
Appellate Advisory Committee	July 11, 2018
Hon. Louis R. Mauro, Chair	Contact
Information Technology Advisory Committee	Ingrid Leverett, (415) 865-8031
Hon. Sheila F. Hanson, Chair	Ingrid.Leverett@jud.ca.gov

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### **Executive Summary**

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending the rules to establish procedures for handling sealed and confidential materials submitted electronically in the Court of Appeal. The proposed amendments encompass the court's return of lodged electronic records submitted in connection with a motion to seal that is denied. The proposal would (1) harmonize the appellate rules with parallel trial court rules governing sealed records; (2) make these appellate rules internally consistent; and (3) address the transmission and handling of records in a proceeding challenging a trial court's order denying a motion to seal.

### **Recommendation**

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2019:

1. Amend rule 8.46(d)(7), rule 8.46(f)(3)(D), rule 8.47(b)(3)(D), and rule 8.47(c)(2)(D) to provide for the disposition of a lodged electronic record when the court denies a motion or application to seal. The moving party would have 10 days after the denial of the application or motion to seal in which to direct the clerk to file a lodged record unsealed. Otherwise, the clerk must return the lodged record to the moving party if it is in paper form or delete the lodged record if it is in electronic form;
2. Amend rule 8.45(d)(1) and rule 8.46(f)(3)(B) to add language requiring that sealed, conditionally sealed, and confidential records be transmitted to the reviewing court in a secure manner that preserves the confidentiality of the record. This requirement currently appears in rule 8.46(d)(3) and in rule 8.47;
3. Add new subdivision (e) to rule 8.46 to clarify procedures for transmitting, conditionally sealing, and returning or deleting a record that is the subject of challenge to a trial court order denying a motion or application to seal;
4. Amend rule 8.46(f)(2)(B) and (f)(3)(B), and rule 8.47(b)(3)(C)(ii) to clarify the procedure for lodging an unredacted version of a record in connection with an appellate filing by requiring that the confidential material within the record be identified as such in the filing; and
5. Amend rule 8.46 and rule 8.47 with other minor changes in language and punctuation intended to clarify the rules.

### **Relevant Previous Council Action**

The Judicial Council adopted the predecessor to rule 8.46 effective January 1, 2001, along with similar rules for the trial courts, to establish uniform procedures regarding records sealed by court order. Effective January 1, 2004, the Judicial Council amended these rules to clarify the factual findings a court must make before sealing a record and the standard for their unsealing. Subsequent amendments clarified the applicability of the rule to various proceedings.

Effective January 1, 2014, the Judicial Council adopted new article 3 in Chapter 1 of Title 8 of the California Rules of Court to serve as the location for the rules concerning sealed and confidential records in the Supreme Court and Courts of Appeal. As part of new article 3, the Judicial Council adopted new rule 8.45 to establish definitions and set forth general provisions governing sealed and confidential records in the reviewing courts. At the same time, the Judicial Council adopted new rule 8.47 to establish requirements relating to confidential records in Supreme Court and Court of Appeal proceedings and amended rule 8.46 to make conforming changes and to add provisions regarding redacted and unredacted submissions.

Effective January 1, 2016, the Judicial Council amended rules 8.46 and 8.47 to add language requiring that all sealed or confidential documents that are transmitted electronically be transmitted in a secure manner.

## **Analysis/Rationale**

The goal of the current proposal is to harmonize rules 8.45, 8.46 and 8.47 with one another and with parallel trial court rules (rules 2.550 and 2.551) that govern the handling of sealed records, including electronic records.

Rules 2.550 and 2.551 govern the handling of sealed records in the trial court. Amendments that took effect January 1, 2017 revised rule 2.551(b)(6) to provide that, unless otherwise ordered, the moving party has 10 days following an order denying a motion or application to seal to direct the court to file the lodged material unsealed. If the clerk receives no notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete them if lodged in electronic form. In reviewing the appellate rules on sealed and confidential records, staff and the committees identified differences between rules 8.46 and 8.47, on the one hand, and, on the other, the corresponding trial court rules discussed above. The proposed amendments are intended to address those differences and inconsistencies and to conform the appellate court rules to the trial court rules.

The current procedure for returning a lodged record when the court denies a motion or application to seal fails to accommodate records lodged in electronic form. The trial court rules account for this situation. (See rule 2.551(b)(6).) The proposed amendments to rules 8.46 and 8.47 attached to this memorandum are drafted to be uniform with the trial court rules. They provide that, after 10 days from the date on which a reviewing court denies a motion or application to seal in a reviewing court, the clerk must file the record unsealed if the lodging party so directs or, if the lodging party does not so direct, must return the record if in hard copy or delete it if electronic.

For internal consistency among the three appellate rules at issue (rules 8.45, 8.46 and 8.47), the amendments require that sealed and confidential records be transmitted in a secure manner that preserves their confidentiality (a provision in rule 8.47 and in one subdivision of rule 8.46 that is absent from rule 8.45 and from another relevant subdivision of rule 8.46). The amendments also direct that when an unredacted record is lodged with a reviewing court, the particular sealed or confidential material within the record be identified as such (an existing requirement of rule 8.46 that is absent from rule 8.47).

Finally, a new proposed subdivision (e) to rule 8.46 addresses the handling of records that are the subject of review in any appeal or original proceeding challenging a lower court's denial of a motion or application to seal. Under new proposed subdivision (e), the record at issue would remain conditionally under seal while the review proceeding was pending. After the reviewing court's decision becomes final, the clerk is required to return the record if it is in paper form, or permanently delete it if it is in electronic form.

## **Policy implications**

The advisory committees have identified no policy implications.

## Comments

Five organizations submitted comments on this proposal. Two bar associations and one superior court agreed with the proposed rule amendments. Two child support organizations agreed with the proposal if modified. Both raised the same substantive issue and recommend that the same additional language be added. A chart with the full text of the comments received and the committee's responses is attached at pages XX-XX.

The two commenters who agreed with the proposal if modified suggest that proposed new subdivision (e) to rule 8.46 could potentially be construed as expanding the right to appeal evidentiary rulings and providing for a stay of the proceedings during the pendency of such an appeal. The commenters suggest adding language clarifying that the new subdivision (e) is not intended to expand availability of appellate review: "This paragraph is not intended to expand the scope of relief available but only to prescribe the manner of [sic] which confidential records are maintained."

Although a rule of court cannot expand appellate jurisdiction, the committee agreed that the first sentence of subdivision (e) could be read to suggest that litigants have broader opportunities for review of orders denying a motion or application to seal a record. To clarify that this is not the intent, the committee recommends revising the proposal to add an Advisory Committee Comment, as follows:

### Advisory Committee Comment

Subdivision (e). This subdivision is not intended to create appellate jurisdiction or to expand the availability of existing appellate remedies for any person aggrieved by a court's denial of a motion or application to seal a record.

## Alternatives considered

The committee considered not proposing these amendments. The committee concluded that the proposed changes were necessary to (1) give guidance and direction to litigants, (2) harmonize the appellate court rules with existing trial court rules governing the same subject matter, (3) make the appellate court rules internally consistent regarding the handling of sealed and confidential records, and (4) clarify proper procedure for the handling of sealed and confidential records that are the subject of a proceeding in a reviewing court.

The committee also considered alternatives for clarifying that new subdivision (e) of rule 8.46 is not intended to expand the availability of appellate review. Specifically, the committee considered whether to add language to the rule itself or to add an Advisory Committee Comment. The committee concluded that this point of clarification was better expressed in an Advisory Committee Comment.

## **Fiscal and Operational Impacts**

If adopted, the proposal may impose some cost on the appellate court in the form of training clerks to delete lodged, unredacted electronic records in the event that the court denies a motion or application to seal and the lodging party fails to instruct the court to file an unsealed version of a record. Beyond this training cost, the proposal is not expected to result in significant new costs or changes to operations in the trial court appellate division or the Court of Appeal, nor to give rise to any implementation challenges.

## **Attachments and Links**

1. Cal. Rules of Court, rules 8.45, 8.46 and 8.47
2. Chart of comments

1 Title 8. Appellate Rules

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

4  
5 Chapter 1. General Provisions

6  
7 Article 3. Sealed and Confidential Records

8  
9  
10 Rule 8.45. General provisions

11  
12 (a) – (c) \* \* \*

13  
14 (d) Transmission of and access to sealed and confidential records

15  
16 (1) A sealed or confidential record must be transmitted in a secure manner that  
17 preserves the confidentiality of the record.

18  
19 ~~(1)~~(2) Unless otherwise provided by ~~(2)~~–~~(4)~~(3)–~~(5)~~ or other law or court order, a  
20 sealed or confidential record that is part of the record on appeal or the  
21 supporting documents or other records accompanying a motion, petition for a  
22 writ of habeas corpus, other writ petition, or other filing in the reviewing  
23 court must be transmitted only to the reviewing court and the party or parties  
24 who had access to the record in the trial court or other proceedings under  
25 review and may be examined only by the reviewing court and that party or  
26 parties. If a party’s attorney but not the party had access to the record in the  
27 trial court or other proceedings under review, only the party’s attorney may  
28 examine the record.

29  
30 ~~(2)~~(3) Except as provided in ~~(3)~~(4), if the record is a reporter’s transcript or any  
31 document related to any in-camera hearing from which a party was excluded  
32 in the trial court, the record must be transmitted to and examined by only the  
33 reviewing court and the party or parties who participated in the in-camera  
34 hearing.

35  
36 ~~(3)~~(4) A reporter’s transcript or any document related to an in-camera hearing  
37 concerning a confidential informant under Evidence Code sections 1041–  
38 1042 must be transmitted only to the reviewing court.

39  
40 ~~(4)~~(5) A probation report must be transmitted only to the reviewing court and to  
41 appellate counsel for the People and the defendant who was the subject of the  
42 report.  
43

1 **Advisory Committee Comment**

2  
3 **Subdivision (a). \* \* \***

4  
5 **Subdivision (b)(5). \* \* \***

6  
7 **Subdivisions (c) and (d). \* \* \***

8  
9 **Subdivision (c)(1)(C). \* \* \***

10  
11 **Subdivision (c)(2). \* \* \* Subdivision (c)(3). \* \* \***

12  
13 **Subdivision (d). \* \* \***

14  
15 **Subdivision (d)(1)(2) and (2)(3).** Because the term “party” includes any attorney of record for  
16 that party, under rule 8.10(3), when a party who had access to a record in the trial court or other  
17 proceedings under review or who participated in an in-camera hearing—such as a *Marsden*  
18 hearing in a criminal or juvenile proceeding—is represented by appellate counsel, the confidential  
19 record or transcript must be transmitted to that party’s appellate counsel. Under rules 8.336(g)(2)  
20 and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the  
21 appellant or the respondent—is not represented by appellate counsel when the clerk’s and  
22 reporter’s transcripts are certified as correct, the clerk must send the copy of the transcripts that  
23 would go to appellate counsel, including confidential records such as transcripts of *Marsden*  
24 hearings, to the district appellate project.

25  
26 **Subdivision (d)(4)(5).** This rule limits to whom a copy of a probation report is transmitted based  
27 on the provisions of Penal Code section 1203.05, which limit who may inspect or copy probation  
28 reports.

29  
30 **Rule 8.46. Sealed records**

31  
32 **(a) – (c) \* \* \***

33  
34 **(d) Record not filed in the trial court; motion or application to file under seal**

35  
36 (1) – (6) \* \* \*

37  
38 (7) If the court denies the motion or application to seal the record, ~~the clerk must~~  
39 ~~not place the lodged record in the case file but must return it to the submitting~~  
40 ~~party unless that party notifies the clerk in writing that the record is to be~~  
41 ~~filed. Unless otherwise ordered by the court, the submitting party must notify~~  
42 ~~the clerk within 10 days after the order denying the motion or application the~~  
43 ~~lodging party may notify the court that the lodged record is to be filed~~

1           unsealed. This notification must be received within 10 days of the order  
2           denying the motion or application to seal, unless otherwise ordered by the  
3           court. On receipt of this notification, the clerk must unseal and file the record.  
4           If the lodging party does not notify the court within 10 days of the order, the  
5           clerk must (1) return the lodged record to the lodging party if it is in paper  
6           form, or (2) permanently delete the lodged record if it is in electronic form.

7  
8           (8) An order sealing the record must direct the sealing of only those documents  
9           and pages or, if reasonably practical, portions of those documents and pages,  
10           that contain the material that needs to be placed under seal. All other portions  
11           of each document or page must be included in the public file.

12  
13           (9) Unless the sealing order provides otherwise, it prohibits the parties from  
14           disclosing the contents of any materials that have been sealed in anything that  
15           is subsequently publicly filed.

16  
17           **(e) Challenge to an order denying a motion or application to seal a record**

18  
19           Notwithstanding the provisions in (d)(1)-(2), when an appeal or original proceeding  
20           challenges an order denying a motion or application to seal a record, the appellant  
21           or petitioner must lodge the subject record labeled as conditionally under seal in the  
22           reviewing court as provided in (d)(3)-(5), and the reviewing court must maintain  
23           the record conditionally under seal during the pendency of the appeal or original  
24           proceeding. Once the reviewing court's decision on the appeal or original  
25           proceeding becomes final, the clerk must (1) return the lodged record to the lodging  
26           party if it is in paper form, or (2) permanently delete the lodged record if it is in  
27           electronic form.

28  
29           **(e)(f) Unsealing a record in the reviewing court**

30  
31           (1) - (2) \* \* \*

32  
33           (3) If the reviewing court proposes to order a record unsealed on its own motion,  
34           the court must send notice to the parties stating the reason for unsealing the  
35           record. Unless otherwise ordered by the court, any party may serve and file  
36           an opposition within 10 days after the notice is sent, and any other party may  
37           serve and file a response within 5 days after an opposition is filed.

38  
39           (4) - (7) \* \* \*

40  
41           **(f)(g) Disclosure of nonpublic material in public filings prohibited**

42  
43           (1) \* \* \*



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(2) If it is necessary to disclose material contained in a sealed record in a filing in the reviewing court, two versions must be filed:

(A) \* \* \*

(B) An unredacted version. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of this version, and if applicable the envelope or other container, must identify it as “May Not Be Examined Without Court Order—Contains material from sealed record.” Sealed material disclosed in this version must be identified as such in the filing and accompanied by a citation to the court order sealing that material.

(C) \* \* \*

(3) If it is necessary to disclose material contained in a conditionally sealed record in a filing in the reviewing court:

(A) A public redacted version must be filed. The cover of this version must identify it as “Public—Redacts material from conditionally sealed record.” In juvenile cases, the cover of the redacted version must identify it as “Redacted version—Redacts material from conditionally sealed record.”

(B) An unredacted version must be lodged. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of this version, and if applicable the envelope or other container, must identify it as “May Not Be Examined Without Court Order—Contains material from conditionally sealed record.” Conditionally sealed material disclosed in this version must be identified as such in the filing.

(C) Unless the court orders otherwise, any party who had access to the conditionally sealed record in the trial court or other proceedings under review must be served with both the unredacted version of all papers as well as the redacted version. Other parties must be served with only the public redacted version.

(D) If the court denies the motion or application to seal the record, ~~the clerk must not place the unredacted version lodged under (B) in the case file but must return it to the party who filed the application or motion to~~

1 seal unless that party notifies the clerk that the record is to be publicly  
2 filed, as provided in (d)(7) the party who filed the motion or application  
3 may notify the court that the unredacted version lodged under (B) is to  
4 be filed unsealed. This notification must be received within 10 days of  
5 the order denying the motion or application to seal, unless otherwise  
6 ordered by the court. On receipt of this notification, the clerk must  
7 unseal and file the lodged unredacted version. If the party who filed the  
8 motion or application does not notify the court within 10 days of the  
9 order, the clerk must (1) return the lodged unredacted version to the  
10 lodging party if it is in paper form, or (2) permanently delete the lodged  
11 unredacted version if it is in electronic form.

### 12 **Advisory Committee Comment**

13  
14  
15 **Subdivision (e)**. This subdivision is not intended to create appellate jurisdiction or  
16 to expand the availability of existing appellate remedies for any person aggrieved  
17 by a court's denial of a motion or application to seal a record.

### 18 **Rule 8.47. Confidential records**

19  
20  
21 (a) \* \* \*

22  
23 (b) **Records of *Marsden* hearings and other in-camera proceedings**

24  
25 (1) \* \* \*

26  
27 (2) Except as provided in (3), if the defendant raises a *Marsden* issue or an issue  
28 related to another in-camera hearing covered by this rule in a brief, petition,  
29 or other filing in the reviewing court, the following procedures apply:

30  
31 (A) The brief, including any portion that discloses matters contained in the  
32 transcript of the in-camera hearing, and other documents filed or lodged  
33 in connection with the hearing, must be filed publicly. The requirement  
34 to publicly file this brief does not apply in juvenile cases; rule 8.401  
35 governs the format of and access to such briefs in juvenile cases.

36  
37 (B) The People may serve and file an application requesting a copy of the  
38 reporter's transcript of, and documents filed or lodged by a defendant  
39 in connection with, the in-camera hearing.

40  
41 (C) \* \* \*

1 (D) If the defendant does not timely serve and file opposition to the  
2 application, the reviewing court clerk must send to the People a copy of  
3 the reporter’s transcript of, and documents filed or lodged by a  
4 defendant in connection with, the in-camera hearing.  
5

6 (3) A defendant may serve and file a motion or application in the reviewing court  
7 requesting permission to file under seal a brief, petition, or other filing that  
8 raises a *Marsden* issue or an issue related to another in-camera hearing  
9 covered by this subdivision, and requesting an order maintaining the  
10 confidentiality of the relevant material from the reporter’s transcript of, or  
11 documents filed or lodged in connection with, the in-camera hearing.  
12

13 (A) \* \* \*

14  
15 (B) The declaration accompanying the motion or application must contain  
16 facts sufficient to justify an order maintaining the confidentiality of the  
17 relevant material from the reporter’s transcript of, or documents filed or  
18 lodged in connection with, the in-camera hearing and sealing of the  
19 brief, petition, or other filing.  
20

21 (C) At the time the motion or application is filed, the defendant must:

22  
23 (i) \* \* \*

24  
25 (ii) Lodge an unredacted version of the brief, petition, or other filing  
26 that he or she is requesting be filed under seal. The filing must be  
27 transmitted in a secure manner that preserves the confidentiality  
28 of the filing being lodged. If this version is in paper format, it  
29 must be placed in a sealed envelope or other appropriate sealed  
30 container. The cover of the unredacted version of the document,  
31 and if applicable the envelope or other container, must identify it  
32 as “May Not Be Examined Without Court Order—Contains  
33 material from conditionally sealed record.” Conditionally sealed  
34 material disclosed in this version must be identified as such in the  
35 filing.  
36

37 (D) If the court denies the motion or application to file the brief, petition, or  
38 other filing under seal, ~~the clerk must not place the unredacted brief,~~  
39 ~~petition, or other filing lodged under (C)(ii) in the case file but must~~  
40 ~~return it to the defendant unless the defendant notifies the clerk in~~  
41 ~~writing that it is to be filed. Unless otherwise ordered by the court, the~~  
42 ~~defendant must notify the clerk within 10 days after the order denying~~  
43 ~~the motion or application~~ the defendant may notify the court that the

1 unredacted brief, petition, or other filing lodged under (C)(ii) is to be  
2 filed unsealed. This notification must be received within 10 days of the  
3 order denying the motion or application to file the brief, petition, or  
4 other filing under seal, unless otherwise ordered by the court. On  
5 receipt of this notification, the clerk must unseal and file the lodged  
6 unredacted brief, petition, or other filing. If the defendant does not  
7 notify the court within 10 days of the order, the clerk must (1) return  
8 the lodged unredacted brief, petition, or other filing to the defendant if  
9 it is in paper form, or (2) permanently delete the lodged unredacted  
10 brief, petition, or other filing if it is in electronic form.

11  
12 **(c) Other confidential records**

13  
14 Except as otherwise provided by law or order of the reviewing court:

15  
16 (1) \* \* \*

17  
18 (2) To maintain the confidentiality of material contained in a confidential record,  
19 if it is necessary to disclose such material in a filing in the reviewing court, a  
20 party may serve and file a motion or application in the reviewing court  
21 requesting permission for the filing to be under seal.

22  
23 (A)– (C) \* \* \*

24  
25 (D) If the court denies the motion or application to file the brief, petition, or  
26 other filing under seal, ~~the clerk must not place the unredacted brief,~~  
27 ~~petition, or other filing lodged under (C)(ii) in the case file but must~~  
28 ~~return it to the lodging party unless the party notifies the clerk in~~  
29 ~~writing that it is to be filed. Unless otherwise ordered by the court, the~~  
30 ~~party must notify the clerk within 10 days after the order denying the~~  
31 ~~motion or application~~ the party who filed the motion or application may  
32 notify the court that the unredacted brief, petition, or other filing lodged  
33 under (C)(ii) is to be filed unsealed. This notification must be received  
34 within 10 days of the order denying the motion or application to file the  
35 brief, petition, or other filing under seal, unless otherwise ordered by  
36 the court. On receipt of this notification, the clerk must unseal and file  
37 the lodged unredacted brief, petition, or other filing. If the party who  
38 filed the motion or application does not notify the court within 10 days  
39 of the order, the clerk must (1) return the lodged unredacted brief,  
40 petition, or other filing to the lodging party if it is in paper form, or (2)  
41 permanently delete the lodged unredacted brief, petition, or other filing  
42 if it is in electronic form.

**Advisory Committee Comment**

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**Subdivisions (a) and (c).** \* \* \*

**Subdivision (c)(1).** \* \* \*

**Subdivision (c)(2).** Note that when a record has been sealed by court order, rule 8.46(~~f~~)(g)(2) requires a party to file redacted (public) and unredacted (sealed) versions of any filing that discloses material from the sealed record; it does not require the party to make a motion or application for permission to do so. By contrast, this rule requires court permission before redacted (public) and unredacted (sealed) filings may be made to prevent disclosure of material from confidential records.

**SPR18-06**

**Appellate Procedure: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal** (Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Department of Child Support Services by Kristen Donadee Assistant Chief Counsel Rancho Cordova, CA	AM	<p>The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the rules with potential impacts to the Department and its stakeholders is set forth below.</p> <p>Rule 8.46 - Sealed records</p> <p>The Department recommends clarification regarding Rule 8.46, subdivision (e), which is related to challenges to an order denying a motion or application to seal a record. Evidentiary rulings are not always subject to immediate appeals. It is unclear if this rule intends to stay the proceedings while an evidentiary ruling is appealed. Clarifying this point would be beneficial to the parties when considering whether to appeal evidentiary rulings regarding motions and applications to seal records.</p> <p>If this is not the JCC's intent, the Department respectfully suggests adding language to subsection e, which provides as follows:</p> <p>This paragraph is not intended to expand the scope of relief available but</p>	<p>The committee notes the commenter’s agreement with the proposal if modified.</p> <p>The committee agrees that subdivision (e) could create uncertainty and has revised the proposal to include an Advisory Committee Comment following the text of rule 8.46, as follows:</p> <p style="text-align: center;"><b><u>Advisory Committee Comment</u></b></p> <p><b><u>Subdivision (e)</u></b>. <u>This subdivision is not intended to create appellate jurisdiction or to expand the availability of existing appellate remedies for any person aggrieved by a court’s denial of a motion or application to seal a record.</u></p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR18-06**

**Appellate Procedure: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal** (Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>only to prescribe the manner of which confidential records are maintained.</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.</p>	
2.	California Lawyers Association, Committee on Appellate Courts of the Litigation Section San Francisco, CA	A	<p>The Committee on Appellate Courts supports this proposal and responds as follows to the Invitation to Comment’s request for specific comments.</p> <p><b>Does the proposal appropriately address the stated purpose?</b>                      Yes, the new and revised forms achieve the stated purpose because (1) when motion to seal is denied, it requires the clerk to either return paper copies submitted, or delete electronic copies; (2) it requires sealed documents to be transmitted to the reviewing court in a secure and confidential manner; (3) it clarifies procedures for transmitting and conditionally sealing materials where the ruling denying sealing is challenged on appeal; and (4) it clarifies procedures for lodging unredacted materials in the appellate court.</p> <p><b>Is new subdivision (e) of rule 8.46— addressing a record that is the subject of an appeal or original proceeding challenging a trial court’s ruling denying a motion or</b></p>	<p>The committee notes the commenter’s support for the proposal.</p> <p>The committee appreciates this feedback.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR18-06****Appellate Procedure: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal** (Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><b>application to seal that record—helpful, and does it provide sufficient guidance?</b>            Yes, new subdivision (e) is helpful and provides sufficient guidance.</p>	The committee appreciates this feedback.
3.	Child Support Directors Association, Judicial Council Forms Committee by Ronald Ladage, Chair	AM	<p>The Committee is concerned that Rule 8.46 subdivision (e), may be interpreted to expand the scope of relief that may be available. Assuming this is not the intent of the Rule, we suggest adding the following language to subsection (e):</p> <p style="padding-left: 40px;">This paragraph is not intended to expand the scope of relief available, but only to prescribe the manner of which confidential records are maintained.</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.</p>	See response to comment No. 1, above.
4.	Orange County Bar Association by Nikki P. Miliband, President	A	No specific comment.	The committee notes the commenter’s agreement with the proposal. No further response required.
5.	Superior Court of San Diego County by Mike Roddy, CEO	A	No specific comment.	The committee notes the commenter’s agreement with the proposal. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated





## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
July 11, 2018	Please read before July 17 committee meeting
To	Deadline
Members of the Appellate Advisory Committee	July 17, 2018
From	Contact
Appellate Division Subcommittee Hon. Kent M. Kellegrew, Chair	Sarah Abbott 415-865-7687 sarah.abbott@jud.ca.gov
Subject	
Appellate Procedure: Finality of Appellate Division Decisions	

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#### Introduction

As you may recall, earlier this spring the Appellate Advisory Committee recommended circulating for public comment a proposal to amend California Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976 and 8.1005. Under the proposed amendments to rules 8.888(a)(2) and (b)(2), 8.889(b)(1), 8.935(b)(2), 8.976(b)(2) and 8.1005(b)(1), the date of finality for appellate division decisions would run from the date on which the court clerk sends the decision to the parties, as opposed to the date on which the decision is filed. The proposed amendments to rules 8.887(b), 8.935(a)(1), and 8.976(a)(1) would require court clerks to send appellate division decisions to the parties on the same day they are filed, electronically when permissible. Collectively, the amendments are intended to ensure that litigants are not prejudiced due to appellate division decisions not being sent by the clerk in a timely manner.

The Judicial Council's Rules and Projects Committee approved the recommendation for circulation and the proposal was circulated for public comment from April 9 through June 8, 2018 as part of the regular spring cycle. This memorandum discusses the public comments received on the proposal.

## Public Comments

Three organizations and two courts submitted comments on this proposal. Of the five commenters, four agreed with the proposal, and one agreed with the proposal if amended. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, specifically noted that the proposal “addresses a genuine problem and is a sensible attempt to give parties sufficient time to prepare their pleadings seeking review of adverse decisions in the Appellate Division.” The full text of the comments received and staff’s proposed committee responses are set out in the attached comment chart. Also attached is a draft report to the Judicial Council, including the text of the proposed rule amendments.

The invitation to comment specifically asked whether, if the amendments to rules 8.887(b), 8.935(a)(1), and 8.976(a) are implemented and court clerks are required to send opinions on the same day they are filed, the other amendments tethering the date of finality to the date of sending, are still beneficial. The Superior Court for Los Angeles County was the only commenter to specifically address this question, and answered in the affirmative. As you may recall, the committee chose to raise this question because it was not clear if amending the rules in both ways (i.e., a “belt and suspenders” approach) was necessary. Based on the comments received, the Appellate Division subcommittee believes that all of the proposed amendments would be beneficial.

The invitation to comment also asked whether rules 8.887, 8.888, 8.935, and 8.976 should be further amended to require the trial court clerk to *serve* all opinions and orders, in order to clarify the date an opinion or order is *sent*. The Superior Court for Los Angeles County was the only commenter to specifically address this question, and responded that “the proposed rule should clarify how to determine the date that a document is sent” but did not propose a specific modification to the proposal. When the Appellate Advisory Committee discussed this issue previously, the committee decided not to add a specific “proof of service” requirement to the proposed amendments to the rules because doing so would be inconsistent with other similar rules and might create confusion for clerks and/or litigants. Moreover, because the proposal would require clerks to send decisions on the same day they are filed, the filing date would necessarily be the sending date, which in turn would be the trigger date for finality.

The subcommittee discussed the Superior Court for Los Angeles County’s comments, and concluded that no further amendment of the rules is necessary to clarify the date on which a decision is sent, because—if the proposal is adopted—that date should necessarily be the same as the filing date. Moreover, it appears that most courts stamp the filing date on the decision itself, and include a proof of service when a decision is sent, so the date should be abundantly clear. However, the committee may wish to discuss whether it agrees with the subcommittee’s conclusion that no modification of the proposal is needed, or whether further amendment of the rules is required to clarify how to determine the date that a decision is sent.

## Committee Task

Attached is a draft of the report to the Judicial Council on this proposal, including the proposed text of the amended rules. The committee's task with respect to this proposal is to:

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

### Attachments:

1. Draft of report to the Judicial Council
2. Draft amendments to California Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976 and 8.1005
3. Comment chart with draft committee responses



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 20–21, 2018

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Title	Agenda Item Type
Appellate Procedure: Finality of Appellate Division Decisions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005	January 1, 2019
Recommended by	Date of Report
Appellate Advisory Committee	July 10, 2018
Hon. Louis R. Mauro, Chair	Contact
	Sarah Abbott, 415-865-7687
	sarah.abbott@jud.ca.gov

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### Executive Summary

The Appellate Advisory Committee recommends amending several California Rules of Court relating to the finality of appellate division decisions. The amendments would require court clerks to send appellate division decisions to the parties on the same day they are filed and to tether the date of finality of appellate division decisions to the date they are sent, rather than the date they are filed.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2019, approve the following amendments:

- Amend California Rules of Court, rules 8.888(a)(2) and (b)(2), 8.889(b)(1), 8.935(b)(2), 8.976(b)(2), and 8.1005(b)(1) so that the date of finality for appellate division decisions is triggered by the date on which the court clerk *sends* the decision to the parties, as opposed to the date on which the decision is *filed*; and

- Amend rules 8.887(b), 8.935(a)(1), and 8.976(a)(1) to require court clerks to send appellate division decisions to the parties, electronically when permissible, on the same day they are filed.

The amendments are intended to ensure that parties have sufficient time after receiving notice of appellate division decisions to prepare and file applications for certification for transfer and petitions for rehearing before the time the appellate division loses jurisdiction.

The text of the amended rules is attached at pages 5–8.

### **Relevant Previous Council Action**

There is no relevant previous Judicial Council action that might impact the council’s consideration of this proposal.

### **Analysis/Rationale**

In the appellate division, an application for certification to transfer to the Court of Appeal and a petition for rehearing are due 15 days after the decision is filed.<sup>1</sup> However, the parties generally do not receive immediate electronic notification when an appellate division decision is filed; instead, filed decisions are generally sent by mail. This proposal responds to feedback that, under the current rules, there often is insufficient time to prepare and file applications for certification for transfer and petitions for rehearing before the appellate division loses jurisdiction (i.e., 30 days after the opinion is filed) because:

- Litigants are unfamiliar with the procedure for preparing applications for certification for transfer;
- Most superior courts notify the parties by mail; and
- Despite rules requiring the court clerk to “promptly” file and send all opinions and orders, there are often delays in mailing those decisions.

To remedy this timing issue, the committee recommends amending rules 8.888(a)(2) and (b)(2), 8.889(b)(1), 8.935(b)(2), 8.976(b)(2), and 8.1005(b)(1) so that the date of finality for appellate division decisions is triggered by the date on which the court clerk sends the decision to the parties, as opposed to the date on which the decision is filed.

The committee also recommends amending rules 8.887(b), 8.935(a)(1), and 8.976(a) to require court clerks to send appellate division decisions to the parties on the same day they are filed, and to send the decisions electronically when permissible under rule 2.251. These rules currently require the appellate division clerk to “promptly file all opinions and orders of the court and promptly send copies showing the filing date ....”<sup>2</sup> However, it appears that at least in some

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<sup>1</sup> See Cal. Rules of Court, rules 8.1005(b) and 8.889(b)(1).

<sup>2</sup> See Cal. Rules of Court, rules 8.887(b), 8.935(b), and 8.876(b).

courts there is a delay between the filing date and the date a decision is sent. The proposed amendments are intended to ensure that litigants are not prejudiced due to appellate division decisions not being sent by the clerk in a timely manner.

### **Policy implications**

The committee did not identify any significant policy implications relating to the proposed amendments. While adoption of the proposal would make the rules for finality of appellate division decisions different from the rules governing finality in the Courts of Appeal, the committee believes that this difference is appropriate given the relevant operational differences between the appellate division and the Courts of Appeal, such as the lack of immediate electronic notification of decisions in many appellate divisions.

### **Comments**

The proposed amendments were circulated for public comment between April 9 and June 8, 2018, as part of the regular spring comment cycle. Three organizations and two courts submitted comments on this proposal. Of the five commentators, four agreed with the proposal, and one agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 9–11.

Three commenters (Github Inc., the Orange County Bar Association, and the Superior Court of San Diego County) agreed with the proposal without providing further comment. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, noted that the proposal “addresses a genuine problem and is a sensible attempt to give parties sufficient time to prepare their pleadings seeking review of adverse decisions in the Appellate Division.”

The only substantive comments were provided by the Superior Court of Los Angeles County. The invitation to comment specifically asked whether, if the amendments to rules 8.887(b), 8.935(a)(1), and 8.976(a) are implemented and court clerks are required to send opinions on the same day they are filed, the other amendments tethering the date of finality to the date of sending are still beneficial. The Superior Court of Los Angeles County answered this question in the affirmative. The committee chose to raise this question because it was not clear if amending the rules in both ways (i.e., a “belt and suspenders” approach) was necessary. Based on the comments received, the committee believes that all of the proposed amendments would be beneficial and should be adopted.

The invitation to comment also asked whether rules 8.887, 8.888, 8.935, and 8.976 should be further amended to require the trial court clerk to *serve* all opinions and orders, in order to clarify the date an opinion or order is *sent*. The Superior Court of Los Angeles County responded that “the proposed rule should clarify how to determine the date that a document is sent” but did not propose a specific modification to the proposal. When the Appellate Advisory Committee discussed this issue initially, the committee decided not to add a specific “proof of service” requirement to the proposed amendments to the rules because doing so would be inconsistent with other similar rules and might create confusion for clerks and/or litigants. Moreover, because

the proposal would require clerks to send decisions on the same day they are filed, the filing date would necessarily be the sending date, which in turn would be the trigger date for finality. Therefore, after considering the Superior Court of Los Angeles County's comment, the committee does not believe that further amendment of the rules is necessary to clarify the date on which a decision is sent, as that date should be the same as the filing date.

### **Alternatives considered**

The committee considered not making any changes to these rules, but concluded that the proposed amendments would help ensure that litigants have sufficient time to prepare and file both applications for certification for transfer and petitions for rehearing before the time that the appellate division loses jurisdiction.

The committee further considered whether the amendments tethering the date of finality to the date on which the court clerk sends the decision to the parties are needed if the amendments requiring court clerks to send appellate division decisions to the parties on the same day they are filed are approved. As discussed above, the committee specifically asked for public comment on this question and ultimately determined that all of the proposed amendments would be beneficial.

The committee also considered whether further amendment of rules 8.887, 8.888, 8.935, and 8.976 would be advisable to specifically require the court clerk to *serve* all appellate division opinions and orders on the date they are filed. As discussed above, the committee specifically asked for public comment on this question. Based on the comments received and after further discussion of the issue, the committee determined that no further amendment of the rules is necessary.

Finally, the committee initially considered a proposal to amend the rules to change the trigger for finality of appellate division opinions certified for publication from the date of the publication order to the date that such decisions are posted on the court's website, to remedy a perceived timing issue with respect to public notice of published appellate division opinions. The committee decided not to recommend these amendments because the timing issue may be resolved by an operational change. This alternative was not part of the proposal included in the invitation to comment.

### **Fiscal and Operational Impacts**

No fiscal impacts are expected, though some training of court staff will likely be required.

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005, at pages 5–8
2. Chart of comments, at pages 9–11

Rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005 of the California Rules of Court are amended, effective January 1, 2019, to read:

1 **Rule 8.887. Decisions**

2  
3 (a) \* \* \*

4  
5 (b) **Filing the decision**

6  
7 The appellate division clerk must promptly file all opinions and orders of the court  
8 and ~~promptly on the same day~~ send copies (by e-mail where permissible under rule  
9 2.251) showing the filing date to the parties and, when relevant, to the trial court.

10  
11 (c) \* \* \*

12  
13  
14 **Rule 8.888. Finality and modification of decision**

15  
16 (a) **Finality of decision**

17  
18 (1) Except as otherwise provided in this rule, an appellate division decision,  
19 including an order dismissing an appeal involuntarily, is final 30 days after  
20 the decision is ~~filed~~ sent by the court clerk to the parties.

21  
22 (2) If the appellate division certifies a written opinion for publication or partial  
23 publication after its decision is filed and before its decision becomes final in  
24 that court, the finality period runs from the ~~filing date of~~ the order for  
25 publication is sent by the court clerk to the parties.

26  
27 (3) \* \* \*

28  
29 (b) **Modification of judgment**

30  
31 (1) \* \* \*

32  
33 (2) An order modifying a decision must state whether it changes the appellate  
34 judgment. A modification that does not change the appellate judgment does  
35 not extend the finality date of the decision. If a modification changes the  
36 appellate judgment, the finality period runs from the ~~filing date of~~ the  
37 modification order is sent by the court clerk to the parties.

38  
39 (c) \* \* \*



1 **Rule 8.889. Rehearing**

2  
3 (a) \* \* \*

4  
5 (b) **Petition and answer**

6  
7 (1) A party may serve and file a petition for rehearing within 15 days after the  
8 following is sent by the court clerk to the parties, whichever is later:

9  
10 (A) The decision ~~is filed~~;

11  
12 (B) A publication order restarting the finality period under rule 8.888(a)(2),  
13 if the party has not already filed a petition for rehearing;

14  
15 (C) A modification order changing the appellate judgment under rule  
16 8.888(b); or

17  
18 (D) ~~The filing of~~ A consent filed under rule 8.888(c).

19  
20 (2)–(4) \* \* \*

21  
22 (c)–(d) \* \* \*

23  
24  
25 **Rule 8.935. Filing, finality, and modification of decisions; rehearing; remittitur**

26  
27 (a) **Filing of decision**

28  
29 (1) The appellate division clerk must promptly file all opinions and orders of the  
30 court and ~~promptly on the same day~~ send copies (by e-mail where  
31 permissible under rule 2.251) showing the filing date to the parties and, when  
32 relevant, to the trial court.

33  
34 (2) \* \* \*

35  
36 (b) **Finality of decision**

37  
38 (1) \* \* \*

39  
40 (2) Except as otherwise provided in (3), all other appellate division decisions in a  
41 writ proceeding are final 30 days after the decision is ~~filed~~ sent by the court  
42 clerk to the parties.

1 (3) \* \* \*

2

3 (c)–(e) \* \* \*

4

5

6 **Rule 8.976. Filing, finality, and modification of decisions; remittitur**

7

8 **(a) Filing of decision**

9

10 The appellate division clerk must promptly file all opinions and orders in  
11 proceedings under this chapter and ~~promptly~~ on the same day send copies (by  
12 e-mail where permissible under rule 2.251) showing the filing date to the parties  
13 and, when relevant, to the small claims court.

14

15 **(b) Finality of decision**

16

17 (1) \* \* \*

18

19 (2) Except as otherwise provided in (3), all other decisions in a writ proceeding  
20 under this chapter are final 30 days after the decision is ~~filed~~ sent by the court  
21 clerk to the parties.

22

23 (3) \* \* \*

24

25 (c)–(d) \* \* \*

26

27

28 **Rule 8.1005. Certification for transfer by the appellate division**

29

30 (a) \* \* \*

31

32 **(b) Application for certification**

33

34 (1) A party may serve and file an application asking the appellate division to  
35 certify a case for transfer at any time after the record on appeal is filed in the  
36 appellate division but no later than 15 days after the following is sent by the  
37 court clerk to the parties:

38

39 (A) The decision ~~is filed~~;

40

41 (B) A publication order restarting the finality period under rule 8.888(a)(2);

42

1 (C) A modification order changing the appellate judgment under rule  
2 8.888(b); or

3  
4 (D) ~~The filing of~~ A consent filed under rule 8.888(c).

5  
6 (2)–(5) \* \* \*

7  
8 (c)–(e) \* \* \*

9

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

#	Commentator	Position	Comment	Committee Response
1	California Lawyers Association, Committee on Appellate Courts of the Litigation Section By Saul Bercovitch Director of Governmental Affairs and Karli Eisenberg Office of the Attorney General	A	The Committee on Appellate Courts supports this proposal. The proposal addresses a genuine problem and is a sensible attempt to give parties sufficient time to prepare their pleadings seeking review of adverse decisions in the Appellate Division.	The committee notes the commenter’s support for the proposal; no response required.
2	Github, Inc. By Isabelle E. Jarrott	A	Welcome	The committee notes the commenter’s support for the proposal; no response required.
3	Orange County Bar Association By Nikki P. Miliband President	A		The committee notes the commenter’s support for the proposal; no response required.
4	Superior Court of Los Angeles County	AM	Suggested Modification: The proposed rule should clarify how to determine the date that a document is sent.  Request for Specific Comments:	The committee notes the commenter’s support for the proposal if modified.  The committee appreciates this suggestion. However, because the proposal will amend the rules so that decisions are sent on the same day they are filed, the date that a document is sent will be the same as the filing date. Therefore, the committee does not believe that further amendment of the rules is necessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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

#	Commentator	Position	Comment	Committee Response
			<p><b>Does the proposal appropriately address the stated purpose?</b>                      Yes.</p> <p><b>If the amendments to rules 8.887(b), 8.935(a)(1), and 8.976(a) are implemented and court clerks are required to send opinions on the same day they are filed, are the other amendments still beneficial?</b>                      Yes.</p> <p><b>To clarify the date an opinion or order is sent, should rules, 8.887, 8.888, 8.935, and 8.975 require the trial court clerk to serve all opinion and orders?</b>                      Yes and the proposed rule should clarify how to determine the date that a document is sent.</p> <p><b>What would the implementation requirement be for courts? For example, training staff (please identify position and expected hour of training), revising processes and procedures (please describe), changing case management systems.</b>                      No additional training needed.</p> <p><b>Is it feasible for court clerks to send appellate division opinions on</b></p>	<p>No response required.</p> <p>No response required.</p> <p>The committee appreciates this suggestion, but for the reasons stated above the committee believes that no further amendment of the rules is necessary.</p> <p>The committee appreciates this input.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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

#	Commentator	Position	Comment	Committee Response
			<p><b>the same day they are filed, electronically when permissible.</b>                      Yes.  <b>What are the impediments to court clerks providing parties with immediate electronic notice of appellate division opinions as is done in the court of Appeal?</b>                      This court has not yet implemented electronic court filing for our Appellate department.  <b>Under the proposed procedure in the appellate division, will the Court of Appeal be able to determine the date a decision or order was sent?</b>                      Yes.  <b>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b>                      Yes.  <b>How well would this proposal work in court of different sizes?</b>                      It should work the same in all courts.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p>
5	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A		The committee notes the commenter’s support for the proposal; no response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

ITC SPR 18-03

Title of Proposal: Appellate Procedure: (Finality of Appellate Division Decisions)

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

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
July 9, 2018	Please review before committee meeting on July 17
To	Deadline
Appellate Advisory Committee	July 17, 2018
From	Contact
Christy Simons Attorney, Legal Services	Christy Simons Legal Services
Subject	415-865-7694 phone christy.simons@jud.ca.gov
Proposal to revise appellate division forms	

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#### Introduction

Earlier this spring, the Appellate Advisory Committee recommended circulating for public comment a proposal to revise several of the Judicial Council forms for filing notices of appeal and notices designating the record on appeal in appellate division matters. The revisions are intended to provide more complete and accurate information, make corrections, and clarify various items.

The Judicial Council's Rules and Projects Committee (RUPRO) approved the recommendation for circulation and the proposal was circulated from April 9 to June 8, 2018 as part of the regular spring comment cycle. This memo discusses the public comments received on the proposal and the appellate division subcommittee's recommendations regarding responding to the comments.

#### Public Comments

Five organizations submitted comments on this proposal. Four commenters (California Lawyers Association, Child Support Directors Association, Orange County Bar Association, and San Diego Superior Court) agreed with the proposal without providing specific comments; one (Los



July 9, 2018

Page 2

Angeles Superior Court) agreed if the proposal is modified. A chart with the full text of the comments received and the appellate division subcommittee's recommended responses is attached, and the comments are discussed below. Based on these comments, the appellate division subcommittee recommends that the committee recommend adoption of the proposal.

As you may recall, this proposal originated from suggestions submitted by the Los Angeles Superior Court (LASC) several years ago. The LASC suggests two modifications to the proposal. On form APP-102, one of the proposed revisions allows multiple appellants to submit one notice of appeal, but it only contains one signature line at the end of the form. The LASC points out that rule 8.821(a)(1) requires that the notice of appeal must be signed by the appellant or the appellant's attorney, and suggests that more signature lines should be added. The appellate division subcommittee recommends this addition.

On form CR-132, item 3(b) on page 2, the last sentence warns that if the appellant does not timely file the notice regarding the record on appeal (form CR-134), the court may appoint new counsel or dismiss the appeal. The LASC suggests that the form should specify that new counsel will be appointed if the appellant is represented by appointed counsel on appeal.

Rule 8.874(a)(1) provides:

If a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party in writing that it must do the act specified in the notice within 15 days after the notice is sent and that, if it fails to comply, the appellate division may impose the following sanctions:

(1) When the defaulting party is the appellant:

- (A) If the appellant is the defendant and is represented by appointed counsel on appeal, the appellate division may relieve that appointed counsel and appoint new counsel; or
- (B) If the appellant is the People or the appellant is the defendant and is not represented by appointed counsel, the appellate division may dismiss the appeal.

The appellate division subcommittee recommends revising this sentence to clarify that the potential penalty the court may impose depends on whether the appellant is represented by appointed counsel or not, and further clarifying that the latter includes self-represented litigants and those who have retained counsel. In addition, the subcommittee recommends retaining the language that sanctions *may* be imposed, rather than changing it to *will* be imposed, because the rule provides that the sanctions are discretionary, not mandatory.

As revised, the last sentence of item 3(b) is expanded to two sentences:

In addition, I understand that if I am represented by a court-appointed lawyer and I do not file the notice regarding the record on time, the court may appoint a new lawyer ~~counsel or~~ If I

represent myself or hired a lawyer to represent me, and I do not file the notice regarding the record on time, the court may dismiss my appeal.

Finally, a similar warning about the potential penalty for failing to timely file a proposed statement on appeal is contained in item 5d(2) of form CR-134. The appellate division subcommittee recommends a similar revision to clarify this advisement.

### Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects the modifications to the proposal recommended by the appellate division subcommittee, which are shown in yellow highlighting.

The committee's task with respect to this proposal is to:

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

### Attachments

1. Draft of report to Judicial Council
2. Revised forms, with proposed further revisions highlighted
3. Comment chart with draft committee responses



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20-21, 2018:

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Title	Agenda Item Type
Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142	January 1, 2019
Recommended by	Date of Report
Appellate Advisory Committee	July 11, 2018
Hon. Louis R. Mauro, Chair	Contact
	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

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### Executive Summary

The Appellate Advisory Committee recommends revising several notice of appeal forms and record election forms used in appellate division matters. The revisions provide more complete and accurate information, make corrections, and clarify various items. The revisions are based on suggestions from a superior court.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Revise *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to provide a way to indicate more than one appellant and to clarify the requirements for serving and filing a notice designating the record on appeal;
2. Revise *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to add references to the appellate fee waiver rules, and to expand the sections regarding a reporter's transcript and a transcript from an electronic recording to better describe the respondent's options and responsibilities;

3. Revise *Notice of Appeal (Misdemeanor) (form CR-132)* to clarify the sections regarding appellant's attorney in the trial court and whether court-appointed counsel is being sought on appeal, and to add an advisement of the potential penalties for not timely filing a notice regarding the record on appeal;
4. Revise *Notice Regarding Record on Appeal (Misdemeanor) (form CR-134)* to clarify the section regarding appellant's attorney, to reorganize the section regarding a reporter's transcript to better explain the appellant's options and responsibilities in designating this form of the record of the oral proceedings, and to more accurately set forth the potential penalties for failing to timely file a proposed statement on appeal; and
5. Revise *Notice of Appeal and Record on Appeal (Infraction) (form CR-142)* to clarify the section regarding appellant's attorney, to set forth the circumstances under which a proposed statement on appeal must be served on the prosecuting attorney, and to more fully describe the options for paying for a reporter's transcript or filing a certified transcript.

The revised forms are attached at pages XX-XX.

### **Relevant Previous Council Action**

These forms were approved by the Judicial Council for optional use effective January 1, 2009, with the exception of form APP-110, which was approved for optional use effective January 1, 2010. All four forms were revised effective January 1, 2017, as part of modernizing the appellate rules and forms to facilitate e-filing and e-service. Revisions prior to 2017 reflect changes to appellate division rules, update references to the California Courts website, and make certain nonsubstantive changes.

### **Analysis/Rationale**

The committee received these suggestions from a superior court when these forms were subject to revision as part of the modernization project noted above. Several of the suggested changes were included in that proposal; the rest were deferred at that time due to lack of resources. The current revisions are based on the previously deferred suggestions. The committee recommends these revisions to make the forms easier to use and understand for litigants and to reduce the burden on courts that results when litigants fill out the forms incorrectly or fail to take other required action in taking an appeal or designating the record.

### **Form APP-102, Notice of Appeal/Cross-Appeal (Limited Civil Case)**

Appellants in limited civil appeals can file form APP-102 to provide notice of an appeal. The form currently does not provide a way to indicate more than one appellant. To remedy this, the committee recommends adding a check box and an instruction to attach a separate page to list additional appellants.

Under the rules regarding the record in limited civil appeals, an appellant must serve and file a notice designating the record within 10 days of the date the notice of appeal is filed, and may file it together with the notice of appeal. Section 4 of form APP-102 provides information on filing a notice designating the record, but it does not include the requirement of serving the notice or the

consequence for failing to file the notice designating the record on time. The committee recommends revising this section of the form to specify the service requirement and state the consequence for failing to file the notice of designation on time.

In addition, this section of form APP-102 is unclear in that appellants often fill it out to state that they have attached the notice designating the record when in fact they have not. This leads to confusion when the trial court asks the appellate division to dismiss the appeal for failure to file the notice of designation. The committee recommends reorganizing this section to clarify the requirement of filing the notice designating the record and the option either to serve and file it together with the notice of appeal or to serve and file it separately but within 10 days of the date of filing of the notice of appeal.

**Form APP-110, Respondent's Notice Designating Record on Appeal (Limited Civil Case)**

Respondents can use form APP-110 to designate the record on appeal in limited civil cases. The appellant chooses the form of the record of documents and oral proceedings (if any) he or she wishes to use, and designates the documents and oral proceedings (if any) to be included in the record. The respondent then may designate additional documents or oral proceedings to be included in the record, and has options regarding format and payment. The committee recommends expanding and reorganizing section 5a regarding the reporter's transcript to include the option of attaching a certified transcript and more fully describe the options for paying for the transcript or applying for payment through the Transcript Reimbursement Fund. The committee also recommends rewording the formatting options for the reporter's transcript to be consistent with recently amended Code of Civil Procedure section 271.

Currently, section 5b regarding a transcript from an official electronic recording does not include a way for the respondent to designate additional proceedings to be included in the transcript. The committee recommends revising this section of the respondent's form to be consistent with form APP-103, *Appellant's Notice Designating Record on Appeal (Limited Civil Case)*.

**Form CR-132, Notice of Appeal (Misdemeanor)**

Appellants can use form CR-132 to provide notice of an appeal in a misdemeanor case. The current form requests information about the appellant's attorney in the trial court and on appeal, but the section is confusing. The committee recommends revising the section so that it requests information about the appellant's attorney in the trial proceedings, allows the appellant to indicate if the same attorney is providing representation on appeal, and refers the appellant to another part of the form if appointed counsel on appeal is being requested.

Currently, the form does not inform the appellant of the potential penalties for not timely filing a notice regarding the record on appeal. The committee recommends including an advisement pursuant to rule 8.874(a)(1) that such failure could result in sanctions.

Finally, the current form does not clearly inform the appellant about which forms to complete and attach in order to request a court-appointed lawyer. The committee recommends reorganizing this section to clarify which forms must be submitted.

### **Form CR-134, Notice Regarding Record on Appeal (Misdemeanor)**

This is the optional form appellants can use to designate the record on appeal in a misdemeanor case. Similar to form CR-132, the request for information about the appellant's attorney is confusing. The committee recommends a similar revision so that it requests information about appellant's attorney in the trial court proceedings and allows the appellant to indicate if the same attorney is providing representation on appeal.

The section of the form that allows an appellant to designate a reporter's transcript as the record of the oral proceedings is incomplete in several respects. The committee recommends revisions to allow the appellant to provide a certified transcript and to provide more information regarding how and when to pay for the reporter's transcript.

In addition, form CR-134 does not accurately inform the appellant who chooses to provide a statement on appeal as the record of the oral proceedings of the potential penalties for not timely filing the proposed statement. Currently, the form advises that such failure could result in dismissal of the appeal. However, the rule provides that the potential penalty for appellants who are represented by appointed counsel is the dismissal of counsel and appointment of new counsel. For appellants who are not represented by appointed counsel, the potential penalty is dismissal of the appeal. The committee recommends revising the advisement accordingly.

### **Form CR-142, Notice of Appeal and Record on Appeal (Infraction)**

Appellants can use form CR-142 to provide notice of appeal and to designate the record on appeal in an infraction case. The form contains the same request for information about the appellant's attorney as in forms CR-132 and CR-134. The committee recommends the same revisions, that the section be revised so that it requests information about the appellant's attorney in the trial court proceedings and allows the appellant to indicate if the same attorney is providing representation on appeal.

Form CR-142 allows the appellant to designate a statement on appeal as the record of the oral proceedings in the trial court. The form explains the requirement that, if the proposed statement on appeal is not attached to form CR-142, the appellant must file it within 20 days. However, this section contains no information on any service requirements. The committee recommends advising the appellant that the proposed statement must be served on the prosecuting attorney if the prosecuting attorney appeared in the case.

### **Policy implications**

This proposal raises no policy implications.

### **Comments**

The proposed revisions to the forms were circulated for public comment between April 9 and June 8, 2018 as part of the regular spring comment cycle. Five organizations submitted comments on this proposal. Four commenters agreed with the proposal without providing specific comments; one agreed with the proposal if modified and provided substantive

comments. A chart with the full text of the comments and the committee's responses is attached at pages XX-XX.

The substantive comments and the committee's responses are discussed below.

***Form APP-102***

One of the revisions to form APP-102, Notice of Appeal (Limited Civil Case), provides a check box to indicate that there is more than one appellant and instructions to attach a separate page listing them and their contact information. However, there is only one signature line at the end of the form. The Superior Court of Los Angeles County pointed out that rule 8.821(a)(1) requires that the notice of appeal must be signed by the appellant or the appellant's attorney, and suggested that more signature lines should be added.

Based on this comment, the committee recommends adding two additional signature lines to this form.

***Form CR-132***

As described above, one of the revisions to this form adds an advisement of the potential penalties for failing to timely file a notice regarding the record on appeal. The proposed revision that circulated for comment simply stated that such failure could result in appointment of new counsel or dismissal of the appeal. The Superior Court of Los Angeles County suggested specifying that new counsel will be appointed if the appellant is represented by appointed counsel on appeal.

Based on this comment, the committee recommends a more substantial revision to clarify that the potential penalty the court may impose depends on whether the appellant is represented by appointed counsel or not. (See rule 8.874(a)(1).) The advisement now states that if the appellant is represented by appointed counsel on appeal, the failure to timely file the notice could result in appointment of new counsel; if the appellant is self-represented or has retained counsel, such failure could result in dismissal of the appeal. The warning is phrased as permissive, not mandatory, because the rule provides that the sanctions are discretionary.

***Form CR-134***

The committee recommends the same clarification to the warning regarding the potential penalties for failure to procure the record as those discussed immediately above.

**Alternatives considered**

The committee considered recommending no changes to these forms, but rejected this alternative because corrections were necessary to bring the forms into compliance with the rules of court. In addition, the clarifications and additional information are designed to assist litigants by making the forms more user friendly and helpful, and to assist the courts by reducing the number of forms that are completed or filed incorrectly.

## **Fiscal and Operational Impacts**

The committee has identified no costs associated with implementation and no fiscal or operational impacts.

## **Attachments and Links**

1. Forms APP-102, APP-110, CR-132, CR-134, and CR-142, at pages XX-XX
2. Chart of comments, at pages XX-XX



**DRAFT****06-20-2018****Not approved by  
the Judicial Council****Instructions**

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

**Superior Court of California, County of**

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

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

The clerk will fill in the number below

**Appellate Division Case Number:****1 Your Information**

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

Check here if more than one appellant and attach a separate page or pages listing the other appellants and their contact information. At the top of each page, write "APP-102, item 1a."

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

Street address: \_\_\_\_\_

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

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Street City State Zip

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

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

Street address: \_\_\_\_\_

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

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Street City State Zip

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



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

2 This is (check a or b):

- a.  The first appeal in this case.
- b.  A cross-appeal (an appeal filed after the first appeal in this case (complete (1), (2), and (3))).
- (1) The notice of appeal in the first appeal was filed on (fill in the date that the other party filed its notice of appeal in this case): \_\_\_\_\_
- (2) The trial court clerk served notice of the first appeal on (fill in the date that the clerk served the notice of the other party's appeal in this case): \_\_\_\_\_
- (3) The appellate division case number for the first appeal is (fill in the appellate division case number of the other party's appeal, if you know it): \_\_\_\_\_

### 3 Judgment or Order You Are Appealing

I am/My client is appealing (check a or b):

- a.  The final judgment in the trial court case identified in the box on page 1 of this form.  
The date the trial court entered this judgment was (fill in the date): \_\_\_\_\_
- b.  Other:
- (1)  An order made after final judgment in the case.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (2)  An order changing or refusing to change the place of trial (venue).  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (3)  An order granting a motion to quash service of summons.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (4)  An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (5)  An order granting a new trial.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (6)  An order denying a motion for judgment notwithstanding the verdict.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (7)  An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_



3 (continued)

(8)  An order appointing a receiver.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_

(9)  Other action (please describe and indicate the date the trial court took the action you are appealing):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4 Record Preparation Election

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

If you are filing the first appeal in this case, you must serve and file a notice in the trial court designating the record on appeal. You may use Appellant’s Notice Designating Record on Appeal (Limited Civil Case) (form APP-103). Check a or b:

- a.  I will serve and file a notice designating the record on appeal together with this notice of appeal.
- b.  I will serve and file a notice designating the record on appeal later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal, and that if I do not file the notice designating the record on time, the court may dismiss my appeal.

**REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.**

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

▶ \_\_\_\_\_  
*Signature of appellant/cross-appellant or attorney*

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

▶ \_\_\_\_\_  
*Signature of appellant/cross-appellant or attorney*

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

▶ \_\_\_\_\_  
*Signature of appellant/cross-appellant or attorney*

**Respondent's Notice Designating Record on Appeal (Limited Civil Case)**

Clerk stamps date here when form is filed.  
**DRAFT**  
**2018-02-13**  
**Not approved by the Judicial Council**

**Instructions**

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

**Superior Court of California, County of**

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

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

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:**

**1 Your Information**

a. Name of respondent (the party who is responding to an appeal filed by another party):

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

b. Respondent’s contact information (*skip this if the respondent has a lawyer for this appeal*):

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

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

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

c. Respondent’s lawyer (*skip this if the respondent does not have a lawyer for this appeal*):

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

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

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

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

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



**Information About the Appeal**

- 2 On (fill in the date): \_\_\_\_\_ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): \_\_\_\_\_ the appellant filed an appellant’s notice designating the record on appeal.

**Record of the Documents Filed in the Trial Court**

- 4 The appellant elected (chose) to use a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.
  - a.  **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk’s transcript, you must identify those documents here.*

**(1) Documents**

- In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-110, item 4a(1).”*

**(2) Exhibits**

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number [such as Plaintiff’s #1 or Defendant’s A] and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-110, item 4a(2).”*



4 (continued)

- b.  **Copy of clerk’s transcript.** I request a copy of the clerk’s transcript. *(Check and complete (1) or (2).)*
  - (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
  - (2)  I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the checked document):*
    - (a)  An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
    - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

**Record of Oral Proceedings in the Trial Court**

5 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c):*

- a.  **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.
  - (1)  **Designation of additional proceedings to be included in the reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

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

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

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”



5 a. (continued)

(2)  **Certified transcripts.** I have attached to this *Respondent's Notice Designating Record on Appeal* an original certified transcript of all the proceedings I have designated in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court.

(3) **Copy of reporter's transcript.** I request a copy of the reporter's transcript.

(a)  I will pay for the reporter's transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will:

(i)  Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of \$50 for the trial court to hold this deposit in trust. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(ii)  Pay the reporter directly and file with the trial court a copy of the written waiver of deposit signed by the reporter. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(b)  I am unable to afford the cost of the reporter's transcript and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund. I understand that within 90 days of filing my application, I must file with the trial court a copy of the provisional approval of my application or pay for the reporter's transcript as provided in (a). I understand that if I do not comply, I will not receive a copy of the transcript.

(4) **Format of reporter's transcript.** I request that the reporter provide my copy of the transcript in:

(a)  Electronic format only.

(b)  Paper format only.

(c)  Electronic format and a second copy of the reporter's transcript in paper format.

**OR**

b.  **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b).

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

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings.*)

5 b. (1) (continued)

Date	Department	Description	Electronic Monitor's Name
(a)			
(b)			
(c)			

Check here if you need more space to describe any proceeding or to list other proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-110, item 5b(1)."

(2) Copy of the transcript. (Check and complete (a) or (b).)

- (a)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the cost of the transcript. I understand that if I do not pay for the transcript, I will not receive a copy.
- (b)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. (Check (i) or (ii) and submit the appropriate document):
  - (i)  An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
  - (ii)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

**OR**

- c.  **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. (Check and complete (1) or (2).)
  - (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.
  - (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. (Check (a) or (b) and submit the appropriate document):
    - (a)  An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).
    - (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)

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

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

\_\_\_\_\_  
Signature of respondent or attorney



*Clerk stamps date here when form is filed.*

**DRAFT**

**2018-07-10**

**Not approved by  
the Judicial Council**

**Instructions**

- This form is only for appealing in a **misdemeanor case**. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

**Superior Court of California, County of**

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

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

*You fill in the appellate division case number (if you know it):*

**Appellate Division Case Number:**

**1 Your Information**

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

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

b. Appellant’s contact information (required):

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

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

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

c. Appellant’s lawyer in the trial court proceedings:

The lawyer filling out this form  is  is not representing the appellant in this appeal.

*If court-appointed counsel on appeal is being requested, see item 4.*

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

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

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

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

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



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

**2 Judgment or Order You Are Appealing**I am/My client is appealing (*check one*):

- a.  The final judgment of conviction in this case (Pen. Code, § 1466(b)(1)).  
 I am/My client is contesting only the conditions of the probation.
- b.  The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Pen. Code, § 1466(b)(1)).  
 An order modifying the conditions of probation.  
 Other(*describe the action you are appealing and give the date the trial court took the action*):  
 \_\_\_\_\_
- c.  The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Pen. Code, § 1538.5(j)).
- d.  Other action (*describe the action you are appealing and give the date the trial court took the action*):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

- a.  I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).
- b.  I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either (1) 20 days after I file this notice of appeal or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings. In addition, I understand that if I am represented by a court-appointed lawyer and I do not file the notice regarding the record on time, the court may appoint a new lawyer. If I represent myself or hired a lawyer to represent me, and I do not file the notice regarding the record on time, the court may dismiss my appeal.

**4 Court-Appointed Lawyer**

- a. Do you/Does your client want to be represented by a court-appointed lawyer in this appeal? (*Answer yes or no.*)  
 Yes. Complete and attach *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133).  
 No.
- b. Were you/Was your client represented by the public defender or other court-appointed lawyer in the trial court? (*Answer yes or no.*)  
 Yes.  
 No. If you answered yes to 4a, complete and attach *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210).

**REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.**

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

\_\_\_\_\_  
Type or print your name\_\_\_\_\_  
Signature of appellant or attorney

**DRAFT****2018-07-10****Not approved by  
the Judicial Council****Instructions**

- This form is only for giving the court notice about the record on appeal in a **misdemeanor case**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
  - (1) 20 days after you file your notice of appeal, or, if it is later
  - (2) 10 days after the court appoints a lawyer to represent you on appeal (if you file a request for a court-appointed lawyer within 20 days after you file your notice of appeal).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

**Superior Court of California, County of**

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

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

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

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

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

- b. Appellant's contact information (required):

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

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

- c. Appellant's lawyer in the trial court proceedings:

The lawyer filling out this form  is  is not representing the appellant in this appeal.

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

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

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

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



**Information About Your Appeal**

② On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

**Your Choices About the Record on Appeal**

**Stipulation for Limited Record**

③  The respondent and I/my client have agreed (“stipulated”) under rule 8.860 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached.

**Record of Oral Proceedings**

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.*

④ I elect (choose)/My client elects to proceed (check a or b):  
a.  WITHOUT a record of the oral proceedings in the trial court (skip item ⑤; sign and date this form). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): \_\_\_\_\_

b.  WITH a record of the oral proceedings in the trial court (complete item ⑤ below). I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): \_\_\_\_\_



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

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

- a.  **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1), (2) or (3).)*
- (1)  Within 10 days of when I receive the court reporter's estimate of the cost of this transcript, I will file a certified transcript of all the proceedings required by rule 8.865 and that complies with rule 8.144.
- (2)  I will pay the trial court clerk's office for the reporter's transcript myself within 10 days of when I receive the court reporter's estimate of the costs of this transcript. Alternatively, I will pay the reporter directly and file with the trial court a written waiver of deposit signed by the reporter. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (3)  I am asking that the reporter's transcript be prepared at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a reporter's transcript at no cost to you.*)

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a transcript at no cost to you.*)



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

⑤ (continued)

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a copy of the official electronic recording at no cost to you.)

**OR**

- d.  **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).)
- (1)  I have attached my proposed statement on appeal to this notice. (If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Misdemeanor) (form CR-135) to prepare and file this proposed statement. You can get form CR-135 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).)
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice. I understand that if I do not file the proposed statement on time, and if I am represented by a court-appointed lawyer, the court may appoint a new lawyer. If I represent myself or hired a lawyer to represent me, and I do not file the proposed statement on time, the court may dismiss my appeal.

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

\_\_\_\_\_  
Type or print your name\_\_\_\_\_  
Signature of appellant or attorney

Clerk stamps date here when form is filed.

**DRAFT****2018-02-13****Not approved by  
the Judicial Council****Instructions**

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

**Superior Court of California, County of**

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

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

The clerk will fill in the number below:

**Appellate Division Case Number:****1 Your Information**

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

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

- b. Appellant's contact information (required):

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

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

- c. Appellant's lawyer in the trial court proceedings:

The lawyer filling out this form  is  is not representing the appellant in this appeal.

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

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

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

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



**2 Judgment or Order You Are Appealing**

I am/My client is appealing (*check a, b, or c*):

- a.  the final judgment of conviction in the case (Pen. Code, § 1466(b)(1)).  
The trial court issued (rendered) this judgment on (*fill in the date*): \_\_\_\_\_
- b.  an order made by the trial court after judgment that affects an important (substantial) right of mine/my client (Pen. Code, § 1466(b)(2)).  
The trial court issued (rendered) this order on (*fill in the date*): \_\_\_\_\_
- c.  Other (describe the action you are appealing and indicate the date the trial court took the action):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Your Choices About the Record on Appeal**

**Stipulation for Limited Record**

- 3  The respondent and I/my client have agreed (“stipulated”) under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. (*At the top of each page write “CR-142, item 3.”*)

**Record of Oral Proceedings**

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.*

- 4 I elect (choose)/My client elects to proceed (*check a or b*):
  - a.  WITHOUT a record of the oral proceedings in the trial court (*skip item 5*); *sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.  

(*Write initials here*): \_\_\_\_\_
  - b.  WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that if I elect (choose) to proceed with a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.  

(*Write initials here*): \_\_\_\_\_

- 5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one—a, b, c, or d*):
  - a.  **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).)*





5 (continued)

- (1)  I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Infraction) (form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).)*
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve the prosecuting attorney if the prosecuting attorney appeared in the case and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may proceed on the clerk's transcript only.

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free transcript.)*

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.
- (2)  I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*



5 (continued)

OR

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


Within 10 days of receiving the court reporter’s estimate of the cost of preparing the reporter’s transcript, I will (check and complete one of the following):

- (1)  File with the trial court a certified transcript of all the proceedings required by rule 8.918.
- (2)  Pay for the transcript myself by depositing with the trial court an amount equal to the estimated cost of the transcript.
- (3)  Pay the reporter directly and file with the trial court a written waiver of the deposit that is signed by the reporter.
- (4)  Request a reporter’s transcript at no cost. I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a reporter’s transcript at no cost to you.)

I understand that if I do not pay for this transcript and I am not eligible for a reporter’s transcript at no cost, the reporter’s transcript will not be prepared and provided to the appellate division.

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

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

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

**SPR18-05**

**Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases** (Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
1.	California Lawyers Association, Litigation Section, Committee on Appellate Courts	A	The Committee on Appellate Courts supports this proposal. The proposal appropriately addresses the stated purpose by providing more complete and accurate information, making corrections, and clarifying various items.	The committee notes the commenter’s support for the proposal and appreciates the input.
2.	Child Support Directors Association, Judicial Council Forms Committee by Ronald Ladage, Chair	A	The Committee agrees with the proposed revisions to forms APP-102 and APP-110, as drafted.	The committee notes the commenter’s support for the proposal and appreciates the input.
3.	Orange County Bar Association by Nikki P. Miliband, President	A	<i>No additional comments.</i>	The committee notes the commenter’s support for the proposal and appreciates the input.
4.	Superior Court of California, County of Los Angeles	AM	<p><b>Suggested Modifications:</b></p> <p><b>Form APP-102:</b> The proposed change to allow multiple parties to submit one notice of appeal requires more space for multiple signatures.</p> <p>Currently California Rules of Court, rule 8.821(a)(1) requires that the notice of appeal must be signed by the appellate or the appellant’s attorney. Additional signature lines should be added.</p> <p><b>Form CR-132 Notice of Appeal (Misdemeanor):</b> Page 2, box 3(b) - Last sentence suggests that an appellant may receive new counsel if appellant’s attorney fails to timely file form CR-</p>	<p>The committee notes the commenter’s support for the proposal if modified and thanks the commenter for the specific feedback.</p> <p>The committee agrees with the commenter and has made the proposed modification to form APP-102.</p> <p>The committee agrees that item 3(b) should be revised to clarify that the potential penalty the court may impose depends on whether the</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR18-05**

**Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases** (Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142)

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

	Commenter	Position	Comment	DRAFT Committee Response
			<p>134. It should specify that new counsel will be appointed if the appellant is represented by appointed counsel on appeal.</p> <p><b>Request for Specific Comments: Does the proposal appropriately address the stated purpose?</b> Yes, however, please see the proposed changes above.</p> <p><b>Would the proposal provide cost savings? If so please quantify.</b> Yes, this will prevent parties from being defaulted for lack of signature. The process is much cleaner.</p> <p><b>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</b> Minimal training would be needed.</p>	<p>appellant is represented by appointed counsel or not. (See rule 8.874(a)(1).) The warning is phrased as permissive, not mandatory, because the rule provides that the sanctions are discretionary.</p> <p>In addition, a similar warning regarding the penalties for failure to procure the record on appeal appears in form CR-134. The committee recommends a similar revision to clarify item 5d(2).</p> <p>See responses above.</p> <p>No response required.</p> <p>No response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR18-05**

**Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases** (Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committee Response</b>
			<b>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b> Yes.	No response required.
5.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	<i>No additional comments.</i>	The committee notes the commenter's support for the proposal and appreciates the input.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
July 11, 2018	Please read before July 17 committee conference call
To	Deadline
Members of the Appellate Advisory Committee	July 17, 2018
From	Contact
Christy Simons Attorney, Legal Services	Christy Simons 415-865-7694 phone christy.simons@jud.ca.gov
Subject	
Settled statement forms	

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#### Introduction

Earlier this year, the Appellate Advisory Committee recommended circulating for public comment a proposal to approve several new forms and revisions to existing forms for litigants and courts to use in preparing and certifying settled statements. The Judicial Council's Rules and Projects Committee approved the recommendation and the proposal was circulated for public comment from April 9 to June 8, 2018 as part of the regular spring comment cycle. This memo discusses the public comments received on the proposal and the rules subcommittee's recommendations for responding to the comments.

#### Public Comments

Eleven organizations submitted comments on this proposal. Four commenters (California Judges Association, Executive Committee of the Family Law Section of the California Lawyers Association, Orange County Bar Association, and the Superior Court of San Diego County) agreed with the proposal. Seven organizations agreed if the proposal is modified (California Department of Child Support Services, Committee on Appellate Courts of the Litigation Section

of the California Lawyers Association, Child Support Directors Association, Family Violence Appellate Project, San Diego Bar Association, Superior Court of Los Angeles County, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee). A chart with the full text of the comments organized by form is attached.

This memo summarizes the comments and the rules subcommittee's recommended responses. The discussion of the comments is organized by form and follows the order of the comment chart (alphabetically by commenter) to facilitate cross-referencing to the actual text of the comment. The recommended additions or modifications are highlighted on the forms attached as part of these materials.

### **General comments**

The comments were overwhelmingly supportive of the proposal. The Los Angeles Superior Court expressed concern, however, about how well the forms would work in family law matters, and strongly recommended developing a separate set of forms that would be tailored to family law proceedings.

The committees considered this issue earlier in the process when the proposal was being developed. The Family and Juvenile Law Advisory Committee believes the forms will work well for family law matters. The subcommittee recommends declining to modify the proposal based on this comment.

The Los Angeles Superior Court also commented on the impacts to the court of implementing the proposed new and revised forms, and in so doing brought an error in a form to staff's attention. Form APP-022, *Order on Appellant's Proposed Settled Statement (Unlimited Civil Cases)*, was erroneously labeled as a mandatory form. It is an optional form; the error has been corrected.

The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, Joint Rules Subcommittee (JRS) commented on the impacts of this proposal on court operations:

- “• Results in additional training, which requires the commitment of staff time and court resources. Courtroom and counter clerks will need to be trained on the forms, but this can be done in the normal course of training.
- “• Increases court staff workload. There would be a significant impact to self-help staff, which typically does not assist self-represented litigants on appellate procedures. In addition to training, self-help staff would likely have to develop long-term services and use existing resources to help self-represented litigants with appellate processes, particularly in family law cases.”

The court is concerned that this proposal will create more work for self-help staff in the trial courts, but it is unclear why this proposal, and not the increasing number of litigants who cannot afford a court reporter, is the cause. The subcommittee recommends acknowledging that courts will incur some costs in implementing the new and revised forms, including potential impacts to self-help staff when more self-represented litigants undertake the settled statement process. The subcommittee also recommends expressing the expectation that the new and revised forms will save resources by making the settled statement process easier for parties to understand and access and less burdensome for the courts.

JRS also suggests including a glossary of terms for the new and revised forms. The subcommittee notes in its response that form APP-014-INFO includes a glossary of terms.

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

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

*Item 1 on page 1.* The commenter suggests adding a link to a website that identifies the counties included in each appellate district. The subcommittee recommends this addition.

*Item 14(b) on page 7.* The commenter points out, with respect to the presumption on appeal that a judgment or order is correct, that this form does not explain the exception to that rule when a statement of decision has been prepared and the record shows that any ambiguity or omission was brought to the trial court's attention. In addition, the form does not explain that some appellate districts may still make the presumption even if a settled statement has been prepared. (See citations in the text of the comment.) The commenter is concerned that many litigants still may not have meaningful access to an appeal because a statement of decision was not prepared in their case, and suggests adding a note of caution to item 14(b) on page 7 of the form to state:

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

The subcommittee approved adding language to this effect, but declined any invitation to include information about exceptions to the presumption that an order or judgment is correct because any such discussion would involve many technical points of law and would likely be confusing to self-represented litigants.

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

*Item 6 on page 2.* This item currently states that an unrepresented appellant must put his or her address, phone number, etc. on any forms that are filed. For safety reasons, the commenter



suggests adding language regarding keeping the information private. The subcommittee recommends the highlighted language, which includes reference to a trial court form for providing notice of a change of address or other contact information. The subcommittee recommends that such a form be developed for use in the appellate courts.

*Item 4 on page 2.* This item includes a list of appealable orders, including orders granting or dissolving, or refusing to grant or dissolve, an injunction. The commenter suggests clarifying that this includes a domestic violence restraining order. The subcommittee recommends adding language indicating that injunctions include restraining orders.

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

*Item 10 on page 3.* The commenter suggests adding reference to orders in the item addressing the deadline to serve and file a notice of appeal. Presently the item only refers to a judgment as triggering the time for serving and filing the notice of appeal. The subcommittee recommends adding “or appealable order.”

*Item 12 on page 4.* This item includes examples of judgments that are not postponed by filing a notice of appeal. The commenter suggests adding the example of custody matters. The subcommittee recommends the addition to this item.

*Item 13(b)(1) on page 7.* This item addresses the reporter’s transcript as the record of the oral proceedings. The commenter suggests the following modifications to clarify the section for survivors of domestic violence, noting that some counties provide court reporters in family law and/or Domestic Violence Prevention Act cases: “A court reporter ~~will~~ may not have been present unless you or another party in your case made specific arrangements to have a court reporter present, as some counties do not provide court reporters in all cases.” The subcommittee agrees with changing will to may, but does not recommend augmenting the sentence since the change to “may” adequately addresses the point.

*Item 19 on page 12, “What is “oral argument?”* In the commenter’s experience, self-represented litigants often do not understand that an appellate oral argument is different from a hearing or a trial, in that no new evidence can be considered. The commenter recommends adding an advisement to this item that an appeal is not a new trial, using the same wording as the advisement contained in item 16, “What is a brief?” The subcommittee recommends adding language that oral argument is not a chance to present new evidence; rather it is a chance to explain the arguments made in the briefs. The subcommittee also recommends adding references to rule 8.256 and an online self-help page for more information about oral argument.

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

*Item 5 on page 2.* The commenter suggests that this section (formerly item 2 on page 1 of the version of this form that circulated for public comment) presents a confusing explanation of the requirements to prevail on appeal. The discussion of “prejudicial error” and “no substantial evidence” do not adequately explain appellate concepts and combine the need to prove prejudicial error with the substantial evidence standard of review.

The subcommittee recommends reorganizing this item, separating “What is an appeal?” into its own item 2 and adding a new item 5, “What does the appellant need to prove to win on appeal?” New item 5 describes prejudicial error, includes a discussion of insufficiency of the evidence as one possible prejudicial error, and emphasizes that the burden of proof lies with the appellant.

The subcommittee also recommends reorganizing form APP-001-INFO to move two sections (former items 5 “Who can appeal?” and 6 “Can I appeal any decision the trial court made?”) higher up on the form to be items 3 and 4, immediately preceding new item 5. The subcommittee believes this new order is more helpful for litigants.

*Item 6 on page 2, “Do I need a lawyer to represent me in an appeal?”* The commenter suggests that that language explaining that individuals can represent themselves is confusing and suggests alternative language. The subcommittee does not recommend making the change because the original language reasonably conveys the information, follows the plain language convention of addressing “you,” the reader, and avoids any redundancy.

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

*Item 4 on page 2.* The commenter suggests adding to the list of immediately appealable orders a new bullet point for orders that are made appealable by the Probate Code or the Family Code. The subcommittee recommends this addition.

**Form APP-003**

**California Department of Child Support Services**

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

*Item 2(b)(3) on page 2 of the form.* Appellants can check this box to indicate that they wish to proceed with a settled statement as the record of the oral proceedings. The commenters suggest adding language that appellants must file form APP-025, *Appellant’s Motion to Use a Settled Statement*, together with form APP-003, to ensure that parties file the right forms and avoid delay.

The subcommittee agrees with adding a reference in item 2b(3)(c) to form APP-025 to inform appellants that they can use this form for the purpose of filing the motion (which is only

necessary for appellants who check subpart (c) of item 2b(3)). The instruction cannot require appellants to use this form, however, because the form is optional.

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

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

The subcommittee recommends modifying the parenthetical to read: “(what was said at the trial or hearing).”

*Item 4(c) on page 3, Exhibits.* The commenter suggests that this section of the form should reflect the modern trial court practice of courts routinely returning exhibits to the parties following the hearing or trial. The subcommittee recommends adding language providing: “If any exhibits identified below were returned to the parties and not kept by the trial court, the party in possession of the exhibit must return it to the trial court within 10 days after service of this notice designating the record on appeal. (See rule 8.122(a)(3).)”

The commenter suggests also including a note or a box to check if the party intends to file an exhibit directly with the appellate court. (See rule 8.224(b)(2).) The subcommittee disagrees with making this change because the form APP-003 is the appellant’s notice designating the record on appeal; rule 8.224 applies to a request for exhibits later in the appellate proceedings.

Finally, the commenter suggests that the “Description” column for designated exhibits should be revised to accommodate exhibits that are lodged with the trial court as part of a Notice of Lodgment. Specifically, they should be identified separately from numbered trial exhibits. The subcommittee does not recommend implementing this suggestion because the item already refers to lodged exhibits and attempting to provide space or instructions for exhibits that are not numbered would likely cause confusion and make the form more complicated.

**Form APP-014**

**California Department of Child Support Services**

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

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

The committee discussed this issue at length before the proposal circulated for public comment. The requirement was eliminated from the form because it is not necessary for a settled statement and calls for a legal analysis. If the description of harm is drafted inartfully, it could result in the forfeiture of arguments on appeal. The subcommittee does not recommend deviating from the committee's earlier conclusion. However, the draft response to this comment includes a note that there is a section on prejudicial error (item 5, "What does the appellant need to prove to win on appeal?") in form APP-001-INFO.

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

*Item 1 on page 1.* This section, "Preliminary Information," asks for the date the notice of appeal was filed, which necessarily means that the notice of appeal has already been filed at the time the appellant is drafting his or her settled statement. The commenter questions this requirement, opining that the process of preparing a settled statement often helps the self-represented litigant decide whether to appeal a trial court decision. Having a settled statement, the commenter continues, also helps an unrepresented litigant find counsel for the appeal. The commenter recognizes that rule 8.137 states that an appellant wishing to use a settled statement must file a motion in the trial court with a copy of the record designation, which requires that a notice of appeal already be filed. The commenter suggests that form APP-014 not include "a mandatory reference to the date of filing of a notice of appeal." It further suggests that the committee consider these issues in connection with a broader review of the language of rule 8.137.

The commenter's suggestion would require amending rule 8.137, which is beyond the scope of the proposal. In addition, a settled statement is a record of the oral proceedings that are relevant to the reasons for the appeal and requires time and effort by the respondent and the trial court in addition to the appellant. The subcommittee does not believe that it would function well as an aid to a litigant who is deciding whether to appeal or seeking the assistance of counsel.

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

Rather than make changes to form APP-014, the subcommittee recommends adding a new item to form APP-014-INFO. New item 8 on page 2 of the form, entitled "Overview for completing form APP-014," gives guidance to the appellant on providing information that is relevant to his or her appeal.

**Form APP-014A**

**California Department of Child Support Services**

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

*Item 1(c) on page 2.* The commenters point out that, if there is testimony from more than two additional parties or nonparty witnesses, the appellant will need to attach more than one form APP-014A. However, there is no way to indicate how many additional forms are attached. The commenters suggest that this “could lead to confusion when parties or their attorneys review the record as there is no way to distinguish one form APP-014A from another form APP-014A.” The commenters suggest modifying the instructions in the parenthetical to require the appellant to fill out and attach additional forms APP-014A and to indicate how many of those forms are attached.

The subcommittee concluded that asking the appellant for the total number of APP-014A forms could be confusing and likely would not improve this form. Form APP-014A is for optional use; the appellant is free to use it or to draft another document to provide additional testimony. Therefore, any request for the number of APP-014A forms would only apply to appellants who use this form exclusively. The subcommittee considered requiring the appellant to indicate how many pages were attached, rather than the number of forms, but decided that requiring an appellant to count the pages attached to an attachment was just too confusing. The fix would be worse than the problem, if indeed there is any confusion about how much additional testimony the appellant submitted. The subcommittee recommends revisiting the issue in the future if the committee receives receive feedback that this is a problem.

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

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

In connection with its comment regarding the presumption that the judgment or order is correct and the doctrine of implied findings (see above suggestion regarding form APP-001-INFO), this commenter also suggests a modification for form APP-022. The commenter is concerned that many litigants may not have meaningful access to an appeal because a statement of decision was not prepared in their case, and suggests adding a check box on form APP-022 stating: “This settled statement contains the court’s decision and the court’s factual and legal basis for its decision.”

The subcommittees does not recommend this addition, which would have the effect of declaring that the settled statement is also a statement of decision. A statement of decision and a settled statement involve different procedures and serve two different functions. Adding a checkbox to avoid the doctrine of implied findings, with no notice to the respondent, would be a substantive change that is beyond the scope of this proposal. The subcommittee also questions whether this would be sound policy.

### Committee Task

Staff has prepared a draft of the report that could be submitted to the Judicial Council on this proposal. This draft reflects the modifications to the proposal recommended by the rules subcommittee. The committee's task is to:

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

### Attachments

1. Draft of report to the Judicial Council
2. Forms APP-001-INFO, APP-003, APP-010, APP-014, APP-014A, APP-014-INFO, APP-020, APP-022, APP-025
3. Draft comment chart



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 20-21, 2018:

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Title	Agenda Item Type
Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve forms APP-0014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014	January 1, 2019
Recommended by	Date of Report
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	July 16, 2018
Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Co-chair Hon. Mark A. Juhas, Co-chair	Contact Christy Simons, 415-865-7694 <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a>  Gabrielle Selden, 415-865-8085 <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a>

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### Executive Summary

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

## Recommendation

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

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

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



## **Relevant Previous Council Action**

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

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

## **Analysis/Rationale**

### **Background**

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

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

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

### **Recommended changes**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

caption advising appellants to read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO).

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

### **Policy implications**

The committees have identified no policy implications.

### **Comments**

This proposal was circulated for public comment from April 9 to June 8, 2018, as part of the regular spring comment cycle. Eleven organizations submitted comments on this proposal. Four commenters agreed with the proposal. Seven organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, agreed if the proposal is modified.

Generally, the discussion of comments below is organized in the same manner as the comment chart, beginning with general comments about the proposal, followed by comments regarding a specific form arranged by form. A chart with the full text of the comments received and the committee's responses is attached.

### ***General comments***

As noted above, all eleven commenters support the proposal, and several included positive general comments.

One superior court expressed concern, however, about whether the forms would work in family law matters, and recommended developing a separate set of forms tailored to these proceedings.

The committees considered this issue when the proposal was being developed. A number of modifications were made to the forms, including adding "other parent/party" to the captions, referencing appealable orders in addition to judgments, including examples from family law matters, and revising form APP-014, Appellant's Proposed Settled Statement (Unlimited Civil Case), so that party and witness testimony is not limited to trial proceedings. Based on the Family and Juvenile Law Advisory Committee's conclusion that the forms will work well for family law matters, the committees concluded that no action is required. Several more such modifications were suggested in the comments and added to the forms by the committees.

The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, Joint Rules Subcommittee (JRS) commented on the impacts of this proposal on court operations: (1) training of staff on the forms, and (2) an increase in court staff workload, particularly self-help staff. JRS indicated self-help staff typically do not assist litigants with appellate procedures, but they "would likely have to develop long-term services and use existing resources to help self-represented litigants with appellate processes, particularly in family law cases."

The committees acknowledge that courts will incur some costs in implementing the new and revised forms, including training costs and potential impacts to self-help staff when more self-represented litigants undertake the settled statement process. However, the potential increased workload for court staff may be more a result of the increasing number of litigants who cannot afford a court reporter than a result of this proposal. The committees expect that the new and revised forms will ultimately save resources by making the settled statement process easier for parties to understand and access and less burdensome for the courts.

***Comments on form APP-001-INFO, Information on Appeal Procedures for Unlimited Civil Cases***

A state lawyers' association noted that the form includes a statement regarding the presumption on appeal that a judgment or order is correct, but does not include information regarding when that presumption does not apply. The commenter suggested adding a note of caution to the appellant to carefully consider the form of the oral record because it may affect the appeal, and that the appellant may wish to consult with an attorney. The committees agreed with adding this note, but declined any invitation to describe in the form the exceptions to the presumption, the effects of implied findings, and ways to avoid implied findings. Any such discussion would involve technical points of law and exceed the scope of an information sheet that provides an overview of the appeals process.

This commenter also suggested modifying the form to add language allowing self-represented victims of domestic violence and others with privacy concerns to keep their contact information private. The committees agreed and made the modification.

This commenter also suggested clarifying that oral argument is not the same as a hearing or a trial in that no new evidence can be considered. The committees added language to this effect as well as references to rule 8.256 and an online self-help page for more information about oral argument.

A county bar association raised issues with the item of this form that described an appeal as distinguished from trial court proceedings and included discussions of "prejudicial error" and "no substantial evidence." The commenter opined that this item presented a confusing explanation of the requirements to prevail on appeal, did not adequately explain appellate concepts, and seemed to combine the need to prove prejudicial error with the substantial evidence standard of review.

The committees reorganized this item, separating the description of an appeal from a new item entitled, "What does the appellant need to prove to win on appeal?" The new item describes prejudicial error, includes a brief discussion of insufficiency of the evidence as one possible prejudicial error, and emphasizes that the burden of proof lies with the appellant.

***Comments on form APP-003, Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)***

With respect to the item on the form where appellants can check a box to indicate that they wish to proceed with a settled statement as the record of the oral proceedings, two commenters suggest adding language that appellants must file new form APP-025, *Appellant's Motion to Use a Settled Statement*. The committees agree with adding a reference to form APP-025 to the checkbox for appellants who must obtain an order allowing them to use a settled statement. The language reflects the fact that form APP-025 is for optional use.

A bar association submitted several suggestions regarding the designation of exhibits. First, the commenter suggested that the form be revised to reflect the practice of courts routinely returning exhibits to the parties following a hearing or trial. The committees agreed and added language describing the procedure for obtaining such exhibits.

Second, the bar association suggested including a checkbox for a party to indicate the intent to file an exhibit directly with the appellate court, citing rule 8.244(b)(2). The committees declined to make this change because this is the form appellants file to designate the record, and the cited rule applies to a request for exhibits later in the appellate proceedings.

Third, the bar association suggested revising the area for describing exhibits to account for exhibits that are lodged and not numbered. The committees decided not to make this change because the item already includes lodged exhibits and any further revisions tailored to lodged exhibits would likely cause confusion and make the form more complex.

#### ***Comments on form APP-014, Appellant's Proposed Settled Statement (Unlimited Civil Case)***

Two child support organizations requested that the requirement that an appellant describe how he or she was harmed by the complained-of error on appeal be restored to this form. The commenters explained that it helps alert self-represented litigants that an error alone is not grounds for an appeal; rather, there must be an error that caused harm. The committees considered this matter in developing the proposal and concluded that appellants should not be required to describe the harm in a settled statement because it calls for a legal analysis that is not required by the rule. It also could result in forfeiture of arguments on appeal if the description is inartfully drafted. The committees reaffirmed their earlier conclusion and, in responding to these comments, noted that item 5 on form APP-001-INFO includes a section describing prejudicial error.

A bar association questioned the requirement that an appellant fill in the date the notice of appeal was filed, because having that date would necessarily mean that the notice of appeal was already filed at the time the appellant was drafting his or her settled statement. The commenter opined that the process of preparing a settled statement would help the self-represented litigant decide whether to appeal a trial court decision. Moreover, having a settled statement would also help an unrepresented litigant find counsel for the appeal. The commenter recognized that rule 8.137 contemplates that the notice of appeal is already on file at the time a notice designating the record (including choosing to proceed with a settled statement) is filed. The commenter suggested that form APP-014 not include "a mandatory reference to the date of filing a notice of

appeal.” The commenter further suggested that the committees consider these issues in connection with a broader review of rule 8.137.

A review of rule 8.137, including any proposed amendments, is beyond the scope of this proposal. In addition, a settled statement is a record of the oral proceedings that are relevant to the reasons for an appeal. Preparing a settled statement requires time and effort on the part of the respondent/prevaling party and the trial court, in addition to the appellant/aggrieved party. Until a notice of appeal is filed and there is a matter pending, it does not seem feasible to expect a potential respondent or the trial court to devote resources to the settled statement process. The committees do not believe that a settled statement would function well as an aid to a litigant who is deciding whether to appeal or seeking the assistance of counsel on appeal.

The commenter also raised concerns that the new format of this form does not help an appellant focus on the factual and legal issues giving rise to the appeal, and that it could encourage “rambling, argumentative, narrative responses.” The commenter suggested it would be better to start with a description of the order or judgment being appealed from and the specific ruling that is being appealed. The form should then ask directed and specific questions about the basis for the appeal and ask the appellant to describe any relevant motions, findings, documents, testimony, instructions, etc.

Rather than making changes to form APP-014, the committees added a new item to the information sheet, form APP-014-INFO, entitled “Overview for completing form APP-014.” The new item provides guidance to the appellant on how to approach filling out the form and provide summaries of portions of the record that are relevant to the appeal.

***Comments on form APP-014A, Other Party and Nonparty Witness Testimony and Other Evidence Attachment (Unlimited Civil Case)***

Two child support organizations point out that, if there is testimony from more parties or nonparty witnesses than will fit on one form APP-014A, the appellant will need to attach more than one such form. However, there is no way to indicate how many additional forms are attached. This, the commenters suggest, could lead to confusion because “there is no way to distinguish one form APP-014A from another form APP-014A.” The commenters suggest requiring the appellant to state how many of these forms are attached.

The committees concluded that such a requirement could be confusing and likely would not improve the form. Form APP-014A is an optional form; the appellant is free to use it or draft another document to provide the additional testimony. Thus, any requirement to state the number of forms APP-014A would apply only to appellants who use this form exclusively. Likewise, requiring the appellant to state how many pages were attached to form APP-014A, rather than the number of those forms, would require the appellant to count the pages attached to an attachment. The potential fixes may be more problematic than the issue they are intended to address. The committees will revisit the issue in the future if they receive feedback that this is a problem and a numbering system is necessary.

### ***Comments on form APP-022, Order on Appellant's Proposed Settled Statement***

A state lawyers' association suggested a modification for this form in light of issues an appellant might have based on the presumption that an order or judgment is correct and the doctrine of implied findings to support that order or judgment. The commenter is concerned that many litigants may not have meaningful access to an appeal because a statement of decision was not prepared in their case, and suggested adding a check box for the court to state: "This settled statement contains the court's decision and the court's factual and legal basis for its decision."

Adding a checkbox to allow the court to order that the settled statement is also the court's statement of decision would be a substantive change that is beyond the scope of this proposal. A statement of decision and a settled statement involve different procedures and serve two different functions. Nothing seems to preclude the court from including the order proposed by the commenter in item 7 of the form ("Other orders are specified below:"), but adding a checkbox that "this settled statement contains the court's decision and the court's factual and legal basis for its decision" would seem to suggest that this is the norm or the preferred practice. Any such modification to the form would require circulation for public comment.

### **Alternatives considered**

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

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

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

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



Advisory Committee concluded that separate forms for family law proceedings were unnecessary; the general unlimited civil forms could be modified to work for family law cases as well as for the other unlimited civil case types.

### **Fiscal and Operational Impacts**

The committees anticipate that courts may incur costs to revise forms, add a new order into the case management system, and train staff regarding the new and revised forms. In addition, as discussed above under general comments, the committees received a comment that this proposal could significantly impact the workload of court self-help staff. However, the committees expect that the new and revised forms will save resources by making the settled statement process easier to understand and access for the parties and less burdensome for the courts.

### **Attachments and Links**

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

**APP-001-INFO** Information on Appeal Procedures for Unlimited Civil Cases**GENERAL INFORMATION****1 What does this information sheet cover?**

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

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the **APPELLANT**, and you should read "Information for the Appellant," starting on page 3. If you received notice that another party in your case is appealing, you are called the **RESPONDENT** and you should read "Information for the Respondent," starting on page 13.

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

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

**2 What is an appeal?**

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

It is important to understand that **an appeal is NOT a new trial**. The Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits.

The appellate court's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made.

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

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

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

**3 Who can appeal?**

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

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

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

- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum.
- Grant a new trial or deny a motion for judgment notwithstanding the verdict.
- Discharge or refuse to discharge an attachment or grant a right to attach.
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction. **Note: Injunctions include restraining orders.**
- Appoint a receiver.
- Are made after final judgment in the case.



- Are made appealable by the Family Code or the Probate Code.

You should consult with a lawyer or a court self-help center to determine if your order is final and appealable. Go to [www.courts.ca.gov/selfhelp-selfhelpcenters.htm](http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm) to find information about the self-help center in your county.

(You can get a copy of Code of Civil Procedure section 904.1 at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

## 5 What does the appellant need to prove to win on appeal?

The appellant must prove that an error in the trial court proceedings was made and that the error affected the outcome of the court's or jury's decision. An error that affected the outcome of the case is called a "prejudicial error."

A prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers or by the jury, incorrect instructions given to the jury, or insufficient evidence to support the judgment, order, or other decision being appealed. Note: This is not a complete list of all possible prejudicial errors.

When the appellant argues that the error was based on insufficient evidence to support the judgment or other decision being appealed, the Court of Appeal will determine whether there was "substantial evidence" to support the judgment, order, or other decision being appealed. But in conducting its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision.

The Court of Appeal generally will not reconsider the jury's or the trial court's conclusions about which side had more or stronger evidence or whether witnesses were believable. It only determines whether the evidence is sufficient to support the judgment, order, or other decision.

The Court of Appeal will generally not overturn the judgment, order, or other decision being appealed unless the record shows a prejudicial error was made. The winning party does not have to prove that the judgment, order, or other decision was correct. Instead, it is up to the appellant to prove that the error was made and that the error affected the outcome of the case.

## 6 Do I need a lawyer to represent me in an appeal?

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

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court.

However, if you need to keep your contact information private (for instance, in an appeal involving a domestic violence restraining order), you may give a different mailing address instead. But if you use a different address, be sure to check it regularly to stay informed about your case and about your obligations regarding your case.

You must keep the court and the other parties in your case informed of any change in your contact information for service of notices and other documents relating to the appeal.

You may refer to *Notice of Change of Address or Other Contact Information (form MC-040)* as an example of how to notify the court and parties about a change of your contact information. Please note, however, that the document that you draft needs to be filed with the Court of Appeal (not the Superior Court) and served on the parties.

## 7 Where can I find a lawyer to help me with my appeal?

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



**INFORMATION FOR THE APPELLANT**

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

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

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

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

“Serve and file” means that you must:

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

Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing (designate) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal.

You can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

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

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



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

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

There are three parts of the official record:

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

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

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

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

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

Read below for more information about these options.

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

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

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

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

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

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

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

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

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



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

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

## (2) Trial court file

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

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

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

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

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

## (3) Agreed statement

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

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

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



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

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

***Important! The type of record of the oral proceedings that you choose, including a reporter's transcript or a settled statement, should be carefully considered, as it may have effects on your appeal. You should consult with a lawyer to determine the best option in your case.***

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

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

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

In an unlimited civil case, you can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to tell the trial court

whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-003 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

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

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

Read below for more information about these options.

**(1) Reporter’s transcript**

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

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

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

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





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

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

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

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

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

## (2) Agreed statement

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

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

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

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

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

## (3) Settled statement

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



**c. Exhibits**

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

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

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

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

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

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

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

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

**15 What happens after the official record has been prepared?**

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

**16 What is a brief?**

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



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

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

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

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

## 17 What happens after I file my brief?

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

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

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

## 19 What is "oral argument"?

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

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

**You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at [www.courts.ca.gov/12421.htm](http://www.courts.ca.gov/12421.htm).**

## 20 What happens after oral argument?

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

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

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

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



**INFORMATION FOR THE RESPONDENT**

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

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

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

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

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

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a “cross-appeal.” To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) to file this notice in an unlimited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 3 of this information sheet, if you are considering filing a cross-appeal.

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

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

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

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

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

Look at the appellant’s notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 14 above. Then read below for what your options are when the appellant has chosen that form of the record.

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

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



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

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

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

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

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

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130

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

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

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

#### **c. Agreed statement**

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

#### **d. Settled statement**

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

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



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

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

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

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

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

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

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

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

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

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

The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.





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

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

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

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

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

## **27** What happens after all the briefs have been filed?

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

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

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

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

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  STATE:                      ZIP CODE: FAX NO.:	FOR COURT USE ONLY  <b>DRAFT</b>  <b>7-06-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>		
RE: Appeal filed on (date):		SUPERIOR COURT CASE NUMBER:  COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>		

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

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

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

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

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

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

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. b.  WITH the following record of the oral proceedings in the superior court (*you must check (1), (2), or (3) below*):
- (1)  A reporter's transcript under rule 8.130. (*You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.*) I have (*check all that apply*):
    - (a)  Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit with this notice as provided in rule 8.130(b)(1).
    - (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
    - (c)  Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (*check either (i) or (ii)*):
      - (i)  all of the designated proceedings.
      - (ii)  part of the designated proceedings.
    - (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
  - (2)  An agreed statement. (*Check and complete either (a) or (b) below.*)
    - (a)  I have attached an agreed statement to this notice.
    - (b)  All the parties have stipulated (agreed) in writing to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
  - (3)  A settled statement under rule 8.137. (*You must check (a), (b), or (c) below, and fill out the settled statement section (item 6) on page 4.*)
    - (a)  The oral proceedings in the superior court were not reported by a court reporter.
    - (b)  The oral proceedings in the superior court were reported by a court reporter, but I have an order waiving fees and costs.
    - (c)  I am asking to use a settled statement for reasons other than those listed in (a) or (b). (*You must serve and file the motion required under rule 8.137(b) at the same time that you file this form. You may use form APP-025 to prepare the motion.*)

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

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

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

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

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

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

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

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

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

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

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

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

See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (12).)

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

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

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

See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (5).)

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

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

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

I request that the reporters provide (check one):

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

(Code Civ. Proc., § 271.)

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

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

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

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

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

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

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

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

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

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

Date:

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

  
(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>07-09-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	
<b>RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before you fill out this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

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

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

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

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

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		

See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 1(a)," and start with number (8).)

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

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

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

See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 1(b)," and start with number (5).)

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

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

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

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

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. a. (1) *(continued)*

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

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

(2) **Deposit for additional proceedings.**

I have *(check a, b, c, or d)*:

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

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

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

*(Code Civ. Proc., § 271.)*

Date:

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(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT OR ATTORNEY)



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:   STATE:                      ZIP CODE: FAX NO.:	FOR COURT USE ONLY  <b>DRAFT</b>  <b>06-25-2018</b>  <b>Not approved by the Judicial Council</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
<b>APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b>		SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on (date):		COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read <i>Information Sheet for Proposed Settled Statement (form APP-014-INFO)</i> before completing this form. You must file this form in the superior court, not in the Court of Appeal.</b>		

**1. PRELIMINARY INFORMATION**

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

**2. REASONS FOR YOUR APPEAL**

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

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

[Attachment 2a](#)

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

[Attachment 2b](#)

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

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

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

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

Summary:

[Attachment 3a\(1\)](#)

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

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
	COURT OF APPEAL CASE NUMBER (if known):

3. a. (2) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_.  
 Summary:

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

(3) Was there testimony from other parties?  No  Yes

(If you answered yes, fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A).)

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER (if known):
OTHER PARENT/PARTY:	

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

[Attachment 3b](#)

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

[Attachment 3c](#)

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

[Attachment 3d](#)

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

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

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

**5. TRIAL COURT'S FINDINGS**

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

b. What are the findings that the judge made that are relevant to the reasons for the appeal?

[Attachment 5](#)

**6. SUMMARY OF MOTIONS**

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a motion or motions?

- Yes (Fill out b.)    
  No (Skip to item 7.)

b. Describe the motion. (State which party made the motion. Then, write a complete and accurate summary of what was said (any testimony and arguments) and what the court decided (whether the court granted or denied the motion).)

[Attachment 6](#)

**7. SUMMARY OF JURY INSTRUCTIONS**

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a jury instruction or instructions?

- Yes (Fill out b.)    
  No (Skip to item 8.)

b. Identify the jury instruction and the party that requested it. (Summarize what the parties said (arguments or objections) and what the court decided (whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified it before giving it to the jury). Describe any modifications the court made to the instruction.)

[Attachment 7](#)

**8. ORDER OR JUDGMENT YOU ARE APPEALING**

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

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	
OTHER PARENT/PARTY:	COURT OF APPEAL CASE NUMBER (if known):

**OTHER PARTY AND NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE ATTACHMENT**

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

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

**1. SUMMARY OF TESTIMONY AND EVIDENCE**

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

[Attachment 1a](#)

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

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

[Attachment 1b](#)

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

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

(If you answered yes, fill out and attach to this form as many additional *Other Party and Nonparty Witness Testimony and Evidence Attachment* (forms APP-014A) as needed to answer the question (or provide information in another document, such as *Attachment to Judicial Council Form* ([form MC-025](#)), labeled as Attachment 1c.)

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

2. **Objections to the other party's or nonparty witness's testimony relevant to the appeal**

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

[Attachment 2](#)

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

[Attachment 3](#)

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

[Attachment 4](#)



## APP-014-INFO Information Sheet for Proposed Settled Statement

### 1 What information does this form provide?

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

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

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

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

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

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

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

### 3 What is a settled statement?

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

The appellant is responsible for preparing a proposed settled statement.

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

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

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

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

The proposed settled statement must include all of the following:

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

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

File the original form in the trial court:

- At the same time you file *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) or within **30 days** of that date;

**OR**

- Within 30 days of the date that the court sends, or a party serves, an order granting your motion to use a settled statement, if applicable.



## 7 Overview for completing form APP-014

- Review the entire form to become familiar with the categories and what areas apply to the reasons for your appeal. Not all items will apply to your situation.
- Review the judgment or order that you are appealing and make a copy to attach to form APP-014.
- Know why you are appealing the trial court's order or judgment. Describe the reasons in item 2 of form APP-014.

In addition, you will use form APP-014 and any attachments to specify those portions of the record that have evidence relevant to your issues on appeal, such as:

- The testimony of a party or nonparty witness.
- The court's ruling on an objection to a party's or non-party witness's testimony.
- The court's rulings about allowing (or not allowing) exhibits to be admitted into evidence to support or disprove a party's or a nonparty witness's testimony.
- The trial court's findings at the hearing or trial.
- The court's ruling on a motion or motions.
- The court's rulings on one or several jury instructions (Note: not all cases have juries.)

Remember, not every item on the form may apply to your situation. Answering "yes" or "no" where indicated on form APP-014 will help you and the court focus on the issues that are relevant to your appeal.

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

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

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

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

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

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

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

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

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

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

## 9 How do I complete the caption (the top part of the form)?

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

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

**Party names.** Write the names of the parties in the case.

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

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

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



# APP-014-INFO Information Sheet for Proposed Settled Statement

## 10 How do I complete item 1, “Preliminary Information”?

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

## 11 How do I complete item 2, “Reasons for Your Appeal”?

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

### *No substantial evidence*

You might argue that there was no substantial evidence that supported the judgment or order that you are appealing. (See item 8 of this information sheet for the definition of substantial evidence.)

### *Error*

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

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

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

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

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

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

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

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

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

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



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

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

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

**14 How do I complete item 5, “Trial Court’s Findings”?**

Indicate if the judge made any findings (decisions about the facts or the law) that are relevant to your reasons in item 2 of form APP-014 for this appeal. (See item 7 for the definition of findings.)

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

**15 How do I complete item 6, “Summary of Motions”?**

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

**16 How do I complete item 7, “Summary of Jury Instructions”?**

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

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

When you have finished your proposed settled statement:

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

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

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

For information about serving your documents:

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

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

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

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

**20 Respondent’s options**

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

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



**21** Review process

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

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

*Changes made to the settled statement*

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

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

*Resolving disagreements*

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

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

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

**22** Certification

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

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

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

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

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

[Attachment 1](#)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:  COURT OF APPEAL CASE NUMBER (if known):
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**2. SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE**

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

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

[Attachment 2](#)

**3. TRIAL COURT'S FINDINGS**

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

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

[Attachment 3](#)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
	COURT OF APPEAL CASE NUMBER (if known):

**4. SUMMARY OF MOTIONS**

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

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

[Attachment 4](#)

**5. SUMMARY OF JURY INSTRUCTIONS**

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

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

Date:

[Attachment 5](#)

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



\_\_\_\_\_  
(SIGNATURE)



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		SUPERIOR COURT CASE NUMBER:
<b>ORDER ON APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b>  <input type="checkbox"/> _____ Amended (If applicable, specify 1st, 2nd, 3rd, etc. amended form.)		COURT OF APPEAL CASE NUMBER (if known):

**1. The court has received and reviewed the following:**

- a.  Appellant's Proposed Settled Statement (Unlimited Civil Case) (form APP-014)  \_\_\_\_\_ Amended filed by the appellant on (date):
- b.  Response to Appellant's Proposed Settled Statement (Unlimited Civil Case) (form APP-020)  \_\_\_\_\_ Amended filed by the respondent on (date):
- c.  Other (specify):

**2. The court makes the following order:**

- a.  *Certification.* The court certifies that the statement proposed by the appellant in 1a is an accurate summary of the testimony and other evidence that is relevant to the appellant's reasons for the appeal. The court settles the statement and certifies that it is ready to be sent to the Court of Appeal.
- b.  *Court reporter transcript required.* The trial court proceedings in this case were reported by a court reporter. Instead of correcting the settled statement, the court orders under rule 8.137(f)(2) of the California Rules of Court that a transcript be prepared as the record of these proceedings. (Check the court's local rules to make sure the court has a rule providing that this option is available.)
- c.  *Corrections required.* Corrections are needed for the settled statement proposed by the appellant to be an accurate summary of the evidence and testimony for the issues the court addressed in the order or judgment being appealed.
  - (1)  A modified settled statement is attached to this order.
  - (2)  The appellant is ordered to prepare a settled statement incorporating the modifications listed below and to serve and file the modified statement.
    - (a)
    - (b)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
	COURT OF APPEAL CASE NUMBER (if known):

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

(c)

(d)

(e)

(3)  *Additional corrections required.* More corrections than could be listed above were needed in order for the settled statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated are the reasons for this appeal. A list of required modifications is attached. The appellant is ordered to prepare a statement incorporating these modifications and serve and file the modified statement.

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

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

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

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

f.  Other orders are specified below:

Date:

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

\_\_\_\_\_  
SIGNATURE OF TRIAL COURT JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER:
<b>APPELLANT'S MOTION TO USE A SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b>  RE: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):

**INSTRUCTIONS TO APPELLANT**

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

**NOTICE OF HEARING**

1. TO (name(s)): \_\_\_\_\_  
 Petitioner     Repondent     Other parent/party     Other (specify):

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

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Room:
b. Address of court <input type="checkbox"/> same as noted above <input type="checkbox"/> other (specify):			

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

**4. PROCEEDINGS**

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

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

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

PLAINTIFF/PETITIONER:	SUPERIOR COURT CASE NUMBER:
DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER (if known):
OTHER PARENT/PARTY:	

5. REASON FOR ALLOWING USE OF SETTLED STATEMENT

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

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

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

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

Date:

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



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

## SPR18-04

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

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	AM	The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Specific feedback related to the provisions of the forms with potential impacts to the Department and its stakeholders is set forth below  ... Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.  <i>[See comments on specific provisions below.]</i>	The committees note the commenter's support for the proposal if modified. See below for responses to specific comments.
2.	California Lawyers Association, Family Law Section, Executive Committee	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with the proposed changes.	The committees note the commenter's support for the proposal.
3.	California Lawyers Association, Litigation Section, Committee on Appellate Courts	AM	The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association supports this proposal but suggests some modifications, as noted below in response to the Invitation to Comment's request for specific comments.  Yes, the new and revised forms make the complex settled statement process more understandable for litigants, especially self-represented litigants. In particular, we believe that domestic violence survivors, a population	The committees note the commenter's support for the proposal if modified. See below for responses to specific comments.  No response required.

## SPR18-04

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

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
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			<p>that is overwhelmingly self-represented in family court, will be able to navigate the settled statement forms, given the new layout, questions, and structure of the documents.</p> <p>However, there is a concern that these forms may mislead self-represented litigants into thinking that the alternatives to a reporter's transcript may lead to greater success in their appeal. Thus, as suggested below, we encourage the Judicial Council to make two changes to avoid this potential problem.</p> <p>...</p> <ul style="list-style-type: none"> <li>• <b>Would the forms work well in all types of unlimited civil cases?</b></li> </ul> <p>APP-014, APP-020, APP-014A, and APP-022 will work in family law cases, including domestic violence restraining order cases.</p> <p><i>[See comments on specific provisions below.]</i></p>	<p>See below for responses to specific comments.</p> <p>No response required.</p>
4.	California Judges Association by Lexi Howard, Legislative Director	A	<p>CJA supports the proposed new and revised forms and thinks will make the settled statement process less burdensome for court participants, especially considering, as indicated in the Invitation to Comment, "(1) the complexity and difficulty of the settled statement process for litigants and the courts, (2) the increasing number of civil proceedings that are not reported by a court reporter, and (3) the increasing number of self-represented litigants for whom the settled statement process is the</p>	<p>The committees note the commenter's support for the proposal and appreciate this feedback.</p>

**SPR18-04**

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

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>			
<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
		<p>only way to create a record of the oral proceedings.”</p> <p>By providing detailed guidance to litigants and courts, the new and revised forms appear to fulfill these goals. The invitation to comment includes the following proposed forms:</p> <ol style="list-style-type: none"> <li>1. Information on Appeal Procedures for Unlimited Civil Cases (APP-001-INFO) (the settled statement discussion is on pages 13-15)</li> <li>2. Appellant’s Notice Designating Record on Appeal (APP-003)</li> <li>3. Respondent’s Notice Designating the Record on Appeal (APP-010)</li> <li>4. Appellant’s Proposed Settled Statement (APP-014)</li> <li>5. Information Sheet for Proposed Settled Statement (APP-014-INFO)</li> <li>6. Response to Appellant’s Proposed Settled Statement (APP-020)</li> <li>7. Order on Appellant’s Proposed Settled Statement (APP-022)</li> <li>8. Appellant’s Motion to Use A Settled Statement (APP-025)</li> </ol>	<p>No response required.</p>
		<p>Creating a settled statement is not an ideal way of preparing the record of the oral proceedings. Even with the assistance of the new and revised forms, settled statements are burdensome, time-consuming, and vulnerable to error. The need for a settled statement often signals a litigant’s lack of representation, sophistication, or funds –</p>	<p>No response required.</p>

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>otherwise, the litigant would have arranged for a court reporter to record the proceedings.</p> <p>Many self-represented litigants will likely have difficulty completing the new and revised forms because, as the forms become more comprehensive and provide more guidance, they necessarily become more complicated. Given the complexity of rule 8.137 and the lack of other options such as court-provided court reporters or electronic recording of court proceedings, however, the new and revised forms for preparing settled statements can only improve the process for the courts and litigants.</p>	No response required.
5.	Child Support Directors Association of California, Judicial Council Forms Committee, by Ronald Ladage, Chair	AM	<p>The Child Support Directors Association’s Judicial Council Forms Committee (Committee) has reviewed the proposal identified above. The Committee’s feedback is set forth below.</p> <p>...</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences and concerns with respect to the proposed rules and form changes.</p> <p><i>[See comments on specific provisions below.]</i></p>	The committees note the commenter’s support for the proposal if modified. See below for responses to specific comments.
6.	Family Violence Appellate Project by Shuray Ghorishi, Senior Attorney	A	Family Violence Appellate Project (“FVAP”) greatly appreciates the opportunity to comment on the above-listed rules. FVAP was founded in 2012 to ensure the safety and well-being of domestic abuse survivors and their children by helping them obtain effective appellate	The committees note the commenter’s support for the proposal.



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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic abuse survivors and their children. Since its inception, FVAP has screened over 1,000 requests for assistance, has represented appellants and respondents in 42 appeals and writs, and has filed amicus curiae briefs in 12 cases that raised significant issues of statewide concern for domestic abuse survivors. Our work has, to date, resulted in 31 published appellate decisions interpreting the Domestic Violence Prevention Act and other California Family Code sections designed to protect survivors of domestic abuse and their children.</p> <p>FVAP supports the letter submitted by the Committee on Appellate Courts of the California Lawyers Association, Litigation Section.</p>	<p>See below for responses to specific comments submitted by the Committee on Appellate Courts of the California Lawyers Association, Litigation Section.</p>
7.	Orange County Bar Association by Nikki P. Miliband, President	A	<i>[No specific comments submitted.]</i>	The committees note the commenter’s support for the proposal.
8.	San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	AM	The Appellate Practice Section of the San Diego County Bar Association ("APS") appreciates the opportunity to comment on the Appellate Advisory Committee's proposed new and changed forms. As your Committee may know, the APS has long supported measures that provide greater access to justice for unrepresented litigants. Through participation in the San Diego Appellate Self-Help Workshop--a	The committees note the commenter’s support for the proposal if modified. See below for responses to specific comments.

## SPR18-04

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

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>program that uses volunteer appellate practitioners to educate <i>pro se</i> litigants on appellate rules and procedures-our members witness firsthand that efforts to demystify the appellate process yield positive results for the unrepresented parties, the courts, and practitioners.</p> <p>From our experience, we offer the following with the hope that it will assist the Committee in achieving its stated purpose of helping parties- in particular self-represented litigants better understand the settled statement procedure.</p> <p>...</p> <p>In conclusion, the APS commends the Appellate Advisory Committee for their dedication to the goal of simplifying the settled statement process. We appreciate the opportunity to comment and hope that the thoughts we provide will further assist the Committee in its work.</p> <p><i>[See comments on specific provisions below.]</i></p>	<p>No response required.</p> <p>No response required.</p>
9.	Superior Court of California, County of Los Angeles	AM	<p><b>Suggested Modifications:</b></p> <p><b>Remove all references to family law.</b> The forms included in SPR18-04 should be used for unlimited civil and NOT for family law. Family law has unique statutory requirement for</p>	<p>The committees note the commenter's support for the proposal if modified.</p> <p>The committees do not recommend the changes suggested by the commenter. The committees believe that the new and revised forms serve the needs of all unlimited civil law litigants, including family law litigants. However, as part of ongoing work to improve the settled statement</p>

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>			
<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
		<p>findings. There are no juries in a family law case so the references to juries are extraneous. These forms are not adequately tailored to meet the needs of the family law discipline. No action should be taken to implement for family until the Judicial Council refines the forms and tailors them for family law.</p> <p><b>Request for Specific Comments:</b></p> <p><b>Does the proposal appropriately address the stated purpose?</b>                      For unlimited civil, yes, very clear for litigant and easier for staff. No for family law.</p> <p><b>Would the forms work well in all types of unlimited civil cases?</b>                      Yes, but not for family law.</p> <p><b>Does moving nonparty testimony and evidence to an attachment improve the form APP-014?</b>                      Yes, it would be helpful.</p> <p><b>Would the proposal provide cost savings? If so, please quantify?</b>                      In the long run it may save time, but we do not see any cost savings.</p> <p><b>What would the implementation requirements be for courts? For example, training staff (please</b></p>	<p>process and forms, the committees may decide to review the forms in the future should any feedback indicate that the forms require further revision to serve the specific needs of family law litigants.</p> <p>Same as above response.</p> <p>Same as above response.</p> <p>No response required.</p> <p>No response required.</p>

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

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<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
		<p><b>identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</b></p> <p>Minimal training will be required, employees will need to become familiar with the new forms.</p> <p>The addition of new forms will require coding in the case management systems and can be accomplished within a 3 month period, except for the processing of Form APP-022, Order on Appellant's Proposed Settled Statement (Unlimited Civil Cases) which is a mandatory use form. This court will authorize proposed orders to be submitted electronically via e-filing applications and will route the form electronically to judicial officers for review. This form will likely require additional time to implement through automated processes and may require training for processing through electronic workflows.</p> <p><b>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation.</b></p> <p>Yes, except for APP-022, Order on Appellant's Proposed Settled Statement (Unlimited Civil Case). See comment above.</p>	<p>No response required.</p> <p>The committees appreciate this input and thank the commenter for pointing out that proposed new form APP-022 circulated for comment as a mandatory use form. This designation was in error; the form is for optional use. The error has been corrected.</p> <p>See response above.</p>

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

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
10.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the stated purpose? Yes.</p> <p>Q: Would the forms work well in all types of unlimited civil cases? Yes.</p> <p>Q: Does moving nonparty testimony and evidence to an attachment improve form APP-014? Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. No.</p> <p>Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Updating internal procedures, modifying/creating filings in case management system, and training staff.</p>	<p>The committees note the commenter’s support for the proposal and appreciates the responses to questions presented in the invitation to comment.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The committees acknowledge courts will incur some costs in implementing the new and revised forms. However, the committees expect that the new and revised forms will save resources by</p>

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

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
			<p>Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p><i>[See comments on specific provisions below.]</i></p>	<p>making the settled statement process easier for parties to understand and access and less burdensome for the courts.</p> <p>No response required.</p>
11.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee, Joint Rules Subcommittee	AM	<p>The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources. Courtroom and counter clerks will need to be trained on the forms, but this can be done in the normal course of training.</li> <li>• Increases court staff workload. There would be a significant impact to self-help staff, which typically does not assist self-represented litigants on appellate procedures. In addition to training, self-help staff would likely have to develop long-term services and use existing resources to help</li> </ul>	<p>The committees note the commenter's support for the proposal if modified and appreciates this input regarding the impact of the proposal on court operations.</p> <p>The committees acknowledge courts will incur some costs in implementing the new and revised forms, including potential impacts to self-help staff when more self-represented litigants undertake the settled statement process. However, the committees expect that the new and revised forms will save resources by making the settled statement process easier for parties to understand and access and less burdensome for the courts.</p>

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

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			self-represented litigants with appellate processes, particularly in family law cases.  Suggested Modifications: Include a “glossary of terms” used in the proposed forms.	A new glossary of terms is included in <i>Information Sheet for Proposed Settled Statement</i> (form APP-014-INFO).

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



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<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>procedures required for adopting a statement of decision and that the settled statement serves as the court’s statements of decision”].)</p> <p>The appellate court will not apply the doctrine of implied findings when the record clearly demonstrates what the trial court did; and, in our experience, the best way to demonstrate that is with a reporter’s transcript. Because the election of a settled statement, therefore, may have practical consequences for a litigant to obtain meaningful relief on appeal, we encourage the Judicial Council to add the following:</p> <p>1. Inset in APP-001-INFO: <b>“Please note the type of oral record you choose, including a reporter’s transcript or a settled statement, should be carefully considered as it may have effects on your appeal and you may want to consult with an attorney to determine the best option in your case.”</b></p> <p>...</p> <p><i>[See 2. in chart for form APP-022.]</i></p> <p>However, we encourage the following amendments to APP-001-INFO to make this form more understandable for survivors of domestic violence with proceedings in family court:</p> <p><b>Under #3, “Do I need a lawyer to represent me in an appeal”:</b> It presently states: “you must put an address, telephone number, fax number (if available)....” Due to safety concerns, survivors of domestic violence may need to keep their information private. Therefore, we suggest adding: “If you want to keep your information private, you may give a different mailing address and telephone number instead, but you should make sure to regularly check the address and telephone number</p>	<p>See response below</p> <p>The committees agree with this suggestion and have incorporated it into the proposal.</p> <p>The committees agree with this suggestion and have incorporated them, with minor alterations, into the proposal.</p>

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

<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>provided to stay informed regarding your appeal.”</p> <p><b>Under #6, “Can I appeal any decision the court made?”:</b>                      Self-represented litigants may not be able to identify that an “injunction” includes a domestic violence restraining order. We encourage the following addition to the fourth bullet point:                      “Grant or dissolve an injunction or refuse to grant or dissolve an injunction (<i>including a domestic violence restraining order</i>).” (See <i>Nakamura v. Parker</i> (2007) 156 Cal.App.4th 327, 332 [a domestic violence restraining order is appealable under Code of Civil Procedure section 904.1(a)(6)].)</p> <p>In addition, since family law dissolution matters often include final orders of the court before the dissolution judgment that may be appealed as collateral orders, such as child and spousal support orders, we encourage the following addition at the end of the list of CCP 904.1 exceptions: “<i>In addition, some final orders the court makes before the final judgment may be appealed immediately. You should consult an attorney or a court self-help center to determine if your order is final and appealable.</i>”</p> <p><b>Under #9, “Is there a deadline to serve and file my notice of appeal?”:</b> It presently states that the deadline to file the Notice of Appeal is triggered by the service of a “‘Notice of Entry’ of the trial court judgment or a file-stamped copy of the judgment.” However, the deadline also is triggered by service of file-stamped copies of final orders, e.g., fully adjudicated custody orders. Therefore, we suggest adding “<i>or order</i>” after the word “judgment” both times, it appears in this section.</p> <p><b>Under #11, p. 4, “If I file a notice of appeal, do I still have to</b></p>	<p>The committees agree with this suggestion and have incorporated them, with minor alterations, into the proposal.</p> <p>The committees agree with this suggestion and have incorporated them, with minor alterations, into the proposal.</p> <p>The committees agree with this suggestion and have incorporated them, with minor alterations, into the proposal.</p>

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

<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><b>do what the trial court ordered me to do?":</b> In addition to stating the examples of payment of money or delivery of property, we encourage the Judicial Council to add custody matters on the list of examples." (See Code Civ. Proc., § 917.7 [stating that custody matters are not stayed on appeal].)</p> <p><b>Page 7, under “(1) Reporter’s Transcript...when available”:</b> We recommend a change to the following sentence: “A court reporter will not have been present unless you or another party in your case made specific arrangements to have a court reporter present.” The sentence will not be accurate in all cases and may confuse some survivors of domestic violence, as it is the practice of some counties to provide court reporters in family law and/or Domestic Violence Prevention Act (“DVPA”) matters. Further, to the extent, a litigant has a concern about whether a court reporter was present, the sentence that follows provides clear instruction on what the litigant should do; it states: “If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.” We suggest the sentence be amended to read: “A court reporter <i>may</i> not have been present unless you or another party in your case made specific arrangements to have a court reporter present, <i>as some counties do not provide court reporters in all cases.</i>”</p> <p>Furthermore, we encourage the following to provide more clarity to APP-001-Info:</p> <p><b>Under #2, “What is an appeal?":</b> We recommend that a website link be inserted that identifies the counties included in each appellate district.</p>	<p>The committees agree with this suggestion and have incorporated them, with minor alterations, into the proposal.</p> <p>See response below.</p> <p>The committees agree with changing the word “will” to “may.” The committees declines to augment the sentence since the change to “may” adequately addresses the point.</p> <p>The committees agree with this suggestion, and have incorporated it into the proposal.</p>

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

<b>Form APP-001-INFO</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><b>#18, p. 12, “What is ‘oral argument’?”:</b> In our experience low-income self-represented litigants do not understand that an appellate “oral argument” is different than a “hearing or trial” such that no new evidence can be considered. In #15 (“what is a brief?”) there is an advisement that an appeal is not a new trial. We also suggest that such advisement be included in the Oral Argument section. The following could be added:  <i>“Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or testimony of new witness, so you will not be able to present any new evidence at oral argument.”</i></p>	<p>The committees agree with clarifying the scope of oral argument, and have added such language to this item.</p>
<p>San Diego County Bar Association,                      Appellate Practice Section                      by Robert M. Shaughnessy, Chair</p>	<p><b><u>I. Information on Appeal Procedures Unlimited Cases (Proposed APP-001-INFO)</u></b></p> <p>Without reservation, we support the new information form. We think it is beneficial and, on the whole, accurately explains the appellate process in plain and clear terms. However, we provide the following comments and suggested modifications to help ensure the form meets the goal of assisting the self-represented litigant.</p> <p style="padding-left: 40px;"><b>A. Page 1, Column 2: Confusing discussion of the requirements necessary for prevailing on appeal</b></p> <p>We find confusing the explanation of the requirements to prevail on an appeal. The two categories-"prejudicial error" and "no substantial evidence"-do not appear to effectively describe the applicable appellate concepts. They also appear to confuse the discreet topics of (I) standard of review; and (2) the general need to establish prejudicial error. Additionally, the description is not written in a simple manner and we believe it would be</p>	<p>No response required.</p> <p>The committees appreciate this feedback and have made revisions responsive to the comment regarding prejudicial error. The committees decline to include a discussion of the standards of review, however, because the topic is complex and any such discussion would likely be confusing to self-represented litigants.</p>

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

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

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

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<b>Form APP-003</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	The Department recommends an addition to this form. Specifically, parties must check the box Form APP-003, Part 2b(3), to indicate they wish to proceed with a settled statement under rule 8.137 as part of the record of the oral proceedings in the superior court. The Department recommends that Part 2b(3) indicate that Form APP-025, Appellant's Motion to Use a Settled Statement, must be filed simultaneously with Form APP-003. Providing this additional instruction on the form would help ensure that the parties file all the appropriate forms with the court, thereby avoiding any delays in the proceedings.	The committees agree with adding a reference in item 2b(3)(c) to form APP-025, <i>Appellant's Motion to Use a Settled Statement</i> , to inform appellants that they can use this form for the purpose of filing the motion. The instruction cannot require appellants to use this form, however, because the form is optional.
Child Support Directors Association's Judicial Council Forms Committee by Ronald Ladage, Chair	In order to make it easier for self-represented litigants to use this form, along with the correct motion, we suggest adding the form number to the language in item 2.b.(3)(c) such that it should read:  “(You must serve and file the motion (form APP-025) required under rule...)”	See response above.
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	We generally support the idea of a revised form APP-003. This form has long been seen by APS members as overly complicated and unwieldy for both practitioners and unrepresented litigants. We support the Committee's goals of both simplifying and updating the form to assist parties and address recent changes in the law. But we note some areas where the form falls short of these aspirations, and so we offer the following additional constructive comments.	No response required.

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**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke and replace form APP-014)  
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<b>Form APP-003</b>		
	<p style="text-align: center;"><b>A. Page 1: The proposed new parenthetical "(what was said)" may be too broad</b></p> <p>The new proposed parenthetical "(what was said)" on Page 1, Section 2 (Record of Oral Proceedings in the Superior Court) might confuse unrepresented parties, who may read far too much into the phrase when trying to ascertain what must be designated as the record of oral proceedings. For example, the term may be misconstrued to include matters discussed with opposing parties or opposing counsel, including "meet and confer" settlement, or informal discussions over tangential and immaterial matters. We believe the parenthetical would offer more guidance if it explained "what was said" means argument and testimony offered at the trial, or the hearing, from which the appeal was taken.</p> <p style="text-align: center;"><b>B. Page 3: Discussion of "Exhibits" should reflect the modern trial court practice, and should accommodate designation of lodged exhibits</b></p> <p>First, the "Exhibits" section should recognize and reflect the modern practice of trial courts routinely returning exhibits to parties following the hearing or trial. For example, the form could include a note that if the exhibits relevant to the appeal were returned to the parties and not kept by the trial court, then the party designating the inclusion of the exhibits must return them to the trial court within 10 days after service of the notice designating the exhibit. (See Cal. Rule of Court, Rule 8.122(a)(3).)</p>	<p>The committees agree with this suggestion and have incorporated it, with minor alterations, into the proposal.</p> <p>The committees agree with this suggestion and have added an instruction regarding designated exhibits that were not kept by the trial court.</p>

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

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<b>Form APP-003</b>		
	<p>The Notice should also include a note or a box to check if the party seeking the inclusion of a returned exhibit intends to file the exhibit directly with the appellate court. (See e.g., Rule of Court, rule 8.224(b)(2).)</p> <p>Second, the "Description" of exhibits should be revised to accommodate exhibits that are lodged with the trial court as part of a Notice of Lodgment. In other words, they should be identified separate from numbered trial exhibits. It is awkward and difficult to identify lodged exhibits merely by number in the section referring to "Exhibits."</p>	<p>The committees disagree with making this addition because form APP-003 is appellant's notice designating the record. Rule 8.224 applies to exhibits designated later in the appellate process.</p> <p>The committees decline to make this change because the item already refers to lodged records. Adding instructions for exhibits that are not numbered would further complicate the form.</p>



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

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<b>Form APP-014</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel	There is a proposal to remove the requirement on Form APP-014 that an appellant describe how he or she was harmed. The Department recommends keeping this requirement in place as currently contained on Form APP-014, Page 3, Parts 3b.(2)-(3). This information is useful in appellate cases, especially with self-represented parties. It can also alert parties that error alone is not grounds for appeal; rather, there must be harm resulting from the error to form a basis for an appeal.	The committees do not recommend requiring an appellant to describe how he or she was harmed because the information is not necessary for a settled statement and would require the appellant to present a legal analysis. If the description of harm is inartfully drafted, it could result in the forfeiture of arguments on appeal. However, there is a section on prejudicial error (item 5, “What does the appellant need to prove to win on appeal?”) in form APP-001-INFO.
Child Support Directors Association’s Judicial Council Forms Committee by Ronald Ladage, Chair	Regarding the changes to form APP-014, we recommend the form be amended for the appellant to add and describe the harm the errors caused. Although, it may not be required for a settled statement, it will assist the self-represented litigants to identify that there must be an error causing harm to form a basis of an appeal.	See response above.
San Diego County Bar Association, Appellate Practice Section by Robert M. Shaughnessy, Chair	As with the forms discussed above, we support the idea of forms and revisions designed and intended to increase access to justice for unrepresented litigants. Thus, we support the concept of a proposed settled statement form to assist parties and the courts with the preparation of a usable settled statement. Again, we offer the following comments to assist the Committee in meeting its stated purposes.  First, we question the requirement (on page 1 of the form) that a party must file a notice of appeal before seeking a settled statement from the trial court. Many times, the process (and result) of obtaining a settled statement helps the self-represented litigant decide whether or not to appeal a trial court decision. Also, the procurement of a settled statement often helps an unrepresented litigant obtain paid or pro-bono	No response required.  The commenter’s suggestion would require amending rule 8.137, which is beyond the scope of the proposal. In addition, a settled statement is a record of the oral proceedings that are relevant to the reasons for the appeal and requires time and effort by the respondent and the trial court in addition to the appellant. The committees do not believe that it would function well as

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

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

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

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

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

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

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<b>Form APP-014A</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
<p>California Department of Child Support Services by Kristen Donadee, Assistant Chief Counsel</p>	<p>Proposed Form APP-014, Page 5, Part 4 requires parties to submit Form APP-014A if there was testimony from another party or nonparty witness that is relevant to the reasons for the appeal. Form APP-014A only provides two sections to fill out information regarding such witnesses. At the bottom of Page 2, Part 1c., Form APP-14A indicates if there was additional testimony from other parties or nonparty witnesses, another Form APP-014A should be filled out and attached.</p> <p>This could lead to confusion when parties and/or their attorneys review the record as there is no way to distinguish one Form APP-014A from another Form APP-014A. The Department recommends that Part 1 c. be modified by removing what is stated in parenthesis and instead instructing as follows:</p> <p>If you answered yes:</p> <p>(1) Fill out and attach to this form additional Other Party and Nonparty Witness Testimony and Evidence, Attachment (form APP-014A) as needed.</p> <p>(2) Please indicate the total number of APP-014A forms attached, including this form.</p> <p>This will alert parties that multiple APP-014A will need to be reviewed when the information cannot be provided in a single form.</p>	<p>The committees appreciate the issue, but concluded that asking the appellant for the total number of APP-014A forms could be confusing and likely would not improve this form. Form APP-014A is for optional use; the appellant is free to use it or to draft another document to provide additional testimony. Therefore, any request for the number of APP-014A forms would only apply to appellants who use this form exclusively. The committees will revisit the numbering issue if they receive feedback that this is a problem.</p>
<p>Child Support Directors Association’s Judicial Council</p>	<p>In order to clarify that there is additional testimony from other parties or non-party witnesses, the Committee suggest the form</p>	<p>See response above.</p>

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

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<b>Form APP-014A</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Forms Committee by Ronald Ladage, Chair	provide for the total number of additional forms attached. Below is sample language:  Please indicate the total number of APP-014A forms attached, including this form.	

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

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<b>Form APP-022</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
<p>California Lawyers Association, Litigation Section, Committee on Appellate Courts</p>	<p>As APP-001-INFO correctly identifies, a general principle of appellate law is that an appellate court will presume that the judgment or order is correct and imply any findings in favor of the prevailing party at trial to uphold the order. Yet, this form does not explain the general exception to this rule that appellate courts will not make this presumption if a statement of decision has been prepared and the record shows that any omission or ambiguity in that decision was brought to the attention of the trial court by the appealing party. The form further does not explain that some appellate districts may still make this presumption even if the settled statement has been prepared. (Compare <i>A.G. v. C.S.</i> (2016) 246 Cal.App.4th 1269, 1282 [“[T]he use of a settled statement in lieu of a reporter’s transcript does not negate the doctrine of implied findings where the parties waived a statement of decision.”] with <i>In re Marriage of Condon</i> (1998) 62 Cal.App.4th 533, 550, fn. 11 [doctrine of implied findings does not apply where statement of decision is waived, and a settled statement including the court’s factual and legal basis is used in place of a reporter’s transcript]; <i>In re Marriage of Seaman &amp; Menjou</i> (1991) 1 Cal.App.4th 1489, 1494, fn. 3 [same]; <i>In re Marriage of Fingert</i> (1990) 221 Cal.App.3d 1575, 1580 [same].)</p> <p>As a result, while the new and revised forms make it easier for self-represented litigants to navigate the intricate settled statement process, there are nevertheless concerns that many litigants still will not have meaningful access to an appeal because a statement of decision was not prepared in their case. (See <i>A.G. v. C.S.</i>, <i>supra</i>, 246 Cal.App.4th 1269 [applying the doctrine of implied findings to affirm a custody order because the settled statement used by the parties did not “contain an</p>	<p>No response required. This comment also appears in the chart for form APP-001-INFO. It is reproduced here to provide context for the suggestion regarding form APP-022.</p> <p>See above.</p>

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

<b>Form APP-022</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>express statement by the trial court that it complied with the procedures required for adopting a statement of decision and that the settled statement serves as the court’s statements of decision”].)</p> <p>The appellate court will not apply the doctrine of implied findings when the record clearly demonstrates what the trial court did; and, in our experience, the best way to demonstrate that is with a reporter’s transcript. Because the election of a settled statement, therefore, may have practical consequences for a litigant to obtain meaningful relief on appeal, we encourage the Judicial Council to add the following:</p> <p>2. Adding a checked box on APP-022 stating: <b>“This settled statement contains the court’s decision and the court’s factual and legal basis for its decision.”</b></p>	<p>See above.</p> <p>The committees decline to make this addition. A statement of decision and a settled statement involve different procedures and serve two different functions. Adding a checkbox to avoid the doctrine of implied findings would be a substantive change that is beyond the scope of this proposal.</p>

**APP-001-INFO** Information on Appeal Procedures for Unlimited Civil Cases**GENERAL INFORMATION****1 What does this information sheet cover?**

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

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

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

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

**2 What is an appeal?**

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

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

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

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

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

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

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





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

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

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

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

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

**INFORMATION FOR THE APPELLANT**

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

**5 Who can appeal?**

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

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

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

- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum.
- Grant a new trial or deny a motion for judgment notwithstanding the verdict.
- Discharge or refuse to discharge an attachment or grant a right to attach.
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction.
- Appoint a receiver.
- Are made after final judgment in the case.

(You can get a copy of Code of Civil Procedure section 904.1 at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.)

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

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



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

“Serve and file” means that you must:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

There are three parts of the official record:

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

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

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

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

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

Read below for more information about these options.

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

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

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

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

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

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

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

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

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



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

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

## (2) Trial court file

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

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

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

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

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

## (3) Agreed statement

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

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

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



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

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

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

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

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

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

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

Read below for more information about these options.

**(1) Reporter’s transcript**

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

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

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

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



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

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

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

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

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

## (2) Agreed statement

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

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

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

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

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

## (3) Settled statement

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

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



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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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



**c. Exhibits**

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

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

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

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

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

**15 What is a brief?**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

### 18 What is "oral argument"?

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

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

### 19 What happens after oral argument?

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

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

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

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



**INFORMATION FOR THE RESPONDENT**

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

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

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

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

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

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

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

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

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

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

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

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

**a. Clerk’s transcript or appendix**

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



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

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

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

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

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

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

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

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

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

### **c. Agreed statement**

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

### **d. Settled statement**

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Oral presentation provided at the meeting.