Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 1. In General

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Rule 8.1. Title

The rules in this title may be referred to as the Appellate Rules. All references in this title to "these rules" are to the Appellate Rules.

Rule 8.1 adopted effective January 1, 2007.

Rule 8.4. Application of division

The rules in this division apply to:

(1) Appeals from the superior courts, except appeals to the appellate divisions of the superior courts;

(2) Original proceedings, motions, applications, and petitions in the Courts of Appeal and the Supreme Court; and

(3) Proceedings for transferring cases within the appellate jurisdiction of the superior court to the Court of Appeal for review, unless rules 8.1000–8.1018 provide otherwise.

Rule 8.4 amended and renumbered effective January 1, 2007; repealed and adopted as rule 53 effective January 1, 2005.

Rule 8.7. Construction

The rules of construction stated in rule 1.5 apply to these rules. In addition, in these rules the headings of divisions, chapters, articles, rules, and subdivisions are substantive.

Rule 8.7 adopted effective January 1, 2007.

Rule 8.10. Definitions and use of terms

Unless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules. In addition, the following apply:

(1) "Appellant" means the appealing party.

(2) "Respondent" means the adverse party.

(3) "Party" includes any attorney of record for that party.

(4) "Judgment" includes any judgment or order that may be appealed.

(5) "Superior court" means the court from which an appeal is taken.

(6) "Reviewing court" means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred.

(7) The word "briefs" includes petitions for rehearing, petitions for review, and answers thereto. It does not include petitions for extraordinary relief in original proceedings.

Rule 8.10 amended and renumbered effective January 1, 2007; repealed and adopted as rule 40 effective January 1, 2005.

Rule 8.13. Amendments to rules

Only the Judicial Council may amend these rules, except the rules in division 5, which may be amended only by the Supreme Court. An amendment by the Judicial Council must be published in the advance pamphlets of the Official Reports and takes effect on the date ordered by the Judicial Council.

Rule 8.13 amended and renumbered effective January 1, 2007; repealed and adopted as rule 54 effective January 1, 2005.

Rule 8.16. Amendments to statutes

In these rules, a reference to a statute includes any subsequent amendment to the statute.

Rule 8.16 adopted effective January 1, 2007.

Rule 8.18. Documents violating rules not to be filed

Except as these rules provide otherwise, the reviewing court clerk must not file any record or other document that does not conform to these rules.

Rule 8.18 amended and renumbered effective January 1, 2007; repealed and adopted as rule 46 effective January 1, 2005.

Advisory Committee Comment

The exception in this rule acknowledges that there are different rules that apply to certain non-conforming documents. For example, this rule does not apply to nonconforming or late briefs, which are addressed by rules 8.204 (e) and 8.220(a), respectively, or to nonconforming supporting documents accompanying a writ petition under rule 8.490, which are addressed by rule 8.490(d)(2).

Rule 8.20. California Rules of Court prevail

A Court of Appeal must accept for filing a record, brief, or other document that complies with the California Rules of Court despite any local rule imposing other requirements.

Rule 8.20 amended and renumbered effective January 1, 2007; repealed and adopted as rule 80 effective January 1, 2005.

Rule 8.23. Sanctions to compel compliance

The failure of a court reporter or clerk to perform any duty imposed by statute or these rules that delays the filing of the appellate record is an unlawful interference with the reviewing court's proceedings. It may be treated as an interference in addition to or instead of any other sanction that may be imposed by law for the same breach of duty. This rule does not limit the reviewing court's power to define and remedy any other interference with its proceedings.

Rule 8.23 renumbered effective January 1, 2007; repealed and adopted as rule 46.5 effective January 1, 2005.

Article 2. Service, Filing, Form, and Number of Documents

Rule 8.25. Service and filing

Rule 8.29. Service on nonparty public officer or agency
Rule 8.32. Address and telephone number of record; notice of change
Rule 8.36. Substituting parties; substituting or withdrawing attorneys
Rule 8.40. Form of filed documents
Rule 8.44. Number of copies of filed documents

Rule 8.25. Service and filing

(a) Service

(1) Before filing any document, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach to the document presented for filing a proof of service showing service on each person or entity required to be served under (1). The proof must name each party represented by each attorney served.

(Subd (a) amended effective January 1, 2007.)

(b) Filing

(1) A document is deemed filed on the date the clerk receives it.

(2) Except as provided in (3), a filing is not timely unless the clerk receives the document before the time to file it expires.

(3) A brief, a petition for rehearing, an answer to a petition for rehearing, a petition for review, an answer to a petition for review, or a reply to an answer to a petition for review is timely if the time to file it has not expired on the date of:

(A) Its mailing by priority or express mail as shown on the postmark or the postal receipt; or

(B) Its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(4) The provisions of (3) do not apply to original proceedings.

(Subd (b) amended effective January 1, 2007.)

Rule 8.25 amended and renumbered effective January 1, 2007; adopted as rule 40.1 effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) requires service "by any method permitted by the Code of Civil Procedure." The reference is to the several permissible methods of service provided in Code of Civil Procedure sections 1010–1020.

Rule 8.29. Service on nonparty public officer or agency

(a) Proof of service

When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the party must file proof of such service with the document unless a statute permits service after the document is filed, in which case the proof of service must be filed immediately after the document is served on the public officer or agency.

(Subd (a) relettered effective January 1, 2007; adopted as subd (b) effective January 1, 2004.)

(b) Identification on cover

When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the cover of the document must contain a statement that identifies the statute or rule requiring service of the document on the public officer or agency in substantially the following form: "Service on [insert name of the officer or agency] required by [insert citation to the statute or rule]."

(Subd (b) relettered effective January 1, 2007; adopted as subd (c) effective January 1, 2004.)

(c) Service on the Attorney General

In addition to any statutory requirements for service of briefs on public officers or agencies, a party must serve its brief or petition on the Attorney General if the brief or petition:

(1) Questions the constitutionality of a state statute; or

(2) Is filed on behalf of the State of California, a county, or an officer whom the Attorney General may lawfully represent in:

(A) A criminal case;

(B) A case in which the state or a state officer in his or her official capacity is a party; or

(C) A case in which a county is a party, unless the county's interest conflicts with that of the state or a state officer in his or her official capacity.

(Subd (c) adopted effective January 1, 2007.)

Rule 8.29 amended and renumbered effective January 1, 2007; adopted as rule 44.5 effective January 1, 2004; previously amended effective July 1, 2004.

Advisory Committee Comment

Rule 8.29 refers to statutes that require a party to serve documents on a nonparty public officer or agency. For a list of examples of such statutory requirements, please see the *Civil Case Information Statement* (form APP-004).

Rule 8.32. Address and telephone number of record; notice of change

(a) Address and telephone number of record

In any case pending before the court, the court will use the address and telephone number that an attorney or unrepresented party provides on the first document filed in that case as the address and telephone number of record unless the attorney or unrepresented party files a notice under (b).

(Subd (a) adopted effective January 1, 2007.)

(b) Notice of change

(1) An attorney or unrepresented party whose address or telephone number changes while a case is pending must promptly serve and file a written notice of the change in the court in which the case is pending.

(2) The notice must specify the title and number of the case or cases to which it applies. If an attorney gives the notice, the notice must include the attorney's California State Bar number.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective January 1, 2005.)

(c) Matters affected by notice

If the notice under (b) does not identify the case or cases in which the new address or telephone number applies, the clerk may use the new address or telephone number as the person's address and telephone number of record in all pending and concluded cases.

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (b) effective January 1, 2005.)

(d) Multiple offices

If an attorney has more than one office, only one office address may be used in a given case.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c) effective January 1, 2005.)

Rule 8.32 amended and renumbered effective January 1, 2007; repealed and adopted as rule 40.5 effective January 1, 2005.

Rule 8.36. Substituting parties; substituting or withdrawing attorneys

(a) Substituting parties

Substitution of parties in an appeal or original proceeding must be made by serving and filing a motion in the reviewing court. The clerk of that court must notify the superior court of any ruling on the motion.

(b) Substituting attorneys

A party may substitute attorneys by serving and filing in the reviewing court a substitution signed by the party represented and the new attorney. In all appeals and in original proceedings related to a superior court proceeding, the party must also serve the superior court.

(c) Withdrawing attorney

(1) An attorney may request withdrawal by filing a motion to withdraw. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected.

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

(3) In all appeals and in original proceedings related to a superior court proceeding, the reviewing court clerk must notify the superior court of any ruling on the motion.

(4) If the motion is filed in any proceeding pending in the Supreme Court after grant of review, the Supreme Court clerk must also notify the Court of Appeal of any ruling on the motion.

Rule 8.36 renumbered effective January 1, 2007; repealed and adopted as rule 48 effective January 1, 2005.

Rule 8.40. Form of filed documents

(a) Form

Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).

(Subd (a) amended effective January 1, 2007.)

(b) Cover color

(1) As far as practicable, the covers of briefs and petitions must be in the following colors:

Appellant's opening brief or appendix	green
Respondent's brief or appendix	yellow
Appellant's reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray
Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red
Reply to answer (or opposition) to petition for original writ	red
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white

Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

(2) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief must be yellow, and the cover of a combined reply brief and respondent's brief must be tan.

(3) A brief or petition not conforming to (1) or (2) must be accepted for filing, but in case of repeated violations by an attorney or party the court may proceed as provided in rule 8.204(e)(2).

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (c) effective January 1, 2005.)

(c) Cover information

The cover—or first page if there is no cover—of every document filed by an attorney in a reviewing court must comply with rule 8.204(b)(10)(D).

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (d) effective January 1, 2005.)

Rule 8.40 amended and renumbered effective January 1, 2007; repealed and adopted as rule 44 effective January 1, 2005; previously amended effective January 1, 2006.

Rule 8.44. Number of copies of filed documents

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a reviewing court is as follows:

(a) Documents filed in the Supreme Court

(1) Except as provided in (4), an original and 13 copies of a petition for review, an answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or an answer to a petition for rehearing;

(2) Unless the court orders otherwise, an original and 10 copies of a petition for a writ within the court's original jurisdiction, an opposition or other response to the petition, or a reply;

(3) Unless the court orders otherwise, an original and 2 copies of any supporting document accompanying a petition for writ of habeas corpus, an opposition or other response to the petition, or a reply;

(4) An original and 8 copies of a petition for review to exhaust state remedies under rule 8.508, an answer, or a reply, or an amicus curiae letter under rule 8.500(g);

(5) An original and 8 copies of a motion or an opposition or other response to a motion; and

(6) An original and 1 copy of an application, including an application to extend time, or any other document.

(b) Documents filed in a Court of Appeal

(1) An original and 4 copies of a brief, an amicus curiae brief, or an answer to an amicus curiae brief, and, in civil appeals, proof of delivery of 4 copies to the Supreme Court;

(2) An original of a petition for writ of habeas corpus filed under rule 8.380 by a person who is not represented by an attorney and 1 set of any supporting documents;

(3) An original and 4 copies of any other petition, an answer, opposition or other response to a petition, or a reply;

(4) An original and 3 copies of a motion or an opposition or other response to a motion;

(5) Unless the court orders otherwise by local rule or in the specific case, 1 set of any separately bound supporting documents accompanying a document filed under (3) or (4);

(6) An original and 1 copy of an application, other than an application to extend time, or any other document; and

(7) An original and 1 copy of an application to extend time. In addition, 1 copy for each separately represented and unrepresented party must be provided to the court.

Rule 8.44 amended effective January 1, 2007; adopted effective January 1, 2007.)

Advisory Committee Comment

The initial sentence of this rule acknowledges that there are exceptions to this rule's requirements concerning the number of copies; see, for example, rule 8.150, which specifies the number of copies of the record that must be filed.

Article 3. Applications and Motions; Extending and Shortening Time

Rule 8.50. Applications
Rule 8.54. Motions
Rule 8.57. Motions before the record is filed
Rule 8.60. Extending time
Rule 8.63. Policies and factors governing extensions of time
Rule 8.66. Extending time because of public emergency
Rule 8.68. Shortening time

Rule 8.50. Applications

(a) Service and filing

Except as these rules provide otherwise, parties must serve and file all applications in the reviewing court, including applications to extend the time to file records, briefs, or other documents, and applications to shorten time. For good cause, the Chief Justice or presiding justice may excuse advance service.

(Subd (a) amended effective January 1, 2007.)

(b) Contents

The application must state facts showing good cause–or making an exceptional showing of good cause, when required by these rules–for granting the application and must identify any previous application filed by any party.

(Subd (b) amended effective January 1, 2007.)

(c) Envelopes

An application to a Court of Appeal must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to all parties.

(d) Disposition

Unless the court determines otherwise, the Chief Justice or presiding justice may rule on the application.

Rule 8.50 amended and renumbered effective January 1, 2007; repealed and adopted as rule 43 effective January 1, 2005.

Advisory Committee Comment

Rule 8.50 addresses applications generally. Rules 8.60, 8.63, and 8.68 address applications to extend or shorten time.

Subdivision (b): An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.

Rule 8.54. Motions

(a) Motion and opposition

(1) Except as these rules provide otherwise, a party wanting to make a motion in a reviewing court must serve and file a written motion stating the grounds and the relief requested and identifying any documents on which the motion is based.

(2) A motion must be accompanied by a memorandum and, if it is based on matters outside the record, by declarations or other supporting evidence.

(3) Any opposition must be served and filed within 15 days after the motion is filed.

(Subd (a) amended effective January 1, 2007.)

(b) Disposition

(1) The court may rule on a motion at any time after an opposition or other response is filed or the time to oppose has expired.

(2) On a party's request or its own motion, the court may place a motion on calendar for a hearing. The clerk must promptly send each party a notice of the date and time of the hearing.

(c) Failure to oppose motion

A failure to oppose a motion may be deemed a consent to the granting of the motion.

Rule 8.54 amended and renumbered effective January 1, 2007; repealed and adopted as rule 41 effective January 1, 2005.

Advisory Committee Comment

Subdivision (c). Subdivision (c) provides that a "failure to oppose a motion" may be deemed a consent to the granting of the motion. The provision is not intended to indicate a position on the question whether there is an implied right to a hearing to oppose a motion to dismiss an appeal.

Rule 8.57. Motions before the record is filed

(a) Motion to dismiss appeal

A motion to dismiss an appeal before the record is filed in the reviewing court must be accompanied by a certificate of the superior court clerk, a declaration, or both, stating:

(1) The nature of the action and the relief sought by the complaint and any cross-complaint or complaint in intervention;

(2) The names, addresses, and telephone numbers of all attorneys of record—stating whom each represents—and unrepresented parties;

(3) A description of the judgment or order appealed from, its entry date, and the service date of any written notice of its entry;

(4) The factual basis of any extension of the time to appeal under rule 8.108;

(5) The filing dates of all notices of appeal and the courts in which they were filed;

(6) The filing date of any document necessary to procure the record on appeal; and

(7) The status of the record preparation process, including any order extending time to prepare the record.

(Subd (a) amended effective January 1, 2007.)

(b) Other motions

Any other motion filed before the record is filed in the reviewing court must be accompanied by a declaration or other evidence necessary to advise the court of the facts relevant to the relief requested.

Rule 8.57 amended and renumbered effective January 1, 2007; repealed and adopted as rule 42 effective January 1, 2005.

Rule 8.60. Extending time

(a) Computing time

The Code of Civil Procedure governs computing and extending the time to do any act required or permitted under these rules.

(b) Extending time

Except as these rules provide otherwise, for good cause–or on an exceptional showing of good cause, when required by these rules–the Chief Justice or presiding justice may extend the time to do any act required or permitted under these rules.

(Subd (b) amended effective January 1, 2007.)

(c) Application for extension

(1) An application to extend time must include a declaration stating facts, not mere conclusions, and must be served on all parties. For good cause, the Chief Justice or presiding justice may excuse advance service.

(2) The application must state:

(A) The due date of the document to be filed;

(B) The length of the extension requested;

(C) Whether any earlier extensions have been granted and, if so, their lengths and whether granted by stipulation or by the court; and

(D) Good cause–or an exceptional showing of good cause, when required by these rules–for granting the extension, consistent with the factors in rule 8.63(b).

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (d) effective January 1, 2005.)

(d) Relief from default

For good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause.

(Subd (d) relettered effective January 1, 2007; adopted as subd (e) effective January 1, 2005.)

(e) No extension by superior court

Except as these rules provide otherwise, a superior court may not extend the time to do any act to prepare the appellate record.

(Subd (e) relettered effective January 1, 2007; adopted as subd (f) effective January 1, 2005.)

(f) Notice to party

(1) In a civil case, counsel must deliver to his or her client or clients a copy of any stipulation or application to extend time that counsel files. Counsel must attach evidence of such delivery to the stipulation or application, or certify in the stipulation or application that the copy has been delivered.

(2) In a class action, the copy required under (1) need be delivered to only one represented party.

(3) The evidence or certification of delivery under (1) need not include the address of the party notified.

(Subd (f) amended and relettered effective January 1, 2007; adopted as subd (g) effective January 1, 2005.)

Rule 8.60 amended and renumbered effective January 1, 2007; repealed and adopted as rule 45 effective January 1, 2005.

Advisory Committee Comment

Subdivisions(b and (c): An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.

Rule 8.63. Policies and factors governing extensions of time

(a) Policies

(1) The time limits prescribed by these rules should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice.

(2) The effective assistance of counsel to which a party is entitled includes adequate time for counsel to prepare briefs or other documents that fully advance the party's interests. Adequate time also allows the preparation of accurate, clear, concise, and complete submissions that assist the courts.

(3) For a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. To balance the competing policies stated in (1) and (2), applications to extend time in the reviewing courts must demonstrate good cause–or an exceptional showing of good cause, when required by these rules–under (b). If good cause is shown, the court must extend the time.

(Subd (a) amended effective January 1, 2007.)

(b) Factors considered

In determining good cause–or an exceptional showing of good cause, when required by these rules–the court must consider the following factors when applicable:

(1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.

(2) In a civil case, the positions of the client and any opponent with regard to the extension.

(3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record. In a civil case, a record containing one volume of clerk's transcript or appendix and two volumes of reporter's transcript is considered an average-length record.

(4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.

(5) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.

(6) Whether the case is entitled to priority.

(7) Whether counsel responsible for preparing the document is new to the case.

(8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel that:

(A) Have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality; or

(B) Arise from cases entitled to priority.

(10) Illness of counsel, a personal emergency, or a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

(Subd (b) amended effective January 1, 2007.)

Rule 8.63 amended and renumbered effective January 1, 2007; repealed and adopted as rule 45.5 effective January 1, 2005.

Advisory Committee Comment

An exceptional showing of good cause is required in applications in certain juvenile proceedings under rules 8.416, 8.450, 8.452, and 8.454.

Rule 8.66. Extending time because of public emergency

(a) Emergency extensions of time

If made necessary by the occurrence or danger of an earthquake, fire, or other public emergency, or by the destruction of or danger to a building housing a reviewing court, the Chair of the Judicial Council, notwithstanding any other rule in this title, may:

(1) Extend by no more than 14 additional days the time to do any act required or permitted under these rules; or

(2) Authorize specified courts to extend by no more than 30 additional days the time to do any act required or permitted under these rules.

(Subd (a) amended effective January 1, 2007.)

(b) Applicability of order

(1) An order under (a) must specify whether it applies throughout the state, only to specified courts, or only to courts or attorneys in specified geographic areas, or applies in some other manner.

(2) An order of the Chair of the Judicial Council under (a)(2) must specify the length of the authorized extension.

(c) Additional extensions

If made necessary by the nature or extent of the public emergency, the Chair of the Judicial Council may extend or renew an order issued under (a) for an additional period of:

(1) No more than 14 days for an order under (a)(1); or

(2) No more than 30 days for an order under (a)(2).

(Subd (c) amended effective January 1, 2007.)

Rule 8.66 amended and renumbered effective January 1, 2007; repealed and adopted as rule 45.1 effective January 1, 2005.

Advisory Committee Comment

The Chief Justice of California is the Chair of the Judicial Council (see rule 10.2).

Rule 8.68. Shortening time

For good cause and except as these rules provide otherwise, the Chief Justice or presiding justice may shorten the time to do any act required or permitted under these rules.

Rule 8.68 adopted effective January 1, 2007.

Chapter 2. Civil Appeals

Article 1. Taking the Appeal

Rule 8.100. Filing the appeal
Rule 8.104. Time to appeal
Rule 8.108. Extending the time to appeal
Rule 8.112. Petition for writ of supersedeas
Rule 8.116. Request for writ of supersedeas or temporary stay

Rule 8.100. Filing the appeal

(a) Notice of appeal

(1) To appeal from a superior court judgment or an appealable order of a superior court, other than in a limited civil case, an appellant must serve and file a notice of appeal in that superior court. The appellant or the appellant's attorney must sign the notice.

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

(3) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

(b) Fee and deposit

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by a $655 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rules 3.50–3.63, or an order granting such an application. The fee should be paid by check or money order payable to "Clerk, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt.

(2) The appellant must also deposit $100 with the superior court clerk under Government Code section 68926.1, unless otherwise provided by law or the superior court waives the deposit under rules 3.50–3.63.

(3) The clerk must file the notice of appeal even if the appellant does not present the filing fee, the deposit, or an application for, or order granting, a waiver under rules 3.50–3.63.

(Subd (b) amended effective January 1, 2007; previously amended effective August 17, 2003.)

(c) Failure to pay fee or deposit

(1) The reviewing court clerk must promptly notify the appellant in writing if:

(A) The reviewing court receives a notice of appeal without the filing fee required by (b)(1), a certificate of cash payment under (d)(5), or an application for, or order granting, a fee waiver under rules 3.50–3.63;

(B) A check for the filing fee is dishonored; or

(C) An application for a waiver under rules 3.50–3.63 is denied.

(2) A clerk's notice under (1) must state that the appeal will be dismissed unless, within 15 days after the notice is sent, the appellant either:

(A) Pays the fee; or

(B) Files an application for a waiver under rules 3.50–3.63 if the appellant has not previously filed such an application.

(3) If the appellant fails to comply with (b)(2), the superior court clerk must promptly notify the appellant in writing that the appeal will be dismissed unless, within 15 days after the notice is sent, the appellant either:

(A) Makes the deposit; or

(B) Files an application in the superior court for a waiver under rules 3.50–3.63 if the appellant has not previously filed such an application.

(4) If the appellant fails to comply with a notice given under (3), the superior court clerk must notify the reviewing court of the default.

(5) If the appellant fails to comply with a notice given under (2), or the superior court clerk notifies the reviewing court under (4) of a default, the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

(Subd (c) amended effective January 1, 2007.)

(d) Superior court clerk's duties

(1) The superior court clerk must promptly mail a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the reviewing court clerk.

(2) The notification must show the date it was mailed and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:

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

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

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

(3) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(4) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5) With the notification of the appeal, the superior court clerk must send the reviewing court the filing fee or an application for, or order granting, a waiver of that fee. If the fee was paid in cash, the clerk must send the reviewing court a certificate of payment and thereafter a check for the amount of the fee.

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

(Subd (d) amended effective January 1, 2007.)

(e) Notice of cross-appeal

As used in this rule, "notice of appeal" includes a notice of cross-appeal and "appellant" includes a respondent filing a notice of cross-appeal.

(f) Civil case information statement

(1) On receiving notice of the filing of a notice of appeal under (d)(1), the reviewing court clerk must promptly mail the appellant a copy of the *Civil Case Information Statement* (form APP-004) and a notice that the statement must be filed within 10 days.

(2) Within 10 days after the clerk mails the notice required by (1), the appellant must serve and file in the reviewing court a completed *Civil Case Information Statement*, attaching a copy of the judgment or appealed order that shows the date it was entered.

(3) If the appellant fails to timely file a case information statement under (2), the reviewing court clerk must notify the appellant by mail that the appellant must file the statement within 15 days after the clerk's notice is mailed and that failure to comply will result in either the imposition of monetary sanctions or dismissal of the appeal. If the appellant fails to comply with the notice, the court may impose the sanctions specified in the notice.

(Subd (f) amended effective January 1, 2007; adopted effective January 1, 2003.)

Rule 8.100 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1 effective January 1, 2002; previously amended effective January 1, 2003, and August 17, 2003.

Advisory Committee Comment

Subdivision (a). In subdivision (a)(1), the reference to "judgment" is intended to include part of a judgment. Subdivision (a)(1) includes an explicit reference to "appealable order" to ensure that litigants do not overlook the applicability of this rule to such orders.

Subdivision (b). In the interest of consistency, subdivision (b)(1) recommends a preferred wording—"Clerk, Court of Appeal"—for the name of the payee of checks or money orders for the filing fee. The provision is not mandatory.

Subdivision (d). Under subdivision (d)(2), a notification of the filing of a notice of appeal must show the date that the clerk mailed the document. This provision is intended to establish the date when the 20-day extension of the time to file a cross-appeal under rule 8.108(e) begins to run.

Subdivision (d)(1) requires the clerk to mail a notification of the filing of the notice of appeal to the appellant's attorney or to the appellant if unrepresented. Knowledge of the date of that notification allows the appellant's attorney or the appellant to track the running of the 20-day extension of time to file a cross-appeal under rule 8.108(e).

Rule 8.104. Time to appeal

(a) Normal time

Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(1) 60 days after the superior court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed;

(2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(3) 180 days after entry of judgment.

(Subd (a) amended effective January 1, 2007.)

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

Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 2005.)

(c) Periodic payment of judgments against public entities

If a public entity elects, under Government Code section 984 and rule 3.1804, to pay a judgment in periodic payments, subdivision (a) of this rule governs the time to appeal from that judgment but the periods prescribed in (a)(1) and (2) are each 90 days.

(Subd (c) amended effective January 1, 2007; adopted as subd (b) effective January 1, 2002; relettered effective January 1, 2005.)

(d) What constitutes entry

For purposes of this rule:

(1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5, or the date it is entered in the judgment book.

(2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a

written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

(3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.

(4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.

(Subd (d) amended effective January 1, 2007; adopted as subd (c) effective January 1, 2002; relettered effective January 1, 2005.)

(e) Premature notice of appeal

(1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.

(2) The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.

(Subd (e) relettered effective January 1, 2005; adopted as subd (d) effective January 1, 2002.)

(f) Appealable order

As used in (a) and (e), "judgment" includes an appealable order if the appeal is from an appealable order.

(Subd (f) amended effective January 1, 2005.)

Rule 8.104 amended and renumbered effective January 1, 2007; repealed and adopted as rule 2 effective January 1, 2002; previously amended effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). Under subdivision (a)(1), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk mailed the document. This provision is intended to establish the date that the 60-day period under subdivision (a)(1) begins to run.

Subdivision (a)(2) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day period under subdivision (a)(2) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the requirement is reiterated here because of the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

Subdivision (b). Subdivision (b) is declarative of the case law, which holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of appeal. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666–674; *Estate of Hanley* (1943) 23 Cal.2d 120, 122–124.)

In criminal cases, the time for filing a notice of appeal is governed by rule 8.408 and by the case law of "constructive filing." (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)

Rule 8.108. Extending the time to appeal

(a) Motion for new trial

If any party serves and files a valid notice of intention to move for a new trial and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 30 days after denial of the motion by operation of law; or

(3) 180 days after entry of judgment.

(b) Motion to vacate judgment

If, within the time prescribed by rule 8.104 to appeal from the judgment, any party serves and files a valid notice of intention to move—or a valid motion—to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 90 days after the first notice of intention to move—or motion—is filed; or

(3) 180 days after entry of judgment.

(Subd (b) amended effective January 1, 2007.)

(c) Motion for judgment notwithstanding the verdict

(1) If any party serves and files a valid motion for judgment notwithstanding the verdict and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of:

(A) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(B) 30 days after denial of the motion by operation of law; or

(C) 180 days after entry of judgment.

(2) Unless extended by (e)(2), the time to appeal from an order denying a motion for judgment notwithstanding the verdict is governed by rule 8.104.

(Subd (c) amended effective January 1, 2007.)

(d) Motion to reconsider appealable order

If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until the earliest of:

(1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order;

(2) 90 days after the first motion to reconsider is filed; or

(3) 180 days after entry of the appealable order.

(e) Cross-appeal

(1) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the superior court clerk mails notification of the first appeal.

(2) If an appellant timely appeals from an order granting a motion for new trial, an order granting—within 150 days after entry of judgment—a motion to vacate the judgment, or a judgment notwithstanding the verdict, the time for any other party to appeal from the original judgment or from an order denying a motion for judgment notwithstanding the verdict is extended until 20 days after the clerk mails notification of the first appeal.

(f) Showing date of order or notice; proof of service

An order or notice mailed by the clerk under this rule must show the date it was mailed. An order or notice served by a party must be accompanied by proof of service.

Rule 8.108 amended and renumbered effective January 1, 2007; repealed and adopted as rule 3 effective January 1, 2002.

Advisory Committee Comment

Rule 8.108 provides various circumstances in which the time to appeal is "extended." The use of the word "extended" limits the scope of the rule: i.e., the rule operates only to *increase* any time to appeal otherwise prescribed; it cannot shorten the time. Thus if the time provided by rule 8.108 would be less than the normal time to appeal stated in rule 8.104(a)—e.g., when a new trial motion is denied before notice of entry of judgment is given—the rule 8.104(a) time governs.

Subdivisions (a)–(d) operate only when a party serves and files a "valid" motion or notice of intent to move for the relief in question. As used in these provisions, the word "valid" means only that the motion or notice complies with all procedural requirements; it does not mean that the motion or notice must also be substantively meritorious. For example, under the rule a timely new trial motion on the ground of excessive damages (Code Civ. Proc., § 657) extends the time to appeal from the judgment even if the trial court ultimately determines the damages were not excessive. Similarly, a timely motion to reconsider (*id*., § 1008) extends the time to appeal from an appealable order for which reconsideration was sought even if the trial court ultimately determines the motion was not "based upon new or different facts, circumstances, or law," as subdivision (a) of section 1008 requires.

Subdivision (a). Subdivision (a)(1) provides that the denial of a motion for new trial triggers a 30-day extension of the time to appeal from the judgment beginning on the date that the superior court clerk mails, or a party serves, either the order of denial or a notice of entry of that order. This provision is intended to eliminate a trap for litigants and to make the rule consistent with the primary rule on the time to appeal from the judgment (rule 8.104(a)).

Subdivision (b). The Code of Civil Procedure provides two distinct statutory motions to vacate a judgment: (1) a motion to vacate a judgment and enter "another and different judgment" because of judicial error (*id*., § 663), which requires a notice of intention to move to vacate (*id*., § 663a); and (2) a motion to vacate a judgment because of mistake, inadvertence, surprise, or neglect, which requires a motion to vacate but not a notice of intention to so move (*id*., § 473, subd. (b)). The courts also recognize certain nonstatutory motions to vacate a judgment, e.g., when the judgment is void on the face of the record or was obtained by extrinsic fraud. (See 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, §§ 222–236, pp. 726–750.) Subdivision (b) is intended to apply to all such motions.

In subdivision (b) the phrase "within the time prescribed by rule 8.104 to appeal from the judgment" is intended to incorporate in full the provisions of rule 8.104(a).

Under subdivision (b)(1), the 30-day extension of the time to appeal from the judgment begins when the superior court clerk mails, or a party serves, the order denying the motion or notice of entry of that order. This provision is discussed further under subdivision (a) of this comment.

Subdivision (c). Subdivision (c)(1) provides an extension of time after an order denying a motion for judgment notwithstanding the verdict regardless of whether the moving party also moved unsuccessfully for a new trial.

Subdivision (c) further specifies the times to appeal when, as often occurs, a motion for judgment notwithstanding the verdict is joined with a motion for new trial and both motions are denied. Under subdivision (a), the appellant has 30 days after notice of the denial of the new trial motion to appeal from the judgment. Subdivision (c) allows the appellant the longer time provided by rule 8.104 to appeal from the order denying the motion for judgment notwithstanding the verdict, subject to that time being further extended in the circumstances covered by subdivision (e)(2).

Under subdivision (c)(1)(A), the 30-day extension of the time to appeal from the judgment begins when the superior court clerk mails, or a party serves, the order denying the motion or notice of entry of that order. This provision is discussed further under subdivision (a) of this comment.

Subdivision (d). The scope of subdivision (d) is specific. It applies to any "appealable order," whether made before or after judgment (see Code Civ. Proc., § 904.1, subd. (a)(2)–(12)), but it extends only the time to appeal "from that order." The subdivision thus takes no position on whether a judgment is subject to a motion to reconsider (see, e.g., *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236–1238 [postjudgment motion to reconsider order granting summary judgment did not extend time to appeal from judgment because trial court had no power to rule on such motion after entry of judgment]), or whether an order denying a motion to reconsider is itself appealable (compare *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 710–711 [order appealable if motion based on new facts] with *Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1160–1161 [order not appealable under any circumstances]). Both these issues are legislative matters.

Subdivision (d) applies only when a "party" makes a valid motion to "reconsider" an appealable order under subdivision (a) of Code of Civil Procedure section 1008; it therefore does not apply when a court reconsiders an order on its own motion (*id.*, subd. (c)) or when a party makes "a subsequent application for the same order" (*id.*, subd. (b)). The statute provides no time limits within which either of the latter events must occur.

Under subdivision (d)(1), the 30-day extension of the time to appeal from the order begins when the superior court clerk mails, or a party serves, the order denying the motion or notice of entry of that order. The purpose of this provision is discussed further under subdivision (a) of this comment.

Among its alternative periods of extension of the time to appeal, subdivision (d) provides in paragraph (2) for a 90-day period beginning on the filing of the motion to reconsider or, if there is more than one such motion, the filing of the first such motion. The provision is consistent with subdivision (b)(2), governing motions to vacate judgment; as in the case of those motions, there is no time limit for a ruling on a motion to reconsider.

Subdivision (e). Consistent with case law, subdivision (e)(1) extends the time to appeal after another party appeals only if the later appeal is taken "from the same order or judgment as the first appeal." (*Commercial & Farmers Nat. Bank v. Edwards* (1979) 91 Cal.App.3d 699, 704.)

The former rule (former rule 3(c), second sentence) provided an extension of time for filing a protective cross-appeal from the judgment when the trial court granted a motion for new trial or a motion to vacate the judgment, but did not provide the same extension when the trial court granted a motion for judgment

notwithstanding the verdict. One case declined to infer that the omission was unintentional, but suggested that the Judicial Council might consider amending the rule to fill the gap. (*Lippert v. AVCO Community Developers, Inc.* (1976) 60 Cal.App.3d 775, 778 & fn. 3.) Rule 8.108(e)(2) fills the gap thus identified.

Subdivision (f). Under subdivision (f), an order or notice mailed by the clerk under this rule must show the date on which the clerk mailed the document, analogously to the clerk's "certificate of mailing" currently in use in many superior courts. This provision is intended to establish the date when an extension of the time to appeal begins to run after the clerk mails such an order or notice.

Subdivision (f) also requires that an order or notice served by a party under this rule be accompanied by proof of service. The proof of service establishes the date when an extension of the time to appeal begins to run after the party serves such an order or notice.

Rule 8.112. Petition for writ of supersedeas

(a) Petition

(1) A party seeking a stay of the enforcement of a judgment or order pending appeal may serve and file a petition for writ of supersedeas in the reviewing court.

(2) The petition must bear the same title as the appeal and, if known, the appeal's docket number.

(3) The petition must explain the necessity for the writ and include a memorandum.

(4) If the record has not been filed in the reviewing court, the petition must include:

(A) The judgment or order, showing its date of entry;

(B) The notice of appeal, showing its date of filing; and

(C) A statement of the case, including a summary of the material facts.

(5) The petition must be verified.

(Subd (a) amended effective January 1, 2007.)

(b) Opposition

(1) Unless otherwise ordered, any opposition must be served and filed within 15 days after the petition is filed.

(2) An opposition must state any material facts not included in the petition and include a memorandum.

(3) The court may not issue a writ of supersedeas until the respondent has had the opportunity to file an opposition.

(Subd (b) amended effective January 1, 2007.)

(c) Temporary stay

(1) The petition may include a request for a temporary stay under rule 8.116 pending the ruling on the petition.

(2) A separately filed request for a temporary stay must be served on the respondent. For good cause, the Chief Justice or presiding justice may excuse advance service.

(Subd (c) amended effective January 1, 2007.)

(d) Issuing the writ

(1) The court may issue the writ on any conditions it deems just.

(2) The court must hold a hearing before it may issue a writ staying an order that awards or changes the custody of a minor.

(3) The court must notify the superior court, under rule 8.490(j), of any writ or temporary stay that it issues.

(Subd (d) amended effective January 1, 2007.)

Rule 8.112 amended and renumbered effective January 1, 2007; repealed and adopted as rule 49 effective January 1, 2005.

Rule 8.116. Request for writ of supersedeas or temporary stay

(a) Information on cover

If a petition for original writ, petition for review, or any other document requests a writ of supersedeas or temporary stay from a reviewing court, the cover of the document must:

(1) Prominently display the notice “STAY REQUESTED”; and

(2) Identify the nature and date of the proceeding or act sought to be stayed.

(Subd (a) amended effective January 1, 2007.)

(b) Additional information

The following information must appear either on the cover or at the beginning of the text:

(1) The trial court and department involved; and

(2) The name and telephone number of the trial judge whose order the request seeks to stay.

(Subd (b) amended effective January 1, 2007.)

(c) Sanction

If the document does not comply with (a) and (b), the reviewing court may decline to consider the request for writ of supersedeas or temporary stay.

Rule 8.116 amended and renumbered effective January 1, 2007; repealed and adopted as rule 49.5 effective January 1, 2005.

Article 2. Record on Appeal

Rule 8.120. Clerk's transcript
Rule 8.124. Appendixes instead of clerk's transcript
Rule 8.128. Superior court file instead of clerk's transcript
Rule 8.130. Reporter's transcript
Rule 8.134. Agreed statement
Rule 8.137. Settled statement
Rule 8.140. Failure to procure the record
Rule 8.144. Form of the record
Rule 8.147. Record in multiple or later appeals in same case
Rule 8.150. Filing the record
Rule 8.153. Lending the record
Rule 8.155. Augmenting and correcting the record
Rule 8.160. Sealed records
Rule 8.163. Presumption from the record

Rule 8.120. Clerk's transcript

(a) Notice of designation

(1) Within 10 days after filing the notice of appeal, an appellant must serve and file a notice in superior court designating the documents to be included in the clerk's transcript, unless the appeal proceeds by appendix under rule 8.124, by stipulation under rule 8.128, or by agreed or settled statement under rule 8.134 or 8.137 instead of a clerk's transcript.

(2) The appellant may combine its notice designating a clerk's transcript with any notice designating a reporter's transcript under rule 8.130(a)(1), and may combine both with the notice of appeal.

(3) Within 10 days after the appellant serves its notice designating a clerk's transcript, the respondent may serve and file a notice in superior court designating any additional documents the respondent wants included in the transcript.

(4) A notice designating a clerk's transcript must state the date the notice of appeal was filed and identify each designated document by its title and filing date or, if the filing date is not available, the date it was signed. The notice may specify portions of designated documents that are not to be included in the transcript. For minute orders or instructions, it is sufficient to collectively designate all minute orders or all minute orders entered between specified dates, or all written instructions given, refused, or withdrawn.

(5) Except as provided in (b)(4), all exhibits admitted in evidence, refused, or lodged are deemed part of the record, but a party wanting a copy of an exhibit included in the transcript must specify that exhibit by number or letter in its notice of designation. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must promptly deliver it to the superior court clerk.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(b) Contents of transcript

(1) The transcript must contain:

(A) The notice of appeal;

(B) Any judgment appealed from and any notice of its entry;

(C) Any order appealed from and any notice of its entry;

(D) Any notice of intention to move for a new trial, or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, and any order on such motion and any notice of its entry;

(E) Any notices or stipulations to prepare clerk's or reporter's transcripts or to proceed by agreed or settled statement; and

(F) The register of actions, if any.

(2) Each document listed in (1)(A), (B), (C), and (D) must show the date necessary to determine the timeliness of the appeal.

(3) If designated by any party, the transcript must also contain:

(A) Any other document filed or lodged in the case in superior court;

(B) Any exhibit admitted in evidence, refused, or lodged; and

(C) Any instruction that a party submitted in writing.

(4) Unless the reviewing court orders or the parties stipulate otherwise, the clerk must not copy or transmit to the reviewing court the original of a deposition.

(Subd (b) amended effective January 1, 2007.)

(c) Deposit for cost of transcript

(1) Within 30 days after the respondent files a designation under (a)(3) or the time for filing it expires, whichever first occurs, the superior court clerk must send:

(A) To the appellant, notice of the estimated cost to prepare an original and one copy of the clerk's transcript; and

(B) To each party other than the appellant, notice of the estimated cost to prepare a copy of the clerk's transcript for that party's use.

(2) A notice under (1) must show the date it was sent.

(3) Within 10 days after the clerk sends a notice under (1), the appellant and any party wanting to purchase a copy of the clerk's transcript must deposit the estimated cost with the clerk, unless otherwise provided by law or the party submits an application for, or an order granting, a waiver of the cost under rules 3.50–3.63.

(Subd (c) amended effective January 1, 2007.)

(d) Preparation of transcript

(1) Within 30 days after the appellant deposits the estimated cost of the transcript or the court files an order waiving that cost, the clerk must:

(A) Prepare an original and one copy of the transcript, and certify the original; and

(B) Prepare additional copies for which the parties have made deposits.

(2) If the appeal is abandoned or dismissed before the clerk has completed preparation of the transcript, the clerk must refund any portion of the deposit under (c) exceeding the preparation cost actually incurred.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

Rule 8.120 amended and renumbered effective January 1, 2007; repealed and adopted as rule 5 effective January 1, 2002; previously amended effective January 1, 2003, and January 1, 2005.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(4) allows a party designating documents for inclusion in the clerk's transcript to specify *portions* of such documents that are not to be included, e.g., because they are duplicates of other designated documents or are not necessary for proper consideration of the issues raised in the appeal. The notice of designation should identify any portion to be omitted by means of a descriptive reference, e.g., by specific page or exhibit numbers. This provision is intended to simplify and therefore expedite the preparation of the clerk's transcript, to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial documents.

Subdivision (b). Subdivision (b)(1)(F) requires the clerk's transcript to include the register of actions, if any. This provision is intended to assist the reviewing court in determining the accuracy of the clerk's transcript.

Subdivision (c). Under subdivision (c)(2), a clerk who sends a notice under subdivision (c)(1) must include a certificate stating the date on which the clerk sent it. This provision is intended to establish the date when the 10-day period for depositing the cost of the clerk's transcript under this rule begins to run.

Rule 8.124. Appendixes instead of clerk's transcript

(a) Notice of election

(1) Within 10 days after the notice of appeal is filed, any party electing to proceed by an appendix under this rule instead of by clerk's transcript under rule 8.120 must serve and file a notice of election in superior court. The notice must state the date the notice of appeal was filed. This rule then governs unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served.

(2) A party may combine a notice of election with any notice designating a reporter's transcript under rule 8.130(a)(1), and may combine both with the notice of appeal.

(3) When a party files a notice of election, the superior court clerk must promptly:

(A) Send a copy of the notice to the reviewing court; and

(B) Send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(4) The parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(b) Contents of appendix

(1) A joint appendix or an appellant's appendix must contain:

(A) All items required by rule 8.120(b)(1), showing the dates required by rule 8.120(b)(2);

(B) Any item listed in rule 8.120(b)(3) that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on;

(C) The notice of election; and

(D) For a joint appendix, the stipulation designating its contents.

(2) An appendix must not contain documents or portions of documents filed in superior court that are unnecessary for proper consideration of the issues.

(3) An appendix must not contain transcripts of oral proceedings that may be designated under rule 8.130.

(4) An appendix must not incorporate any document by reference except the record on appeal in another case pending in the reviewing court or the record in a prior appeal in the same case.

(5) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, whether or not the appendix contains copies of them.

(6) A respondent's appendix may contain any document that could have been included in the appellant's appendix or a joint appendix.

(7) An appellant's reply appendix may contain any document that could have been included in the respondent's appendix.

(Subd (b) amended effective January 1, 2007.)

(c) Exhibit held by other party

If a party preparing an appendix wants it to contain a copy of an exhibit in the possession of another party:

(1) The party must first ask the party possessing the exhibit to provide a copy or lend it for copying. All parties should reasonably cooperate with such requests.

(2) If the attempt under (1) is unsuccessful, the party may serve and file in the reviewing court a notice specifying the exhibit's trial court designation and requesting the party possessing the exhibit to deliver it to the requesting party or, if the possessing party prefers, to the reviewing court. The possessing party must comply with the request within 10 days after the notice was served.

(3) If the party possessing the exhibit sends it to the requesting party, that party must copy and return it to the possessing party within 10 days after receiving it.

(4) If the party possessing the exhibit sends it to the reviewing court, that party must:

(A) Accompany the exhibit with a copy of the notice served by the requesting party; and

(B) Immediately notify the requesting party that it has sent the exhibit to the reviewing court.

(5) On request, the reviewing court may return an exhibit to the party that sent it. When the remittitur issues, the reviewing court must return all exhibits to the party that sent them.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2005.)

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144(a)–(c) for a clerk's transcript.

(2) In addition to the information required on the cover of a brief by rule 8.204(b)(10), the cover of an appendix must prominently display the title "Joint Appendix" or "Appellant's Appendix" or "Respondent's Appendix" or "Appellant's Reply Appendix."

(3) An appendix must not be bound with a brief.

(Subd (d) amended effective January 1, 2007; adopted as subd (c) effective January 1, 2002; relettered effective January 1, 2005.)

(e) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

(2) A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief.

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

(4) An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief.

(Subd (e) amended effective January 1, 2007; adopted as subd (d) effective January 1, 2002; relettered effective January 1, 2005.)

(f) Cost of appendix

(1) Each party must pay for its own appendix.

(2) The cost of a joint appendix must be paid:

(A) By the appellant;

(B) If there is more than one appellant, by the appellants equally; or

(C) As the parties may agree.

(Subd (f) amended effective January 1, 2007; adopted as subd (e) effective January 1, 2002; relettered effective January 1, 2005.)

(g) Inaccurate or noncomplying appendix

Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file. The reviewing court may impose monetary or other sanctions for filing an appendix that contains inaccurate copies or otherwise violates this rule.

(Subd (g) adopted as subd (f) effective January 1, 2002; relettered effective January 1, 2005.)

Rule 8.124 amended and renumbered effective January 1, 2007; repealed and adopted as rule 5.1 effective January 1, 2002; previously amended effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(3)(B) is intended to assist appellate counsel in preparing an appendix by providing them with the list of pleadings and other filings found in the register of actions or "docket sheet" in those counties that maintain such registers. (See Gov. Code, § 69845.) The provision is derived from rule 10-1 of the United States Circuit Rules (9th Cir.).

Subdivision (b). Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must contain any register of actions that the clerk sent to the parties under subdivision (a)(3)(B). This provision is intended to assist the reviewing court in determining the accuracy of the appendix. The provision is derived from rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).

In support of or opposition to pleadings or motions, the parties may have filed a number of lengthy documents in the proceedings in superior court, including, for example, declarations, memorandums, trial briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and photocopies of judicial opinions or other publications. Subdivision (b)(2) prohibits the inclusion of such documents in an appendix when they are not necessary for proper consideration of the issues raised in the appeal. Even if a document is otherwise includable in an appendix, the rule prohibits the inclusion of any substantial *portion* of the document that is not necessary for proper consideration of the issues raised in the appeal. The prohibition is intended to simplify and therefore expedite the preparation of the appendix, to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing redundant, irrelevant, or immaterial documents. The provision is adapted from rule 30-1.4 of the United States Circuit Rules (9th Cir.).

Subdivision (b)(3) prohibits the inclusion in an appendix of transcripts of oral proceedings that may be made part of a reporter's transcript. (Compare rule 8.130(e)(3) [the reporter must not copy into the reporter's transcript any document includable in the clerk's transcript under rule 8.120].) The prohibition is intended to prevent a party filing an appendix from evading the requirements and safeguards imposed by rule 8.130 on the process of designating and preparing a reporter's transcript, or the requirements imposed by rule 8.144(d) on the use of daily or other transcripts instead of a reporter's transcript (i.e., renumbered pages, required indexes). In addition, if an appellant were to include in its appendix a transcript of less than all the proceedings, the respondent would not learn of any need to designate additional proceedings (under rule 8.130(a)(2)) until the appellant had served its appendix with its brief, when it would be too late to designate them. Note also that a party may file a certified transcript of designated proceedings instead of a deposit for the reporter's fee (rule 8.130(b)(3)).

Subdivision (d). In current practice, served copies of filed documents often bear no clerk's date stamp and are not conformed by the parties serving them. Consistently with this practice, subdivision (d) does not require such documents to be conformed. The provision thereby relieves the parties of the burden of obtaining conformed copies at the cost of considerable time and expense and expedites the preparation of the appendix and the processing of the appeal. It is to be noted, however, that under subdivision (b)(1)(A) each document necessary to determine the timeliness of the appeal must show the date required under rule 8.104 or 8.108. Note also that subdivision (g) of rule 8.124 provides that a party filing an appendix represents under penalty of sanctions that its copies of documents are accurate.

Subdivision (e). Subdivision (e)(2) requires a joint appendix to be filed with the appellant's opening brief. The provision is intended to improve the briefing process by enabling the appellant's opening brief to include citations to the record. To provide for the case in which a respondent concludes in light of the appellant's opening brief that the joint appendix should have included additional documents, subdivision (b)(6) permits such a respondent to present in an appendix filed with its respondent's brief (see subd. (e)(3)) any document that could have been included in the joint appendix.

Under subdivision (e)(2)–(4) an appendix is required to be filed "with" the associated brief. This provision is intended to clarify that an extension of a briefing period ipso facto extends the filing period of an appendix associated with the brief.

Subdivision (g). Under subdivision (g), sanctions do not depend on the degree of culpability of the filing party—i.e., on whether the party's conduct was willful or negligent—but on the nature of the inaccuracies and the importance of the documents they affect.

Rule 8.128. Superior court file instead of clerk's transcript

(a) Stipulation; time to file

(1) If a local rule of the reviewing court permits, the parties may stipulate to use the original superior court file instead of a clerk's transcript under rule 8.120. This rule and any supplemental provisions of the local rule then govern unless the superior court orders otherwise after notice to the parties.

(2) Parties wanting to proceed under this rule must file their stipulation in superior court within 10 days after the filing of a notice of appeal. The parties must serve the reviewing court with a copy of the stipulation and of any notice designating a reporter's transcript.

(Subd (a) amended effective January 1, 2007.)

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after a stipulation under (a) is filed, the superior court clerk must mail the appellant an estimate of the cost to prepare the file, including the cost of sending the index under (3). The appellant must deposit the cost within 10 days after the clerk mails the estimate.

(2) Within 10 days after the appellant deposits the cost, the superior court clerk must put the superior court file in chronological order, number the pages, and attach a chronological index and a list of all attorneys of record, the parties they represent, and any unrepresented parties.

(3) The clerk must send copies of the index to all attorneys of record and any unrepresented parties for their use in paginating their copies of the file to conform to the index.

(4) The clerk must send the prepared file to the reviewing court with the reporter's transcript. If the appellant elected to proceed without a reporter's transcript, the clerk must immediately send the prepared file to the reviewing court.

Rule 8.128 amended and renumbered effective January 1, 2007; repealed and adopted as rule 5.2 effective January 1, 2002.

Rule 8.130. Reporter's transcript

(a) Notice

(1) Within 10 days after filing the notice of appeal, an appellant must serve and file in superior court either a notice designating a reporter's transcript or a notice of intent to proceed without a reporter's transcript, unless the appellant proceeds by agreed or settled statement under rule 8.134 or 8.137.

(2) If the appellant serves and files a notice designating a reporter's transcript, the respondent may, within 10 days after such service, serve and file a notice in superior court designating any additional proceedings the respondent wants included in the transcript.

(3) If the appellant elects to proceed without a reporter's transcript, the respondent cannot require that a reporter's transcript be prepared. But the reviewing court, on its own or the respondent's motion, may order the record augmented under rule 8.155 to prevent a miscarriage of justice. Unless the court orders otherwise, the appellant is responsible for the cost of any reporter's transcript the court may order under this subdivision.

(4) A notice designating a reporter's transcript must state the date the notice of appeal was filed and specify the date of each proceeding to be included in the transcript, and may specify portions of designated proceedings that are not to be included.

(5) If the appellant designates less than all the testimony, the notice must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise.

(6) Any notice of designation must be served on each known reporter of the designated proceedings.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(b) Deposit or substitute for cost of transcript

(1) With its notice of designation, a party must deposit with the superior court clerk the approximate cost of transcribing the proceedings it designates, using either:

(A) The reporter's written estimate; or

(B) An amount calculated at $325 per fraction of the day's proceedings that did not exceed three hours, or $650 per day or fraction that exceeded three hours.

(2) If the reporter believes the deposit is inadequate, within 15 days after the clerk mails the notice under (d)(2) the reporter may file with the clerk and mail to the designating party an estimate of the transcript's total cost, showing the additional deposit required. The party must deposit the additional sum within 10 days after the reporter mails the estimate.

(3) Instead of a deposit, the party may substitute the reporter's written waiver of a deposit, a copy of a Transcript Reimbursement Fund application filed under (c)(1), or a certified transcript of the designated proceedings. A reporter may waive the deposit for—and a party may submit a certified transcript of—a part of the designated proceedings, but such a waiver or transcript replaces the deposit for only that part.

(Subd (b) amended effective January 1, 2007.)

(c) Transcript Reimbursement Fund application

(1) With its notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

(2) If the Court Reporters Board approves the application for payment or reimbursement, the reporter's time to prepare the transcript under (f)(1) begins when the reporter receives notice of the approval.

(3) If the Court Reporters Board denies the application for payment or reimbursement, the party's time to deposit the reporter's fee or substitute under (b), or to file an agreed or settled statement under rule 8.134 or 8.137, is extended until 30 days after the board mails notice of the denial.

(Subd (c) amended effective January 1, 2007.)

(d) Superior court clerk's duties

(1) The clerk must promptly send the reviewing court a copy of any notice filed under (a)(1).

(2) If a party designates proceedings to be included in a reporter's transcript and has presented the fee deposit or a substitute under (b)(3), the clerk must promptly mail the reporter notice of the designation and of the deposit or substitute. The notice must show the date it was mailed.

(3) If a party does not present the deposit or a substitute with its notice of designation, the clerk must file the notice and promptly issue a notice of default under rule 8.140.

(4) The clerk must promptly notify the reporter if a check for a deposit is dishonored or an appeal is abandoned or is dismissed before the reporter has filed the transcript.

(Subd (d) amended effective January 1, 2007.)

(e) Contents of transcript

(1) The reporter must transcribe all designated proceedings for which a certified transcript has not been substituted under (b)(3), and must note in the transcript where any proceedings were omitted and the nature of those proceedings. The reporter must also note where any exhibit was marked for identification and where it was admitted or refused, identifying such exhibits by number or letter.

(2) If a party designates a portion of a witness's testimony to be transcribed, the reporter must transcribe the witness's entire testimony unless the parties stipulate otherwise.

(3) The reporter must not copy any document includable in the clerk's transcript under rule 8.120.

(Subd (e) amended effective January 1, 2007.)

(f) Filing the transcript; copies; payment

(1) Within 30 days after notice is received under (c)(2) or mailed under (d)(2), the reporter must prepare and certify an original of the transcript and file it in superior court. The reporter must also file one copy of the original transcript, or more than one copy if multiple appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the reporter's transcript (see rule 8.60).

(2) When the transcript is completed, the reporter must bill each designating party at the statutory rate and send a copy of the bill to the superior court clerk. The clerk must pay the reporter from that party's deposited funds and refund any excess deposit or notify the party of any additional funds needed. In a multiple reporter case, the clerk must pay each reporter who certifies under penalty of perjury that his or her transcript portion is completed.

(3) If the appeal is abandoned or is dismissed before the reporter has filed the transcript, the reporter must inform the superior court clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit.

(4) On request, and unless the superior court orders otherwise, the reporter must provide any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).

(Subd (f) amended effective January 1, 2007.)

(g) Agreed or settled statement when proceedings cannot be transcribed

(1) If any portion of the designated proceedings cannot be transcribed, the superior court clerk must so notify the designating party by mail; the notice must show the date it was mailed. The party may then substitute an agreed or settled statement for that portion of the designated proceedings by complying with either (A) or (B):

(A) Within 10 days after the notice is mailed, the party may file in superior court, under rule 8.134, an agreed statement or a stipulation that the parties are attempting to agree on a statement. If the party files a stipulation, within 30 days thereafter the party must file the agreed statement, move to use a settled statement under rule 8.137, or proceed without such a statement; or

(B) Within 10 days after the notice is mailed, the party may move in superior court to use a settled statement. If the court grants the motion, the statement must be served, filed, and settled as rule 8.137 provides, but the order granting the motion must fix the times for doing so.

(2) If the agreed or settled statement contains all the oral proceedings, it will substitute for the reporter's transcript; if it contains a portion of the proceedings, it will be incorporated into that transcript.

(3) This remedy supplements any other available remedies.

(Subd (g) amended effective January 1, 2007.)

Rule 8.130 amended and renumbered effective January 1, 2007; repealed and adopted as rule 4 effective January 1, 2002; previously amended effective January 1, 2005.

Advisory Committee Comment

Under rule 8.130 an appellant serves and files a notice *designating* a reporter's transcript ((a)(1)) and the notice identifies the proceedings to be *included* ((a)(4)). The wording recognizes that under rule 8.130(b)(3) the appellant, instead of depositing the reporter's cost to transcribe the proceedings, may substitute certified transcripts of proceedings that have already been transcribed (e.g., daily transcripts) and hence need only be designated for inclusion in the transcript.

Subdivision (a). Subdivision (a)(1) makes the filing of one of two notices—either to prepare a reporter's transcript or to proceed without one—an "act required to procure the record" within the meaning of rule 8.140(a). Under that rule, a failure to file such a notice triggers the clerk's duty to issue a 15-day notice of default and thereby allows the appellant to cure the default in superior court.

Subdivision (a)(4) requires that every notice designating a reporter's transcript identify which proceedings are to be included, and that it do so by specifying the date or dates on which those proceedings took place; if the appellant does not want a portion of the proceedings on a given date to be included, the notice should identify that portion by means of a descriptive reference (e.g., "August 3, 2004, but not the proceedings on defendant's motion to tax costs").

As used in subdivision (a)(4), the phrase "oral proceedings" includes all instructions that the court gives, whether or not submitted in writing, and any instructions that counsel orally propose but the court refuses; all such instructions are included in the reporter's transcript if designated under this rule. All instructions that counsel submit in writing, whether or not given to the jury, are lodged with the superior court clerk and are included in the clerk's transcript if designated under rule 8.120.

Under subdivision (a), portions of depositions read in open court but not reported, or not read but lodged with the superior court clerk, are included in the clerk's transcript if designated under rule 8.120.

Subdivision (b). To eliminate any ambiguity, subdivision (b)(3) recognizes, first, that a party may substitute a waiver or a certified transcript for part of the designated proceedings and, second, that in such event the waiver or transcript replaces the deposit for only that part.

Subdivision (c). Under subdivision (c), an application to the Court Reporters Board for payment or reimbursement of the cost of the reporter's transcript from the Transcript Reimbursement Fund (Bus. & Prof. Code, § 8030.8) is a permissible substitute for the required deposit of the reporter's fee (subd. (b)(3)) and thereby prevents issuance of a notice of default (subd. (d)(4)).

Business and Professions Code sections 8030.6 and 8030.8 use the term "reimbursement" to mean not only a true reimbursement, i.e., repaying a party who has previously paid the reporter out of the party's own funds (see *id*., § 8030.8, subd. (d)), but also a direct payment to a reporter who has not been previously paid by the party (see *id.*, § 8030.6, subds. (b) and (d)). Subdivision (f) recognizes this special dual meaning by consistently using the compound phrase "payment or reimbursement."

Subdivision (d). Under subdivision (d)(2), the clerk's notice to the reporter must show the date on which the clerk mailed the notice. This provision is intended to establish the date when the period for preparing the reporter's transcript under subdivision (f)(1) begins to run.

Subdivision (e). Subdivision (e)(3) is not intended to relieve the reporter of the duty to report all oral proceedings, including the reading of instructions or other documents.

Subdivision (f). Subdivision (f)(1) requires the reporter to prepare and file additional copies of the record "if multiple appellants equally share the cost of preparing the record . . . ." The reason for the requirement is explained in the comment to rule 8.147(a)(2).

Implementing statutory provisions (e.g., Code Civ. Proc., § 269, subd. (c); Gov. Code, § 69954), subdivision (f)(4) requires the reporter to provide a party, on request, with a copy of the reporter's transcript in computer-readable format. But in recognition of the fact that in some instances the reporter may be unable to provide a copy in that format, the subdivision also authorizes the reporter to apply to the superior court for relief from this requirement.

Rule 8.134. Agreed statement

(a) Contents of statement

(1) The record on appeal may consist wholly or partly of an agreed statement. The statement must explain the nature of the action, the basis of the reviewing court's jurisdiction, and how the superior court decided the points to be raised on appeal. The statement should recite only those facts needed to decide the appeal and must be signed by the parties.

(2) If the agreed statement replaces a clerk's transcript, the statement must be accompanied by copies of all items required by rule 8.120(b)(1), showing the dates required by rule 8.120(b)(2).

(3) The statement may be accompanied by copies of any document includable in the clerk's transcript under rule 8.120(b)(3) and (4).

(Subd (a) amended effective January 1, 2007.)

(b) Time to file; extension of time

(1) Within 10 days after filing the notice of appeal, an appellant wanting to proceed under this rule must file in superior court either an agreed statement or a stipulation that the parties are attempting to agree on a statement.

(2) If the appellant files the stipulation and the parties can agree on the statement, the appellant must file the statement within 40 days after filing the notice of appeal.

(3) If the appellant files the stipulation and the parties cannot agree on the statement, the appellant must file the notices provided for in rule 8.120, 8.124, or 8.130, or the stipulation provided for in rule 8.128, or a motion under rule 8.137, within 50 days after filing the notice of appeal.

(Subd (b) amended effective January 1, 2007.)

Rule 8.134 amended and renumbered effective January 1, 2007; repealed and adopted as rule 6 effective January 1, 2002.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) requires the appellant to file, within 10 days after the notice of appeal is filed, either an agreed statement or a stipulation that the parties are attempting to agree on a statement. The provision is intended to prevent issuance of a notice of default while the parties are preparing an agreed statement.

Rule 8.137. Settled statement

(a) Motion to use settled statement

(1) Within 10 days after filing the notice of appeal, an appellant wanting to proceed under this rule must serve and file in superior court a motion to use a settled statement instead of a reporter's transcript or both reporter's and clerk's transcripts.

(2) The motion must be supported by a showing that:

(A) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

(B) The designated oral proceedings were not reported or cannot be transcribed; or

(C) The appellant is unable to pay for a reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule

8.130(c)). A party proceeding in forma pauperis is deemed unable to pay for a transcript.

(3) If the court denies the motion, the appellant must file the notices provided for in rule 8.120, 8.124, or 8.130, or the stipulation provided for in rule 8.128, within 10 days after the superior court clerk mails, or a party serves, the order of denial.

(Subd (a) amended effective January 1, 2007.)

(b) Time to file; contents of statement

(1) Within 30 days after the superior court clerk mails, or a party serves, an order granting a motion to use a settled statement, the appellant must serve and file in superior court a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.

(2) If the condensed narrative describes less than all the testimony, the appellant must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise.

(3) An appellant wanting to use a settled statement instead of both reporter's and clerk's transcripts must accompany the condensed narrative with copies of all items required by rule 8.120(b)(1), showing the dates required by rule 8.120(b)(2).

(4) Within 20 days after the appellant serves the condensed narrative, the respondent may serve and file proposed amendments.

(5) The proposed statement and proposed amendments may be accompanied by copies of any document includable in the clerk's transcript under rule 8.120(b)(3) and (4).

(Subd (b) amended effective January 1, 2007.)

(c) Settlement, preparation, and certification

(1) The clerk must set a date for a settlement hearing by the trial judge that is no later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, and must give the parties at least five days' notice of the hearing date.

(2) At the hearing, the judge must settle the statement and fix the times within which the appellant must prepare, serve, and file it.

(3) If the respondent does not object to the prepared statement within five days after it is filed, it will be deemed properly prepared and the clerk must present it to the judge for certification.

(4) The parties' stipulation that the statement as originally served or as prepared is correct is equivalent to the judge's certification.

Rule 8.137 amended and renumbered effective January 1, 2007; repealed and adopted as rule 7 effective January 1, 2002.

Advisory Committee Comment

Subdivision (b). This rule requires the appellant to file only one copy of the settled statement, i.e., for the use of the reviewing court. Because all parties participate in preparing the settled statement, it may be assumed that each will retain a copy for its own use.

Rule 8.140. Failure to procure the record

(a) Notice of default

If a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the party by mail that it must do the act specified in the notice within 15 days after the notice is mailed, and that failure to comply will result in one of the following sanctions:

(1) If the defaulting party is the appellant, the appeal will be dismissed; or

(2) If the defaulting party is the respondent, the appeal will proceed on the record designated by the appellant.

(Subd (a) amended effective January 1, 2007.)

(b) Sanctions

If a party fails to comply with a notice given under (a), the superior court clerk must promptly notify the reviewing court of the default, and the reviewing court may impose one of the following sanctions:

(1) If the defaulting party is the appellant, the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause; or

(2) If the defaulting party is the respondent, the reviewing court may order the appeal to proceed on the record designated by the appellant, but the respondent may obtain relief from default under rule 8.60(d).

(Subd (b) amended effective January 1, 2007.)

(c) Motion for sanctions

If the superior court clerk fails to give a notice required by (a), a party may serve and file a motion for sanctions under (b) in the reviewing court, but the motion must be denied if the defaulting party cures the default within 15 days after the motion is served.

Rule 8.140 amended and renumbered effective January 1, 2007; adopted as rule 8 effective January 1, 2002.

Advisory Committee Comment

Subdivision (a). In subdivision (a), the reference to a failure to "timely" do a required act is intended to include any valid extension of that time.

Rule 8.144. Form of the record

(a) Paper and format

(1) In the clerk's and reporter's transcripts:

(A) The paper must be white or unbleached, recycled, 8½ by 11 inches, and of at least 20-pound weight;

(B) The text must be reproduced as legibly as printed matter;

(C) The contents must be arranged chronologically;

(D) The pages must be consecutively numbered, except as provided in (e);

(E) The margin must be at least 1¼ inches on the bound edge of the page.

(2) In the clerk's transcript only one side of the paper may be used; in the reporter's transcript both sides may be used, but the margins must then be 1¼ inches on each edge.

(3) In the reporter's transcript the lines on each page must be consecutively numbered, and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.

(Subd (a) amended effective January 1, 2007.)

(b) Indexes

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume and page where any exhibit is marked for identification and where it is admitted or refused.

(Subd (b) amended effective January 1, 2007.)

(c) Binding and cover

(1) Clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets.

(2) Each volume's cover, preferably of recycled stock, must state the title and trial court number of the case, the names of the trial court and each participating trial judge, the names and addresses of appellate counsel for each party, the volume number, and the inclusive page numbers of that volume.

(3) In addition to the information required by (2), the cover of each volume of the reporter's transcript must state the dates of the proceedings reported in that volume.

(d) Daily transcripts

Daily or other certified transcripts may be used for all or part of the reporter's transcript, but the pages must be renumbered consecutively and the required indexes and covers must be added.

(e) Pagination in multiple reporter cases

(1) In a multiple reporter case, each reporter must estimate the number of pages in each segment reported and inform the designated primary reporter of the estimate. The primary reporter must then assign beginning and ending page numbers for each segment.

(2) If a segment exceeds the assigned number of pages, the reporter must number the additional pages with the ending page number, a hyphen, and a new number, starting with 1 and continuing consecutively.

(3) If a segment has fewer than the assigned number of pages, the reporter must add a hyphen to the last page number used, followed by the segment's assigned ending page number, and state in parentheses "(next page number is ____)."

(f) Agreed or settled statements

Agreed or settled statements must conform with this rule insofar as practicable.

Rule 8.144 amended and renumbered effective January 1, 2007; repealed and adopted as rule 9 effective January 1, 2002.

Rule 8.147. Record in multiple or later appeals in same case

(a) Multiple appeals

(1) If more than one appeal is taken from the same judgment or a related order, only one record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

(2) If there is more than one separately represented appellant, they must equally share the cost of preparing the record, unless otherwise agreed by the appellants or ordered by the superior court. Appellants equally sharing the cost are each entitled to a copy of the record.

(b) Later appeal

In an appeal under rule 8.120 or 8.130:

(1) A party wanting to incorporate by reference parts of a record in a prior appeal in the same case must specify those parts in its designation of the record, with page numbers if available.

(2) A party wanting any incorporated parts of a prior record to be copied into the later record must serve and file a notice specifying those parts and must deposit the estimated copying cost within 10 days after the clerk mails notice of that cost.

(Subd (b) amended effective January 1, 2007.)

Rule 8.147 amended and renumbered effective January 1, 2007; repealed and adopted as rule 10 effective January 1, 2002.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) provides broadly for a single record whenever there are multiple appeals "from the same judgment or a related order." Multiple appeals from the *same judgment* include all cases in which opposing parties, or multiple parties on the same side of the case, appeal from the judgment. Multiple appeals from a judgment *and a related order* include all cases in which one party appeals from the judgment and another party appeals from any appealable order arising from or related to the judgment, i.e., not only orders contemplated by rule 8.108 (e.g., denying a motion for judgment notwithstanding the verdict) but also, for example, posttrial orders granting or denying attorney fees. The purpose is to encourage, when practicable, the preparation of a single record for all appeals taken in the same case. In specifying that "only one *record* need be prepared," of course, the rule does not depart from the basic requirement that an *original* and at least one *copy* of the record be prepared.

The second sentence of subdivision (a)(2) applies when multiple appellants equally share the cost of preparing the record and that cost includes the cost of a copy for each appellant. An appellant wanting the reporter to prepare an additional copy of the record—i.e., additional to the copy required by rule 8.130(f)(1)—must make a timely deposit adequate to cover the cost of that copy.

Rule 8.150. Filing the record

(a) Superior court clerk's duties

When the record is complete, the superior court clerk must promptly send the original to the reviewing court and the copy to the appellant.

(Subd (a) amended effective January 1, 2007.)

(b) Reviewing court clerk's duties

On receiving the record, the reviewing court clerk must promptly file the original and mail notice of the filing date to the parties.

(Subd (b) amended and lettered effective January 1, 2007; adopted as part of subd (a) effective January 1, 2002.)

Rule 8.150 amended and renumbered effective January 1, 2007; repealed and adopted as rule 11 effective January 1, 2002.

Rule 8.153. Lending the record

(a) Request

Within 20 days after the record is filed in the reviewing court, a party that has not purchased its own copy of the record may request another party, in writing, to lend it that party's copy of the record. The other party must then lend its copy of the record when it serves its brief.

(b) Time to return

The borrowing party must return the copy of the record when it serves its brief or the time to file its brief has expired.

(c) Cost

The borrowing party must bear the cost of sending the copy of the record to and from the borrowing party.

Rule 8.153 adopted effective January 1, 2007.

Rule 8.155. Augmenting and correcting the record

(a) Augmentation

(1) At any time, on motion of a party or its own motion, the reviewing court may order the record augmented to include:

(A) Any document filed or lodged in the case in superior court; or

(B) A certified transcript—or agreed or settled statement—of oral proceedings not designated under rule 8.130. Unless the court orders otherwise, the appellant is responsible for the cost of any additional transcript the court may order under this subdivision.

(2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. If the reviewing court grants the motion it may augment the record with the copy.

(3) If the party cannot attach a copy of the matter to be added, the party must identify it as required under rules 8.120 and 8.130.

(Subd (a) amended effective January 1, 2007.)

(b) Omissions

(1) If a clerk or reporter omits a required or designated portion of the record, a party may serve and file a notice in superior court specifying the omitted portion and requesting that it be prepared, certified, and sent to the reviewing court. The party must serve a copy of the notice on the reviewing court.

(2) The clerk or reporter must comply with a notice under (1) within 10 days after it is filed. If the clerk or reporter fails to comply, the party may serve and file a motion to augment under (a), attaching a copy of the notice.

(c) Corrections

(1) On motion of a party, on stipulation, or on its own motion, the reviewing court may order the correction or certification of any part of the record.

(2) The reviewing court may order the superior court to settle disputes about omissions or errors in the record.

(d) Notice

The reviewing court clerk must send all parties notice of the receipt and filing of any matter under this rule.

Rule 8.155 amended and renumbered effective January 1, 2007; repealed and adopted as rule 12 effective January 1, 2002.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) makes it clear that a party may apply for—and the reviewing court may order—augmentation of the record at any time. Whether the motion is made within a reasonable time and is not for the purpose of delay, however, are among the factors the reviewing court may consider in ruling on such a motion.

Rule 8.160. Sealed records

(a) Application

This rule applies to sealed records and records proposed to be sealed on appeal and in original proceedings, but does not apply to records required to be kept confidential by law.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Definitions

(1) "Record" means all or part of a document, paper, exhibit, transcript, or other thing filed or lodged with the court.

(2) A "sealed" record is a record closed to public inspection by court order.

(3) A "lodged" record is a record temporarily deposited with the court but not filed.

(c) Record sealed by the trial court

If a record sealed by the trial court is part of the record on appeal:

(1) The sealed record must be filed under seal in the reviewing court and remain sealed unless that court orders otherwise under (f).

(2) The record on appeal must include:

(A) The motion or application to seal;

(B) All documents filed in the trial court supporting or opposing the motion or application; and

(C) The order sealing the record.

(3) The reviewing court may examine the sealed record.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(d) Record not sealed by the trial court

A record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court.

(e) Record not filed in the trial court; motion or application to file under seal

(1) A record not filed in the trial court may be filed under seal in the reviewing court only by order of that court; it must not be filed under seal solely by stipulation or agreement of the parties.

(2) To obtain an order under (1), a party must serve and file a motion or application in the reviewing court, accompanied by a declaration containing facts sufficient to justify the sealing. At the same time, the party must lodge the record under (3), unless good cause is shown not to lodge it.

(3) To lodge a record, the party must put the record in an envelope or other appropriate container, seal it, and attach a cover sheet that complies with rule 8.40(c) and labels the contents as "CONDITIONALLY UNDER SEAL."

(4) If necessary to prevent disclosure, any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal. Unless the court orders otherwise, any party that already possesses copies of the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version.

(5) On receiving a lodged record, the clerk must note the date of receipt on the cover sheet and retain but not file the record. The record must remain conditionally under seal pending determination of the motion or application.

(6) The court may order a record filed under seal only if it makes the findings required by rule 2.550(d)–(e).

(7) If the court denies the motion or application, the clerk must not place the lodged record in the case file but must return it to the submitting party unless that party notifies the clerk in writing within 10 days after the order denying the motion or application that the record is to be filed.

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

(9) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in any subsequently filed records or papers.

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 2002, and January 1, 2004.)

(f) Unsealing a record in the reviewing court

(1) A sealed record must not be unsealed except on order of the reviewing court.

(2) Any person or entity may serve and file a motion, application, or petition in the reviewing court to unseal a record. If necessary to preserve confidentiality, the motion, application, or petition; any opposition; and any supporting documents must be filed in both a public redacted version and a sealed complete version.

(3) If the reviewing court proposes to order a record unsealed on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies. Any other party may file a response within 5 days after an opposition is filed.

(4) In determining whether to unseal a record, the court must consider the matters addressed in rule 2.550(c)–(e).

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both.

(6) If, in addition to the records in the sealed envelope or container, a court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(g) Disclosure of nonpublic material in public records prohibited

A record filed publicly in the reviewing court must not disclose material contained in a record that is sealed, lodged conditionally under seal, or otherwise subject to a pending motion to file under seal.

(Subd (g) amended effective January 1, 2007.)

Rule 8.160 amended and renumbered effective January 1, 2007; repealed and adopted as rule 12.5 effective January 1, 2002; previously amended effective July 1, 2002, January 1, 2004, and January 1, 2006.

Advisory Committee Comment

This rule and rules 2.550–2.551 for the trial courts provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. The sealed records rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Fam. Code, § 1818, subd. (b)) and in forma pauperis applications (Cal. Rules of Court, rule 3.60). Except as otherwise expressly provided in rule 8.160, motions in a reviewing court relating to the sealing or unsealing of a record must follow rule 8.54.

Rule 8.163. Presumption from the record

The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.

Rule 8.163 amended and renumbered effective January 1, 2007; repealed and adopted as rule 52 effective January 1, 2005.

Advisory Committee Comment

The intent of rule 8.163 is explained in the case law. (See, e.g., *Dumas v. Stark* (1961) 56 Cal.2d 673, 674.)

Article 3. Briefs in the Court of Appeal

Rule 8.200. Briefs by parties and amici curiae
Rule 8.204. Contents and form of briefs
Rule 8.208. Certificate of Interested Entities or Persons
Rule 8.212. Service and filing of briefs
Rule 8.216. Appeals in which a party is both appellant and respondent
Rule 8.220. Failure to file a brief
Rule 8.224. Transmitting exhibits

Rule 8.200. Briefs by parties and amici curiae

(a) Parties' briefs

(1) Each appellant must serve and file an appellant's opening brief.

(2) Each respondent must serve and file a respondent's brief.

(3) Each appellant may serve and file a reply brief.

(4) No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) or (c)(6).

(5) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal.

(Subd (a) amended effective January 1, 2003.)

(b) Supplemental briefs after remand or transfer from Supreme Court

(1) Within 15 days after finality of a Supreme Court decision remanding or order transferring a cause to a Court of Appeal for further proceedings, any party may serve and file a supplemental opening brief in the Court of Appeal. Within 15 days after such a brief is filed, any opposing party may serve and file a supplemental responding brief.

(2) Supplemental briefs must be limited to matters arising after the previous Court of Appeal decision in the cause, unless the presiding justice permits briefing on other matters.

(3) Supplemental briefs may not be filed if the previous decision of the Court of Appeal was a denial of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause.

(Subd (b) adopted effective January 1, 2003.)

(c) Amicus curiae briefs

(1) Any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief.

(2) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(3) The proposed brief must be served and must accompany the application, and may be combined with it.

(4) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(5) If the court grants the application, any party may file an answer within the time the court specifies. The answer must be served on all parties and the amicus curiae.

(6) The Attorney General may file an amicus curiae brief without the presiding justice's permission, unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within 14 days after the last respondent's brief is filed, and must provide the information required by (2) and comply with (4). Any party may serve and file an answer within 14 days after the brief is filed.

(Subd (c) amended effective January 1, 2007; adopted as subd (b) effective January 1, 2002; relettered effective January 1, 2003.)

Rule 8.200 amended and renumbered effective January 1, 2007; repealed and adopted as rule 13 effective January 1, 2002; previously amended effective January 1, 2003.

Advisory Committee Comment

Subdivision (b). After the Supreme Court remands or transfers a cause to the Court of Appeal for further proceedings (i.e., under rules 8.528(c)–(e) or 10.1000(a)(1)(B)), the parties are permitted to file supplemental briefs. The first 15-day briefing period begins on the day of *finality* (under rule 8.532) of the Supreme Court decision remanding or order transferring the cause to the Court of Appeal. The rule specifies that "any party" may file a supplemental opening brief, and if such a brief is filed, "any opposing party" may file a supplemental responding brief. In this context the phrase "any party" is intended to mean any *or all* parties. Such a decision or order of transfer to the Court of Appeal thus triggers, first, a 15-day period in which any or all parties may file supplemental opening briefs and, second—if any party files such a brief—an additional 15-day period in which any opposing party may file a supplemental responding brief.

Rule 8.204. Contents and form of briefs

(a) Contents

(1) Each brief must:

(A) Begin with a table of contents and a table of authorities separately listing cases, constitutions, statutes, court rules, and other authorities cited;

(B) State each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority; and

(C) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears. If any

part of the record is submitted in an electronic format, citations to that part must identify, with the same specificity required for the printed record, the place in the record where the matter appears.

(2) An appellant's opening brief must:

(A) State the nature of the action, the relief sought in the trial court, and the judgment or order appealed from;

(B) State that the judgment appealed from is final, or explain why the order appealed from is appealable; and

(C) Provide a summary of the significant facts limited to matters in the record.

(Subd (a) amended effective January 1, 2006.)

(b) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. The paper must be white or unbleached, recycled, 8½ by 11 inches, and of at least 20-pound weight.

(2) Any conventional typeface may be used. The typeface may be either proportionally spaced or monospaced.

(3) The type style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the type size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.

(5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.

(6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.

(7) The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems.

(8) The brief must be bound on the left margin. If the brief is stapled, the bound edge and staples must be covered with tape.

(9) The brief need not be signed.

(10) The cover, preferably of recycled stock, must be in the color prescribed by rule 8.40(b) and must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief, but the cover need not state the bar number of any supervisor of the attorney responsible for the brief; and

(E) The name of the party that each attorney on the brief represents.

(11) If the brief is produced on a typewriter:

(A) A typewritten original and carbon copies may be filed only with the presiding justice's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.

(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2006.)

(c) Length

(1) A brief produced on a computer must not exceed 14,000 words, including footnotes. Such a brief must include a certificate by appellate counsel or an

unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A brief produced on a typewriter must not exceed 50 pages.

(3) The tables, a certificate under (1), and any attachment under (d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by rule 8.216 must not exceed double the limits stated in (1) or (2).

(5) On application, the presiding justice may permit a longer brief for good cause.

(Subd (c) amended effective January 1, 2007.)

(d) Attachments to briefs

A party filing a brief may attach copies of exhibits or other materials in the appellate record or copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible. These attachments must not exceed a combined total of 10 pages, but on application the presiding justice may permit additional pages of attachments for good cause. A copy of an opinion required to be attached to the brief under rule 8.1115(c) does not count toward this 10-page limit.

(Subd (d) amended effective January 1, 2007.)

(e) Noncomplying briefs

If a brief does not comply with this rule:

(1) The reviewing court clerk may decline to file it, but must mark it "received but not filed" and return it to the party; or

(2) If the brief is filed, the reviewing court may, on its own or a party's motion, with or without notice:

(A) Order the brief returned for corrections and refiling within a specified time;

(B) Strike the brief with leave to file a new brief within a specified time; or

(C) Disregard the noncompliance.

(Subd (e) amended effective January 1, 2006.)

Rule 8.204 amended and renumbered effective January 1, 2007; repealed and adopted as rule 14 effective January 1, 2002; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2006.

Advisory Committee Comment

Subdivision (b). The first sentence of subdivision (b)(1) confirms that any method of reproduction is acceptable provided it results in a clear black image of letter quality. The provision is derived from subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).

Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *typeface*, *type style*, and *type size* (see also subd. (b)(11)(C)). The first two terms are defined in *The Chicago Manual of Style* (15th ed., 2003) p. 839. Note that computer programs often refer to typeface as "font."

Subdivision (b)(2) allows the use of any conventional typeface—e.g., Times New Roman, Courier, Arial, Helvetica, etc.—and permits the typeface to be either proportionally spaced or monospaced.

Subdivision (b)(3) requires the type style to be roman, but permits the use of italics, boldface, or underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions are derived from FRAP 32(a)(6).

Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief writer.

Brief writers are encouraged to follow the citation form of the *California Style Manual* (4th ed., 2000).

Subdivision (c). Subdivision (c) governs the maximum permissible length of a brief. It is derived from the federal procedure of measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Subdivision (c)(1), like FRAP 32(a)(7)(B)(i), imposes a limit of 14,000 words if the brief is produced on a computer. Subdivision (c)(1) implements this provision by requiring the writer of a brief produced on a computer to include a certificate stating the number of words in the brief, but allows the writer to rely on the word count of the computer program used to prepare the brief. This requirement, too, is adapted from the federal rule. (FRAP 32(a)(7)(C).) For purposes of this rule, a "brief produced on a computer" includes a commercially printed brief.

Subdivision (c)(5) clarifies that a party seeking permission to exceed the page or word limits stated in subdivision (c)(1) and (2) must proceed by application under rule 8.50 rather than by motion under rule 8.54, and must show good cause.

Subdivision (d). Subdivision (d) permits a party filing a brief to attach copies of exhibits or other materials, provided they are part of the record on appeal and do not exceed a total of 10 pages. If the brief writer attaches, under rule 8.1115(c), a copy of an unpublished opinion or an opinion available only in computerized form, that opinion does not count toward the 10-page limit stated in rule 8.204(d).

Subdivision (e). Subdivision (e) states the consequences of submitting briefs that do not comply with this rule: (e)(1) recognizes the power of the reviewing court clerk to decline to file such a brief, and (e)(2) recognizes steps the reviewing court may take to obtain a brief that does comply with the rule. Subdivision (e)(2) does not purport to limit the inherent power of the reviewing court to fashion other sanctions for such noncompliance.

Rule 8.208. Certificate of Interested Entities or Persons

(a) Purpose and intent

The California Code of Judicial Ethics states the circumstances under which an appellate justice must disqualify himself or herself from a proceeding. The purpose of this rule is to provide justices of the Courts of Appeal with additional information to help them determine whether to disqualify themselves from a proceeding.

(b) Definitions

For purposes of this rule:

(1) "Certificate" means a Certificate of Interested Entities or Persons signed by appellate counsel or an unrepresented party.

(2) "Entity" means a corporation, a partnership, a firm, or any other association, but does not include a governmental entity or its agencies or a natural person.

(c) Serving and filing a certificate

(1) Each party must serve and file a certificate at the time it files its first document in the Court of Appeal. Each party must also include a copy of the certificate in its principal brief. The certificate must appear after the cover and before the tables.

(2) If a party fails to file a certificate as required under (1), the clerk must notify the party by mail that the party must file the certificate within 15 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the appellant, the court will strike the document or dismiss the appeal; or

(B) If the party is the respondent, the court will strike the document or decide the appeal on the record, the opening brief, and any oral argument by the appellant.

(3) If the party fails to comply with the notice under (2), the court may impose the sanctions specified in the notice.

(d) Contents of certificate

(1) If an entity is a party, that party's certificate must list any other entity or person that the party knows has an ownership interest of 10 percent or more in the party.

(2) If a party knows of any other person or entity that has a financial or other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics, the party's certificate must list that entity or person and identify the nature of the interest of the person or entity. For purposes of this subdivision:

(A) A mutual or common investment fund's ownership of securities or bonds issued by an entity does not constitute a financial interest in that entity.

(B) An interest in the outcome of the proceeding does not arise solely because the entity or person is in the same industry, field of business, or regulatory category as a party and the case might establish a precedent that would affect that industry, field of business, or regulatory category.

(3) If the party knows of no entity or person that must be listed under (1) or (2), the party must so state in the certificate.

(Subd (d) amended effective January 1, 2007.)

(e) Supplemental information

A party that learns of changed or additional information that must be disclosed under (d) must promptly serve and file a supplemental certificate in the reviewing court.

Rule 8.208 amended and renumbered effective January 1, 2007; adopted as rule 14.5 effective July 1, 2006.

Advisory Committee Comment

Subdivision (d). This subdivision requires a party to list on its certificate entities or persons that the party *knows* have specified interests. This subdivision does not impose a duty on a party to gather information not already known by that party.

Rule 8.212. Service and filing of briefs

(a) Time to file

(1) An appellant must serve and file its opening brief within:

(A) 30 days after the record—or the reporter's transcript, after a rule 8.124 election—is filed in the reviewing court; or

(B) 70 days after the filing of a rule 8.124 election, if the appeal proceeds without a reporter's transcript.

(2) A respondent must serve and file its brief within 30 days after the appellant files its opening brief.

(3) An appellant must serve and file its reply brief, if any, within 20 days after the respondent files its brief.

(Subd (a) amended effective January 1, 2007.)

(b) Extensions of time

(1) The parties may extend each period under (a) by up to 60 days by filing one or more stipulations in the reviewing court before the brief is due. Stipulations must be signed by and served on all parties. The original signature of at least one party must appear on the stipulation filed in the reviewing court; the signatures of the other parties may be in the form of fax copies of the signed signature page of the stipulation.

(2) A stipulation under (1) is effective on filing. The reviewing court may not shorten a stipulated extension.

(3) Before the brief is due, a party may apply to the presiding justice for an extension of each period under (a), or under rule 8.200(c)(5) or (6), on a showing that there is good cause and that:

(A) The applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation; or

(B) The parties have stipulated to the maximum extension permitted under (1) and the applicant seeks a further extension.

(4) A party need not apply for an extension or relief from default if it can file its brief within the time prescribed by rule 8.220. The clerk must file a brief submitted within that time if it otherwise complies with these rules.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2003, and July 1, 2005.)

(c) Service

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

(2) Four copies of each brief filed in a civil appeal must be served on the Supreme Court. If the Court of Appeal has ordered the brief sealed:

(A) The party serving the brief must place all four copies of the brief in a sealed envelope and attach a cover sheet that contains the information required by rule 8.204(b)(10) and labels the contents as "CONDITIONALLY UNDER SEAL"; and

(B) The Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice the Supreme Court clerk must keep all copies of the brief under seal.

(3) A copy of each brief must be served on a public officer or agency when required by rule 8.29.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2004, and January 1, 2005.)

Rule 8.212 amended and renumbered effective January 1, 2007; repealed and adopted as rule 15 effective January 1, 2002; previously amended effective January 1, 2003, January 1, 2004, January 1, 2005, and July 1, 2005.

Advisory Committee Comment

Subdivision (b). In criminal cases, stipulated extensions of time to file briefs are prohibited by rule. (See rule 8.360(c)(4).)

Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must proceed by application under rule 8.50 rather than by motion under rule 8.54.

Subdivision (c). In subdivision (c)(2) the word "brief" means only (1) an appellant's opening brief, (2) a respondent's brief, (3) an appellant's reply brief, (4) a petition for rehearing, (5) an answer thereto, or (6) an amicus curiae brief. It follows that no other documents or papers filed in the Court of Appeal,

whatever their nature, should be served on the Supreme Court. Further, only briefs filed in the Court of Appeal "in a civil appeal" must be served on the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal appeals or in original proceedings should be served on the Supreme Court.

Rule 8.216. Appeals in which a party is both appellant and respondent

(a) Briefing sequence and time to file briefs

In an appeal in which any party is both an appellant and a respondent:

(1) The parties must jointly—or separately if unable to agree—submit a proposed briefing sequence to the reviewing court within 20 days after the second notice of appeal is filed.

(2) After receiving the proposal, the reviewing court must order a briefing sequence and prescribe briefing periods consistent with rule 8.212(a).

(3) Extensions of time are governed by rule 8.212(b).

(Subd (a) amended effective January 1, 2007.)

(b) Contents of briefs

(1) A party that is both an appellant and a respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any, whichever is appropriate under the briefing sequence that the reviewing court orders.

(2) A combined brief must address each appeal separately.

(3) A party must confine a reply brief, or the reply portion of a combined brief, to points raised in its appeal.

(Subd (b) amended effective January 1, 2007.)

Rule 8.216 amended and renumbered effective January 1, 2007; repealed and adopted as rule 16 effective January 1, 2002.

Advisory Committee Comment

Rule 8.216 applies, first, to all cases in which opposing parties both appeal from the judgment. In addition, it applies to all cases in which one party appeals from the judgment and another party appeals from any appealable order arising from or related to the judgment, i.e., not only orders contemplated by rule 8.108 (denying a motion for judgment notwithstanding the verdict) but also, for example, posttrial

orders granting or denying attorney fees. The purpose of the rule is to provide, in all such appeals, a single unified procedure for resolving uncertainties as to the order in which the parties must file their briefs.

As used in this rule, "appellant" includes cross-appellant and "respondent" includes cross-respondent. (Compare rule 8.100(e).)

Subdivision (a). Subdivision (a) implements the above-stated purpose by providing a procedure for determining both the briefing *sequence*—i.e., the order in which the parties must file their briefs—and the briefing *periods*—i.e., the periods of time (e.g., 30 days or 70 days, etc.) within which the briefs must be filed. Subdivision (a)(1) places the burden on the parties in the first instance to propose a briefing sequence, jointly if possible but separately if not. The purpose of this requirement is to assist the reviewing court by giving it the benefit of the parties' views on what is the most efficient briefing sequence in the circumstances of the case. Subdivision (a)(2) then prescribes the role of the reviewing court: after considering the parties' proposal, the court will decide on the briefing sequence, prescribe the briefing periods, and notify the parties of both. The reviewing court, of course, may thereafter modify its order just as it may do in a single-appeal case. Extensions of time are governed by rule 8.212(b).

Subdivision (b). The purpose of subdivision (b)(2) is to ensure that in its reply brief a party addresses only issues germane to its own appeal. For example, a cross-appellant may not use its *cross-appellant's* reply brief to answer points raised in the *appellant's* reply brief.

Rule 8.220. Failure to file a brief

(a) Notice to file

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party by mail that the brief must be filed within 15 days after the notice is mailed and that failure to comply will result in one of the following sanctions:

(1) If the brief is an appellant's opening brief, the court will dismiss the appeal;

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

(Subd (a) amended effective January 1, 2007.)

(b) Combined brief

A party that is both an appellant and a respondent under rule 8.216 may file its combined respondent's brief and appellant's reply brief within the period specified in the notice under (a).

(Subd (b) amended effective January 1, 2007.)

(c) Sanction

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

(d) Extension of time

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

Rule 8.220 amended and renumbered effective January 1, 2007; repealed and adopted as rule 17 effective January 1, 2002.

Advisory Committee Comment

Subdivision (a). Subdivision (a) applies to all appellant's opening briefs and respondent's briefs, but does not apply to reply briefs.

A brief is "timely" under subdivision (a) if it is filed within the normal rule time prescribed for that brief or any extension of that time.

A party that fails to timely file a required brief need not make a formal motion to permit a late filing (e.g., under rule 8.60(d)); it is sufficient to file the brief within the 15-day grace period specified in the notice under subdivision (a).

Subdivision (d). Subdivision (d) clarifies that a party seeking an extension of time from the presiding justice must proceed by application under rule 8.50 rather than by motion under rule 8.54. In conformity with current practice, the subdivision also clarifies that if a brief is not filed within an extension granted by the court, the court may impose sanctions without further notice.

Rule 8.224. Transmitting exhibits

(a) Notice of designation

(1) Within 10 days after the last respondent's brief is filed or could be filed under rule 8.220, a party wanting the reviewing court to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the clerk's transcript under rule 8.120 or the appendix under rule 8.124 must serve and file a notice in superior court designating such exhibits.

(2) Within 10 days after a notice under (1) is served, any other party wanting the reviewing court to consider additional exhibits must serve and file a notice in superior court designating such exhibits.

(3) A party filing a notice under (1) or (2) must serve a copy on the reviewing court.

(Subd (a) amended effective January 1, 2007.)

(b) Transmittal

Unless the reviewing court orders otherwise, within 20 days after the first notice under (a) is filed:

(1) The superior court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the reviewing court with two copies of a list of the exhibits sent. If the reviewing court clerk finds the list correct, the clerk must sign and return one copy to the superior court clerk.

(2) Any party in possession of designated exhibits returned by the superior court must put them into numerical or alphabetical order and send them to the reviewing court with two copies of a list of the exhibits sent. If the reviewing court clerk finds the list correct, the clerk must sign and return one copy to the party.

(c) Application for later transmittal

After the periods specified in (a) have expired, a party may apply to the reviewing court for permission to send an exhibit to that court.

(d) Request and return by reviewing court

At any time the reviewing court may direct the superior court or a party to send it an exhibit. On request, the reviewing court may return an exhibit to the superior court or to the party that sent it. When the remittitur issues, the reviewing court must return all exhibits to the superior court or to the party that sent them.

Rule 8.224 amended and renumbered effective January 1, 2007; repealed and adopted as rule 18 effective January 1, 2002.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(2) provides a procedure by which parties send designated exhibits directly to the reviewing court in cases in which the superior court has returned the exhibits to the parties under Code of Civil Procedure section 1952 or other provision. (See also rule 8.120(a)(5).)

Subdivision (c). Subdivision (c) addresses the case in which a party's need to designate a certain exhibit does not arise until after the period specified in subdivision (a) has expired—for example, when the appellant makes a point in its reply brief that the respondent reasonably believes justifies the reviewing court's consideration of an exhibit it had not previously designated. In that event, the subdivision authorizes the party to apply to the reviewing court for permission to send the exhibit on a showing of good cause.

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.240. Calendar preference
Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise
Rule 8.248. Prehearing conference
Rule 8.252. Judicial notice; findings and evidence on appeal
Rule 8.256. Oral argument and submission of the cause
Rule 8.260. Opinions [Reserved]
Rule 8.264. Filing, finality, and modification of decision
Rule 8.268. Rehearing
Rule 8.272. Remittitur
Rule 8.276. Costs and sanctions

Rule 8.240. Calendar preference

A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, "calendar preference" means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument.

Rule 8.240 amended and renumbered effective January 1, 2007; repealed and adopted as rule 19 effective January 1, 2003.

Advisory Committee Comment

Rule 8.240 requires a party claiming preference to file a motion for preference in the reviewing court. The motion requirement relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395).

The rule is broad in scope: it includes motions for preference on the grounds (1) that a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., id., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see Warren v. Schecter (1997) 57 Cal.App.4th 1189, 1198–1199); and (3) that the

reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).

Because valid grounds for preference could arise after the filing of the reply brief, e.g., a diagnosis of terminal illness, the rule requires the motion to be filed "promptly," i.e., as soon as the ground for preference arises.

Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

(1) If a civil case settles after a notice of appeal has been filed either as a whole or as to any party, the appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeal. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the appellant must also immediately serve a copy of the notice on the superior court clerk.

(2) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeal of the settlement by telephone or other expeditious method.

(3) Within 45 days after filing a notice of settlement—unless the court has ordered a longer time period on a showing of good cause—the appellant who filed the notice of settlement must file either an abandonment under (b), if the record has not yet been filed in the Court of Appeal, or a request to dismiss under (c), if the record has already been filed in the Court of Appeal.

(4) If the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause why the appeal should not be dismissed within the time period specified under (3), the court may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal.

(5) This subdivision does not apply to settlements requiring findings to be made by the Court of Appeal under Code of Civil Procedure section 128(a)(8).

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Abandonment

(1) Before the record is filed in the Court of Appeal, the appellant may serve and file in superior court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) The superior court clerk must promptly notify the Court of Appeal and the parties of the abandonment or stipulation.

(c) Request to dismiss

(1) After the record is filed in the Court of Appeal, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.

(2) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

(d) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the Court of Appeal may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the minor's or the conservatee's best interests and to report its findings.

Rule 8.244 amended and renumbered effective January 1, 2007; repealed and adopted as rule 20 effective January 1, 2003; previously amended effective January 1, 2006.

Rule 8.248. Prehearing conference

(a) Statement and conference

After the notice of appeal is filed in a civil case, the presiding justice may:

(1) Order one or more parties to serve and file a concise statement describing the nature of the case and the issues presented; and

(2) Order all necessary persons to attend a conference to consider a narrowing of the issues, settlement, and other relevant matters.

(Subd (a) amended effective January 1, 2007.)

(b) Agreement

An agreement reached in a conference must be signed by the parties and filed. Unless the Court of Appeal orders otherwise, the agreement governs the appeal.

(c) Proceedings after conference

(1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or discussed in a conference under (a)(2) may be considered in any subsequent proceeding in the appeal other than in another conference.

(2) Neither the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal.

(d) Time to file brief

The time to file a party's brief under rule 8.212(a) is tolled from the date the Court of Appeal mails notice of the conference until the date it mails notice that the conference is concluded.

(Subd (d) amended effective January 1, 2007.)

Rule 8.248 amended and renumbered effective January 1, 2007; repealed and adopted as rule 21 effective January 1, 2003.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) requires each party to *serve* any statement it files. (Cf. rule 3.1380(c) [pretrial settlement conference statement must be served on each party].) The service requirement is not intended to prohibit the presiding justice from ordering the parties to submit additional, confidential material in appropriate cases.

Subdivision (d). If a prehearing conference is ordered before the due date of the appellant's opening brief, the time to file the brief is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Under subdivision (d) the tolling period continues "until the date [the Court of Appeal] mails notice that the conference is *concluded*" (italics added). This provision is intended to accommodate the possibility that the conference may not conclude on the date it begins.

Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of Appeal clerk to mail the parties a notice that the conference is concluded. This provision is intended to facilitate the calculation of the new briefing due dates.

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

(b) Findings on appeal

A party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion must include proposed findings.

(c) Evidence on appeal

(1) A party may move that the reviewing court take evidence.

(2) An order granting the motion must:

(A) State the issues on which evidence will be taken;

(B) Specify whether the court, a justice, or a special master or referee will take the evidence; and

(C) Give notice of the time and place for taking the evidence.

(3) For documentary evidence, a party may offer the original, a certified copy, or a photocopy. The court may admit the document in evidence without a hearing.

(Subd (c) amended effective January 1, 2007.)

Rule 8.252 amended and renumbered effective January 1, 2007; repealed and adopted as rule 22 effective January 1, 2003.

Advisory Committee Comment

Subdivisions (b) and (c). Although appellate courts are authorized to take evidence and make findings of fact on appeal by Code of Civil Procedure section 909 and this rule, this authority should be exercised sparingly. (See *In re Zeth S.* (2003) 31 Cal.4th 396.)

Rule 8.256. Oral argument and submission of the cause

(a) Frequency and location of argument

(1) Each Court of Appeal and division must hold a session at least once each quarter.

(2) A Court of Appeal may hold sessions at places in its district other than the court's permanent location.

(3) Subject to approval by the Chair of the Judicial Council, a Court of Appeal may hold a session in another district to hear a cause transferred to it from that district.

(b) Notice of argument

The Court of Appeal clerk must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(c) Conduct of argument

Unless the court provides otherwise by local rule or order:

(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.

(2) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

(3) Only one counsel may argue for each separately represented party.

(d) When the cause is submitted

(1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(2) If the Supreme Court transfers a cause to the Court of Appeal and supplemental briefs may be filed under rule 8.200(b), the cause is submitted when the last such brief is or could be timely filed. The Court of Appeal may order the cause submitted at an earlier time if the parties so stipulate.

(Subd (d) amended effective January 1, 2007.)

(e) Vacating submission

(1) Except as provided in (2), the court may vacate submission only by an order stating its reasons and setting a timetable for resubmission.

(2) If a cause is submitted under (d)(2), an order setting oral argument vacates submission and the cause is resubmitted when the court has heard oral argument or approved its waiver.

(Subd (e) amended effective January 1, 2007.)

Rule 8.256 amended and renumbered effective January 1, 2007; repealed and adopted as rule 23 effective January 1, 2003.

Rule 8.260. Opinions [Reserved]

Rule 8.260 adopted effective January 1, 2007.

Rule 8.264. Filing, finality, and modification of decision

(a) Filing the decision

(1) The Court of Appeal clerk must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(2) A decision by opinion must identify the participating justices, including the author of the majority opinion and of any concurring or dissenting opinion, or the justices participating in a "by the court" opinion.

(b) Finality of decision

(1) Except as otherwise provided in this rule, a Court of Appeal decision, including an order dismissing an appeal involuntarily, is final in that court 30 days after filing.

(2) The following Court of Appeal decisions are final in that court on filing:

(A) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause;

(B) The denial of a petition for writ of supersedeas;

(C) The denial of an application for bail or to reduce bail pending appeal;

(D) The denial of a transfer of a case within the appellate jurisdiction of the superior court; and

(E) The dismissal of an appeal on request or stipulation.

(3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, a Court of Appeal may order early finality in that court of a decision granting a petition for a writ within its original jurisdiction or denying such a petition after issuing an alternative writ or order to show cause. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(4) A Court of Appeal decision denying a petition for writ of habeas corpus without issuing an order to show cause is final in that court on the same day that its decision in a related appeal is final if the two decisions are filed on the same day. If the Court of Appeal orders rehearing of the decision in the appeal, its decision denying the petition for writ of habeas corpus is final when its decision on rehearing is final.

(5) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.

(Subd (b) amended effective January 1, 2007.)

(c) Modification of decision

(1) A reviewing court may modify a decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open.

(2) An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(d) Consent to increase or decrease in amount of judgment

If a Court of Appeal decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (b), the party serves and files two copies of a consent in the Court of Appeal. If a consent is filed, the finality period runs from

the filing date of the consent. The clerk must send one file-stamped copy of the consent to the superior court with the remittitur.

Rule 8.264 amended and renumbered effective January 1, 2007; repealed and adopted as rule 24 effective January 1, 2003.

Advisory Committee Comment

Subdivision (b). As used in subdivision (b)(1), "decision" includes all interlocutory orders of the Court of Appeal. (See Advisory Committee Comment to rule 8.500(a) and (e).)

Subdivision (b)(5) provides that a postfiling decision of the Court of Appeal to publish its opinion in whole under rule 8.1105(c) or in part under rule 8.1100(a) restarts the 30-day finality period. This provision is based on rule 40-2 of the United States Circuit Rules (9th Cir.). It is intended to allow parties sufficient time to petition the Court of Appeal for rehearing and/or the Supreme Court for review—and to allow potential amici curiae sufficient time to express their views—when the Court of Appeal changes the publication status of an opinion. The rule thus recognizes that the publication status of an opinion may affect a party's decision whether to file a petition for rehearing and/or a petition for review.

Rule 8.268. Rehearing

(a) Power to order rehearing

(1) On petition of a party or on its own motion, a reviewing court may order rehearing of any decision that is not final in that court on filing.

(2) An order for rehearing must be filed before the decision is final. If the clerk's office is closed on the date of finality, the court may file the order on the next day the clerk's office is open.

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after:

(A) The filing of the decision;

(B) A publication order restarting the finality period under rule 8.264(b)(5), if the party has not already filed a petition for rehearing;

(C) A modification order changing the appellate judgment under rule 8.264(c)(2); or

(D) The filing of a consent under rule 8.264(d).

(2) A party must not file an answer to a petition for rehearing unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within 8 days after the order is filed unless the court orders otherwise. A petition for rehearing normally will not be granted unless the court has requested an answer.

(3) The petition and answer must comply with the relevant provisions of rule 8.204.

(4) Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(c) No extension of time

The time for granting or denying a petition for rehearing in the Court of Appeal may not be extended. If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(d) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Court of Appeal.

Rule 8.268 amended and renumbered effective January 1, 2007; repealed and adopted as rule 25 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.272. Remittitur

(a) Proceedings requiring issuance of remittitur

A Court of Appeal must issue a remittitur after a decision in:

(1) An appeal; or

(2) An original proceeding, except when the court denies a writ petition without issuing an alternative writ or order to show cause.

(Subd (a) amended effective January 1, 2007.)

(b) Clerk's duties

(1) If a Court of Appeal decision is not reviewed by the Supreme Court:

(A) The Court of Appeal clerk must issue a remittitur immediately after the Supreme Court denies review, or the period for granting review expires, or the court dismisses review under rule 8.528(b); and

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur and a file-stamped copy of the opinion or order.

(2) After Supreme Court review of a Court of Appeal decision:

(A) On receiving the Supreme Court remittitur, the Court of Appeal clerk must issue a remittitur immediately if there will be no further proceedings in the Court of Appeal; and

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur, a copy of the Supreme Court remittitur, and a file-stamped copy of the Supreme Court opinion or order.

(Subd (b) amended effective January 1, 2007.)

(c) Immediate issuance, stay, and recall

(1) A Court of Appeal may direct immediate issuance of a remittitur only on the parties' stipulation or on dismissal of the appeal under rule 8.244(c)(2).

(2) On a party's or its own motion or on stipulation, and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

(Subd (c) amended effective January 1, 2007.)

(d) Notice

(1) The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

(2) If, without requiring further proceedings in the trial court, the decision changes the length of a state prison sentence, applicable credits, or the maximum permissible confinement to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, the clerk must send a copy of the remittitur and opinion or order to either the Department of Corrections and Rehabilitation or the Division of Juvenile Justice.

(Subd (d) amended effective January 1, 2007.)

Rule 8.272 amended effective January 1, 2007; repealed and adopted as rule 26 effective January 1, 2003.

Rule 8.276. Costs and sanctions

(a) Right to costs

(1) Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case is entitled to costs on appeal.

(2) The prevailing party is the respondent if the Court of Appeal affirms the judgment without modification or dismisses the appeal. The prevailing party is the appellant if the court reverses the judgment in its entirety.

(3) If the court reverses the judgment in part or modifies it, or if there is more than one notice of appeal, the opinion must specify the award or denial of costs.

(4) If the interests of justice require it, the court may award or deny costs as it deems proper.

(5) In probate cases, the prevailing party must be awarded costs unless the Court of Appeal orders otherwise, but the superior court must decide who will pay the award.

(b) Judgment for costs

(1) The Court of Appeal clerk must enter on the record, and insert in the remittitur, a judgment awarding costs to the prevailing party under (a)(2) or as directed by the court under (a)(3) or (a)(4).

(2) If the clerk fails to enter judgment for costs, the court may recall the remittitur for correction on its own motion, or on a party's motion made not later than 30 days after the remittitur issues.

(c) Recoverable costs

(1) A party may recover only the following costs, if reasonable:

(A) The amount the party paid for any portion of the record, whether an original or a copy or both. The cost to copy parts of a prior record under rule 8.147(b)(2) is not recoverable unless the Court of Appeal ordered the copying;

(B) The cost to produce additional evidence on appeal;

(C) The costs to notarize, serve, mail, and file the record, briefs, and other papers;

(D) The cost to print and reproduce any brief, including any petition for rehearing or review, answer, or reply; and

(E) The cost to procure a surety bond, including the premium and the cost to obtain a letter of credit as collateral, unless the trial court determines the bond was unnecessary.

(2) Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702.

(Subd (c) amended effective January 1, 2007.)

(d) Procedure for claiming or opposing costs

(1) Within 40 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700.

(2) A party may serve and file a motion in the superior court to strike or tax costs claimed under (1) in the manner required by rule 3.1700.

(3) An award of costs is enforceable as a money judgment.

(Subd (d) amended effective January 1, 2007.)

(e) Sanctions

(1) On a party's or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs, on a party or an attorney for:

(A) Taking a frivolous appeal or appealing solely to cause delay;

(B) Including in the record any matter not reasonably material to the appeal's determination; or

(C) Committing any other unreasonable violation of these rules.

(2) A party's motion under (1) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due. If a party moves to dismiss the appeal, with or without a sanctions motion, and the motion to dismiss is not granted, the party may move for sanctions within 10 days after the appellant's reply brief is due.

(3) The court must give notice in writing if it is considering imposing sanctions. Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

(4) Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

(Subd (e) amended effective January 1, 2007.)

Rule 8.276 amended and renumbered effective January 1, 2007; repealed and adopted as rule 27 effective January 1, 2003.

Advisory Committee Comment

Rule 8.276 applies only to costs in appeals in ordinary civil cases; it is not intended to expand the categories of appeals subject to the award of costs.

Subdivision (c). Subdivision (c)(1)(A) is intended to refer not only to a normal record prepared by the clerk and the reporter under rules 8.120 and 8.130, but also, for example, to an appendix prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

Subdivision (d). Subdivision (d)(2) provides the procedure for a party to move in the trial court to strike or tax costs that another party has claimed under subdivision (d)(1). It is not intended that the trial court's authority to strike or tax unreasonable costs be limited by any failure of the moving party to move for sanctions in the Court of Appeal under subdivision (e); a party may seek to strike or tax costs on the ground that an opponent included unnecessary materials in the record even if the party did not move the Court of Appeal to sanction the opponent under subdivision (e)(1)(B).

Chapter 3. Criminal Appeals

Article 1. Taking the Appeal

Rule 8.300. Appointment of appellate counsel by the Court of Appeal
Rule 8.304. Filing the appeal; certificate of probable cause
Rule 8.308. Time to appeal
Rule 8.312. Stay of execution and release on appeal
Rule 8.316. Abandoning the appeal

Rule 8.300. Appointment of appellate counsel by the Court of Appeal

(a) Procedures

(1) Each Court of Appeal must adopt procedures for appointing appellate counsel for indigents not represented by the State Public Defender in all cases in which indigents are entitled to appointed counsel.

(2) Each court's appointments must be based on criteria approved by the Judicial Council or its designated oversight committee.

(Subd (b) amended effective January 1, 2007.)

(b) List of qualified attorneys

(1) The Court of Appeal must evaluate the attorney's qualifications for appointment and, if the attorney is qualified, place the attorney's name on a list to receive appointments in appropriate cases.

(2) Each court's appointments must be based on criteria approved by the Judicial Council or its designated oversight committee.

(Subd (b) amended effective January 1, 2007.)

(c) Demands of the case

In matching counsel with the demands of the case, the Court of Appeal should consider:

(1) The length of the sentence;

(2) The complexity or novelty of the issues;

(3) The length of the trial and of the reporter's transcript; and

(4) Any questions concerning the competence of trial counsel.

(Subd (c) amended effective January 1, 2007.)

(d) Evaluation

The court must review and evaluate the performance of each appointed counsel to determine whether counsel's name should remain on the list at the same level, be placed on a different level, or be deleted from the list.

(e) Contracts to perform administrative functions

(1) The court may contract with an administrator having substantial experience in handling appellate court appointments to perform any of the duties prescribed by this rule.

(2) The court must provide the administrator with the information needed to fulfill the administrator's duties.

Rule 8.300 amended and renumbered effective January 1, 2007; repealed and adopted as rule 76.5 effective January 1, 2005.

Advisory Committee Comment

Subdivision (b). The "designated oversight committee" referred to in subdivision (b)(2) is currently the Appellate Indigent Defense Oversight Advisory Committee. The criteria approved by this committee can be found on the judicial branch's public website at www.courtinfo.ca.gov.

Rule 8.304. Filing the appeal; certificate of probable cause

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the superior court in a felony case—other than a judgment imposing a sentence of death—the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).

(2) As used in (1), "felony case" means any criminal action in which a felony is charged, regardless of the outcome. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a. A felony case includes an action in which the defendant is charged with:

(A) A felony and a misdemeanor or infraction, but is convicted of only the misdemeanor or infraction;

(B) A felony, but is convicted of only a lesser offense; or

(C) An offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).

(3) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

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

(Subd (a) amended effective January 1, 2007.)

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court—in addition to the notice of appeal required by (a)—the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

(2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark

the notice of appeal "Inoperative," notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.

(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:

(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or

(B) Grounds that arose after entry of the plea and do not affect the plea's validity.

(5) If the defendant's notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).

(Subd (b) amended effective January 1, 2007.)

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly mail a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not mail the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was mailed, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

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

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

(C) The name, address, and telephone number of any unrepresented defendant.

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

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

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

(Subd (c) amended effective January 1, 2007.)

Rule 8.304 amended and renumbered effective January 1, 2007; repealed and adopted as rule 30 effective January 1, 2004.

Advisory Committee Comment

Subdivision (a). Penal Code section 1235(b) provides that an appeal from a judgment or appealable order in a "felony case" is taken to the Court of Appeal, and Penal Code section 691(f) defines "felony case" to mean "a criminal action in which a felony is charged. . . ." Rule 8.304(a)(2) makes it clear that a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or under the rules governing appeals to the appellate division of the superior court (rule 8.700 et seq.) is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in Penal Code, section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995. . . .']." ("Recommendation on Trial Court Unification" (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–56.)

Subdivision (b). Under (b)(1), the defendant is required to file both a notice of appeal and the statement required by Penal Code section 1237.5(a) for issuance of a certificate of probable cause. Requiring a notice of appeal in all cases simplifies the rule, permits compliance with the signature requirement of rule 8.304(a)(3), ensures that the defendant's intent to appeal will not be misunderstood, and makes the

provision consistent with the rule in civil appeals and with current practice as exemplified in the Judicial Council form governing criminal appeals.

Because of the drastic consequences of failure to file the statement required for issuance of a certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an admission of probation violation, (b)(5) alerts appellants to a relevant rule of case law, i.e., that although such an appeal may be maintained without a certificate of probable cause if the notice of appeal states the appeal is based on the denial of a motion to suppress evidence or on grounds arising after entry of the plea and not affecting its validity (rule 8.304(b)(4)), no *issue* challenging the validity of the plea is cognizable on that appeal without a certificate of probable cause. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1104.)

Rule 8.308. Time to appeal

(a) Normal time

Except as provided in (b) or as otherwise provided by law, a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. Except as provided in rule 8.66, no court may extend the time to file a notice of appeal.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 30 days after the superior court clerk mails notification of the first appeal.

(Subd (b) adopted effective January 1, 2007.)

(c) Premature notice of appeal

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

(Subd (c) relettered effective January 1, 2007; adopted as subd (b) effective January 1, 2004.)

(d) Late notice of appeal

The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(Subd (d) relettered effective January 1, 2007; adopted as subd (c) effective January 1, 2004.)

(e) Receipt by mail from custodial institution

If the superior court clerk receives a notice of appeal by mail from a custodial institution after the period specified in (a) has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing within the period specified in (a), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.

(Subd (e) relettered effective January 1, 2007; adopted as subd (d) effective January 1, 2004.)

Rule 8.308 amended and renumbered effective January 1, 2007; adopted as rule 30.1 effective January 1, 2004; previously amended effective January 1, 2005.

Advisory Committee Comment

Subdivision (c). The subdivision requires the clerk to send a copy of a late notice of appeal, marked with the date it was received but not filed, to the appellate project for the district; that entity is charged with the duty, among others, of dealing with indigent criminal appeals that suffer from procedural defect, but it can do so efficiently only if it is promptly notified of such cases.

Subdivision (d). The subdivision is not intended to limit a defendant's appeal rights under the case law of constructive filing. (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)

Rule 8.312. Stay of execution and release on appeal

(a) Application

Pending appeal, the defendant may apply to the reviewing court:

(1) For a stay of execution after a judgment of conviction or an order granting probation; or

(2) For bail, to reduce bail, or for release on other conditions.

(Subd (a) amended effective January 1, 2007.)

(b) Showing

The application must include a showing that the defendant sought relief in the superior court and that the court unjustifiably denied the application.

(c) Service

The application must be served on the district attorney and on the Attorney General.

(d) Interim relief

Pending its ruling on the application, the reviewing court may grant the relief requested. The reviewing court must notify the superior court under rule 8.490(k) of any stay that it grants.

(Subd (d) amended effective January 1, 2007.)

Rule 8.312 amended and renumbered effective January 1, 2007; adopted as rule 30.2 effective January 1, 2004.

Advisory Committee Comment

Subdivision (a). The remedy of an application for bail under (a)(2) is separate from but consistent with the statutory remedy of a petition for habeas corpus under Penal Code section 1490. (*In re Brumback* (1956) 46 Cal.2d 810, 815, fn. 3.)

An order of the Court of Appeal denying bail or reduction of bail, or for release on other conditions, is final on filing. (See rule 8.264(b)(2)(C).)

Subdivision (d). The first sentence of (d) recognizes the case law holding that a reviewing court may grant bail or reduce bail, or release the defendant on other conditions, pending its ruling on an application for that relief. (See, e.g., *In re Fishman* (1952) 109 Cal.App.2d 632, 633; *In re Keddy* (1951) 105 Cal.App.2d 215, 217.) The second sentence of the subdivision requires the reviewing court to notify the superior court under rule 8.490(k) when it grants either (i) a stay to preserve the status quo pending its ruling on a stay application or (ii) the stay requested by that application.

Rule 8.316. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal signed by the appellant or the appellant's attorney of record.

(b) Where to file; effect of filing

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

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

(c) Clerk's duties

(1) The clerk of the court in which the appellant files the abandonment must immediately notify the adverse party of the filing or of the order of dismissal. If the defendant abandons the appeal, the clerk must notify both the district attorney and the Attorney General.

(2) If the appellant files the abandonment in the superior court, the clerk must immediately notify the reviewing court.

(3) The clerk must immediately notify the reporter if the appeal is abandoned before the reporter has filed the transcript.

Rule 8.316 renumbered effective January 1, 2007; adopted as rule 30.3 effective January 1, 2004.

Article 2. Record on Appeal

Rule 8.320. Normal record; exhibits
Rule 8.324. Application in superior court for addition to normal record
Rule 8.328. Confidential records
Rule 8.332. Juror-identifying information
Rule 8.336. Preparing, certifying, and sending the record
Rule 8.340. Augmenting or correcting the record in the Court of Appeal
Rule 8.344. Agreed statement
Rule 8.346. Settled statement

Rule 8.320. Normal record; exhibits

(a) Contents

If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The accusatory pleading and any amendment;

(2) Any demurrer or other plea;

(3) All court minutes;

(4) All instructions submitted in writing, each one indicating the party requesting it;

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

(6) Any verdict;

(7) Any written opinion of the court;

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

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

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

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

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

(13) And, if the appellant is the defendant:

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

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

(C) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term. If a record was closed to public inspection in the trial court because it is required to be kept confidential by law, it must remain closed to public inspection in the reviewing court unless that court orders otherwise; and

(D) The probation officer's report.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(c) Reporter's transcript

The reporter's transcript must contain:

(1) The oral proceedings on the entry of any plea other than a not guilty plea;

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

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

(4) All instructions given orally;

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

(6) Any oral opinion of the court;

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

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

(9) And, if the appellant is the defendant:

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

(B) The closing arguments; and

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

(Subd (c) amended effective January 1, 2007.)

(d) Limited normal record in certain appeals

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

oral proceedings incident to the judgment or order being appealed and a clerk's transcript containing:

(1) The accusatory pleading and any amendment;

(2) Any demurrer or other plea;

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

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

(5) Any court minutes relating to the judgment or order appealed from; and

(6) The notice of appeal.

(Subd (d) amended effective January 1, 2007.)

(e) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.

(Subd (e) amended effective January 1, 2007.)

(f) Stipulation for partial transcript

If counsel for the defendant and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

(g) Form of record

The clerk's and reporter's transcripts must comply with rule 8.144.

(Subd (g) amended effective January 1, 2007.)

Rule 8.320 amended and renumbered effective January 1, 2007; repealed and adopted as rule 31 effective January 1, 2004; previously amended effective January 1, 2005.

Rule 8.324. Application in superior court for addition to normal record

(a) Appeal by the People

The People, as appellant, may apply to the superior court for inclusion in the record of any item that would be part of the normal record in a defendant's appeal.

(b) Application by either party

Either the People or the defendant may apply to the superior court for inclusion in the record of any of the following items:

(1) In the clerk's transcript: any written defense motion granted in whole or in part or any written motion by the People, with supporting and opposing memoranda and attachments;

(2) In the reporter's transcript:

(A) The voir dire examination of jurors;

(B) Any opening statement; and

(C) The oral proceedings on motions other than those listed in rule 8.320(c).

(Subd (b) amended effective January 1, 2007.)

(c) Application

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

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

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

(d) Order

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

(2) If the judge does not rule on the application within the time prescribed by (1), the requested material—other than exhibits—must be included in the clerk's transcript or the reporter's transcript without a court order.

(3) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (1) or (2).

(Subd (d) amended effective January 1, 2007.)

Rule 8.324 amended and renumbered effective January 1, 2007; adopted as rule 31.1 effective January 1, 2004.

Rule 8.328. Confidential records

(a) Application

This rule applies to records required to be kept confidential by law but does not apply to records sealed under rules 2.550–2.551 or records proposed to be sealed under rule 8.160.

(Subd (a) adopted effective January 1, 2007.)

(b) *Marsden* hearing

(1) The reporter's transcript of any hearing held under *People v. Marsden* (1970) 2 Cal.3d 118 must be kept confidential. The chronological index to the reporter's transcript must include the *Marsden* hearing but list it as "CONFIDENTIAL" or the equivalent.

(2) The superior court clerk must send the original and one copy of the confidential transcript to the reviewing court with the record.

(3) The superior court clerk must send one copy of the confidential transcript to the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

(4) If the defendant raises a *Marsden* issue in the opening brief, the defendant must serve and file~~d~~ with the brief a notice stating whether the confidential transcript contains any confidential material not relevant to the issues on appeal. If the defendant states that the transcript contains confidential material not relevant to the issues on appeal, the notice must identify the page and line numbers of the transcript containing this irrelevant material.

(5) If the defendant serves and files a notice under (4), stating that the transcript contains confidential material not relevant to the issues on appeal, the People may move to obtain a copy of any relevant portion of the confidential transcript. If the defendant serves and files a notice under (4), stating that no such irrelevant material is contained in the transcript, the reviewing court clerk must send a copy of the confidential transcript to the People.

(6) If the defendant raises a *Marsden* issue in the opening brief but does not serve and file a notice under (4), on written application the People may request a copy of the confidential transcript. Within 10 days after the application is filed, the defendant may serve and file opposition to this application on the basis that the transcript contains confidential material not relevant to the issues on appeal. Any such opposition must identify the page and line numbers of the transcript containing this irrelevant material. If the defendant does not timely serve and file opposition to the application, the reviewing court clerk must send a copy of the confidential transcript to the People.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective January 1, 2004.)

(c) Other in-camera proceedings and confidential records

(1) Any party may apply to the superior court for an order that the record include:

(A) A confidential, separately paginated reporter's transcript of any in-camera proceeding at which a party was not allowed to be represented; and

(B) Any item that the trial court withheld from a party on the ground that it was confidential.

(2) The application and any ruling under (1) must comply with rule 8.324.

(3) If the court grants an application for a reporter's transcript of any in-camera proceeding, it may order the reporter who attended the in-camera proceeding to personally prepare the transcript. The chronological index to the reporter's transcript must include the proceeding but list it as "CONFIDENTIAL–MAY NOT BE EXAMINED WITHOUT COURT ORDER" or the equivalent.

(4) The superior court clerk must send the transcript of the in-camera proceeding or the confidential item to the reviewing court in a sealed envelope labeled "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT

ORDER." The reviewing court clerk must file the envelope and store it separately from the remainder of the record.

(5) The superior court clerk must prepare an index of any material sent to the reviewing court under (4), except confidential material relating to a request for funds under Penal Code section 987.9, showing the date and the names of all parties present at each proceeding, but not disclosing the substance of the sealed matter, and send the index:

(A) To the People; and

(B) To the defendant's appellate counsel or, if the defendant is not yet represented by appellate counsel, to the appellate project for the district.

(6) Unless the reviewing court orders otherwise, confidential material sent to the reviewing court under (4) may be examined only by a reviewing court justice personally; but parties and their attorneys who had access to the material in the trial court may also examine it.

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (b) effective January 1, 2004; previously amended effective January 1, 2005.)

(d) Omissions

If at any time the superior court clerk or the reporter learns that the record omits material that any rule requires to be included and that this rule requires to be kept confidential:

(1) The clerk and the reporter must comply with rule 8.340(b); and

(2) The clerk must comply with the provisions of this rule requiring that the record be kept confidential and prescribing which party's counsel, if any, must receive a copy of sealed material.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c) effective January 1, 2004.)

Rule 8.328 amended and renumbered effective January 1, 2007; adopted as rule 31.2 effective January 1, 2004; previously amended effective January 1, 2005.

Advisory Committee Comment

Subdivision (c). Subdivision (c)(5) requires the clerk to prepare and send to the parties an index of any confidential materials sent to the reviewing court, showing the date and the names of all parties present.

The purpose of this provision is to assist the parties in making–and the court in adjudicating–motions to unseal portions of the record. To protect confidentiality until a record is unsealed, however, the index must endeavor to identify the sealed matter without disclosing its substance.

Rule 8.332. Juror-identifying information

(a) Application

A clerk's transcript, a reporter's transcript, or any other document in the record that contains juror-identifying information must comply with this rule.

(Subd (a) amended effective January 1, 2007.)

(b) Juror names, addresses, and telephone numbers

(1) The name of each trial juror or alternate sworn to hear the case must be replaced with an identifying number wherever it appears in any document. The superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers. The clerk and the reporter must use the table in preparing all transcripts or other documents.

(2) The addresses and telephone numbers of trial jurors and alternates sworn to hear the case must be deleted from all documents.

(c) Potential jurors

Information identifying potential jurors called but not sworn as trial jurors or alternates must not be sealed unless otherwise ordered under Code of Civil Procedure section 237(a)(1).

Rule 8.332 amended and renumbered effective January 1, 2007; adopted as rule 31.3 effective January 1, 2004.

Advisory Committee Comment

Rule 8.332 implements Code of Civil Procedure section 237.

Rule 8.336. Preparing, certifying, and sending the record

(a) Immediate preparation when appeal is likely

(1) The reporter and the clerk must begin preparing the record immediately after a verdict or finding of guilt of a felony is announced following a trial on the merits, unless the judge determines that an appeal is unlikely under (2).

(2) In determining the likelihood of an appeal, the judge must consider the facts of the case and the fact that an appeal is likely if the defendant has been convicted of a crime for which probation is prohibited or is prohibited except in unusual cases, or if the trial involved a contested question of law important to the outcome.

(3) A determination under (2) is an administrative decision intended to further the efficient operation of the court and not intended to affect any substantive or procedural right of the defendant or the People. The determination cannot be cited to prove or disprove any legal or factual issue in the case and is not reviewable by appeal or writ.

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

In an appeal under rule 8.304(b)(1), the time to prepare, certify, and file the record begins when the court files a certificate of probable cause under rule 8.304(b)(2).

(Subd (b) amended effective January 1, 2007.)

(c) Clerk's transcript

(1) Except as provided in (a) or (b), the clerk must begin preparing the clerk's transcript immediately after the notice of appeal is filed.

(2) Within 20 days after the notice of appeal is filed, the clerk must complete preparation of an original and two copies of the clerk's transcript, one for defendant's counsel and one for the Attorney General or the district attorney, whichever is the counsel for the People on appeal.

(3) On request, the clerk must prepare an extra copy for the district attorney or the Attorney General, whichever is not counsel for the People on appeal.

(4) If there is more than one appealing defendant, the clerk must prepare an extra copy for each additional appealing defendant represented by separate counsel.

(5) The clerk must certify as correct the original and all copies of the clerk's transcript.

(Subd (c) amended effective January 1, 2007.)

(d) Reporter's transcript

(1) Except as provided in (a) or (b), the reporter must begin preparing the reporter's transcript immediately on being notified by the clerk under rule 8.304(c)(1) that the notice of appeal has been filed.

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

(3) The reporter must deliver the original and all copies to the superior court clerk as soon as they are certified, but no later than 20 days after the notice of appeal is filed.

(4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.

(5) In a multireporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (3) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

(Subd (d) amended effective January 1, 2007.)

(e) Extension of time

(1) The superior court may not extend the time for preparing the record.

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

(A) An affidavit showing good cause; and

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

(Subd (e) amended effective January 1, 2007.)

(f) Sending the transcripts

(1) When the clerk and reporter's transcripts are certified as correct, the clerk must promptly send:

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

(B) One copy of each transcript to appellate counsel for each defendant represented by separate counsel and to the Attorney General or the district attorney, whichever is counsel for the People on appeal; and

(C) One copy of each transcript to the district attorney or Attorney General if requested under (c)(3).

(2) If the defendant is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that defendant's counsel's copy of the transcripts to the district appellate project.

(Subd (f) amended effective January 1, 2007.)

(g) Probation officer's report

The probation officer's report included in the clerk's transcript under rule 8.320(b) must appear in all copies of the appellate record. The reviewing court's copy of the report must be placed in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—PROBATION OFFICER REPORT."

(Subd (g) amended effective January 1, 2007.)

(h) Supervision of preparation of record

Each Court of Appeal clerk, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records.

Rule 8.336 amended and renumbered effective January 1, 2007; repealed and adopted as rule 32 effective January 1, 2004.

Advisory Committee Comment

Subdivision (a). Subdivision (a) implements Code of Civil Procedure section 269(b).

Rule 8.340. Augmenting or correcting the record in the Court of Appeal

(a) Subsequent trial court orders

(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence or probation, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to:

(A) The reviewing court;, the probation officer, the defendant,

(B) The defendant's appellate counsel for each defendant represented by separate counsel, and the Attorney General or the district attorney, whichever is counsel for the People on appeal; and

(C) The district attorney or Attorney General, whichever is not counsel for the People on appeal, if he or she requested a copy of the clerk's transcript under 8.336(c)(3).

(2) If there is any additional document or transcript related to the amended judgment or new order that any rule or order requires be included in the record, the clerk must send this document or transcript with the amended abstract of judgment or other order. The clerk must promptly copy and certify any such document, and the reporter must promptly prepare and certify any such transcript.

(Subd (a) amended effective January 1, 2007.)

(b) Omissions

(1) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for a court order, the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under (a)(1).

(Subd (b) amended effective January 1,2007.)

(c) Augmentation or correction by the reviewing court

At any time, on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155. The clerk must send any document or transcript added to the record to all those who are listed under (a)(1).

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (d) effective January 1, 2004.)

(d) Defendant not yet represented

If the defendant is not represented by appellate counsel when the record is augmented or corrected, the clerk must send that defendant's counsel's copy of the augmentations or corrections to the district appellate project.

(Subd (d) adopted effective January 1, 2007.)

Rule 8.340 amended and renumbered effective January 1, 2007; adopted as rule 32.1 effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). The words "or order" in the first sentence of (b) are intended to refer to any court order to include additional material in the record, e.g., an order of the superior court under rule 8.324(d)(1).

Rule 8.344. Agreed statement

If the parties present the appeal on an agreed statement, they must comply with the relevant provisions of rule 8.134, but the appellant must file an original and three copies of the statement in superior court within 25 days after filing the notice of appeal.

Rule 8.344 amended and renumbered effective January 1, 2007; adopted as rule 32.2 effective January 1, 2004.

Rule 8.346. Settled statement

(a) Application

As soon as a party learns that any portion of the oral proceedings cannot be transcribed, the party may serve and file in superior court an application for permission to prepare a settled statement. The application must explain why the oral proceedings cannot be transcribed.

(b) Order and proposed statement

The judge must rule on the application within five days after it is filed. If the judge grants the application, the parties must comply with the relevant provisions of rule 8.137, but the applicant must deliver a proposed statement to the judge for settlement within 30 days after it is ordered, unless the reviewing court extends the time.

(Subd (b) amended effective January 1, 2007.)

(c) Serving and filing the settled statement

The applicant must prepare, serve, and file in superior court an original and three copies of the settled statement.

Rule 8.346 amended and renumbered effective January 1, 2007; adopted as rule 32.3 effective January 1, 2004.

Article 3. Briefs, Hearing, and Decision

Rule 8.360. Briefs by parties and amici curiae
Rule 8.366. Hearing and decision in the Court of Appeal
Rule 8.368. Hearing and decision in the Supreme Court

Rule 8.360. Briefs by parties and amici curiae

(a) Contents and form

Except as provided in this rule, briefs in criminal appeals must comply as nearly as possible with rules 8.200 and 8.204.

(Subd (a) amended effective January 1, 2007.)

(b) Length

(1) A brief produced on a computer must not exceed 25,500 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented defendant stating the number of words in the brief; the person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A typewritten brief must not exceed 75 pages.

(3) The tables, a certificate under (1), and any attachment permitted under rule 8.204(d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by (e) must not exceed double the limit stated in (1) or (2).

(5) On application, the presiding justice may permit a longer brief for good cause.

(Subd (b) amended effective January 1, 2007.)

(c) Time to file

(1) The appellant's opening brief must be served and filed within 40 days after the record is filed in the reviewing court.

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

(3) The appellant must serve and file a reply brief, if any, within 20 days after the respondent files its brief.

(4) The time to serve and file a brief may not be extended by stipulation, but only by order of the presiding justice under rule 8.60.

(5) If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party by mail that the brief must be filed within 30 days after the notice is mailed, and that failure to comply may result in one of the following sanctions:

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

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

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

(iii) If the appellant is the defendant and is not represented by appointed counsel, the court will dismiss the appeal; or

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

(6) If a party fails to comply with a notice under (5), the court may impose the sanction specified in the notice.

(Subd (c) amended effective January 1, 2007.)

(d) Service

(1) Defendant's appellate counsel must serve each brief for the defendant on the People and the district attorney, and must send a copy of each to the defendant personally unless the defendant requests otherwise.

(2) The proof of service under (1) must state that a copy of the defendant's brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.

(3) For each appealing defendant, the People must serve two copies of their briefs on the defendant's appellate counsel and one copy on the district appellate project.

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

(e) When a defendant and the People appeal

When both a defendant and the People appeal, the defendant must file the first opening brief unless the reviewing court orders otherwise, and rule 8.216(b) governs the contents of the briefs.

(Subd (e) amended effective January 1, 2007.)

(f) Amicus curiae briefs

Amicus curiae briefs may be filed as provided in rule 8.200(c).

(Subd (f) amended effective January 1, 2007.)

Rule 8.360 amended and renumbered effective January 1, 2007; repealed and adopted as rule 33 effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible length of a brief produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. The word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5).

The maximum permissible length of briefs in death penalty appeals is prescribed in rule 8.630.

Rule 8.366. Hearing and decision in the Court of Appeal

Rules 8.248 through 8.276 govern the hearing and decision in the Court of Appeal of an appeal in a criminal case.

Rule 8.366 amended and renumbered effective January 1, 2007; adopted as rule 33.1 effective January 1, 2004.

Rule 8.368. Hearing and decision in the Supreme Court

Rules 8.500 through 8.552 govern the hearing and decision in the Supreme Court of an appeal in a criminal case.

Rule 8.368 amended and renumbered effective January 1, 2007; adopted as rule 33.2 effective January 1, 2004.

Chapter 4. Habeas Corpus Appeals and Writs

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney
Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party
Rule 8.388. Appeal from order granting relief by writ of habeas corpus

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a) Required Judicial Council form

(1) A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form.

(2) A petition filed under (1) need not comply with the provisions of rules 8.40, 8.204, or 8.490 that prescribe the form and content of a petition and require the petition to be accompanied by a memorandum.

(3) In the Court of Appeal, the petitioner must file the original of the petition under (1) and one set of any supporting documents. In the Supreme Court, the petitioner must file an original and 10 copies of the petition and an original and 2 copies of any supporting document accompanying the petition unless the court orders otherwise.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Record

Before ruling on the petition, the court may order the custodian of any relevant record to produce the record or a certified copy to be filed with the court.

(Subd (b) relettered effective January 1, 2006; adopted as subd (c) effective January 1, 2005.)

(c) Informal response

(1) The court may request an informal written response from the respondent, the real party in interest, or an interested person. The court must send a copy of any request to the petitioner.

(2) The response must be served and filed within 15 days or as the court specifies.

(3) If a response is filed, the court must notify the petitioner that a reply may be served and filed within 15 days or as the court specifies. The court may not deny the petition until that time has expired.

(Subd (c) relettered effective January 1, 2006; adopted as subd (d) effective January 1, 2006.)

(d) Petition filed in an inappropriate court

(1) A Court of Appeal may deny without prejudice a petition for writ of habeas corpus that is based primarily on facts occurring outside the court's appellate district, including petitions that question:

(A) The validity of judgments or orders of trial courts located outside the district; or

(B) The conditions of confinement or conduct of correctional officials outside the district.

(2) A Court of Appeal must deny without prejudice a petition for writ of habeas corpus that challenges the denial of parole or the petitioner's suitability for parole if the issue was not first adjudicated by the trial court that rendered the underlying judgment.

(3) If the court denies a petition solely under (1), the order must state the basis of the denial and must identify the appropriate court in which to file the petition.

(Subd (d) amended effective January 1, 2007; adopted as subd (e) effective January 1, 2005; previously amended and relettered effective January 1, 2006.)

Rule 8.380 amended and renumbered effective January 1, 2007; repealed and adopted as rule 60 effective January 1, 2005; previously amended effective January 1, 2006.

Advisory Committee Comment

Subdivision (d). Except for subdivision (d)(2), revised rule 8.380(d) restates former section 6.5 of the Standards of Judicial Administration. New subdivision (d)(2) is based on the California Supreme Court decision in In re Roberts (2005) 36 Cal.4th 575, which provides that petitions for writ of habeas corpus challenging denial or suitability for parole are first to be adjudicated in the trial court that rendered the underlying judgment.

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) General application of rule 8.380

Except as provided in this rule, rule 8.380 applies to any petition for a writ of habeas corpus filed by an attorney.

(Subd (a) amended effective January 1, 2007.)

(b) Special requirements for a petition filed by an attorney

(1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form MC-275), but must contain the information requested in that form and must comply with rules 8.40(c)–(d), 8.204(a)–(b), and 8.490(b)(6).

(2) Any memorandum accompanying the petition must comply with rule 8.204(a)–(b).

(3) The petition must be accompanied by a copy of any petition—excluding exhibits—pertaining to the same judgment and petitioner that was previously filed in any lower state court or any federal court. If such documents have previously been filed in the Supreme Court, the petition need only so state.

(4) If the petition asserts a claim that was the subject of an evidentiary hearing, the petition must be accompanied by a certified transcript of that hearing.

(5) Any supporting documents accompanying the petition must comply with rule 8.490(d).

(6) The petition and any memorandum must support any reference to a matter in the supporting documents by a citation to its index tab and page.

(7) If the petition is filed in the Supreme Court, the attorney must file the number of copies of the petition and supporting documents required by rule 8.44(a). If the petition is filed in the Court of Appeal, the attorney must file the number of copies of the petition required by rule 8.44(b).

(8) The clerk must file an attorney's petition not complying with (1)–(7) if it otherwise complies with the rules of court, but the court may notify the attorney that it may strike the petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time of not less than five days.

(Subd (b) amended effective January 1, 2007.)

Rule 8.384 amended and renumbered effective January 1, 2007; adopted as rule 60.5 effective January 1, 2006.

Rule 8.388. Appeal from order granting relief by writ of habeas corpus

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals under Penal Code section 1506 or 1507 from orders granting all or part of the relief sought in a petition for writ of habeas corpus.

(Subd (a) amended effective January 1, 2007.)

(b) Contents of record

In an appeal under this rule, the record must contain:

(1) The petition, the return, and the traverse;

(2) The order to show cause;

(3) All court minutes;

(4) All documents and exhibits submitted to the court;

(5) The reporter's transcript of any oral proceedings;

(6) Any written opinion of the court;

(7) The order appealed from; and

(8) The notice of appeal.

(Subd (b) amended effective January 1, 2007.)

Rule 8.388 amended and renumbered effective January 1, 2007; repealed and adopted as rule 39.2 effective January 1, 2005.

Chapter 5. Juvenile Appeals and Writs

Article 1. Appeals

Rule 8.400. Appeals in juvenile cases generally
Rule 8.404. Record on appeal
Rule 8.406. Record in multiple appeals in the same case
Rule 8.408. Preparing, sending, augmenting, and correcting the record
Rule 8.412. Briefs by parties and amici curiae
Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties

Rule 8.400. Appeals in juvenile cases generally

(a) Application

Rules 8.400–8.474 govern:

(1) Appeals from judgments or appealable orders in:

(A) Dependency and delinquency cases under the Welfare and Institutions Code; and

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

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

(Subd (a) amended effective January 1, 2007.)

(b) Confidentiality

(1) Except as provided in (3), the record on appeal and documents filed by the parties may be inspected only by reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.

(2) To protect anonymity, a party must be referred to by first name and last initial in all filed documents and court orders and opinions; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the party's initials may be used.

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

(4) The court may limit or prohibit public admittance to oral argument.

(c) Notice of appeal

(1) To appeal from a judgment or appealable order under these rules, the appellant must file a notice of appeal in the superior court. The appellant or the appellant's attorney must sign the notice.

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

(d) Time to appeal

(1) Except as provided in (2) and (3), a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. Except as provided in rule 8.66, no court may extend the time to file a notice of appeal.

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

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

(4) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the superior court clerk mails notification of the first appeal.

(Subd (d) amended effective January 1, 2007.)

(e) Receipt by mail from custodial institution

If the superior court clerk receives a notice of appeal by mail from a custodial institution after the period specified in (d) has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing within the period specified in (d), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.

(Subd (e) adopted effective January 1, 2006.)

(f) Premature or late notice of appeal

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

(2) The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(Subd (f) relettered effective January 1, 2006; adopted as subd (e) effective January 1, 2005.)

(g) Superior court clerk's duties

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

(A) Mail a notification of the filing to each party—including the minor—other than the appellant, to all attorneys of record, and to the reviewing court clerk; and

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

(2) The clerk must immediately mail a notification of the filing to any de facto parent, any Court Appointed Special Advocate (CASA) volunteer, and any Indian tribe that has appeared in the proceedings.

(3) The notification must show the name of the appellant, the date it was mailed, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

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

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

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

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

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

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

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

(Subd (g) amended effective January 1, 2007; adopted as subd (f) effective January 1, 2005; previously relettered effective January 1, 2006.)

Rule 8.400 amended and renumbered effective January 1, 2007; adopted as rule 37 effective January 1, 2005; previously amended effective January 1, 2006.

Rule 8.404. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

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

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

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

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

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

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

(Subd (a) amended effective January 1, 2007.)

(b) Normal record: reporter's transcript

The reporter's transcript must contain:

(1) Except as provided in (2), the oral proceedings at any hearing that resulted in the order or judgment being appealed;

(2) In appeals from dispositional orders, the oral proceedings at hearings on

(A) Jurisdiction and disposition; and

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

(3) Any oral opinion of the court.

(Subd (b) amended effective January 1, 2007.)

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

(1) Any party or tribe may apply to the superior court for inclusion in the record of any of the following items:

(A) In the clerk's transcript: any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court; and

(B) In the reporter's transcript: any oral proceedings.

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

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

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

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

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

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

(Subd (c) amended effective January 1, 2007.)

(d) Agreed or settled statement

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

(Subd (d) amended effective January 1, 2007.)

(e) Form of record

Except in cases governed by rule 8.416(b), the clerk's and reporter's transcripts must comply with rule 8.144.

(Subd (e) amended effective January 1, 2007.)

(f) Transmitting exhibits

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

(Subd (f) amended effective January 1, 2007.)

Rule 8.404 amended and renumbered effective January 1, 2007; adopted as rule 37.1 effective January 1, 2005.

Advisory Committee Comment

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

Subdivision (b)(2)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing dispositional order. The rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a dispositional order.

Subdivision (b)(2)(B) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of juvenile appeals.

Rule 8.406. Record in multiple appeals in the same case

If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared, which must be filed within the time allowed for filing the record in the latest appeal.

Rule 8.406 adopted effective January 1, 2007.

Rule 8.408. Preparing, sending, augmenting, and correcting the record

(a) Application

Except as provided in (b), this rule does not apply to cases under rule 8.416.

(Subd (a) amended effective January 1, 2007.)

(b) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

(1) The clerk must prepare and certify as correct an original of the clerk's transcript and sufficient copies to comply with (d); and

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

(Subd (b) amended effective January 1, 2007.)

(c) Extension of time

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

(2) The reviewing court may order one or more extensions of time, not exceeding a total of 60 days, on receipt of:

(A) A declaration showing good cause; and

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

(Subd (c) amended effective January 1, 2007.)

(d) Sending the record

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

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

(B) One copy of each transcript to the appellate counsel for the appellant, the respondent, and the minor.

(2) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

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

(Subd (d) amended effective January 1, 2007.)

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

(1) Rule 8.340(a)–(b) governs augmentation of the record without court order.

(2) On request of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(Subd (e) amended effective January 1, 2007.)

Rule 8.408 amended and renumbered effective January 1, 2007; adopted as rule 37.2 effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs *sending, augmenting, and correcting* the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties. Rule 8.408(b) governs *preparing and certifying* the record in those appeals. (See rule 8.416(a)(2) ["In all respects not provided for in this rule, rules 8.400–8.412 apply."].)

Rule 8.412. Briefs by parties and amici curiae

(a) Contents, form, and length

Rule 8.360(a)–(b) governs the contents, form, and length of briefs.

(Subd (a) amended effective January 1, 2007.)

(b) Time to file

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

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

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

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

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

(Subd (b) amended effective January 1, 2007.)

(c) Extensions of time

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

(Subd (c) amended effective January 1, 2007.)

(d) Failure to file a brief

(1) Except in dependency appeals in Orange, Imperial, and San Diego Counties, and in appeals from the termination of parental rights, if a party fails to timely file an appellant's opening brief or a respondent's brief the reviewing court clerk must promptly notify the party's counsel, or if not represented, the party,

by mail that the brief must be filed within 30 days after the notice is mailed, and that failure to comply may result in one of the following sanctions:

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

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

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

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

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

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

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

(Subd (d) adopted effective January 1, 2007.)

(e) Additional service requirements

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

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

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

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

(3) In delinquency cases the parties must serve copies of their briefs on the Attorney General and the district attorney. In all other cases the parties must

not serve copies of their briefs on the Attorney General or the district attorney unless that office represents a party.

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

(Subd (e) amended and relettered effective January 1, 2007; adopted as subd (d) effective January 1, 2005.)

Rule 8.412 amended and renumbered effective January 1, 2007; adopted as rule 37.3 effective January 1, 2005.

Advisory Committee Comment

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

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

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

(a) Application

(1) This rule governs:

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

(B) Appeals from judgments or appealable orders of the Superior Courts of Orange, Imperial, and San Diego Counties in all juvenile dependency cases.

(2) In all respects not provided for in this rule, rules 8.400–8.412 apply.

(Subd (a) amended effective January 1, 2007.)

(b) Cover of record

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

(2) In appeals from judgments or appealable orders of the Superior Courts of Orange, Imperial, and San Diego Counties, the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

(c) Sending the record

(1) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

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

(B) One copy of each transcript to the attorneys of record for the appellant, the respondent, and the minor, and to the district appellate project, by any method as fast as United States Postal Service express mail.

(2) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project.

(Subd (c) amended effective January 1, 2007.)

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

(1) Except as provided in (2) and (3), rule 8.155 governs any augmentation or correction of the record.

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

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

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

(Subd (d) amended effective January 1, 2007.)

(e) Time to file appellant's opening brief

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

(f) Extensions of time

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

(g) Failure to file a brief

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

(Subd (g) adopted effective January 1, 2007.)

(h) Oral argument and submission of the cause

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

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

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

(Subd (h) relettered effective January 1, 2007; adopted as subd (g) effective January 1, 2005.)

Rule 8.416 amended and renumbered effective January 1, 2007; adopted as rule 37.4 effective January 1, 2005.

Advisory Committee Comment

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

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

Article 2. Writs

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26
Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 and rule 5.600
Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights
Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

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

(a) Application

Rules 8.450–8.452 and 5.600 govern writ petitions to review orders setting a hearing under Welfare and Institutions Code section 366.26. Rule 8.490 does not apply to petitions governed by these rules.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006, and July 1, 2006.)

(b) Purpose

Rules 8.450–8.452 are intended to encourage and assist the reviewing courts to determine on their merits all writ petitions filed under these rules within the 120-

day period for holding a hearing under Welfare and Institutions Code section 366.26.

(Subd (b) amended effective January 1, 2007.)

(c) Who may file

The petitioner's trial counsel—or, if the petitioner was not represented by counsel at the hearing at which the section 366.26 hearing was set, the petitioner—is responsible for filing any notice of intent and writ petition under rules 8.450–8.452. Trial counsel is encouraged to seek assistance from or consult with attorneys experienced in writ procedure.

(Subd (c) amended effective January 1, 2007.)

(d) Extensions of time

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

(Subd (d) amended effective January 1, 2007.)

(e) Notice of intent

(1) A party seeking writ review under rules 8.450–8.452 must file a notice of intent to file a writ petition and a request for the record.

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

(3) The notice must be signed by the party intending to file the petition or, if filed on behalf of a child, by the attorney of record for the child. The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice.

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

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

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

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

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

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

(5) If the superior court clerk receives a notice of intent by mail from a party in a custodial institution after the time specified in (4) has expired but the envelope containing the notice of intent shows that it was mailed or delivered to custodial officials for mailing within the time specified in (4), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.

(Subd (e) amended effective January 1, 2007.)

(f) Sending the notice of intent

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

(A) Each counsel of record;

(B) Each party, including the child, if the child is 10 years of age or older; the mother; the father; the presumed and alleged parents; the dependent child's present caregiver; any legal guardian; and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings;

(C) The probation officer or social worker;

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

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

(F) The Indian custodian and tribe of the child or the Bureau of Indian Affairs if the identify or location of the parent or Indian custodian and the tribe cannot be determined.

(2) The clerk must promptly send a copy of the notice of intent and a proof of service list to the reviewing court, by first-class mail or fax. If the party was notified of the order setting the hearing only by mail, the clerk must include the date that the notification was mailed.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2006, and July 1, 2006.)

(g) Preparing the record

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

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

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.404(a).

(Subd (g) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(h) Sending the record

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

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

(2) One copy of each transcript to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail.

(Subd (h) amended effective January 1, 2007.)

(i) Reviewing court clerk's duties

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

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

(Subd (i) amended effective January 1, 2007.)

Rule 8.450 amended and renumbered effective January 1, 2007; adopted as rule 38 effective January 1, 2005; previously amended effective January 1, 2006, and July 1, 2006.

Advisory Committee Comment

Subdivision (d). The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].)

Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26 and rule 5.600

(a) Petition

(1) The petition must include:

(A) The identities of the parties;

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

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

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

(E) The relief requested.

(2) The petition must be liberally construed.

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

(Subd (a) amended effective January 1, 2007.)

(b) Contents of the memorandum

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

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

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

(Subd (b) amended effective January 1, 2007.)

(c) Time to file petition and response

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

(2) Any response must be served and filed:

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

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

(Subd (c) amended effective January 1, 2007.)

(d) Sending the writ

Petitioner must send the writ to all parties entitled to receive notice under Welfare and Institutions Code section 294, the child's Court Appointed Special Advocate (CASA) volunteer, the child's present caregiver, and any de facto parent given standing to participate in the juvenile court proceedings.

(Subd (d) adopted effective January 1, 2006.)

(e) Order to show cause or alternative writ

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

(Subd (e) relettered effective January 1, 2006; adopted as subd (d) effective January 1, 2005.)

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

(1) Except as provided in (2) and (3), rule 8.155 governs any augmentation or correction of the record.

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

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

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

(Subd (f) amended effective January 1, 2007; adopted as subd (e) effective January 1, 2005; previously relettered effective January 1, 2006.)

(g) Stay

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

(Subd (g) relettered effective January 1, 2006; adopted as subd (f) effective January 1, 2005.)

(h) Oral argument

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

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

(Subd (h) relettered effective January 1, 2006; adopted as subd (g) effective January 1, 2005.)

(i) Decision

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

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

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

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

(Subd (i) amended effective January 1,2007; adopted as subd (h) effective January 1, 2005; relettered as subd (i) effective January 1, 2006.)

Rule 8.452 amended and renumbered effective January 1, 2007; adopted as rule 38.1 effective January 1, 2005; previously amended effective January 1, 2006.

Advisory Committee Comment

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

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

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

(a) Application

Rules 8.454–8.456 govern writ petitions to review placement orders following termination of parental rights entered on or after January 1, 2005. "Posttermination placement order" as used in this rule and rule 8.456 refers to orders following termination of parental rights. Rule 8.490 does not apply to petitions governed by these rules.

(Subd (a) amended effective January 1, 2007.)

(b) Purpose

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

(c) Who may file

The petitioner's trial counsel—or if the petitioner was not represented by counsel at the hearing at which the posttermination placement order was issued, the petitioner—is responsible for filing any notice of intent and writ petition under rules 8.454–8.456. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedure.

(Subd (c) amended effective January 1, 2007.)

(d) Extensions of time

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

(Subd (d) amended effective January 1, 2007.)

(e) Notice of intent

(1) A party seeking writ review under rules 8.454–8.456 must file a notice of intent to file a writ petition and a request for the record.

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

(3) The notice must be signed by the party intending to file the petition or, if filed on behalf of the child, by the attorney of record for the child. The reviewing

court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice.

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

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

(Subd (e) amended effective January 1, 2007.)

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

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

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

(Subd (f) amended effective January 1, 2007; adopted effective January 1, 2006.)

(g) Sending the notice of intent

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

(A) Each counsel of record;

(B) Each relevant party, including the child, if the child is 10 years of age or older, the child's present caregiver, any legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings;

(C) The probation officer or social worker;

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

(E) The tribe of an Indian child and the Indian custodian.

(2) The clerk must promptly send a copy of the notice and a proof of service list to the reviewing court, by first-class mail or fax. If the party was notified of the posttermination placement order only by mail, the clerk must include the date that the notification was mailed.

(Subd (g) amended effective January 1, 2007; adopted as subd (f) effective January 1, 2005; relettered effective January 1, 2006.)

(h) Preparing the record

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

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

(2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.404(a).

(Subd (h) amended effective January 1, 2007; adopted as subd (g) effective January 1, 2005; previously amended and relettered effective January 1, 2006; previously amended effective July 1, 2006.)

(i) Sending the record

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

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

(2) One copy of each transcript to each counsel of record and any unrepresented party and unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail.

(Subd (i) amended effective January 1, 2007; adopted as subd (h) effective January 1, 2005; relettered effective January 1, 2006.)

(j) Reviewing court clerk's duties

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

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

(Subd (j) amended effective January 1, 2007; adopted as subd (i) effective January 1, 2005; relettered effective January 1, 2006.)

Rule 8.454 amended and renumbered effective January 1, 2007; adopted as rule 38.2 effective January 1, 2005; previously amended effective January 1, 2006, and July 1, 2006.

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

(a) Petition

(1) The petition must include:

(A) The identities of the parties;

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

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

(D) The relief requested.

(2) The petition must be liberally construed.

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

(Subd (a) amended effective January 1, 2007.)

(b) Contents of memorandum

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

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

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

(Subd (b) amended effective January 1, 2007.)

(c) Time to file petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court. The petitioner must give notice to all parties entitled to receive notice under rule 8.454.

(2) Any response must be served and filed:

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

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

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(d) Sending the writ

Petitioner must send the writ to all parties entitled to receive notice under Welfare and Institutions Code section 294, any Court Appointed Special Advocate (CASA) volunteer, the child's present caregiver, the child's prospective adoptive parties, and any de facto parent given standing to participate in the juvenile court proceedings.

(Subd (d) adopted effective January 1, 2006.)

(e) Order to show cause or alternative writ

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

(Subd (e) relettered effective January 1, 2006; adopted as subd (d) effective January 1, 2005.)

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

(1) Except as provided in (2) and (3), rule 8.155 governs augmentation or correction of the record.

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

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

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

(Subd (f) amended effective January 1, 2007; adopted as subd (e) effective January 1, 2005; previously relettered effective January 1, 2006.)

(g) Stay

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

(Subd (g) amended effective February 24, 2006; adopted as subd (f) effective January 1, 2005; previously relettered effective January 1, 2006.)

(h) Oral argument

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

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

(Subd (h) relettered effective January 1, 2006; adopted as subd (g) effective January 1, 2005.)

(i) Decision

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

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

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

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

(Subd (i) amended effective January 1, 2007; adopted as subd (h) effective January 1, 2005; relettered effective January 1, 2006.)

(j) Right to appeal other orders

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

(Subd (j) amended effective January 1, 2007; adopted as subd (i) effective January 1, 2005; previously relettered effective January 1, 2006.)

Rule 8.456 amended and renumbered effective January 1, 2007; adopted as rule 38.3 effective January 1, 2005; previously amended effective January 1, 2006, and February 24, 2006.

Article 3. Hearing and Decision

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

Rule 8.470. Hearing and decision in the Court of Appeal

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

Rule 8.470 amended and renumbered effective January 1, 2007; adopted as rule 38.4 effective January 1, 2005; previously amended effective July 1, 2005.

Rule 8.472. Hearing and decision in the Supreme Court

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

Rule 8.472 amended and renumbered effective January 1, 2007; adopted as rule 38.5 effective January 1, 2005; previously amended effective July 1, 2005.

Rule 8.474. Procedures and data

(a) Procedures

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

(b) Data

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

Rule 8.474 renumbered effective January 1, 2007; adopted as rule 38.6 effective January 1, 2005.

Chapter 6. Conservatorship Appeals

Rule 8.480. Appeal from order establishing conservatorship
Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

Rule 8.480. Appeal from order establishing conservatorship

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq.

(Subd (a) amended effective January 1, 2007.)

(b) Clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any demurrer or other plea;

(3) Any written motion with supporting and opposing memoranda and attachments;

(4) Any filed medical or social worker reports;

(5) All court minutes;

(6) All instructions submitted in writing, each noting the party requesting it;

(7) Any verdict;

(8) Any written opinion of the court;

(9) The judgment or order appealed from;

(10) The notice of appeal; and

(11) Any application for additional record and any order on the application.

(Subd (b) amended effective January 1, 2007.)

(c) Reporter's transcript

The reporter's transcript must contain all oral proceedings, excluding the voir dire examination of jurors and any opening statement.

(d) Sending the record

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

(e) Briefs

The parties must not serve copies of their briefs:

(1) On the Attorney General or the district attorney, unless that office represents a party; or

(2) On the Supreme Court under rule 8.44(b)(1).

(Subd (e) amended effective January 1, 2007.)

Rule 8.480 amended and renumbered effective January 1, 2007; repealed and adopted as rule 39 effective January 1, 2005.

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from judgments authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee.

(Subd (a) amended effective January 1, 2007.)

(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c) Superior court clerk's duties

After entering the judgment, the clerk must immediately:

(1) Begin preparing a clerk's transcript and notify the reporter to prepare a reporter's transcript; and

(2) Mail certified copies of the judgment to the Court of Appeal and the Attorney General.

(Subd (c) amended effective January 1, 2007.)

(d) Clerk's transcript

The clerk's transcript must contain:

(1) The petition and notice of hearing;

(2) All court minutes;

(3) Any application, motion, or notice of motion, with supporting and opposing memoranda and attachments;

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

(5) Any transcript of a proceeding pertaining to the case;

(6) The statement of decision; and

(7) The judgment or order appealed from.

(Subd (d) amended effective January 1, 2007.)

(e) Reporter's transcript

The reporter's transcript must contain all oral proceedings, including:

(1) All proceedings at the hearing on the petition, with opening statements and closing arguments;

(2) All proceedings on motions;

(3) Any comments on the evidence by the court; and

(4) Any oral opinion or oral statement of decision.

(Subd (e) amended effective January 1, 2007.)

(f) Preparing and sending transcripts

(1) The clerk and the reporter must prepare and send an original and two copies of each of the transcripts as provided in rule 8.336.

(2) Probate Code section 1963 governs the cost of preparing the record on appeal.

(Subd (f) amended effective January 1, 2007.)

(g) Confidential material

(1) Written reports of physicians, psychologists, and clinical social workers, and any other matter marked confidential by the court, may be inspected only by court personnel, the parties and their counsel, the district appellate project, and other persons designated by the court.

(2) Material under (1) must be sent to the reviewing court in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER."

(h) Trial counsel's continuing representation

To expedite preparation and certification of the record, the conservatee's trial counsel must continue to represent the conservatee until appellate counsel is retained or appointed.

(i) Appointment of appellate counsel

If appellate counsel has not been retained for the conservatee, the reviewing court must appoint such counsel.

Rule 8.482 amended and renumbered effective January 1, 2007; repealed and adopted as rule 39.1 effective January 1, 2005.

Chapter 7. Miscellaneous Writs

Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition
Rule 8.494. Review of Workers' Compensation Appeals Board cases
Rule 8.496. Review of Public Utilities Commission cases
Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases

Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition

(a) Application

(1) Except as provided in (2), this rule governs petitions to the reviewing court for writs of mandate, certiorari, or prohibition, or other writs within its original jurisdiction. In all respects not provided for in this rule, rule 8.204 applies.

(2) This rule does not apply to petitions for writs of supersedeas under rule 8.116, to petitions for writs of habeas corpus except as provided in rule 8.384, or to petitions for writs of review under rules 8.494–8.498.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(b) Petition

(1) If the petition could have been filed first in a lower court, it must explain why the reviewing court should issue the writ as an original matter.

(2) If the petition names as respondent a judge, court, board, or other officer acting in a public capacity, it must disclose the name of any real party in interest.

(3) If the petition seeks review of trial court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition and the first paragraph of the petition must state:

(A) The appeal's title, trial court docket number, and any reviewing court docket number; and

(B) If the petition is filed under Penal Code section 1238.5, the date the notice of appeal was filed.

(4) The petition must be verified.

(5) The petition must be accompanied by a memorandum, which need not repeat facts alleged in the petition.

(6) Rule 8.204(c) governs the length of the petition and memorandum, but the tables, the certificate, the verification, and any supporting documents are excluded from the limits stated in rule 8.204(c)(1) and (2).

(7) If the petition requests a temporary stay, it must comply with rule 8.116 and explain the urgency.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(c) Contents of supporting documents

(1) A petition that seeks review of a trial court ruling must be accompanied by an adequate record, including copies of:

(A) The ruling from which the petition seeks relief;

(B) All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position;

(C) Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review; and

(D) A reporter's transcript of the oral proceedings that resulted in the ruling under review.

(2) If a transcript under (1)(D) is unavailable, the record must include a declaration by counsel:

(A) Explaining why the transcript is unavailable and fairly summarizing the proceedings, including counsel's arguments and any statement by the court supporting its ruling; or

(B) Stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action requested of the reviewing court other than issuance of a temporary stay supported by other parts of the record.

(3) A declaration under (2) may omit a full summary of the proceedings if part of the relief sought is an order to prepare a transcript for use by an indigent criminal defendant in support of the petition and if the declaration demonstrates the petitioner's need for and entitlement to the transcript.

(4) In exigent circumstances, the petition may be filed without the documents required by (1)(A)–(C) if counsel files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.

(5) If the petitioner does not submit the required record or explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny a stay request, the petition, or both.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2006, and July 1, 2006.)

(d) Form of supporting documents

(1) Documents submitted under (c) must comply with the following requirements:

(A) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) They must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than 5 days.

(3) Rule 8.44(a) governs the number of copies of supporting documents to be filed in the Supreme Court. Rule 8.44(b) governs the number of supporting documents to be filed in the Court of Appeal.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2006.)

(e) Sealed records

Rule 8.160 applies if a party seeks to lodge or file a sealed record or to unseal a record.

(Subd (e) amended effective January 1, 2007.)

(f) Service

(1) If the respondent is the superior court or a judge of that court, the petition and one set of supporting documents must be served on any named real party in interest, but only the petition must be served on the respondent.

(2) If the respondent is not the superior court or a judge of that court, both the petition and one set of supporting documents must be served on the respondent and on any named real party in interest.

(3) In addition to complying with the requirements of rule 8.25, the proof of service must give the telephone number of each attorney served.

(4) The petition must be served on a public officer or agency when required by statute or rule 8.29.

(5) The clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within 5 days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(6) The court may allow the petition to be filed without proof of service.

(Subd (f) amended effective January 1, 2007.)

(g) Preliminary opposition

(1) Within 10 days after the petition is filed, the respondent or any real party in interest, separately or jointly, may serve and file a preliminary opposition.

(2) An opposition must contain a memorandum and a statement of any material fact not included in the petition.

(3) Within 10 days after an opposition is filed, the petitioner may serve and file a reply.

(4) Without requesting opposition or waiting for a reply, the court may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance.

(Subd (g) amended effective January 1, 2007.)

(h) Return or opposition; reply

(1) If the court issues an alternative writ or order to show cause, the respondent or any real party in interest, separately or jointly, may serve and file a return by demurrer, verified answer, or both. If the court notifies the parties that it is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the court orders otherwise, the return or opposition must be served and filed within 30 days after the court issues the alternative writ or order to show

cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the court orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the court may issue the peremptory writ without granting leave to answer.

(i) Certificate of Interested Entities or Persons

(1) Each party must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition. The certificates of the respondent and real party in interest must be included in their preliminary opposition or, if no such opposition is filed, in their return, if any. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the respondent or the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (i) amended effective January 1, 2007; adopted effective July 1, 2006.)

(j) Attorney General's amicus curiae brief

(1) If the court issues an alternative writ or order to show cause, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or presiding justice, unless the brief is submitted on behalf of another state officer or agency.

(2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due.

(3) The brief must provide the information required by rule 8.200(c)(2) and comply with rule 8.200(c)(4).

(4) Any party may serve and file an answer within 14 days after the brief is filed.

(Subd (j) amended effective January 1, 2007; adopted as subd (i) effective January 1, 2005; relettered effective July 1, 2006.)

(k) Notice to trial court

(1) If a writ or order issues directed to any judge, court, board, or other officer, the reviewing court clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is addressed.

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

(3) The clerk need not give telephonic notice of the summary denial of a writ, whether or not a stay previously issued.

(Subd (k) amended effective January 1, 2007; adopted as subd (j) effective January 1, 2005; relettered effective July 1, 2006.)

(*l*) Responsive pleading under Code of Civil Procedure section 418.10

If the Court of Appeal denies a petition for writ of mandate brought under Code of Civil Procedure section 418.10(c) and the Supreme Court denies review of the Court of Appeal's decision, the time to file a responsive pleading in the trial court is extended until 10 days after the Supreme Court files its order denying review.

(Subd (l) relettered effective July 1, 2006; adopted as subd (k) effective January 1, 2005.)

(m) Costs

(1) Except in a criminal or juvenile or other proceeding in which a party is entitled to court-appointed counsel, the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(2) In the interests of justice, the court may award or deny costs as it deems proper.

(3) The opinion or order resolving the proceeding must specify the award or denial of costs.

(4) Rule 8.276(b)–(d) governs the procedure for recovering costs under this rule.

(Subd (m) amended effective January 1, 2007; adopted as subd (l) effective January 1, 2005; previously amended effective July 1, 2005; relettered effective July 1, 2006.)

Rule 8.490 amended and renumbered effective January 1, 2007; repealed and adopted as rule 56 effective January 1, 2005; previously amended effective July 1, 2005, January 1, 2006, and July 1, 2006.

Advisory Committee Comment

Subdivision (a) Rule 8.25, which generally governs service and filing in reviewing courts, also applies to the original proceedings covered by this rule

Subdivision (b). Because of the importance of the point, rule 8.490(b)(6) explicitly states that the provisions of rule 8.204(c)—and hence the word-count limits imposed by that rule—apply to a petition for original writ.

Subdivision (g). Consistent with practice, rule 8.490 draws a distinction between a "preliminary opposition," which the respondent or a real party in interest may file before the court takes any action on the petition ((g)(1)), and a more formal "opposition," which the respondent or a real party in interest may file if the court notifies the parties that it is considering issuing a peremptory writ in the first instance ((h)(1)).

Subdivision (g)(1) allows the respondent or any real party in interest to serve and file a preliminary opposition within 10 days after the petition is filed. The reviewing court retains the power to act in any case without obtaining an opposition ((g)(4)).

Subdivision (g)(3) allows a petitioner to serve and file a reply within 10 days after an opposition is filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may act on the petition without waiting for a reply.

Subdivision (g)(4) recognizes that the reviewing court may "grant or deny a request for temporary stay" without requesting opposition or waiting for a reply.

The several references in rule 8.490 to the power of the court to issue a peremptory writ in the first instance after notifying the parties that it is considering doing so ((g)–(h)) implement the rule of *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

Subdivision (h). Subdivision (h)(2) requires that the return or opposition be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is

considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.

Subdivision (h)(3) formalizes the common practice of permitting petitioners to file replies to returns and specifies that such a reply must be served and filed within 15 days after the return is filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.

Rule 8.494. Review of Workers' Compensation Appeals Board cases

(a) Petition

(1) A petition to review an order, award, or decision of the Workers' Compensation Appeals Board must include:

(A) The order, award, or decision to be reviewed; and

(B) The workers' compensation judge's minutes of hearing and summary of evidence, findings and opinion on decision, and report and recommendation on the petition for reconsideration.

(2) If the petition claims that the board's ruling is not supported by substantial evidence, it must fairly state and attach copies of all the relevant material evidence.

(3) The petition must be accompanied by proof of service of two copies of the petition on the Secretary of the Workers' Compensation Appeals Board in San Francisco and one copy on each party who appeared in the action and whose interest is adverse to the petitioner. Service on the board's local district office is not required.

(Subd (a) amended effective January 1, 2007.)

(b) Answer and reply

(1) Within 25 days after the petition is filed, the board or any real party in interest may serve and file an answer and any relevant exhibits not included in the petition.

(2) Within 15 days after an answer is filed, the petitioner may serve and file a reply.

(c) Certificate of Interested Entities or Persons

(1) Each party other than the board must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition and the real party in interest's certificate must be included in the answer. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (c) amended effective January 1, 2007; adopted effective July 1, 2006.)

Rule 8.494 amended and renumbered effective January 1, 2007; repealed and adopted as rule 57 effective January 1, 2005; previously amended effective July 1, 2006.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(3) specifies that the petition must be served on the Secretary of the Workers' Compensation Appeals Board in San Francisco. Neither the petition nor a courtesy copy should be served on the local district office of the board.

Subdivision (b). To clarify that a respondent may rely on exhibits filed with the petition without duplicating them in the answer, (b)(1) specifies that exhibits filed with an answer must be limited to exhibits "not included in the petition."

Rule 8.496. Review of Public Utilities Commission cases

(a) Petition

(1) A petition to review an order or decision of the Public Utilities Commission must be verified and must be served on the executive director and general counsel of the commission and any real parties in interest.

(2) A real party in interest is one who was a party of record to the proceeding and took a position adverse to the petitioner.

(b) Answer and reply

(1) Within 35 days after the petition is filed, the commission or any real party in interest may serve and file an answer.

(2) Within 25 days after an answer is filed, the petitioner may serve and file a reply.

(c) Certificate of Interested Entities or Persons

(1) Each party other than the commission must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition and the real party in interest's certificate must be included in the answer. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (c) amended effective January 1, 2007; adopted effective July 1, 2006.)

Rule 8.496 amended and renumbered effective January 1, 2007; repealed and adopted as rule 58 effective January 1, 2005; previously amended effective July 1, 2006.

Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases

(a) Petition

(1) A petition to review an order or decision of the Agricultural Labor Relations Board or the Public Employment Relations Board must be filed in the Court of Appeal and served on the executive secretary of the Agricultural Labor Relations Board or the general counsel of the Public Employment Relations Board in Sacramento and on any real parties in interest.

(2) A real party in interest is a party of record to the proceeding.

(3) The petition must be verified.

(b) Record

Within the time permitted by statute, the board must file the certified record of the proceedings and simultaneously file and serve on all parties an index to that record.

(c) Briefs

(1) The petitioner must serve and file its brief within 35 days after the index is filed.

(2) Within 35 days after the petitioner's brief is filed, the board must—and any real party in interest may—serve and file a respondent's brief.

(3) Within 25 days after the respondent's brief is filed, the petitioner may serve and file a reply brief.

(d) Certificate of Interested Entities or Persons

(1) Each party other than the board must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.

(2) The petitioner's certificate must be included in the petition and the real party in interest's certificate must be included in the answer. The certificate must appear after the cover and before the tables.

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:

(A) If the party is the petitioner, the court will strike the petition; or

(B) If the party is the real party in interest, the court will strike the document.

(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.

(Subd (d) amended effective January 1, 2007; adopted effective July 1, 2006.)

Rule 8.498 amended and renumbered effective January 1, 2007; repealed and adopted as rule 59 effective January 1, 2005; previously amended effective July 1, 2006.

Chapter 8. Proceedings in the Supreme Court

Rule 8.500. Petition for review
Rule 8.504. Form and contents of petition, answer, and reply
Rule 8.508. Petition for review to exhaust state remedies
Rule 8.512. Ordering review
Rule 8.516. Issues on review
Rule 8.520. Briefs by parties and amici curiae; judicial notice
Rule 8.524. Oral argument and submission of the cause
Rule 8.528. Disposition
Rule 8.532. Filing, finality, and modification of decision
Rule 8.536. Rehearing
Rule 8.540. Remittitur
Rule 8.544. Costs and sanctions
Rule 8.548. Decision on request of a court of another jurisdiction
Rule 8.552. Transfer for decision

Rule 8.500. Petition for review

(a) Right to file a petition, answer, or reply

(1) A party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, except the denial of a transfer of a case within the appellate jurisdiction of the superior court.

(2) A party may file an answer responding to the issues raised in the petition. In the answer, the party may ask the court to address additional issues if it grants review.

(3) The petitioner may file a reply to the answer.

(Subd (a) amended effective January 1, 2004.)

(b) Grounds for review

The Supreme Court may order review of a Court of Appeal decision:

(1) When necessary to secure uniformity of decision or to settle an important question of law;

(2) When the Court of Appeal lacked jurisdiction;

(3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or

(4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

(Subd (b) amended effective January 1, 2007.)

(c) Limits of review

(1) As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal.

(2) A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing.

(d) Petitions in nonconsolidated proceedings

If the Court of Appeal decides an appeal and denies a related petition for writ of habeas corpus without issuing an order to show cause and without formally consolidating the two proceedings, a party seeking review of both decisions must file a separate petition for review in each proceeding.

(e) Time to serve and file

(1) A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court under rule 8.264. For purposes of this

rule, the date of finality is not extended if it falls on a day on which the clerk's office is closed.

(2) The time to file a petition for review may not be extended, but the Chief Justice may relieve a party from a failure to file a timely petition for review if the time for the court to order review on its own motion has not expired.

(3) If a petition for review is presented for filing before the Court of Appeal decision is final in that court, the Supreme Court clerk must accept it and file it on the day after finality.

(4) Any answer to the petition must be served and filed within 20 days after the petition is filed.

(5) Any reply to the answer must be served and filed within 10 days after the answer is filed.

(Subd (e) amended effective January 1, 2007.)

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and the Court of Appeal clerk.

(2) A copy of each brief must be served on a public officer or agency when required by statute or by rule 8.29.

(3) The Supreme Court clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within 5 days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(g) Amicus curiae letters

(1) Any person or entity wanting to support or oppose a petition for review or for an original writ must serve on all parties and send to the Supreme Court an amicus curiae letter rather than a brief.

(2) The letter must describe the interest of the amicus curiae. Any matter attached to the letter or incorporated by reference must comply with rule 8.504(e).

(3) Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under rule 8.520(f).

(Subd (g) amended effective January 1,2007; previously amended effective July 1, 2004.)

Rule 8.500 amended and renumbered effective January 1, 2007; repealed and adopted as rule 28 effective January 1, 2003; previously amended effective January 1, 2004, and July 1, 2004.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) makes it clear that any interlocutory order of the Court of Appeal—such as an order denying an application to appoint counsel, to augment the record, or to allow oral argument—is a "decision" that may be challenged by petition for review.

Subdivision (e). Subdivision (e)(1) provides that a petition for review must be served and filed within 10 days after the Court of Appeal decision is *final in that court*. Finality in the Court of Appeal is governed by rule 8.264. Rule 8.264(b) declares the general rule that a Court of Appeal decision is final in that court 30 days after filing. The provision then carves out five specific exceptions—decisions that it declares to be final immediately on filing (see rule 8.264(b)(2)). The plain implication is that all other Court of Appeal orders—specifically, interlocutory orders that may be the subject of a petition for review—are *not* final on filing. This implication is confirmed by current practice, in which parties may be allowed to apply for—and the Courts of Appeal may grant—reconsideration of such interlocutory orders; reconsideration, of course, would be impermissible if the orders were in fact final on filing.

Contrary to paragraph (2) of subdivision (e), paragraphs (4) and (5) do not prohibit extending the time to file an answer or reply; because the subdivision thus expressly forbids an extension of time only with respect to the petition for review, by clear negative implication it permits an application to extend the time to file an answer or reply under rule 8.50.

Subdivision (f). The general requirements relating to service of documents in the appellate courts are established by rule 8.25. Subdivision (f)(1) requires that the petition (but not an answer or reply) be served on the Court of Appeal clerk. To assist litigants, (f)(1) also states explicitly what is impliedly required by rule 8.212(c), i.e., that the petition must also be served on the superior court clerk (for delivery to the trial judge).

Rule 8.504. Form and contents of petition, answer, and reply

(a) In general

Except as provided in this rule, a petition for review, answer, and reply must comply with the relevant provisions of rule 8.204.

(Subd (a) amended effective January 1, 2007.)

(b) Contents of a petition

(1) The body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail.

(2) The petition must explain how the case presents a ground for review under rule 8.500(b).

(3) If a petition for rehearing could have been filed in the Court of Appeal, the petition for review must state whether it was filed and, if so, how the court ruled.

(4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion showing its filing date and a copy of any order modifying the opinion or directing its publication must be bound at the back of the original petition and each copy filed in the Supreme Court.

(5) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

(6) Rule 8.508 governs the form and content of a petition for review filed by the defendant in a criminal case for the sole purpose of exhausting state remedies before seeking federal habeas corpus review.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(c) Contents of an answer

An answer that raises additional issues for review must contain a concise, nonargumentative statement of those issues, framing them in terms of the facts of the case but without unnecessary detail.

(d) Length

(1) If produced on a computer, a petition or answer must not exceed 8,400 words, including footnotes, and a reply must not exceed 4,200 words, including footnotes. Each petition, answer, or reply must include a certificate by appellate counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(2) If typewritten, a petition or answer must not exceed 30 pages and a reply must not exceed 15 pages.

(3) The tables, the Court of Appeal opinion, a certificate under (1), and any attachment under (e)(1) are excluded from the limits stated in (1) and (2).

(4) On application and for good cause, the Chief Justice may permit a longer petition, answer, reply, or attachment.

(Subd (d) amended effective January 1, 2007; adopted as subd (e) effective January 1, 2003; previously relettered effective January 1, 2004.)

(e) Attachments and incorporation by reference

(1) No attachments are permitted except:

(A) An opinion or order from which the party seeks relief;

(B) Exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant;

(C) Copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible; and

(D) An opinion required to be attached under rule 8.1115(c).

(2) The attachments under (1)(A)–(C) must not exceed a combined total of 10 pages.

(3) No incorporation by reference is permitted except a reference to a petition, an answer, or a reply filed by another party in the same case or filed in a case that raises the same or similar issues and in which a petition for review is pending or has been granted.

(Subd (e) amended effective January 1, 2007; adopted as subd (f) effective January 1, 2003; previously relettered effective January 1, 2004.)

Rule 8.504 amended and renumbered effective January 1, 2007; adopted as rule 28.1 effective January 1, 2003; previously amended effective January 1, 2004.

Advisory Committee Comment

Subdivision (d). Subdivision (d) states in terms of word counts rather than page counts the maximum permissible lengths of a petition for review, answer, or reply produced on a computer. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory committee comment to that provision.

Rule 8.508. Petition for review to exhaust state remedies

(a) Purpose

After decision by the Court of Appeal in a criminal case, a defendant may file an abbreviated petition for review in the Supreme Court for the sole purpose of exhausting state remedies before presenting a claim for federal habeas corpus relief.

(b) Form and contents

(1) The words "Petition for Review to Exhaust State Remedies" must appear prominently on the cover of the petition.

(2) Except as provided in (3), the petition must comply with rule 8.504.

(3) The petition need not comply with rule 8.504(b)(1)–(2) but must include:

(A) A statement that the case presents no grounds for review under rule 8.500(b) and the petition is filed solely to exhaust state remedies for federal habeas corpus purposes;

(B) A brief statement of the underlying proceedings, including the nature of the conviction and the punishment imposed; and

(C) A brief statement of the factual and legal bases of the claim.

(Subd (b) amended effective January 1, 2007.)

(c) Service

The petition must be served on the Court of Appeal clerk but need not be served on the superior court clerk.

Rule 8.508 amended and renumbered effective January 1, 2007; adopted as rule 33.3 effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). Although a petition under this rule must state that "the case presents no grounds for review under rule 8.500(b)" (see (b)(3)(A)), this does not mean the Supreme Court cannot order review if it determines the case warrants review. The list of grounds for granting review in rule 8.500(b) is not intended to be exclusive, and from time to time the Supreme Court has exercised its discretion to order review in a case that does not present one of the listed grounds. (Compare U.S. Supreme Court Rule 10

[the listed grounds for granting certiorari, "although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers"].)

Subdivision (b)(3)(C) requires the petition to include a statement of the factual and legal bases of the claim. This showing is required by federal law: "for purposes of exhausting state remedies, a claim for relief [in state court] . . . must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief." (*Gray v. Netherland* (1996) 518 U.S. 152, 162–163, citing *Picard v. Connor* (1971) 404 U.S. 270.) The federal courts will decide whether a petition filed in compliance with this rule satisfies federal exhaustion requirements, and practitioners should consult federal law to determine whether the petition's statement of the factual and legal bases for the claim is sufficient for that purpose.

Rule 8.512. Ordering review

(a) Transmittal of record

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the Court of Appeal clerk must promptly send the record to the Supreme Court. If the petition is denied, the Supreme Court clerk must promptly return the record to the Court of Appeal.

(b) Determination of petition

(1) The court may order review within 60 days after the last petition for review is filed. Before the 60-day period or any extension expires, the court may order one or more extensions to a date not later than 90 days after the last petition is filed.

(2) If the court does not rule on the petition within the time allowed by (1), the petition is deemed denied.

(Subd (b) amended effective January 1, 2004.)

(c) Review on the court's own motion

(1) If no petition for review is filed, the Supreme Court may, on its own motion, order review of a Court of Appeal decision within 30 days after the decision is final in that court. Before the 30-day period or any extension expires, the Supreme Court may order one or more extensions to a date not later than 90 days after the decision is final in the Court of Appeal. If any such period ends on a day on which the clerk's office is closed, the court may order review on its own motion on the next day the clerk's office is open.

(2) If a petition for review is filed, the Supreme Court may deny the petition but order review on its own motion within the periods prescribed in (b)(1).

(Subd (c) amended and relettered effective January 1, 2004; adopted as subd (d) effective January 1, 2003.)

(d) Order; grant and hold

(1) An order granting review must be signed by at least four justices; an order denying review may be signed by the Chief Justice alone.

(2) On or after granting review, the court may order action in the matter deferred until the court disposes of another matter or pending further order of the court.

(Subd (d) adopted effective January 1, 2004.)

Rule 8.512 renumbered effective January 1, 2007; adopted as rule 28.2 effective January 1, 2003; previously amended effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). The Supreme Court deems the 60-day period within which it may grant review to begin on the filing date of the last petition for review that either (1) is timely in the sense that it is filed within the rule time for such petitions (i.e., 10 days after finality of the Court of Appeal decision) or (2) is treated as timely—although presented for filing after expiration of the rule time—in the sense that it is filed with permission of the Chief Justice on a showing of good cause for relief from default. In each circumstance it is the filing of the petition that triggers the 60-day period.

Rule 8.516. Issues on review

(a) Issues to be briefed and argued

(1) On or after ordering review, the Supreme Court may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in them.

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire cause.

(b) Issues to be decided

(1) The Supreme Court may decide any issues that are raised or fairly included in the petition or answer.

(2) The court may decide an issue that is neither raised nor fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it.

(3) The court need not decide every issue the parties raise or the court specifies.

Rule 8.516 renumbered effective January 1, 2007; repealed and adopted as rule 29 effective January 1, 2003.

Rule 8.520. Briefs by parties and amici curiae; judicial notice

(a) Parties' briefs; time to file

(1) Within 30 days after the Supreme Court files the order of review, the petitioner must serve and file in that court either an opening brief on the merits or the brief it filed in the Court of Appeal.

(2) Within 30 days after the petitioner files its brief or the time to do so expires, the opposing party must serve and file either an answer brief on the merits or the brief it filed in the Court of Appeal.

(3) The petitioner may file a reply brief on the merits or the reply brief it filed in the Court of Appeal. A reply brief must be served and filed within 20 days after the opposing party files its brief.

(4) A party filing a brief it filed in the Court of Appeal must attach to the cover a notice of its intent to rely on the brief in the Supreme Court.

(5) The time to serve and file a brief may not be extended by stipulation but only by order of the Chief Justice under rule 8.60.

(6) The court may designate which party is deemed the petitioner or otherwise direct the sequence in which the parties must file their briefs.

(Subd (a) amended effective January 1,2007.)

(b) Form and content

(1) Briefs filed under this rule must comply with the relevant provisions of rule 8.204.

(2) The body of the petitioner's brief on the merits must begin by quoting either:

(A) Any order specifying the issues to be briefed; or, if none,

(B) The statement of issues in the petition for review and, if any, in the answer.

(3) Unless the court orders otherwise, briefs on the merits must be limited to the issues stated in (2) and any issues fairly included in them.

(Subd (b) amended effective January 1, 2007.)

(c) Length

(1) If produced on a computer, a brief on the merits must not exceed 14,000 words, including footnotes, and a reply brief on the merits must not exceed 4,200 words, including footnotes. Each brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) If typewritten, a brief on the merits must not exceed 50 pages and a reply brief must not exceed 15 pages.

(3) The tables, a certificate under (1), any attachment under (h), and any quotation of issues required by (b)(2) are excluded from the limits stated in (1) and (2).

(4) On application and for good cause, the Chief Justice may permit a longer brief.

(Subd (c) amended effective January 1, 2007.)

(d) Supplemental briefs

(1) A party may file a supplemental brief limited to new authorities, new legislation, or other matters that were not available in time to be included in the party's brief on the merits.

(2) A supplemental brief must not exceed 2,800 words, including footnotes, if produced on a computer or 10 pages if typewritten, and must be served and filed no later than 10 days before oral argument.

(Subd (d) amended effective January 1, 2007.)

(e) Briefs on the court's request

The court may request additional briefs on any or all issues, whether or not the parties have filed briefs on the merits.

(f) Amicus curiae briefs

(1) After the court orders review, any person or entity may serve and file an application for permission of the Chief Justice to file an amicus curiae brief.

(2) The application must be filed no later than 30 days after all briefs that the parties may file under this rule—other than supplemental briefs—have been filed or were required to be filed. The Chief Justice may allow later filing if the applicant shows specific and compelling reasons for the delay.

(3) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(4) The proposed brief must be served. It must accompany the application and may be combined with it.

(5) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(6) If the court grants the application, any party may file an answer within 20 days after the amicus curiae brief is filed. It must be served on all parties and the amicus curiae.

(7) The Attorney General may file an amicus curiae brief without the Chief Justice's permission unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within the time specified in (2) and must provide the information required by (3) and comply with (5). Any answer must comply with (6).

(g) Judicial notice

To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 8.252(a).

(Subd (g) amended effective January 1, 2007.)

(h) Attachments

A party filing a brief may attach copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible. These attachments must not exceed a combined total of 10 pages. A copy of an opinion required to be attached to the brief under rule 8.1115(c) does not count toward this 10-page limit.

(Subd (h) adopted effective January 1, 2007.)

Rule 8.520 amended and renumbered effective January 1, 2007; adopted as rule 29.1 effective January 1, 2003.

Advisory Committee Comment

Subdivisions (c) and (d). Subdivisions (c) and (d) state in terms of word count rather than page count the maximum permissible lengths of Supreme Court briefs produced on a computer. This provision tracks an identical provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory committee comment to that provision.

Rule 8.524. Oral argument and submission of the cause

(a) Application

This rule governs oral argument in the Supreme Court unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(b) Place of argument

The Supreme Court holds regular sessions in San Francisco, Los Angeles, and Sacramento on a schedule fixed by the court, and may hold special sessions elsewhere.

(c) Notice of argument

The Supreme Court clerk must send notice of the time and place of oral argument to all parties at least 20 days before the argument date. The Chief Justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(d) Sequence of argument

The petitioner for Supreme Court relief has the right to open and close. If there are two or more petitioners—or none—the court must set the sequence of argument.

(e) Time for argument

Each side is allowed 30 minutes for argument.

(f) Number of counsel

(1) Only one counsel on each side may argue—regardless of the number of parties on the side—unless the court orders otherwise on request.

(2) Requests to divide oral argument among multiple counsel must be filed within 10 days after the date of the order setting the case for argument.

(3) Multiple counsel must not divide their argument into segments of less than 10 minutes per person, except that one counsel for the opening side—or more, if authorized by the Chief Justice on request—may reserve any portion of that counsel's time for rebuttal.

(g) Argument by amicus curiae

An amicus curiae is not entitled to argument time but may ask a party for permission to use a portion or all of the party's time, subject to the 10-minute minimum prescribed in (f)(3). If permission is granted, counsel must file a request under (f)(2).

(h) Submission of the cause

(1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(2) The court may vacate submission only by an order stating the court's reasons and setting a timetable for resubmission.

Rule 8.524 renumbered effective January 1, 2007; repealed and adopted as rule 29.2 effective January 1, 2003.

Advisory Committee Comment

Subdivision (d). In subdivision (d), "The petitioner for Supreme Court relief" can be a petitioner for review, a petitioner for transfer (rule 8.552), a petitioner in an original proceeding in the Supreme Court, or a party designated as petitioner in a proceeding on request of a court of another jurisdiction (rule 8.548(b)(1)).

The number of petitioners is “none” when the court grants review on its own motion or transfers a cause to itself on its own motion.

Subdivision (e). The time allowed for argument in death penalty appeals is prescribed in rule 8.638.

Subdivision (f). The number of counsel allowed to argue on each side in death penalty appeals is prescribed in rule 8.638.

Rule 8.528. Disposition

(a) Normal disposition

After review, the Supreme Court normally will affirm, reverse, or modify the judgment of the Court of Appeal, but may order another disposition.

(b) Dismissal of review

(1) The Supreme Court may dismiss review. The Supreme Court clerk must promptly send an order dismissing review to all parties and the Court of Appeal.

(2) When the Court of Appeal receives an order dismissing review, the decision of that court is final and its clerk must promptly issue a remittitur or take other appropriate action.

(3) After an order dismissing review, the Court of Appeal opinion remains unpublished unless the Supreme Court orders otherwise.

(c) Remand for decision on remaining issues

If it decides fewer than all the issues presented by the case, the Supreme Court may remand the cause to a Court of Appeal for decision on any remaining issues.

(d) Transfer without decision

After ordering review, the Supreme Court may transfer the cause to a Court of Appeal without decision but with instructions to conduct such proceedings as the Supreme Court orders.

(e) Retransfer without decision

After transferring to itself, before decision, a cause pending in the Court of Appeal, the Supreme Court may retransfer the cause to a Court of Appeal without decision.

(f) Court of Appeal briefs after remand or transfer

Any supplemental briefing in the Court of Appeal after remand or transfer from the Supreme Court is governed by rule 8.200(b).

(Subd (f) amended effective January 1, 2007.)

Rule 8.528 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.3 effective January 1, 2003.

Advisory Committee Comment

Subdivision (a). Subdivision (a) serves two purposes. First, it declares that the Supreme Court's normal disposition of a cause after completing its review is to affirm, reverse, or modify *the judgment of the Court of Appeal*. Second, the subdivision recognizes that, when necessary, the Supreme Court may order "another disposition" appropriate to the circumstances. Subdivisions (b)–(e) provide examples of such "other dispositions," but the list is not intended to be exclusive.

As used in subdivision (a), "the judgment of the Court of Appeal" includes a decision of that court denying a petition for original writ without issuing an alternative writ or order to show cause. The Supreme Court's method of disposition after reviewing such a decision, however, has evolved. In earlier cases the Supreme Court itself denied or granted the requested writ, in effect treating the matter as if it were an original proceeding in the Supreme Court. (E.g., *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 58 ["The alternative writ of mandate is discharged and the petition for a peremptory writ of mandate is denied."].) By contrast, current Supreme Court practice is to affirm or reverse the judgment of the Court of Appeal summarily denying the writ petition. (E.g., *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 742–743 ["The judgment of the Court of Appeal is reversed with directions to vacate its order denying the petition, and to issue a writ of mandate. . . ."]; *State Comp. Ins. Fund v. Superior Court* (2001) 24 Cal.4th 930, 944 ["The judgment of the Court of Appeal summarily denying the petition for writ of mandate is affirmed and the order to show cause . . . is discharged."].) As the cited cases illustrate, if the Supreme Court affirms such a judgment it will normally discharge any alternative writ or order to show cause it issued when granting review; if the court reverses the judgment it will normally include a direction to the Court of Appeal, e.g., to issue the requested writ or to reconsider the petition.

Subdivision (b). An earlier version of this rule purported to limit Supreme Court *dismissals of review* to cases in which the court had "improvidently" granted review. In practice, however, the court may dismiss review for a variety of other reasons. For example, after the court decides a "lead" case, its current practice is to dismiss review in any pending companion case (i.e., a "grant and hold" matter under rule 8.512(c)) that appears correctly decided in light of the lead case and presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal. The Supreme Court may also dismiss review when a supervening event renders the case moot for any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or when the court orders review to construe a statute that is then repealed before the court can act. Reflecting this practice, the Supreme Court now dismisses review—even in the rare case in which the grant of review was arguably "improvident"—by an order that says simply that "review is dismissed."

An order of review ipso facto transfers jurisdiction of the cause to the Supreme Court. By the same token, an order dismissing review ipso facto retransfers jurisdiction to the Court of Appeal. The Court of Appeal has no discretion to exercise after the Supreme Court dismisses review: the Supreme Court clerk must

promptly send the dismissal order to the Court of Appeal; when the Court of Appeal clerk files that order, the Court of Appeal decision immediately becomes final.

If the decision of the Court of Appeal made final by (b)(2) requires issuance of a remittitur under rule 8.272(a), the clerk must issue the remittitur; if the decision does not require issuance of a remittitur—e.g., if the decision is an interlocutory order (see rule 8.500(a)(1))—the clerk must take whatever action is appropriate in the circumstances.

Subdivision (d). Subdivision (d) is intended to apply primarily to two types of cases: (1) those in which the court granted review "for the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order" (rule 8.500(b)(4)) and (2) those in which the court, after deciding a "lead case," determines that a companion "grant and hold" case (rule 8.512(c)) should be reconsidered by the Court of Appeal in light of the lead case or presents an additional issue or issues that require resolution by the Court of Appeal.

Subdivision (e). Subdivision (e) is intended to apply to cases in which the Supreme Court, after *transferring* to itself before decision a cause pending in the Court of Appeal, *retransfers* the matter to that court without decision and with or without instructions.

Rule 8.532. Filing, finality, and modification of decision

(a) Filing the decision

The Supreme Court clerk must promptly file all opinions and orders issued by the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(b) Finality of decision

(1) Except as provided in (2), a Supreme Court decision is final 30 days after filing unless:

(A) The court orders a shorter period; or

(B) Before the 30-day period or any extension expires the court orders one or more extensions, not to exceed a total of 60 additional days.

(2) The following Supreme Court decisions are final on filing:

(A) The denial of a petition for review of a Court of Appeal decision;

(B) A disposition ordered under rule 8.528(b), (d), or (e);

(C) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause; and

(D) The denial of a petition for writ of supersedeas.

(Subd (b) amended effective January 1, 2007.)

(c) Modification of decision

The Supreme Court may modify a decision as provided in rule 8.264(c).

(Subd (c) amended effective January 1, 2007.)

Rule 8.532 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.4 effective January 1, 2003.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(2)(A) recognizes the general rule that the denial of a petition for review of a Court of Appeal decision is final on filing. Subdivision (b)(2)(B)–(D) recognizes several additional types of Supreme Court decisions that are final on filing. Thus (b)(2)(B) recognizes that a dismissal, a transfer, and a retransfer under (b), (d), and (e), respectively, of rule 8.528 are decisions final on filing. A remand under rule 8.528(c) is not a decision final on filing because it is not a separately filed order; rather, as part of its appellate judgment at the end of its opinion in such cases the Supreme Court simply orders the cause remanded to the Court of Appeal for disposition of the remaining issues in the appeal.

Subdivision (b)(2)(C) recognizes that an order denying a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final on filing. The provision reflects the settled Supreme Court practice, since at least 1989, of declining to file petitions for rehearing in such matters. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989 ["The motion to vacate this court's order of May 18, 1989 [denying a petition for habeas corpus without opinion] is denied. Because the California Rules of Court do not authorize the filing of a petition for rehearing of such an order, the alternate request to consider the matter as a petition for rehearing is denied."].)

Subdivision (b)(2)(D) recognizes that an order denying a petition for writ of supersedeas is final on filing.

Rule 8.536. Rehearing

(a) Power to order rehearing

The Supreme Court may order rehearing as provided in rule 8.268(a).

(Subd (a) amended effective January 1, 2007.)

(b) Petition and answer

A petition for rehearing and any answer must comply with rule 8.268(b)(1) and (3). Any answer to the petition must be served and filed within eight days after the

petition is filed. Before the Supreme Court decision is final and for good cause, the Chief Justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(c) Extension of time

The time for granting or denying a petition for rehearing in the Supreme Court may be extended under rule 8.532(b)(1)(B). If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(Subd (c) amended effective January 1, 2007.)

(d) Determination of petition

An order granting a rehearing must be signed by at least four justices; an order denying rehearing may be signed by the Chief Justice alone.

(e) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Supreme Court.

Rule 8.536 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.5 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.540. Remittitur

(a) Proceedings requiring issuance of remittitur

The Supreme Court must issue a remittitur after a decision in:

(1) A review of a Court of Appeal decision; or

(2) An appeal from a judgment of death or in a cause transferred to the court under rule 8.552.

(Subd (a) amended effective January 1, 2007.)

(b) Clerk's duties

(1) The clerk must issue a remittitur when a decision of the court is final. The remittitur is deemed issued when the clerk enters it in the record.

(2) After review of a Court of Appeal decision, the Supreme Court clerk must address the remittitur to the Court of Appeal and send that court two copies of the remittitur and two file-stamped copies of the Supreme Court opinion or order.

(3) After a decision in an appeal from a judgment of death or in a cause transferred to the court under rule 8.552, the clerk must send the remittitur and a file-stamped copy of the Supreme Court opinion or order to the lower court or tribunal.

(4) The clerk must comply with the requirements of rule 8.272(d).

(Subd (b) amended effective January 1, 2007.)

(c) Immediate issuance, stay, and recall

(1) The Supreme Court may direct immediate issuance of a remittitur on the parties' stipulation or for good cause.

(2) On a party's or its own motion and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

Rule 8.540 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.6 effective January 1, 2003.

Rule 8.544. Costs and sanctions

In a civil case, the Supreme Court may direct the Court of Appeal to award costs, if any; or may order the parties to bear their own costs; or may make any other award of costs the Supreme Court deems proper. The Supreme Court may impose sanctions on a party or an attorney under rule 8.276(e) for committing any unreasonable violation of these rules.

Rule 8.544 amended and renumbered effective January 1, 2007; adopted as rule 29.7 effective January 1, 2003.

Advisory Committee Comment

If the Supreme Court makes an award of costs, the party claiming such costs must proceed under rule 8.276(d).

Rule 8.548. Decision on request of a court of another jurisdiction

(a) Request for decision

On request of the United States Supreme Court, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth, the Supreme Court may decide a question of California law if:

(1) The decision could determine the outcome of a matter pending in the requesting court; and

(2) There is no controlling precedent.

(Subd (a) amended effective January 1, 2007.)

(b) Form and contents of request

The request must take the form of an order of the requesting court containing:

(1) The title and number of the case, the names and addresses of counsel and any unrepresented party, and a designation of the party to be deemed the petitioner if the request is granted;

(2) The question to be decided, with a statement that the requesting court will accept the decision;

(3) A statement of the relevant facts prepared by the requesting court or by the parties and approved by the court; and

(4) An explanation of how the request satisfies the requirements of (a).

(Subd (b) amended effective January 1, 2007.)

(c) Supporting materials

Copies of all relevant briefs must accompany the request. At any time, the Supreme Court may ask the requesting court to furnish additional record materials, including transcripts and exhibits.

(d) Serving and filing the request

The requesting court clerk must file an original and 10 copies of the request in the Supreme Court with a certificate of service on the parties.

(e) Letters in support or opposition

(1) Within 20 days after the request is filed, any party or other person or entity wanting to support or oppose the request must send a letter to the Supreme Court, with service on the parties and on the requesting court.

(2) Within 10 days after service of a letter under (1), any party may send a reply letter to the Supreme Court, with service on the other parties and the requesting court.

(3) A letter or reply asking the court to restate the question under (f)(5) must propose new wording.

(f) Proceedings in the Supreme Court

(1) In exercising its discretion to grant or deny the request, the Supreme Court may consider whether resolution of the question is necessary to secure uniformity of decision or to settle an important question of law, and any other factor the court deems appropriate.

(2) An order granting the request must be signed by at least four justices; an order denying the request may be signed by the Chief Justice alone.

(3) If the court grants the request, the rules on review and decision in the Supreme Court govern further proceedings in that court.

(4) If, after granting the request, the court determines that a decision on the question may require an interpretation of the California Constitution or a decision on the validity or meaning of a California law affecting the public interest, the court must direct the clerk to send to the Attorney General—unless the Attorney General represents a party to the litigation—a copy of the request and the order granting it.

(5) At any time, the Supreme Court may restate the question or ask the requesting court to clarify the question.

(6) After filing the opinion, the clerk must promptly send file-stamped copies to the requesting court and the parties and must notify that court and the parties when the decision is final.

(7) Supreme Court decisions pursuant to this rule are published in the Official Reports and have the same precedential effect as the court's other decisions.

(Subd (f) amended effective January 1, 2007.)

Rule 8.548 amended and renumbered effective January 1, 2007; adopted as rule 29.8 effective January 1, 2003.

Rule 8.552. Transfer for decision

(a) Time of transfer

On a party's petition or its own motion, the Supreme Court may transfer to itself, for decision, a cause pending in a Court of Appeal.

(b) When a cause is pending

For purposes of this rule, a cause within the appellate jurisdiction of the superior court is not pending in the Court of Appeal until that court orders it transferred under rule 8.1002. Any cause pending in the Court of Appeal remains pending until the decision of the Court of Appeal is final in that court under rule 8.264.

(Subd (b) amended effective January 1, 2007.)

(c) Grounds

The Supreme Court will not order transfer under this rule unless the cause presents an issue of great public importance that the Supreme Court must promptly resolve.

(d) Petition and answer

A party seeking transfer under this rule must promptly serve and file in the Supreme Court a petition explaining how the cause satisfies the requirements of (c). Within 20 days after the petition is filed, any party may serve and file an answer. The petition and any answer must conform to the relevant provisions of rule 8.504.

(Subd (d) amended effective January 1, 2007.)

(e) Order

Transfer under this rule requires a Supreme Court order signed by at least four justices; an order denying transfer may be signed by the Chief Justice alone.

Rule 8.552 amended and renumbered effective January 1, 2007; repealed and adopted as rule 29.9 effective January 1, 2003.

Advisory Committee Comment

Rule 8.552 applies only to causes that the Supreme Court transfers to itself for the purpose of reaching a decision on the merits. The rule implements a portion of article VI, section 12(a) of the Constitution. As used in article VI, section 12(a) and the rule, the term "cause" is broadly construed to include " 'all cases, matters, and proceedings of every description' " adjudicated by the Courts of Appeal and the Supreme Court. (*In re Rose* (2000) 22 Cal.4th 430, 540, quoting *In re Wells* (1917) 174 Cal. 467, 471.)

Chapter 9. Appeals from Judgments of Death

Article 1. General Provisions

Rule 8.600. In general
Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus proceedings

Rule 8.600. In general

(a) Automatic appeal to Supreme Court

If a judgment imposes a sentence of death, an appeal by the defendant is automatically taken to the Supreme Court.

(b) Copies of judgment

When a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment to the Supreme Court, the Attorney General, the Governor, and the California Appellate Project in San Francisco.

(c) Extensions of time

When a rule in this part authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 8.63.

(Subd (c) amended effective January 1, 2007.)

(d) Supervising preparation of record

The Supreme Court clerk, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this part. This provision does not affect the

superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(e) Definitions

For purposes of this part:

(1) The delivery date of a transcript sent by mail is the mailing date plus five days; and

(2) "Trial counsel" means both the defendant's trial counsel and the prosecuting attorney.

(Subd (e) amended effective January 1, 2007.)

Rule 8.600 amended and renumbered effective January 1, 2007; repealed and adopted as rule 34 effective January 1, 2004.

Rule 8.605. Qualifications of counsel in death penalty appeals and habeas corpus proceedings

(a) Purpose

This rule defines the minimum qualifications for attorneys appointed by the Supreme Court in death penalty appeals and habeas corpus proceedings related to sentences of death. An attorney is not entitled to appointment simply because the attorney meets these minimum qualifications.

(b) General qualifications

The Supreme Court may appoint an attorney only if it has determined, after reviewing the attorney's experience, writing samples, references, and evaluations under (d) through (f), that the attorney has demonstrated the commitment, knowledge, and skills necessary to competently represent the defendant. An appointed attorney must be willing to cooperate with an assisting counsel or entity that the court may designate.

(c) Definitions

As used in this rule:

(1) "Appointed counsel" or "appointed attorney" means an attorney appointed to represent a person in a death penalty appeal or death penalty–related habeas

corpus proceedings in the Supreme Court. Appointed counsel may be either lead counsel or associate counsel.

(2) "Lead counsel" means an appointed attorney or an attorney in the Office of the State Public Defender, the Habeas Corpus Resource Center, or the California Appellate Project in San Francisco who is responsible for the overall conduct of the case and for supervising the work of associate and supervised counsel. If two or more attorneys are appointed to represent a defendant jointly in a death penalty appeal, in death penalty–related habeas corpus proceedings, or in both classes of proceedings together, one such attorney will be designated as lead counsel.

(3) "Associate counsel" means an appointed attorney who does not have the primary responsibility for the case but nevertheless has casewide responsibility to perform the duties for which that attorney was appointed, whether they are appellate, habeas corpus, or appellate and habeas corpus duties. Associate counsel must meet the same minimum qualifications as lead counsel.

(4) "Supervised counsel" means an attorney who works under the immediate supervision and direction of lead or associate counsel but is not appointed by the Supreme Court. Supervised counsel must be an active member of the State Bar of California.

(5) "Assisting counsel or entity" means an attorney or entity designated by the Supreme Court to provide appointed counsel with consultation and resource assistance. Entities that may be designated include the Office of the State Public Defender, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco.

(d) Qualifications for appointed appellate counsel

An attorney appointed as lead or associate counsel in a death penalty appeal must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years.

(2) Either:

(A) Service as counsel of record for a defendant in seven completed felony appeals, including one murder case; or

(B) Service as counsel of record for a defendant in five completed felony appeals and as supervised counsel for a defendant in two death penalty appeals in which the opening brief has been filed. Service as supervised counsel in a death penalty appeal will apply toward this qualification only if lead or associate counsel in that appeal attests that the supervised attorney performed substantial work on the case and recommends the attorney for appointment.

(3) Familiarity with Supreme Court practices and procedures, including those related to death penalty appeals.

(4) Within three years before appointment, completion of at least nine hours of Supreme Court–approved appellate criminal defense training, continuing education, or course of study, at least six hours of which involve death penalty appeals. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(5) Proficiency in issue identification, research, analysis, writing, and advocacy, taking into consideration all of the following:

(A) Two writing samples—ordinarily appellate briefs—written by the attorney and presenting an analysis of complex legal issues;

(B) If the attorney has previously been appointed in a death penalty appeal or death penalty–related habeas corpus proceeding, the evaluation of the assisting counsel or entity in that proceeding;

(C) Recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) If the attorney is on a panel of attorneys eligible for appointments to represent indigents in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(Subd (d) amended effective January 1, 2007.)

(e) Qualifications for appointed habeas corpus counsel

An attorney appointed as lead or associate counsel to represent a person in death penalty–related habeas corpus proceedings must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years.

(2) Either:

(A) Service as counsel of record for a defendant in five completed felony appeals or writ proceedings, including one murder case, and service as counsel of record for a defendant in three jury trials or three habeas corpus proceedings involving serious felonies; or

(B) Service as counsel of record for a defendant in five completed felony appeals or writ proceedings and service as supervised counsel in two death penalty–related habeas corpus proceedings in which the petition has been filed. Service as supervised counsel in a death penalty–related habeas corpus proceeding will apply toward this qualification only if lead or associate counsel in that proceeding attests that the attorney performed substantial work on the case and recommends the attorney for appointment.

(3) Familiarity with the practices and procedures of the California Supreme Court and the federal courts in death penalty–related habeas corpus proceedings.

(4) Within three years before appointment, completion of at least nine hours of Supreme Court–approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least six hours of which address death penalty habeas corpus proceedings. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(5) Proficiency in issue identification, research, analysis, writing, investigation, and advocacy, taking into consideration all of the following:

(A) Three writing samples—ordinarily two appellate briefs and one habeas corpus petition—written by the attorney and presenting an analysis of complex legal issues;

(B) If the attorney has previously been appointed in a death penalty appeal or death penalty–related habeas corpus proceeding, the evaluation of the assisting counsel or entity in that proceeding;

(C) Recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) If the attorney is on a panel of attorneys eligible for appointments to represent indigent appellants in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(Subd (e) amended effective January 1, 2007.)

(f) Alternative qualifications

The Supreme Court may appoint an attorney who does not meet the requirements of (d)(1) and (2) or (e)(1) and (2) if the attorney has the qualifications described in (d)(3)–(5) or (e)(3)–(5) and:

(1) The court finds that the attorney has extensive experience in another jurisdiction or a different type of practice (such as civil trials or appeals, academic work, or work for a court or prosecutor) for at least four years, providing the attorney with experience in complex cases substantially equivalent to that of an attorney qualified under (d) or (e).

(2) Ongoing consultation is available to the attorney from an assisting counsel or entity designated by the court.

(3) Within two years before appointment, the attorney has completed at least 18 hours of Supreme Court–approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least nine hours of which involve death penalty appellate or habeas corpus proceedings. The Supreme Court will determine in each case whether the training, education, or course of study completed by a particular attorney satisfies the requirements of this subdivision in light of the attorney's individual background and experience. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(g) Attorneys without trial experience

If an evidentiary hearing is ordered in a death penalty–related habeas corpus proceeding and an attorney appointed under either (e) or (f) to represent a defendant in that proceeding lacks experience in conducting trials or evidentiary hearings, the attorney must associate an attorney who has such experience.

(h) Use of supervised counsel

An attorney who does not meet the qualifications described in (d), (e), or (f) may assist lead or associate counsel, but must work under the immediate supervision and direction of lead or associate counsel.

(i) Appellate and habeas corpus appointment

(1) An attorney appointed to represent a defendant in both a death penalty appeal and death penalty–related habeas corpus proceedings must meet the minimum qualifications of both (d) and (e) or of (f).

(2) Notwithstanding (1), two attorneys together may be eligible for appointment to represent a defendant jointly in both a death penalty appeal and death penalty–related habeas corpus proceedings if the Supreme Court finds that their qualifications in the aggregate satisfy the provisions of both (d) and (e) or of (f).

(j) Designated entities as appointed counsel

(1) Notwithstanding any other provision of this rule, the State Public Defender is qualified to serve as appointed counsel in death penalty appeals, the Habeas Corpus Resource Center is qualified to serve as appointed counsel in death penalty–related habeas corpus proceedings, and the California Appellate Project in San Francisco is qualified to serve as appointed counsel in both classes of proceedings.

(2) When serving as appointed counsel in a death penalty appeal, the State Public Defender or the California Appellate Project in San Francisco must not assign any attorney as lead counsel unless it finds the attorney qualified under (d)(1)–(5) or the Supreme Court finds the attorney qualified under (f).

(3) When serving as appointed counsel in a death penalty–related habeas corpus proceeding, the Habeas Corpus Resource Center or the California Appellate Project in San Francisco must not assign any attorney as lead counsel unless it

finds the attorney qualified under (e)(1)–(5) or the Supreme Court finds the attorney qualified under (f).

(k) Attorney appointed by federal court

Notwithstanding any other provision of this rule, the Supreme Court may appoint an attorney who is under appointment by a federal court in a death penalty–related habeas corpus proceeding for the purpose of exhausting state remedies in the Supreme Court and for all subsequent state proceedings in that case, if the Supreme Court finds that attorney has the commitment, proficiency, and knowledge necessary to represent the defendant competently in state proceedings.

Rule 8.605 amended and renumbered effective January 1, 2007; repealed and adopted as rule 76.6 effective January 1, 2005.

Advisory Committee Comment

Subdivision (c). The definition of "associate counsel" in (c)(3) is intended to make it clear that although appointed lead counsel has overall and supervisory responsibility in a capital case, appointed associate counsel also has casewide responsibility to perform the duties for which he or she was appointed, whether they are appellate duties, habeas corpus duties, or appellate *and* habeas corpus duties.

Article 2. Record on Appeal

Rule 8.610. Contents and form of the record
Rule 8.613. Preparing and certifying the record of preliminary proceedings
Rule 8.616. Preparing the trial record
Rule 8.619. Certifying the trial record for completeness
Rule 8.622. Certifying the trial record for accuracy
Rule 8.625. Certifying the record in pre-1997 trials

Rule 8.610. Contents and form of the record

(a) Contents of the record

(1) The record must include a clerk's transcript containing:

(A) The accusatory pleading and any amendment;

(B) Any demurrer or other plea;

(C) All court minutes;

(D) All instructions submitted in writing, each one indicating the party requesting it;

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

(F) Any verdict;

(G) Any written opinion of the court;

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

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

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

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

(L) Any written defense motion or any written motion by the People, with supporting and opposing memoranda and attachments;

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

(N) Any document admitted in evidence to prove a prior juvenile adjudication, criminal conviction, or prison term;

(O) The probation officer's report; and

(P) Any other document filed or lodged in the case, including each juror questionnaire, whether or not the juror was selected.

(2) The record must include a reporter's transcript containing:

(A) The oral proceedings on the entry of any plea other than a not guilty plea;

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

(C) The voir dire examination of jurors;

(D) Any opening statement;

(E) The oral proceedings at trial;

(F) All instructions given orally;

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

(H) Any oral opinion of the court;

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

(J) The oral proceedings at sentencing, granting or denying of probation, or other dispositional hearing;

(K) The oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;

(L) The closing arguments;

(M) Any comment on the evidence by the court to the jury;

(N) The oral proceedings on motions in addition to those listed above; and

(O) Any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.

(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.634.

(4) The superior court or the Supreme Court may order that the record include additional material.

(Subd (a) amended effective January 1, 2007.)

(b) Confidential records

(1) All documents filed or lodged confidentially under Penal Code section 987.9 or 987.2 must be sealed. Documents filed or lodged under Penal Code section 987.9 must be bound separately from documents filed under Penal Code section 987.2. Unless otherwise ordered, copies must be provided only to the Supreme Court and to counsel for the defendant to whom the documents relate.

(2) All reporter's transcripts of in camera proceedings must be sealed. Unless otherwise ordered, copies must be provided only to the Supreme Court and to counsel for parties present at the proceedings.

(3) Records sealed under this rule must comply with rule 8.328.

(Subd (b) amended effective January 1, 2007.)

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule 8.332. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together, must be included in the record sent to the Supreme Court.

(Subd (c) amended effective January 1, 2007.)

(d) Form of record

The clerk's transcript and the reporter's transcript must comply with rule 8.144, but the indexes for the clerk's transcript must separately list all sealed documents in that transcript, and the indexes for the reporter's transcript must separately list all sealed reporter's transcripts with the date and the names of all parties present. The indexes must not list any confidential material relating to a request for funds under Penal Code section 987.9 or disclose the substance of any sealed matter.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2005.)

Rule 8.610 amended and renumbered effective January 1, 2007; adopted as rule 34.1 effective January 1, 2004; previously amended effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). Subdivision (a) restates Penal Code section 190.7(a).

Subdivision (b). Under the third sentence of (b)(1), copies of sealed documents must be given only to the Supreme Court and to the defendant concerned "[u]nless otherwise ordered." The qualification recognizes

the statutory right of the Attorney General to request, under certain circumstances, copies of documents filed confidentially under Penal Code section 987.9(d). To facilitate compliance with such requests, the second sentence of rule 8.610(b)(1) requires such documents to be bound separately from documents filed confidentially under Penal Code section 987.2.

Subdivision (d). Subdivision (d) requires that the master indexes of the clerk and reporter's transcripts separately list all documents and transcripts each contains that were filed in sealed form under subdivision (b). The purpose of this provision is to assist the parties in making—and the court in adjudicating—motions to unseal portions of the record. To protect confidentiality until a record is unsealed, however, each index must endeavor to identify the sealed matter it lists without disclosing its substance.

Rule 8.613. Preparing and certifying the record of preliminary proceedings

(a) Definitions

For purposes of this rule:

(1) The "preliminary proceedings" are all proceedings held before and including the filing of the information or indictment, whether in open court or otherwise, and include the preliminary examination or grand jury proceeding;

(2) The "record of the preliminary proceedings" is the court file and the reporter's transcript of the preliminary proceedings;

(3) The "responsible judge" is the judge assigned to try the case or, if none is assigned, the presiding superior court judge or designee of the presiding judge; and

(4) The "designated judge" is the judge designated by the presiding judge to supervise preparation of the record of preliminary proceedings.

(Subd (a) amended effective January 1, 2007.)

(b) Notice of intent to seek death penalty

In any case in which the death penalty may be imposed:

(1) If the prosecution notifies the responsible judge that it intends to seek the death penalty, the judge must notify the presiding judge and the clerk. The clerk must promptly enter the information in the court file.

(2) If the prosecution does not give notice under (1)—and does not give notice to the contrary—the clerk must notify the responsible judge 60 days before the first date set for trial that the prosecution is presumed to seek the death

penalty. The judge must notify the presiding judge, and the clerk must promptly enter the information in the court file.

(c) Assignment of judge designated to supervise preparation of record of preliminary proceedings

(1) Within five days after receiving notice under (b), the presiding judge must designate a judge to supervise preparation of the record of the preliminary proceedings.

(2) If there was a preliminary examination, the designated judge must be the judge who conducted it.

(d) Notice to prepare transcript

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must notify each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

(e) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant against whom the death penalty is sought. The transcript must include the preliminary examination or grand jury proceeding unless a transcript of that examination or proceeding has already been filed in superior court for inclusion in the clerk's transcript.

(2) The reporter must certify the original and all copies of the reporter's transcript as correct.

(3) Within 20 days after receiving the notice to prepare the reporter's transcript, the reporter must deliver the original and all copies of the transcript to the clerk.

(f) Review by counsel

(1) Within five days after the reporter delivers the transcript, the clerk must deliver the original to the designated judge and one copy to each trial counsel. If a different attorney represented the defendant or the People in the

preliminary proceedings, both attorneys must perform the tasks required by (2).

(2) Each trial counsel must promptly:

(A) Review the reporter's transcript for errors or omissions;

(B) Review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed;

(C) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(D) Review the court file to determine whether it is complete.

(Subd (f) amended effective January 1, 2007.)

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the transcript, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (f), and must serve and file either:

(A) A request for corrections or additions to the reporter's transcript or court file; or

(B) A statement that counsel does not request any corrections or additions.

(2) If a different attorney represented the defendant in the preliminary proceedings, that attorney must also file the declaration required by (1).

(3) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(4) If any counsel fails to timely file a declaration under (1), the designated judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(Subd (g) amended effective January 1, 2007.)

(h) Corrections or additions to the record of preliminary proceedings

If any counsel files a request for corrections or additions:

(1) Within 15 days after the last request is filed, the designated judge must hold a hearing and order any necessary corrections or additions.

(2) If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(3) Within 20 days after the hearing under (1), the original reporter's transcript and court file must be corrected or augmented to reflect all corrections or additions ordered. The clerk must promptly send copies of the corrected or additional pages to trial counsel.

(4) The judge may order any further proceedings to correct or complete the record of the preliminary proceedings.

(5) When the judge is satisfied that all corrections and additions ordered have been made and copies of all corrected or additional pages have been sent to the parties, the judge must certify the record of the preliminary proceedings as complete and accurate.

(6) The record of the preliminary proceedings must be certified as complete and accurate within 120 days after the presiding judge orders preparation of the record.

(Subd (h) amended effective January 1, 2007.)

(i) Computer-readable copies

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant against whom the death penalty is sought.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(Subd (i) amended effective January 1, 2007.)

(j) Delivery to the superior court

Within five days after the reporter delivers the computer-readable copies, the clerk must deliver to the responsible judge, for inclusion in the record:

(1) The certified original reporter's transcript of the preliminary proceedings and the copies that have not been distributed to counsel, including the computer-readable copies; and

(2) The complete court file of the preliminary proceedings or a certified copy of that file.

(Subd (j) amended effective January 1, 2007.)

(k) Extension of time

(1) Except as provided in (2), the designated judge may extend for good cause any of the periods specified in this rule.

(2) The period specified in (h)(6) may be extended only as follows:

(A) The designated judge may request an extension of the period by presenting a declaration to the responsible judge explaining why the time limit cannot be met; and

(B) The responsible judge may order an extension not exceeding 90 additional days; in an exceptional case the judge may order an extension exceeding 90 days, but must state on the record the specific reason for the greater extension.

(Subd (k) amended effective January 1, 2007.)

(*l*) Notice that the death penalty is no longer sought

After the presiding judge has ordered preparation of the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

(Subd (l) amended effective January 1, 2007.)

Rule 8.613 amended and renumbered effective January 1, 2007; adopted as rule 34.2 effective January 1, 2004.

Advisory Committee Comment

Rule 8.613 implements Penal Code section 190.9(a). Rules 8.613–8.622 govern the process of preparing and certifying the record in any appeal from a judgment of death imposed after a trial that began on or after January 1, 1997; specifically, rule 8.613 provides for the record of the preliminary proceedings in such an appeal. Rule 8.625 governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.

Subdivision (f). As used in subdivision (f)—as in all rules in this chapter—trial counsel "means both the defendant's trial counsel and the prosecuting attorney." (Rule 8.600(e)(2).)

Subdivision (i). Subdivision (i)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect on December 31, 2003.

Rule 8.616. Preparing the trial record

(a) Clerk's duties

(1) The clerk must promptly—and no later than five days after the judgment of death is rendered—notify the reporter to prepare the reporter's transcript.

(2) The clerk must prepare an original and eight copies of the clerk's transcript and two additional copies for each codefendant sentenced to death.

(3) The clerk must certify the original and all copies of the clerk's transcript as correct.

(b) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant sentenced to death.

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies

needed must not be retyped but must be prepared by photocopying or an equivalent process.

(3) The reporter must certify the original and all copies of the reporter's transcript as correct and deliver them to the clerk.

(c) Sending the record to trial counsel

Within 30 days after the judgment of death is rendered, the clerk must deliver one copy of the clerk's and reporter's transcripts to each trial counsel, retaining the original transcripts and the remaining copies. If counsel does not receive the transcripts within that period, counsel must promptly notify the superior court.

(d) Extension of time

(1) On request of the clerk or a reporter and for good cause, the superior court may extend the period prescribed in (c) for no more than 30 days. For any further extension the clerk or reporter must file a request in the Supreme Court, showing good cause.

(2) A request under (1) must be supported by a declaration explaining why the extension is necessary. The court may presume good cause if the clerk's and reporter's transcripts combined will likely exceed 10,000 pages.

(3) If the superior court orders an extension under (1), the order must specify the reason justifying the extension. The clerk must promptly send a copy of the order to the Supreme Court.

Rule 8.616 renumbered effective January 1, 2007; repealed and adopted as rule 35 effective January 1, 2004.

Advisory Committee Comment

Rule 8.616 implements Penal Code section 190.8(b).

Rule 8.619. Certifying the trial record for completeness

(a) Review by counsel during trial

During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.

(b) Review by counsel after trial

When the clerk delivers the clerk's and reporter's transcripts to trial counsel, each counsel must promptly:

(1) Review the docket sheets and minute orders to determine whether the reporter's transcript is complete;

(2) Consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(3) Review the court file to determine whether the clerk's transcript is complete.

(Subd (b) amended effective January 1, 2007.)

(c) Declaration and request for additions or corrections

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (b), and must serve and file either:

(A) A request to include additional materials in the record or to correct errors that have come to counsel's attention; or

(B) A statement that counsel does not request any additions or corrections.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(3) If any counsel fails to timely file a declaration under (1), the judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(Subd (c) amended effective January 1, 2007.)

(d) Completion of the record

If any counsel files a request for additions or corrections:

(1) The clerk must promptly deliver the original transcripts to the judge who presided at the trial.

(2) Within 15 days after the last request is filed, the judge must hold a hearing and order any necessary additions or corrections. The order must require that any additions or corrections be made within 10 days of its date.

(3) The clerk must promptly—and in any event within five days—notify the reporter of an order under (2). If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(4) The original transcripts must be augmented or corrected to reflect all additions or corrections ordered. The clerk must promptly send copies of the additional or corrected pages to trial counsel.

(5) Within five days after the augmented or corrected transcripts are filed, the judge must set another hearing to determine whether the record has been completed or corrected as ordered. The judge may order further proceedings to complete or correct the record.

(6) When the judge is satisfied that all additions or corrections ordered have been made and copies of all additional or corrected pages have been sent to trial counsel, the judge must certify the record as complete and redeliver the original transcripts to the clerk.

(7) The judge must certify the record as complete within 90 days after the judgment of death is rendered.

(Subd (d) amended effective January 1, 2007.)

(e) Computer-readable copies

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(f) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 30-day period to review the record under (c) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(g) Sending the certified record

When the record is certified as complete, the clerk must promptly send:

(1) To each defendant's appellate counsel and each defendant's habeas corpus counsel: one paper copy of the entire record and one computer-readable copy of the reporter's transcript. If either counsel has not been retained or appointed, the clerk must keep that counsel's copies until counsel is retained or appointed.

(2) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: one paper copy of the clerk's transcript and one computer-readable copy of the reporter's transcript.

(h) Notice of delivery

When the clerk sends the record to the defendant's appellate counsel, the clerk must serve a notice of delivery on the Supreme Court clerk.

Rule 8.619 amended and renumbered effective January 1, 2007; adopted as rule 35.1 effective January 1, 2004.

Advisory Committee Comment

Rule 8.619 implements Penal Code section 190.8(c)–(e).

Subdivision (e)(4) restates a provision of former rule 35(b), second paragraph, as it was in effect on December 31, 2003.

Rule 8.622. Certifying the trial record for accuracy

(a) Request for corrections or additions

(1) Within 90 days after the clerk delivers the record to defendant's appellate counsel, any party may serve and file a request for corrections or additions.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 8.619(d)(1)–(5) must be followed.

(2) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

(3) The judge must certify the record as accurate within 120 days after it is delivered to appellate counsel.

(Subd (b) amended effective January 1, 2007.)

(c) Computer-readable copies

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six computer-readable copies of the reporter's transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) In preparing the computer-readable copies, the procedures and time limits of rule 8.619(e)(2)–(5) must be followed.

(Subd (c) amended effective January 1, 2007.)

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 90-day period to request corrections or additions under (a) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel's progress in reviewing the record.

(e) Sending the certified record

When the record is certified as accurate, the clerk must promptly send:

(1) To the Supreme Court: the corrected original record, including the judge's certificate of accuracy, and a computer-readable copy of the reporter's transcript.

(2) To each defendant's appellate counsel, each defendant's habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a computer-readable copy of the reporter's transcript.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

Rule 8.622 amended and renumbered effective January 1, 2007; adopted as rule 35.2 effective January 1, 2004.

Advisory Committee Comment

Rule 8.622 implements Penal Code section 190.8(g).

Rule 8.625. Certifying the record in pre-1997 trials

(a) Application

This rule governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.

(b) Sending the transcripts to counsel for review

(1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.

(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be computer-readable copies complying with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date they were made.

(3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.

(c) Correcting, augmenting, and certifying the record

(1) Within 90 days after the clerk delivers the transcripts to each defendant's appellate counsel, any party may serve and file a request for correction or augmentation of the record. Any request for extension of time must be served and filed in the Supreme Court no later than five days before the 90-day period expires.

(2) If no party files a timely request for correction or augmentation, the clerk must certify on the original transcripts that no party objected to the accuracy or completeness of the record within the time allowed by law.

(3) Within 10 days after any party files a timely request for correction or augmentation, the clerk must deliver the request and the transcripts to the trial judge.

(4) Within 60 days after receiving a request and transcripts under (3), the judge must order the reporter, clerk, or party to make any necessary corrections or

do any act necessary to complete the record, fixing the time for performance. If any portion of the oral proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 8.346.

(5) The clerk must promptly send a copy of any order under (4) to the parties and to the Supreme Court, but any request for extension of time to comply with the order must be addressed to the trial judge.

(6) The original transcripts must be corrected or augmented to reflect all corrections or augmentations ordered. The clerk must promptly send copies of all corrected or augmented pages to the parties.

(7) The judge must allow the parties a reasonable time to review the corrections or augmentations. If no party objects to the corrections or augmentations as prepared, the judge must certify that the record is complete and accurate. If any party objects, the judge must resolve the objections before certifying the record.

(8) If the record is not certified within 90 days after the clerk sends the transcripts to appellate counsel under (b)(2), the judge must monitor preparation of the record to expedite certification and report the status of the record monthly to the Supreme Court.

(Subd (c) amended effective January 1, 2007.)

(d) Sending the certified record

When the clerk certifies that no party objected to the record or the judge certifies that the record is complete and accurate, the clerk must promptly send:

(1) To the Supreme Court: the original record, including the original certification by the trial judge.

(2) To each defendant's appellate counsel, the Attorney General, and the California Appellate Project in San Francisco: a copy of the order certifying the record.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

(e) Subsequent trial court orders; omissions

(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to the persons and entities listed in (d).

(2) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or court order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for further court order, the clerk must send the document or transcript—as an augmentation of the record—to the persons and entities listed in (d).

Rule 8.625 amended and renumbered effective January 1, 2007; adopted as rule 35.3 effective January 1, 2004.

Article 3. Briefs, Hearing, and Decision

Rule 8.630. Briefs by parties and amici curiae
Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court
Rule 8.638. Oral argument and submission of the cause
Rule 8.642. Filing, finality, and modification of decision; rehearing; remittitur

Rule 8.630. Briefs by parties and amici curiae

(a) Contents and form

Except as provided in this rule, briefs in appeals from judgments of death must comply as nearly as possible with rules 8.200 and 8.204.

(Subd (a) amended effective January 1, 2007.)

(b) Length

(1) A brief produced on a computer must not exceed the following limits, including footnotes:

(A) Appellant's opening brief and respondent's brief: 95,200 words.

(B) Reply brief: 47,600 words.

(C) Petition for rehearing and answer: 23,800 words.

(2) A brief under (1) must include a certificate by appellate counsel stating the number of words in the brief; counsel may rely on the word count of the computer program used to prepare the brief.

(3) A typewritten brief must not exceed the following limits:

(A) Appellant's opening brief and respondent's brief: 280 pages.

(B) Reply brief: 140 pages.

(C) Petition for rehearing and answer: 70 pages.

(4) The tables, a certificate under (2), and any attachment permitted under rule 8.204(d) are excluded from the limits stated in (1) or (3).

(5) On application, the Chief Justice may permit a longer brief for good cause.

(Subd (b) amended effective January 1, 2007.)

(c) Time to file

(1) Except as provided in (2), the times to file briefs in an appeal from a judgment of death are as follows:

(A) The appellant's opening brief must be served and filed within 210 days after the record is certified as complete or the superior court clerk delivers the completed record to the defendant's appellate counsel, whichever is later. The Supreme Court clerk must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the appellant's opening brief.

(B) The respondent's brief must be served and filed within 120 days after the appellant's opening brief is filed. The Supreme Court clerk must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the respondent's brief.

(C) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (A) and (B) are extended by 15 days for each 1,000 pages of combined transcript over 10,000 pages.

(D) The appellant must serve and file a reply brief, if any, within 60 days after the respondent files its brief.

(2) In any appeal from a judgment of death imposed after a trial that began before January 1, 1997, the time to file briefs is governed by rule 8.360(c).

(3) The Chief Justice may extend the time to serve and file a brief for good cause.

(Subd (c) amended effective January 1, 2007.)

(d) Supplemental briefs

Supplemental briefs may be filed as provided in rule 8.520(d).

(Subd (d) amended effective January 1, 2007.)

(e) Amicus curiae briefs

Amicus curiae briefs may be filed as provided in rule 8.520(f).

(Subd (e) amended effective January 1, 2007.)

(f) Briefs on the court's request

The court may request additional briefs on any or all issues.

(g) Service

(1) The Supreme Court Policy on Service of Process by Counsel for Defendant governs service of the defendant's briefs.

(2) The Attorney General must serve two copies of the respondent's brief on each defendant's appellate counsel and, for each defendant sentenced to death, one copy on the California Appellate Project in San Francisco.

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

(h) Judicial notice

To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 8.252(a).

(Subd (h) amended effective January 1, 2007.)

Rule 8.630 amended and renumbered effective January 1, 2007; repealed and adopted as rule 36 effective January 1, 2004.

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. Each word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5).

Subdivision (g). Subdivision (g)(1) is a cross-reference to Policy 4 of the Supreme Court Policies Regarding Cases Arising From Judgments of Death.

Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court

(a) Application

Except as provided in (b), rule 8.224 governs the transmission of exhibits to the Supreme Court.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(b) Time to file notice of designation

No party may file a notice designating exhibits under rule 8.224(a) until the Supreme Court clerk notifies the parties of the time and place of oral argument.

(Subd (b) amended effective January 1, 2007.)

(c) Augmenting the record in the Supreme Court

At any time, on motion of a party or on its own motion, the Supreme Court may order the record augmented or corrected as provided in rule 8.155.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2004.)

Rule 8.634 amended and renumbered effective January 1, 2007; adopted as rule 36.1 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.638. Oral argument and submission of the cause

(a) Application

Except as provided in (b), rule 8.524 governs oral argument and submission of the cause in the Supreme Court unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2004.)

(b) Procedure

(1) The appellant has the right to open and close.

(2) Each side is allowed 45 minutes for argument.

(3) Two counsel may argue on each side if, within 10 days after the date of the order setting the case for argument, they notify the court that the case requires it.

(Subd (b) amended effective January 1, 2004.)

Rule 8.638 amended and renumbered effective January 1, 2007; adopted as rule 36.2 effective January 1, 2003; previously amended effective January 1, 2004.

Rule 8.642. Filing, finality, and modification of decision; rehearing; remittitur

Rules 8.532 through 8.540 govern the filing, finality, and modification of decision, rehearing, and issuance of remittitur by the Supreme Court in an appeal from a judgment of death.

Rule 8.642 amended and renumbered effective January 1, 2007; adopted as rule 36.3 effective January 1, 2004.

Division 2. Rules on Appeal to the Superior Court

Chapter 1. Appellate Division Rules

Rule 8.700. Appellate rules
Rule 8.701. Appellate division assignments
Rule 8.702. Sessions
Rule 8.703. Powers of presiding judge
Rule 8.704. Calendars and notice of hearing
Rule 8.705. Motions
Rule 8.706. Briefs and records
Rule 8.707. Decisions
Rule 8.708. Finality, modification, and rehearing

Rule 8.709. Consent to modification

Rule 8.700. Appellate rules

All references in the California Rules of Court to "appellate department" mean "appellate division." Rules that apply to an appeal taken from a municipal court judgment to the appellate division of the superior court apply to an appeal taken from a unified superior court (trial court) judgment to the appellate division of the unified superior court (reviewing court).

Rule 8.700 renumbered effective January 1, 2007; adopted as rule 100 effective June 3, 1998.

Rule 8.701. Appellate division assignments

(a) Goal

The Chief Justice, in making appointments to the appellate division of the superior or unified court, will consider the goal of promoting the independence and the quality of the appellate division.

(b) Factors considered

Factors to be used in making the appointments may include:

(1) Length of service as a judge;

(2) Reputation within the judicial community;

(3) Degree of separateness of the appellate division work from the judge's regular assignments; and

(4) Any recommendation of the presiding judge.

(Subd (b) amended effective January 1, 2007.)

(c) Judges assigned

Judges assigned may include judges from another county; judges retired from the superior or unified court, or court of higher jurisdiction; or a panel of judges from different superior or unified courts who sit in turn in each of those superior or unified courts.

(d) Terms of service

In specifying terms of service to the appellate division, the Chief Justice will consider the needs of the court.

Rule 8.701 amended and renumbered effective January 1, 2007; adopted as rule 100.5 effective June 3, 1998.

Rule 8.702. Sessions

The appellate department of a superior court shall hold one or more regular sessions each month at a time or times and at a place to be determined by the judges of the department by order entered in the minutes. The department may hold sessions at any other time and place found necessary or convenient.

Rule 8.702 renumbered effective January 1, 2007; adopted as rule 101.

Rule 8.703. Powers of presiding judge

The presiding judge of the appellate department may convene the court at any time and shall supervise the business of the department. Except as otherwise provided in these rules, applications to extend time for filing briefs, applications to extend or shorten time for opposing a motion, and applications relating to other matters of routine shall be served and filed; but the presiding judge of the reviewing court may require an additional showing to be made and for good cause may excuse advance service. The application may be granted or denied by the presiding judge, unless the court otherwise determines.

In the absence of the presiding judge, the regular judge of the department among those present who is senior in service thereon shall act as presiding judge, and in the case of equal seniority then the judge who is also senior in service in the superior court shall act as presiding judge. The words “presiding judge,” wherever used in these rules, include the acting presiding judge.

Rule 8.703 renumbered effective January 1, 2007; adopted as rule 102; previously amended effective July 1, 1972, January 1, 1977, and July 1, 1996.

Rule 8.704. Calendars and notice of hearing

(a) Calendar

The clerk of the court, unless otherwise ordered, shall place upon the calendar for hearing at each regular session all appeals of which such department has jurisdiction, wherein the records on appeal were filed not less than 50 days prior to

the date of the session. Any appeal may, by order of the presiding judge or the department, be placed on the calendar for hearing at any session of the department.

(Subd (a) amended effective July 1, 1980; previously amended effective January 1, 1967, and July 1, 1976.)

(b) Notice of hearing

As soon as the record on appeal in any case is filed, the clerk shall mail to the attorney appearing of record for each party, or if any party has appeared without attorney, then to such party personally, at the address of such attorney, or party appearing in the record, a notice stating that said record has been filed and giving the date at which the appeal will be heard and the dates when each party must file briefs, as provided in these rules. Failure of the clerk to mail any such notice shall not affect the jurisdiction of the appellate department.

Rule 8.704 renumbered effective January 1, 2007; adopted as rule 103.

Rule 8.705. Motions

(a) Motions and opposition

Except as otherwise provided in these rules all motions in the reviewing court shall be made by the filing of a typewritten motion, with proof of service on all other parties, stating the grounds of the motion, the papers, if any, on which it is based, and the order or other relief requested. Each copy of the motion shall be accompanied by a memorandum of points and authorities, and if the motion is based on matters not appearing of record by affidavits or other evidence in support thereof. Any showing in opposition to the motion shall be served and filed within 7 days after the filing of the motion.

(Subd (a) amended effective January 1, 1977.)

(b) Disposition of motion

Motions may be disposed of after opposition has been filed or the time for filing opposition has expired. The reviewing court may place any motion on the calendar for hearing or may otherwise dispose of the motion as it may determine. When a motion has been placed on the calendar for hearing, the clerk shall mail to each party a notice showing the date and time designated for the hearing.

(Subd (b) adopted effective January 1, 1977.)

Rule 8.705 renumbered effective January 1, 2007; adopted as rule 104.

Rule 8.706. Briefs and records

(a) Time for filing

In civil and criminal cases the appellant shall file an opening brief within 20 days after the filing of record on appeal; the respondent shall file a brief within 20 days after the filing of appellant's opening brief, and the appellant may file a reply brief within 10 days after the filing of respondent's brief, but not later than the time of the hearing. Any party may join another party or other parties in a brief or may adopt by reference any brief in the same or a companion case.

(Subd (a) amended effective July 1, 1980; previously amended effective January 1, 1967, and July 1, 1976.)

(b) Brief of amicus curiae

A brief of amicus curiae may be filed on permission first obtained from the presiding judge, subject to conditions he or she may prescribe. If the brief is in support of the position of one of the parties, that fact shall be noted in the brief's heading.

The Attorney General may file an amicus curiae brief without obtaining the presiding judge's permission, unless the Attorney General is presenting the brief on behalf of another state officer or agency; but the presiding judge may prescribe reasonable conditions for filing and answering the brief.

(Subd (b) amended effective July 1, 2000.)

(c) Contents of briefs

Each brief shall state concisely the propositions of both law and fact relied on by the party filing it, with reference (by line and page, if possible) to the parts of the record supporting such propositions of fact and citations of the authorities for such propositions of law. Each point to be made, with the argument in support thereof, shall be presented separately under an appropriate heading with subheadings if desired, showing its nature. No quotation or extract from the record or from any legal authority shall exceed 15 full lines of typewriting, and no brief shall exceed 15 pages in length, except by permission of the presiding judge.

(d) Format

All briefs shall be prepared as provided in rule 8.204(b), except that such briefs shall be bound at the top.

(Subd (d) amended effective January 1, 2007; previously amended effective July 1, 1969, July 1, 1971, January 1, 1976, and July 1, 1996.)

(e) Service and filing

Every brief shall, before filing, be served by the party filing it on each adverse party who has appeared separately, and every brief of amicus curiae shall, before filing, be served on all parties to the appeal. The original brief, with proof of service thereof, shall be filed with the clerk. The clerk shall not file any brief which does not conform to these rules or which is tendered to him for filing after the time fixed by these rules or by any order extending or fixing the time therefor, unless by order of the presiding judge. The presiding judge may make such order, in his discretion, where the infraction of the rules is of minor character and will not affect the rights of the parties or seriously hamper the court in its examination of the appeal. Service in unfair competition cases under Business and Professions Code section 17209 must also comply with rule 8.212(c).

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 2000.)

(f) Copy for trial judge

No brief shall be filed without proof of the deposit of one copy with the clerk of the trial court for delivery to the judge who presided at the trial of the case. The clerk shall deliver the brief to the judge and need not maintain a copy in the court file.

(Subd (f) amended effective July 1, 1977; adopted effective July 1, 1972.)

(g) Use of recycled paper for records on appeal from limited civil cases and for briefs filed in the appellate divisions

The use of recycled paper is required for the original record on appeal from a limited civil case and for any brief filed with the court in a matter to be heard in the appellate division. The use of recycled paper is required for all copies of these documents filed with the court or served on other parties.

(Subd (g) adopted effective July 1, 1999.)

(h) Unfair competition cases

In an unfair competition proceeding under Business and Professions Code section 17200 et seq., each brief and each petition shall contain the following statement on

the front cover: "Unfair competition case. (See Bus. & Prof. Code, § 17209 and Cal. Rules of Court, rule 8.212(c).)"

(Subd (h) amended effective January 1, 2007; adopted effective July 1, 2000.)

Rule 8.706 amended and renumbered effective January 1, 2007; adopted as rule 105; previously amended effective January 1, 1967, July 1, 1969, July 1, 1971, July 1, 1972, January 1, 1976, July 1, 1976, July 1, 1977, July 1, 1980, July 1, 1996, July 1, 1997, July 1, 1999, and July 1, 2000.

Rule 8.707. Decisions

(a) Time to decide

The appellate division must hear and decide, or take under submission, each appeal at the session in which it was set for hearing unless, for good cause entered in the minutes, the court continues the case to another date or orders it submitted on briefs to be filed.

(b) Written opinions

Appellate division judges are not required to prepare a written opinion in any case but may do so when they deem it advisable or in the public interest. Appellate division opinions certified for publication must comply to the extent practicable with the *California Style Manual*.

(c) Transmitting opinions

When the judgment is final as to the appellate division in a case in which the opinion is certified for publication, the clerk must immediately send to the Reporter of Decisions two paper copies and one electronic copy in a format approved by the Reporter, and to the Court of Appeal for the district another copy bearing the notation "To be published in the Official Reports." The Court of Appeal clerk must promptly file that copy or make a docket entry showing its receipt.

Rule 8.707 renumbered effective January 1, 2007; repealed and adopted as rule 106 effective January 1, 2003.

Rule 8.708. Finality, modification, and rehearing

(a) When judgment is final

An appellate division judgment is final:

(1) 15 days after judgment is pronounced; or

(2) If a party timely files a petition for rehearing or application for certification, 30 days after judgment is pronounced or when all such petitions or applications are denied, whichever is earlier.

(Subd (a) amended effective January 1, 2007.)

(b) Modification of judgment

The appellate division may modify its judgment until the judgment is final in that court. An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the time for the judgment's finality. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(c) Rehearing

(1) On petition of a party or on its own motion, the appellate division may order rehearing at any time before its judgment is final.

(2) A party may serve and file a petition for rehearing within 15 days after judgment is pronounced or a modification order changing the appellate judgment is filed.

(3) Any answer to the petition must be served and filed within 8 days after the petition is filed.

(4) The petition and answer must comply as nearly as possible with rules 8.500 and 8.504.

(5) If the appellate division orders rehearing, it may place the case on calendar for further argument or submit it for decision.

(Subd (c) amended effective January 1, 2007.)

(d) Extensions of time

The periods specified in this rule may not be extended except as provided in Code of Civil Procedure section 12a.

Rule 8.708 amended and renumbered effective January 1, 2007; repealed and adopted as rule 107 effective January 1, 2003.

Rule 8.709. Consent to modification

If the appellate department orders that a judgment be reversed and a new trial granted or that, in the alternative, the judgment be affirmed on condition that the party in whose favor judgment has been rendered consent to a remission of a portion thereof, or on condition that the party against whom the judgment has been rendered consent to an addition thereto, then, unless otherwise ordered, the judgment of reversal and granting of a new trial shall become effective unless within 15 days after the filing of the decision two copies of a written consent by such party to the remission or addition is filed in the appellate department, and becomes final as provided in rule 8.708. The filing of written consent is not a modification of the judgment, within the meaning of rule 8.708. A copy of the consent shall be transmitted with the remittitur to the trial court.

Rule 8.709 amended and renumbered effective January 1, 2007; adopted as rule 108; previously amended effective July 1, 1980.

Chapter 2. Appeals to the Appellate Division in Limited Civil Cases

Rule 8.750. Filing notice of appeal
Rule 8.751. Time of filing notice of appeal
Rule 8.752. Extension of time and cross-appeal
Rule 8.753. Reporter's transcript
Rule 8.754. Clerk's transcript and original papers
Rule 8.755. Agreed statement
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Rule 8.757. Correction and certification of record
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Rule 8.760. Record on cross-appeal
Rule 8.761. Augmentation and correction of record
Rule 8.762. Abandonment and dismissal
Rule 8.763. Hearing
Rule 8.764. Costs on appeal
Rule 8.765. Definitions
Rule 8.766. Applications on routine matters
Rule 8.767. Extension and shortening of time
Rule 8.768. Substitution of parties and attorneys
Rule 8.769. Writ of supersedeas
Rule 8.770. Substitute judge where trial judge unavailable
Rule 8.771. Presumption where record not complete
Rule 8.772. Scope and construction
Rule 8.773. Remittitur

Rule 8.750. Filing notice of appeal

(a) Form of notice

An appeal in a civil case, except a small claims case, from a judgment of a municipal or justice court or from a particular part thereof is taken by filing with the clerk of that court a notice of appeal therefrom. The notice shall be signed by the appellant or by his attorney and shall be sufficient if it states in substance that the appellant appeals from a specified judgment or a particular part thereof. A notice of appeal shall be liberally construed in favor of its sufficiency.

(Subd (a) amended effective January 1, 1977; previously amended effective July 1, 1964.)

(b) Notification by clerk

The clerk of the trial court shall forthwith mail a notification of the filing of the notice of appeal to the attorney of record of each party other than the appellant, or if the party is not represented by an attorney, then to the party at his last known address. The notification shall state the number and title of the action or proceeding and the date the notice of appeal was filed. Such mailing is a sufficient performance of the clerk's duty notwithstanding the death of the party or the death, discharge, suspension, disbarment or disqualification of his attorney prior to the giving of the notification. The failure of the clerk to give such notification shall not affect the validity of the appeal.

(c) Payment of filing fee in civil appeals

At the time of filing the notice of appeal or within 10 days thereafter the appellant shall pay to the clerk of the municipal or justice court the filing fee prescribed by section 26824 of the Government Code. The filing fee shall be nonrefundable.

(Subd (c) adopted effective January 1, 1980.)

(d) Excuse from payment of filing fee

If the appellant is indigent, payment of the filing fee may be excused on the same basis as payment of a filing fee in the trial court is excused.

(Subd (d) adopted effective January 1, 1980.)

(e) Notice of cross appeal

As used in this rule, “notice of appeal” includes notice of cross appeal, and “appellant” includes any party who files a cross appeal.

(Subd (e) adopted effective January 1, 1980.)

Rule 8.750 renumbered effective January 1, 2007; adopted as rule 121; previously amended effective July 1, 1964, January 1, 1977, and January 1, 1980.

Rule 8.751. Time of filing notice of appeal

(a) Normal time

Except as otherwise provided by statute or rule 8.752, a notice of appeal shall be filed on or before the earliest of the following dates:

(1) 30 days after the date of mailing by the clerk of the court of a document entitled “notice of entry” of judgment or appealable order;

(2) 30 days after the date of service of a document entitled “notice of entry” of judgment or appealable order by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or

(3) 90 days after the date of entry of the judgment.

For the purposes of this subdivision, a file-stamped copy of the judgment or appealable order may be used in place of the document entitled “notice of entry.”

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1964, September 17, 1965, July 1, 1978, January 1, 1982, September 22, 1982, and January 1, 1991.)

(b) What constitutes entry

For the purposes of this rule:

(1) The date of entry of a judgment shall be the date of its entry in the minute book or docket unless the entry expressly directs that a written order be prepared, signed and filed, in which case the date of entry shall be the date of filing of the signed order.

(2) The date of entry of an order which is not entered in the minutes or docket shall be the date of filing of the order signed by the court.

(Subd (b) amended effective July 1, 1964.)

(c) Premature notice

A notice of appeal filed prior to entry of the judgment, but after its rendition, shall be valid and shall be deemed to have been filed immediately after entry. A notice of appeal filed prior to rendition of the judgment, but after the judge has announced his intended ruling, may, in the discretion of the reviewing court for good cause, be treated as filed immediately after entry of the judgment.

(Subd (c) amended effective January 5, 1953.)

Rule 8.751 amended and renumbered effective January 1, 2007; adopted as rule 122; previously amended effective January 5, 1953, July 1, 1964, September 17, 1965, July 1, 1978, January 1, 1982, September 22, 1982, and January 1, 1991.

Rule 8.752. Extension of time and cross-appeal

(a) New trial proceeding

When a valid notice of intention to move for a new trial is served and filed by any party within the time in which, under rule 8.751, a notice of appeal may be filed, and the motion is denied, the time for filing the notice of appeal from the judgment is extended for all parties until 15 days after either entry of the order denying the motion or denial thereof by operation of law, but in no event may such notice of appeal be filed later than 90 days after the date of entry of the judgment whether or not the motion for new trial has been determined.

(Subd (a) amended effective January 1, 2007; previously amended effective January 5, 1953, January 2, 1962, September 17, 1965, and January 1971.)

(b) Motion to vacate

When a valid notice of intention to move to vacate a judgment or to vacate a judgment and enter another and different judgment is served and filed by any party on any ground within the time in which, under rule 8.751, a notice of appeal from the judgment may be filed, or such shorter time as may be prescribed by statute, and the motion is denied or not decided by the trial court within 75 days after entry of the judgment, the time for filing the notice of appeal from the judgment is extended for all parties until 15 days after entry of the order denying the motion to vacate or until 90 days after entry of the judgment, whichever shall be less.

(Subd (b) amended effective January 1, 2007; previously amended effective January 5, 1953, January 2, 1962, July 1, 1964, September 17, 1965, and January 1, 1971.)

(c) Cross-appeal

When a timely notice of appeal is filed under subdivision (a) of rule 8.751 or under subdivision (a) or (b) of this rule, any other party may file a notice of appeal within 10 days after mailing of notification by the trial court clerk of such first appeal or within the time otherwise prescribed by the applicable subdivision, whichever period last expires. If a timely notice of appeal is filed from an order granting a motion for a new trial or granting, within 75 days after entry of judgment, a motion to vacate the judgment or to vacate judgment and enter another and different judgment, any party other than the appellant, within 10 days after mailing of notification by the trial court clerk of such appeal, may file a notice of appeal from the judgment or from an order denying a motion for judgment notwithstanding the verdict, and on that appeal may present any question which he might have presented on an appeal from the judgment as originally entered or from the order denying a motion for judgment notwithstanding the verdict.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 1971; previously amended effective January 1, 1976.)

(d) Notification of cross-appeal

On the filing by a party of a notice of cross-appeal, the trial court clerk shall mail a notification thereof as provided in subdivision (b) of rule 8.750.

(Subd (d) amended effective January 1, 2007; adopted as subd (c); previously amended and renumbered effective January 1, 1971.)

Rule 8.752 amended and renumbered effective January 1, 2007; adopted as rule 123; previously amended effective January 5, 1953, January 2, 1962, July 1, 1964, September 17, 1965, January 1, 1971, and January 1, 1976.)

Rule 8.753. Reporter's transcript

(a) Notice to prepare transcript

When an appellant desires to present any point which requires a consideration of the oral proceedings, including oral instructions given or refused by the court, he shall serve on the respondent and file with the clerk of the trial court, within 10 days after filing of the notice of appeal, a notice to prepare a reporter's transcript of the oral proceedings and such oral instructions given or refused as he shall desire transcribed. A copy of this notice shall be transmitted by the clerk without delay to the reporter who shall within 10 days thereafter file his estimate with the clerk or notify the clerk in writing of the date that he notified the appellant directly of the estimated cost of preparing the reporter's transcript on appeal. The voir dire

examination of jurors, the opening statements, the arguments to the jury, and the proceedings on a motion for new trial shall not be transcribed as part of the oral proceedings unless they are specified in the notice to the clerk. The oral proceedings shall include such portions of depositions as have been received in evidence and such portions thereof as shall have been offered and rejected. The portions rejected and the objections thereto shall be clearly indicated.

(Subd (a) amended effective July 1, 1964; previously amended effective January 5, 1953.)

(b) Partial transcript by stipulation or designation

The parties, by stipulation filed with the clerk of the trial court within the time prescribed for filing the notice to prepare a reporter's transcript, may direct that any part of the oral proceedings be not transcribed. If the appellant, in his notice to the clerk, states the points to be raised by him on the appeal, he may designate the portions of the oral proceedings to be transcribed, or direct the omission of any portions which he deems unnecessary, and in such event shall be precluded from presenting any grounds for reversal not embraced within the points stated by him, unless the reviewing court on motion shall permit the appellant to present additional errors or grounds of appeal on such terms as it may prescribe. Within 10 days after the service of the appellant's notice to prepare the reporter's transcript pursuant to this rule, or to prepare the clerk's transcript pursuant to subdivision (a) of rule 8.754, the respondent may serve and file a notice designating the oral proceedings, including oral instructions given or refused not designated in the appellant's notice, which he desires transcribed. Only those portions of the oral proceedings and instructions designated in the notices of the parties shall be transcribed; provided, however, that if any portion of the testimony of a witness is designated by either party for inclusion in the reporter's transcript, the whole of his testimony shall be included unless the parties otherwise stipulate.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964.)

(c) Deposit or waiver of reporter's charges

The notice given by the appellant under the foregoing provisions of this rule shall not be effective for any purpose unless, within 10 days after notification from the clerk of his estimate of the cost of preparing the reporter's transcript as designated by the notices of the parties, or within 10 days after being notified directly by the reporter, the appellant shall either deposit with the clerk an amount of cash equal to the estimated cost with directions to apply the same to the fees of the reporter or file with the clerk a waiver of such deposit signed by the reporter. When the appellant has complied with the provisions hereof, the clerk shall forthwith direct the reporter to prepare the reporter's transcript in accordance with the notices of the parties.

(Subd (c) amended effective January 5, 1953.)

(d) Preparation of transcript

Within 20 days after direction from the clerk or the receipt of the fees from the appellant the reporter shall complete and file with the clerk an original reporter's transcript as directed, and certify the same as correct. One week after the deadline for filing the transcript, the clerk shall accept completed portions of the transcript from the lead reporter in a multi-reporter case even if not all portions of the transcript are complete. The clerk shall pay promptly each reporter who certifies under penalty of perjury that all of his or her portions of the transcript are completed. The reporter shall note in the transcript all places where omissions of any oral proceedings occur (and the nature of the omitted matter) and shall also indicate the place where exhibits were received in evidence or were offered and marked for identification, and shall identify the exhibits so received or so offered. The reporter shall not transcribe or copy in the reporter's transcript any documents which, under the provisions of rule 8.754, may be included in the clerk's transcript on appeal.

(Subd (d) amended effective January 1, 2007; previously amended effective January 5, 1953, and January 1, 1992.)

(e) Settled statement where transcript unavailable

If, without fault of the appellant, the reporter refuses or becomes unable or fails to transcribe all or any portion of the oral proceedings designated by the parties, any party may, within 15 days after the expiration of the time allowed by this rule for such transcription, or of any lawful extension thereof, and on 5 days' written notice, make a motion for leave to prepare a statement of the portions of the oral proceedings which the reporter refuses, is unable, or fails to transcribe. If the trial court grants the motion, proceedings for the settlement of the statement shall be had as provided in rule 8.756, except that the party making the motion shall serve and file his proposed statement within 20 days after the making of the order granting leave therefor and the adverse party shall serve and file his proposed amendments to such statement within 10 days after service of the statement. If the settled statement contains all the oral proceedings, it shall become a part of the record on appeal in lieu of the reporter's transcript, but if it contains only a portion of the oral proceedings, it shall be incorporated in the reporter's transcript. This remedy is in addition to any remedy given by law.

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 1964.)

Rule 8.753 amended and renumbered effective January 1, 2007; adopted as rule 124; previously amended effective January 5, 1953, July 21, 1964, and January 1, 1992.

Rule 8.754. Clerk's transcript and original papers

(a) Appellant's designation of papers or records

Within 10 days after filing the notice of appeal, the appellant shall serve on the respondent and file with the clerk of the trial court a notice designating the papers or records on file or lodged with the clerk, including the clerk's minutes and any written opinion of the trial court and exhibits either admitted in evidence or rejected, and any notices, affidavits, orders, and written instructions given or refused, which he desires incorporated in the record on appeal. The notice designating papers and records and the notice to prepare the reporter's transcript may be included in the same document, and both notices may be included in the document containing the notice of appeal.

(Subd (a) amended effective July 1, 1964.)

(b) Designation by respondent or by stipulation

Within 10 days after service of the appellant's notice, the respondent may serve on the appellant and file with the clerk a notice designating additional papers or records, including the clerk's minutes, any written opinion of the trial court, and exhibits either admitted in evidence or rejected, and any notices, affidavits, orders, and written instructions given or refused, to be included in the record on appeal. In lieu of such individual notices the parties, within 10 days after the filing of the notice of appeal, may file a written stipulation designating the papers or records to be included in the record on appeal.

(Subd (b) amended effective July 1, 1964.)

(c) Clerk's charges

The notice given by the appellant under the foregoing provisions of this Rule shall not be effective for any purpose unless, within 10 days after notification from the clerk of his estimate of the cost of preparing the transcript, the appellant shall make arrangements with the clerk for the payment thereof.

(d) Preparation of clerk's transcript

Within 10 days after the appellant has arranged for payment of the cost of the transcript, as provided in (c), the clerk shall prepare and certify a transcript consisting of either copies or originals, as specified in (e), of:

The following whether designated in the notices or stipulations or referred to in the statements of the parties or not:

(1) The notice of appeal;

(2) The notices or stipulations to prepare the clerk's transcript and the reporter's transcript, if any, and the notices or stipulations for the preparation of a settled statement or agreed statement, if any;

(3) The judgment appealed from with an endorsement by the clerk showing the date notice of entry thereof was mailed by the clerk or served by a party; and

(4) Any notice of intention to move for a new trial or motion to vacate the judgment, and the ruling thereon, if any; and

The following, if they have been designated by any of the parties:

(5) The judgment roll, or such parts thereof as have been designated by the parties; and

(6) Any other papers or records, including exhibits admitted in evidence or rejected, notices, affidavits, orders, and written instructions given or refused, on file or lodged with the clerk.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 1953, July 1, 1968, and July 1, 1971.)

(e) Matters not to be copied

Except when the record on appeal is prepared by a photocopying process as provided in subdivision (a) of rule 8.144, captions and formal parts of papers and verifications and proofs of service of such papers shall be omitted unless one of the parties expressly requests their inclusion, but the clerk shall state in his transcript the nature of such omitted matters. No exhibit admitted in evidence or rejected, notice, affidavit, pleading, order, written instructions given or refused, or other paper on file or lodged with the clerk (except the notice of appeal) shall be copied if it is possible for the clerk to transmit the original to the reviewing court, but where such matters are properly designated by the parties in either notice or stipulation, or referred to in the list accompanying an agreed statement, or are otherwise required

by these rules, the clerk shall include the originals thereof in the record on appeal, and transmit them to the reviewing court. The notice of appeal, matters appearing only in the minutes or other records of the trial court, and anything properly designated or referred to, the original of which it is not possible to transmit, shall be copied by the clerk, and the copies made part of the record on appeal. In no event shall the clerk copy in his transcript or transmit to the reviewing court (except by order of that court or stipulation of the parties) the original of any deposition.

(Subd (e) amended effective January 1, 2007; previously amended effective July 1, 1964, and July 1, 1971.)

(f) Appeal on judgment roll

Where the appellant has designated only a clerk's transcript consisting of part or all of the matters specified in (a) and (b) and has not given notice to prepare a reporter's transcript, the respondent may not require the preparation of a reporter's transcript but he may counterdesignate any exhibits, affidavits, papers or records which may properly be included in a clerk's transcript. Where the appellant has designated only the papers and records constituting the judgment roll and has not given notice to prepare a reporter's transcript, the judgment roll shall constitute the record on appeal, and the respondent may not require any addition thereto: In either case, however, on motion of the respondent the reviewing court may allow augmentation of the record whenever it is necessary to prevent a miscarriage of justice.

(Subd (f) amended effective January 1, 2007; previously amended effective January 5, 1953.)

Rule 8.754 amended and renumbered effective January 1, 2007; adopted as rule 125; previously amended effective January 1, 1953, January 5, 1953, July 1, 1964, July 1, 1968, and July 1, 1971.

Rule 8.755. Agreed statement

(a) Contents of agreed statement

An appeal may be presented on a record consisting in whole or in part of an agreed statement. Within 30 days after filing the notice of appeal, the appellant shall file with the clerk of the trial court the original statement signed by the parties. The statement shall show the nature of the controversy, the basis on which it is claimed that the reviewing court has jurisdiction and how the questions arose in and were decided by the trial court, and should set forth only such facts alleged and proved, or sought to be proved, as are necessary to a determination of the questions on appeal. The statement shall contain a copy of the judgment and a copy of the notice of appeal with its filing date, together with any notice of intention to move for a new trial or motion to vacate the judgment, the ruling thereon, if any, and a recital

or resumé of any oral proceedings thereon. The statement shall be accompanied by a list of such exhibits admitted in evidence or rejected, notices, affidavits, orders, instructions given or refused, or other papers on file or lodged with the clerk, as the parties desire to have transmitted to the reviewing court, with the statement.

(Subd (a) amended effective July 1, 1964; previously amended effective January 5, 1953.)

(b) Extension of time

Within 10 days after filing the notice of appeal, the parties may file with the clerk of the trial court a preliminary stipulation stating that they are attempting to prepare an agreed statement. This stipulation shall have the effect of extending for a period of 40 days from the date of filing of the notice of appeal the time for service and filing of the notices of the appellant provided for in rules 8.753, 8.754, and 8.756 in the event that the parties are unable to agree on a statement.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964.)

Rule 8.755 amended and renumbered effective January 1, 2007; adopted as rule 126; previously amended effective January 5, 1953, and July 1, 1964.

Rule 8.756. Settled statement

(a) Proposal of narrative statement

If, in lieu of a reporter's transcript, the appellant desires to set forth the oral proceedings by a settled statement, he shall serve and file a notice so stating within 10 days after filing the notice of appeal. Within 20 days thereafter the appellant shall serve and file a condensed statement in narrative form of all or such portions of the oral proceedings as he deems material to the determination of the points on appeal. Where necessary for the purposes of accuracy, clarity or convenience, portions of the evidence may be set forth by question and answer, subject to the approval of the court in settling the statement. If the condensed statement purports to cover only a portion of the oral proceedings, the appellant shall state the points to be raised by him on appeal, and in such event shall be precluded from presenting any grounds for reversal not embraced within the points stated by him unless the reviewing court, on motion, shall permit him to present additional errors or grounds of appeal on such terms as it may prescribe. Within 10 days after service of said narrative statement the respondent may serve and file his proposed amendments thereto. The appellant in his condensed statement and the respondent in his proposed amendments may incorporate any oral instructions given or refused which such party deems material.

(b) Appellant's transcript available to respondent

If the appellant has prepared his proposed statement from an entire or partial transcript of the oral proceedings, and after service of his proposed statement declines to make such transcript available to the respondent, the municipal court, on such terms and conditions as it deems just, may direct the appellant to make his copy of the transcript available to the respondent. If the appellant fails to comply with such direction, the court on motion of the respondent shall strike the proposed statement from the files.

(c) Settlement and engrossment

On the filing by the respondent of his proposed amendments or on the expiration of the time therefor (whichever shall first occur), the clerk shall set a time not more than 10 days thereafter for settlement of the statement by the judge who tried the case, and shall give not less than 5 days' notice by mail to all parties of the time set. At the time set, or at the time to which the judge may continue the hearing, he shall settle the statement and fix the time within which the appellant shall engross it as settled. Within the time so fixed the appellant shall engross the statement in accordance with the order of the judge and shall serve and file the engrossed statement. If the respondent does not serve and file objections to the engrossed statement within five days thereafter, it shall be presumed that it is engrossed in accordance with the order of the judge and shall be presented by the clerk to the judge for certification. If the parties stipulate that the statement as originally served or as engrossed is correct, such stipulation shall have the same effect as certification thereof by the judge.

Rule 8.756 renumbered effective January 1, 2007; adopted as rule 127.

Rule 8.757. Correction and certification of record

(a) Request for correction of record

Immediately on the completion of the clerk's and reporter's transcripts the clerk shall mail notice thereof to all parties, and within 10 days after mailing of such notice, any party may file a request for correction of such transcripts. If no request for correction is filed within such time, the clerk shall certify the record as correct.

(b) Hearing and certification

If any party files a request for correction of the transcripts within such time, the clerk shall set a time not more than 10 days thereafter for certification of the transcripts by the judge who tried the case, and shall give not less than 5 days'

notice thereof by mail to all parties. At the time set or at the time to which the judge may continue the hearing, he shall determine the request for correction, and if none is allowed, shall certify the transcripts as correct. If corrections are allowed by the judge, he shall fix the time within which they shall be made by the clerk or reporter, and on the transcripts being corrected as directed, shall certify them as correct. If no time for correction is fixed by the trial judge, the corrections shall be made by the clerk or reporter within 30 days after their allowance. The parties at any time may stipulate that the whole or any portion of the record is correct, and such stipulation shall render unnecessary the certification by either the clerk or judge of the record or the portion stipulated to by the parties.

Rule 8.757 renumbered effective January 1, 2007; adopted as rule 128; previously amended effective January 5, 1953.

Rule 8.758. Form of record

(a) Size of paper, etc.

The reporter's transcript shall be prepared as provided in subdivision (b) of rule 8.144. All papers copied by the clerk for the record shall be prepared as provided in subdivision (a) of rule 8.144.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1968, July 1, 1969, and July 1, 1971.)

(b) Indexes

The clerk shall include at the beginning of each volume of his transcript an alphabetical and a chronological index referring to each paper or record therein, and he shall also include a list of original exhibits, notices, affidavits, orders, written instructions given or refused, and other papers included in the record with a brief description of each of them. The reporter shall include at the beginning of each volume of his transcript an alphabetical and a chronological index referring to the page at which the direct examination, the cross-examination, the redirect examination, and the recall of each witness begins. He shall also indicate in a separate table in the first volume of the reporter's transcript the page at which any exhibit or other document copied therein appears, and the page at which he has noted the omission of any exhibit or other document. The contents of each transcript shall be arranged chronologically. So far as practicable the arrangement and indexing of an agreed or settled statement shall conform to the foregoing requirements.

(Subd (b) amended effective July 1, 1971.)

(c) Binding and cover

The reporter's transcript shall be bound in volumes of not more than 300 pages. The cover of each volume shall be of the same size as the pages therein, and there shall be endorsed thereon the title of the case, the name of the trial judge and judicial district, and the names and addresses of the attorneys representing the parties on the appeal.

(Subd (c) amended effective January 5, 1953.)

Rule 8.758 amended and renumbered effective January 1, 2007; adopted as rule 129; previously amended effective January 5, 1953, January 1, 1968, July 1, 1969, and July 1, 1971.

Rule 8.759. Transmission and filing of record

When the appellant has paid or been excused from paying the filing fee and the record on appeal has been completed in accordance with these rules, the clerk of the trial court shall forthwith transmit the record to the county clerk for filing, and may be compelled to do so by order of the reviewing court, made on motion.

Rule 8.759 renumbered effective January 1, 2007; adopted as rule 130; previously amended effective July 1, 1964, July 1, 1970, January 1, 1977, and January 1, 1980.

Rule 8.760. Record on cross-appeal

Where several parties appeal from the same judgment or any part or parts thereof, or where there is a cross-appeal pursuant to rule 8.752, a single record on appeal shall be prepared and filed within the time prescribed for filing the record in the latest appeal. Such record shall be prepared in accordance with rules 8.753 and 8.754 unless all appellants give notice of intention to proceed under rule 8.756, or unless the parties stipulate to proceed under rule 8.755. Unless the trial court orders otherwise, the initial expense of preparing the record shall be borne equally by the parties appealing.

Rule 8.760 amended and renumbered effective January 1, 2007; adopted as rule 131; previously amended effective January 5, 1953, and July 1, 1964.

Rule 8.761. Augmentation and correction of record

(a) Augmentation

On suggestion of any party or on its own motion, the reviewing court, on such terms as it deems proper, may order that the original or a copy of a paper, record or exhibit offered at or used on the trial or hearing below and on file in or lodged with the trial court be transmitted to it, or that portions of the oral proceeding be

transcribed, certified and transmitted to it, or that an agreed or settled statement of portions of the oral proceedings be prepared and transmitted to it; and when so transmitted they shall be deemed part of the record on appeal.

(Subd (a) amended effective July 1, 1964; previously amended effective January 5, 1953.)

(b) Correction

If any material part of the record is incorrect in any respect, or lacks proper certification, the reviewing court, on suggestion of any party or on its own motion, may direct that it be corrected or certified.

(c) Correction by trial court or parties

The reviewing court may submit to the trial court for settlement any differences of the parties with respect to alleged omissions or errors in the record, and the trial court shall make the record conform to the truth. The reviewing court may also direct that omissions or errors be corrected pursuant to the stipulation of the parties filed with the clerk of that court.

(Subd (c) amended effective July 1, 1964.)

Rule 8.761 renumbered effective January 1, 2007; adopted as rule 132; previously amended effective January 5, 1953, and July 1, 1964.

Rule 8.762. Abandonment and dismissal

(a) Before record filed

At any time before the filing of the record in the reviewing court, the appellant may file in the office of the clerk of the trial court a written abandonment of the appeal; or the parties may file in said office a stipulation for abandonment. The filing of either document shall operate to dismiss the appeal and to restore the jurisdiction of the trial court. Upon such a dismissal, the appellant shall be entitled to the return of that portion of any deposit in excess of the actual cost of preparation of the record on appeal up to that time.

(Subd (a) amended effective July 1, 1964.)

(b) After record filed

After the filing of the record in the reviewing court an appeal may be dismissed by that court on written request of the appellant or stipulation of the parties filed with the clerk of the reviewing court.

(c) Dismissal by court

If the appellant shall fail to perform any act necessary to procure the preparation or filing of the record on appeal or shall otherwise fail to prosecute his appeal with diligence, and such failure is the fault of the appellant and not of any court officer or any other party, the appeal may be dismissed by the reviewing court on motion of the respondent or on its own motion.

(Subd (c) adopted effective January 6, 1947.)

(d) Notification by clerk

The clerk of the court in which an abandonment is filed shall immediately notify the adverse party of the filing thereof. The clerk of the reviewing court shall immediately notify the parties of any order of dismissal made by that court.

(Subd (d) amended effective January 6, 1947.)

(e) Approval of compromise

Whenever the guardian of a minor or of an insane or incompetent person seeks approval of a proposed compromise of a case pending on appeal, the reviewing court may, by order, refer the matter to the trial court with instructions to hear the same and determine whether the proposed compromise is for the best interests of the ward, and to report its findings. On receipt of the report, the reviewing court shall make its order approving or disapproving the compromise.

(Subd (e) adopted effective January 5, 1953.)

Rule 8.762 renumbered effective January 1, 2007; adopted as rule 133; previously amended effective January 6, 1947, January 5, 1953, and July 1, 1964.

Rule 8.763. Hearing

Appeals in civil cases shall be calendared, argued and determined, notice of hearings shall be given, and petitions for rehearing and answers thereto shall be filed and acted upon as prescribed in chapter 1 of this division (commencing with rule 8.700).

Rule 8.763 amended and renumbered effective January 1, 2007; adopted as rule 134 effective January 5, 1953; previously amended effective July 1, 1964, and January 1, 1977.

Rule 8.764. Costs on appeal

(a) Rights to costs

Except as provided in this rule, the prevailing party shall be entitled to costs on appeal from a municipal or justice court as an incident to the judgment on appeal. In the case of a general and unqualified affirmance of the judgment, or the dismissal of an appeal, the respondent shall be deemed the prevailing party; in the case of a reversal, in whole or in part, or of a modification of the judgment, the appellant shall be deemed the prevailing party. In any case in which the interests of justice require it, the reviewing court may make any award or apportionment of costs which it deems proper. If the appeal is frivolous or taken solely for the purpose of delay or if any party has required in the record on appeal the inclusion of any matter not reasonably material to the determination of the appeal, or has been guilty of any other unreasonable infraction of the rules governing appeals, the reviewing court may impose upon offending attorneys or parties those penalties, including the withholding or imposing of costs, that the circumstances of the case and the discouragement of like conduct may require.

(Subd (a) amended effective January 1, 1987; previously amended effective July 1, 1964.)

(b) Entry of judgment for costs

In any case on appeal from a municipal or justice court in which the reviewing court directs the manner in which costs shall be awarded or denied, the clerk shall enter on the record and insert in the remittitur a judgment in accordance with those directions. In the absence of those directions by the reviewing court, the clerk shall enter on the record and insert in the remittitur to the municipal or justice court a judgment for costs as follows:

(1) In the case of a general and unqualified affirmance of the judgment, for the respondent;

(2) In the case of a dismissal of the appeal, for the respondent;

(3) In the case of a modification of the judgment, for the appellant; and

(4) In the case of a reversal of the judgment, in whole or in part, with or without directions, for the appellant.

If the clerk fails to enter judgment for costs as provided in this subdivision, the reviewing court, on motion made not later than 30 days after issuance of the remittitur, or on its own motion, may recall it for correction.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964, and January 1, 1987.)

(c) Items recoverable as costs

The party to whom costs are awarded may recover only the following, if actually incurred:

(1) The cost of preparation of an original and one copy of any type of record on appeal authorized by these rules if that party is the appellant, or one copy of the record if the party is the respondent, subject to reduction by order of the reviewing court pursuant to subdivision (a) of this rule; but the expense of any method of preparation in excess of the cost of preparing the record in typewriting shall not be recoverable as costs, unless the parties so stipulate;

(2) The cost of production of additional evidence; and

(3) Filing and notary fees and expense of service, transmission, and filing of the record, briefs, and other papers.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1987, and July 1, 1991.)

(d) Procedure for claiming costs

If costs are awarded to a party by a reviewing court and the party claims those costs, the party shall, within 30 days after the remittitur is filed with the trial court, serve on all parties and file with the clerk of the trial court a memorandum of costs, verified as prescribed by rule 3.1700(a)(1).

A party may move to have costs taxed in the same manner and within a like time after service of a copy of the memorandum of costs, as prescribed by rule 3.1700(b). After the costs have been taxed, or after the time for taxing the costs has expired, the award of costs may be enforced in the same manner as a money judgment.

(Subd (d) amended effective January 1, 2007; adopted effective January 1, 1987.)

(e) Procedure for imposing sanctions

(1) A party seeking monetary sanctions on the ground that the appeal is frivolous or taken solely for purposes of delay or that there has been an unreasonable infraction of the rules governing appeals shall serve and file a motion under

rule 8.705 no later than 10 days after the time the appellant's reply brief is due or at the time of filing a motion to dismiss the appeal.

(2) A party who filed a motion to dismiss the appeal before filing a brief may make or renew the motion for sanctions up to 10 days after the time the appellant's reply brief is due.

(3) A motion under (1) or (2) shall include a declaration supporting the amount of sanctions being sought.

(4) The court shall notify a party or an attorney if it is considering imposing sanctions on its own motion or on motion of a party.

(5) The party or attorney against whom sanctions are sought may serve and file a written opposition within 10 days after notice from the court that it is considering imposing sanctions; failure to do so shall not be deemed consent to the award of sanctions. An opposition should not ordinarily be filed unless the court has sent notice that it is considering imposing sanctions or requests the party's or attorney's views.

(6) Unless otherwise ordered, the issue of sanctions and their amount will be argued at the time of oral argument on the merits of the appeal.

(Subd (e) amended effective January 1, 2007; adopted effective July 1, 2000.)

Rule 8.764 amended and renumbered effective January 1, 2007; adopted as rule 135; previously amended effective July 1, 1964, January 1, 1987, July 1, 1991, and July 1, 2000.

Rule 8.765. Definitions

In this chapter, unless the context or subject matter otherwise requires:

(1) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(2) "Trial court" means the municipal or justice court from which an appeal is taken pursuant to these rules; "reviewing court" applies to the court in which an appeal is pending, and means the appellate department of the superior court.

(3) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(4) “Shall” is mandatory and “may” is permissive.

(5) “Party,” “appellant,” “respondent,” “petitioner,” or other designation of a party include such party’s attorney of record. Whenever under these rules a notice is required to be given to or served on a party, such notice or service shall be made on his attorney of record, if he has one.

(6) “Serve and file” mean that a document filed in a court is to be accompanied by proof of prior service in a manner permitted by law of one copy of the document on counsel for each adverse party who is represented by separate counsel.

(7) “Judgment” includes any judgment, order or decree from which an appeal lies.

(8) “Judgment roll” with respect to a justice court consists of the same papers as in the municipal court.

(9) “Presiding judge” includes the acting presiding judge.

(10) “Clerk” with respect to a justice court means the judge if there be no clerk.

(11)“Written,” “writing,” “typewriting” and “typewritten” include other methods of duplication equivalent in legibility to typewriting.

(12) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.

Rule 8.765 amended and renumbered effective January 1, 2007; adopted as rule 136; previously amended effective January 5, 1953, July 1, 1964, and January 1, 1977.

Rule 8.766. Applications on routine matters

Except as otherwise provided in these rules, applications to extend time for filing briefs, applications to shorten time, and applications relating to other matters of routine shall be served and filed; but the presiding judge of the reviewing court may require an additional showing to be made and for good cause may excuse advance service. The application shall set forth facts showing:

(1) Good cause for granting the application; and

(2) Any previous applications granted or denied to any party after filing of the notice of appeal.

The application may be granted or denied by the presiding judge, unless the court otherwise determines. The applicant shall provide to the clerk addressed, postage-prepaid envelopes and sufficient additional copies of the application for later mailing by the clerk to all other parties of a copy of the order granting or denying the application, together with a copy of the application.

Rule 8.766 amended and renumbered effective January 1, 2007; adopted as rule 137; previously amended effective January 1, 1974, January 1, 1975, and July 1, 1996.

Rule 8.767. Extension and shortening of time

(a) Computation of time

The time for doing any act required or permitted under these rules shall be computed and extended in the manner provided by the Code of Civil Procedure.

(b) Extension by trial court

The presiding judge of the trial court, or a judge designated by him, for good cause shown on application made as provided in rule 8.766, may extend the time for doing any act involved in the preparation of the record on appeal in a civil case, prior to the expiration of such time or any valid extension thereof; provided, however, that the time specified for payment of the fee for filing the record in the reviewing court may not be extended by the trial court. Such extensions granted to any party shall not exceed 60 days in the aggregate for any and all acts in preparation of the record, and no single extension shall be for a period in excess of 10 days. Anything in these rules to the contrary notwithstanding, the initial extension granted to any party by the trial court may be granted ex parte.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 1964, and January 1, 1974.)

(c) Extension by presiding judge

The presiding judge of the reviewing court, for good cause shown, may extend the time for doing any act required or permitted under these rules, except the time for filing a notice of appeal. An application for extension of time shall be made as provided in rule 8.766.

(Subd (c) amended effective January 1, 2007.)

(d) Shortening time

The presiding judge of the reviewing court, for good cause shown, may shorten the time for serving or filing a paper incident to an appeal. An application to shorten time shall be made as provided in rule 8.766.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 1977.)

Rule 8.767 amended and renumbered effective January 1, 2007; adopted as rule 138; previously amended effective July 1, 1964, January 1, 1974, and January 1, 1977.

Rule 8.768. Substitution of parties and attorneys

(a) Parties

Whenever a substitution of parties to a pending appeal is necessary, it shall be made by proper proceedings instituted for that purpose in the trial court. On suggestion thereof and the presentation of a certified copy of the order of substitution made by the trial court, a like order of substitution shall be made in the reviewing court.

(Subd (a) amended effective July 1, 1964.)

(b) Attorneys

Withdrawal or substitution of attorneys may be effected by serving and filing a stipulation in the reviewing court, signed by the party, the retiring attorney and any substituted attorney. In the absence of stipulation, withdrawal or substitution may be effected only by an order made pursuant to a motion in the reviewing court; except that unless otherwise ordered by the court, service of the motion need be made only on the party and the attorneys directly affected thereby. A notification of any withdrawal or substitution shall be given by the clerk of the reviewing court to the clerk of the trial court, and substituted counsel shall forthwith give notice thereof to all parties.

(Subd (b) amended effective January 1, 1977; previously amended effective July 1, 1964.)

Rule 8.768 renumbered effective January 1, 2007; adopted as rule 139; previously amended effective July 1, 1964, and January 1, 1977.

Rule 8.769. Writ of supersedeas

A petition for a writ of supersedeas shall bear the same title as the appeal, and shall be served and filed in the reviewing court in which the appeal is pending. The petition shall be verified, and shall contain a statement of the necessity for the writ, and supporting points and authorities. If the record on appeal has not been filed with the reviewing court, the petition shall contain a description of the judgment, the date of its entry, the fact and

date of filing of the notice of appeal, and a statement of the subject matter of the appeal sufficient to advise the reviewing court of the question involved. A request for a temporary stay pending the granting or denial of the writ may be included in the petition, or may be made separately and without service on the respondent. The writ may be issued on any conditions which the reviewing court deems just.

If the writ or stay issues, the reviewing court shall notify the trial court pursuant to rule 8.490(k).

Rule 8.769 amended and renumbered effective January 1, 2007; adopted as rule 140; previously amended effective January 1, 1984.

Rule 8.770. Substitute judge where trial judge unavailable

Whenever by these rules any act is required to be done by the judge who tried the case, and such judge is unavailable or unable to act at the time fixed therefor, the act shall be done by another judge of the same court, to be designated by the presiding judge thereof, or if there is no judge of the court available to act, then the act shall be done by a judge designated by the Chairman of the Judicial Council.

Rule 8.770 renumbered effective January 1, 2007; adopted as rule 141.

Rule 8.771. Presumption where record not complete

If a record on appeal does not contain all of the papers, records and oral proceedings, but is certified by the judge or the clerk, or stipulated to by the parties, in accordance with these rules, it shall be presumed in the absence of proceedings for augmentation that it includes all matters material to a determination of the points on appeal. On an appeal on the judgment roll alone, or on a partial or complete clerk's transcript, the foregoing presumption shall not apply unless the error claimed by appellant appears on the face of the record.

Rule 8.771 renumbered effective January 1, 2007; adopted as rule 142; previously amended effective January 5, 1953.

Rule 8.772. Scope and construction

(a) Courts and proceedings covered

This chapter applies to appeals from municipal and justice courts in civil cases, except small claims cases. The rules shall be liberally construed to secure the just and speedy determination of appeals.

(Subd (a) amended effective January 1, 1977; previously amended effective July 1, 1964.)

(b) Relief from default

The reviewing court for good cause may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal.

Rule 8.772 renumbered effective January 1, 2007; adopted as rule 143; previously amended effective July 1, 1964, and January 1, 1977.

Rule 8.773. Remittitur

(a) Issuance and transmission

Upon the expiration of the period during which a transfer may be ordered, the clerk of the superior court shall remit to the court from which the appeal was taken a certified copy of the judgment of the superior court and of its opinion, if any, and also all the original exhibits, orders, affidavits, papers, and documents which were sent to the superior court in connection with the appeal, except the statement or transcript on appeal and the notice of appeal. After the certified copy of the judgment has been remitted to the court below, the superior court has no further jurisdiction of the appeal or of the proceedings thereon, and the lower court shall make all orders necessary to carry its judgment or order into effect or otherwise proceed in conformity to the decision on appeal.

(Subd (a) amended effective January 1, 1977; adopted effective July 1, 1964.)

(b) Issuance forthwith

The court may direct the immediate issuance of the remittitur on stipulation of the parties.

(Subd (b) adopted effective July 1, 1964.)

(c) Stay of issuance

The court, for good cause, may stay the issuance of the remittitur for a reasonable period.

(Subd (c) adopted effective July 1, 1964.)

(d) Recall of remittitur

A remittitur may be recalled by order of the court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth the facts which would justify the granting of a motion.

(Subd (d) adopted effective July 1, 1964.)

Rule 8.773 renumbered effective January 1, 2007; adopted as rule 144; previously amended effective July 1, 1964, and January 1, 1977.

Chapter 3. Appeals to the Appellate Division in Criminal Cases

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Rule 8.780. Applicability to felonies, misdemeanors, infractions

(a) Rules applicable to felonies and superior courts

Rule 8.300 et seq. applies to appeals from the judgments and appealable orders of all courts in felony cases, and to appeals from the judgments and appealable orders of superior courts in all criminal cases. References in those rules to "superior court" mean "the court that pronounced judgment or issued the appealable order," and include a municipal or justice court that pronounced judgment or issued an appealable order in a felony case.

(Subd (a) amended effective January 1, 2007.)

(b) Rules applicable to misdemeanors and infractions

Rule 8.781 et seq. applies to appeals from the judgments and appealable orders of municipal and justice courts in misdemeanor and infraction cases.

(Subd (b) amended effective January 1, 2007.)

Rule 8.780 amended and renumbered effective January 1, 2007; adopted as rule 180 effective January 1, 1994.

Rule 8.781. Definitions

The definitions in rules 1.5, 1.6, and 8.10 apply to this chapter unless the context otherwise requires.

Rule 8.781 amended and renumbered effective January 1, 2007; adopted as rule 181 effective January 1, 1983.

Rule 8.782. Notice of appeal

(a) Time for filing

An appeal in a criminal case from a judgment or appealable order of a municipal or justice court is taken by filing with the clerk of that court a written notice of appeal signed by the appellant or appellant's attorney. The notice shall specify the judgment or order or part thereof from which the appeal is taken. The notice shall be liberally construed in favor of its sufficiency.

The notice of appeal shall be filed within 30 days after the rendition of the judgment or the making of the order; but if the defendant is committed before final judgment for insanity or narcotics addiction or indeterminately as a mentally disordered sex offender, the notice of appeal shall be filed within 30 days after the commitment.

If the notice of appeal is not filed within the time prescribed, the appeal shall be void and of no effect. A notice received after the expiration of the time prescribed shall be marked by the clerk "Received (date) but not filed", and the clerk shall advise the party seeking to file the notice that it was received but not filed because the period for filing had elapsed.

A notice of appeal filed prior to the time prescribed is premature but may, in the discretion of the reviewing court for good cause, be treated as filed immediately after the rendition of the judgment or the making of the order.

References in this subdivision to the clerk apply to the judge of a justice court, in the absence of a clerk.

(Subd (a) amended effective January 1, 1982; previously amended September 15, 1961, July 1, 1964, November 13, 1968, and January 1, 1972.)

(b) Notification by clerk

The clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith mail a notification of the filing of the notice of appeal to each party other than the appellant. The notification shall state the number and title of the case and the date the notice of appeal was filed. The failure of the clerk or judge to give such notification shall not affect the validity of the appeal.

(Subd (b) adopted effective July 1, 1964.)

Rule 8.782 renumbered effective January 1, 2007; adopted as rule 182; previously amended September 15, 1961, July 1, 1964, November 13, 1968, January 1, 1972, and January 1, 1982.

Rule 8.783. Record on appeal

(a) The record on an appeal to a Superior Court from a municipal or an inferior court in a criminal case shall consist of the following items, or so many thereof as may exist in the particular case:

(1) The complaint;

(2) The plea or pleas of the defendant;

(3) All written instructions given, or requested and refused;

(4) The verdict, or if a jury was waived, the entry of such waiver in the minutes or docket, and the finding of the court upon the issues;

(5) Any written motion or notice of motion for new trial, in arrest of judgment or to dismiss or otherwise terminate the action, or the entry in the minutes or docket of any oral motion to the same effect, and the order of the court thereon;

(6) Any demurrer to the complaint, and the order of the court thereon;

(7) All other minutes of the court relating to the action;

(8) The judgment, and the order appealed from, if the appeal is from an order;

(9) The notice of appeal;

(10) Any statement or transcript on appeal, or both, settled and certified by the trial judge as hereinafter provided for in rules 8.784 and 8.788;

(11) All exhibits, instructions, orders, affidavits, papers and documents properly referred to and identified in such statement or transcript, as provided in rule 8.784;

(12) If the appeal is from an order made after judgment, items 2, 3, 4, 5, 6 and 7 may be omitted, and the record shall include any written motion and any written notice of motion, the denial or granting of which is the order appealed from, or the entry in the minutes or docket of any such oral motion, and all minutes of the court relating to such motion.

(Subd (a) amended effective January 1, 2007.)

(b) The matters included in the foregoing item 1 to 9 inclusive, 11 and 12 of subdivision (a), or so many of them as may be pertinent to the appeal taken, shall be prepared by the clerk of the trial court, or by the judge thereof if there is no clerk. The notice of appeal, matters appearing in the minutes or docket of the trial court and any other part of the record, the original of which it is not possible to transmit to the superior court, shall be copied as provided in subdivision (a) of rule 8.144 and the copies made part of the record on appeal; but the originals of all other matters shall be included in the record. As soon as the statement on appeal, including the transcript, if any, has been settled and certified, or the right of the appellant to have a statement settled and certified shall have terminated, as elsewhere provided in these rules, the clerk of the trial court, or the judge thereof if there is no clerk, shall forthwith transmit the record on appeal, with his certificate that the parts thereof are originals or copies, as the case may be, to the clerk of the superior court to which the appeal is taken.

(Subd (b) amended effective January 1, 2007; previously amended effective January 6, 1947, and July 1, 1971.)

Rule 8.783 amended and renumbered effective January 1, 2007; adopted as rule 183; previously amended effective January 6, 1947, and July 1, 1971.)

Rule 8.784. Statement or transcript

(a) Where a consideration of the evidence or any part thereof, or of any proceedings which do not otherwise constitute a part of the record on appeal as defined in rule 8.783, is necessary to a determination of the appeal, the same

must be set forth in a statement on appeal settled and certified as provided in these rules, and if not so set forth, it shall be presumed that they were such as to support the judgment or order appealed from. If all or any part of such evidence or other proceedings was reported by an official reporter, the appellant may give notice in his proposed statement that he intends to file a reporter's transcript of the evidence and proceedings so reported, and to make the same a part of the statement, and if he gives such notice he may omit any other statement of the evidence and proceedings so reported from his proposed statement.

(Subd (a) amended effective January 1, 2007.)

(b) In every such statement the appellant shall specify the grounds on which he intends to rely upon appeal and set forth so much of the evidence and other proceedings as are necessary for a decision upon said grounds. Said grounds of appeal shall be stated with sufficient particularity to apprise the court and the opposing party of the rulings or other matters of which the appellant intends to complain, but this may be done by any general description calling attention to the points to be made, without specifying each separate ruling or other matter to be complained of. If one of said grounds of appeal is insufficiency of the evidence, the particulars in which it is insufficient shall also be stated, unless a reporter's transcript containing the whole thereof is to be made a part of the statement. No ground of appeal not so specified shall be considered by the superior court unless it shall appear to the satisfaction of said Court that the record on appeal fairly and fully presents the evidence and other proceedings necessary for a decision thereon.

(c) It shall not be necessary in any such statement or transcript to copy any exhibit, instruction, order, affidavit, paper or document on file with the trial court, but the same may be merely referred to by any designation sufficient to identify it. If any point is to be made on appeal as to the giving, refusal or modification of instructions, it shall be necessary to show by said statement or transcript whether any oral instructions were given and, if so, what they were, and by whom requested, and if the written instructions included in the record under rule 8.783 do not show by whom requested, or what modifications were made in instructions given as modified, these facts shall be set forth in the statement.

(Subd (c) amended effective January 1, 2007.)

(d) An appellant who desires to have a statement settled shall, within 15 days after filing notice of appeal, serve on the respondent and file with the trial court a proposed statement on appeal. If in such proposed statement appellant gives

notice that a reporter's transcript is to be filed and made a part thereof, as provided in subdivision (a) of this rule, appellant may file, within 15 days after the filing of the proposed statement, a transcript of the evidence or other proceedings reported by an official reporter, certified by that reporter to be correct, and shall within five days after such filing, notify the respondent thereof. Any such transcript, when settled and certified as provided in rule 8.788, shall become a part of the statement. If the transcript is not filed or notice is not given of its filing within the time limited by these rules or any lawful extension thereof, the appellant's right to have the transcript settled and certified as a part of the statement shall terminate and the trial court shall proceed upon the other parts of the proposed statement as provided in rule 8.788. If the failure to file such transcript in time results from the refusal, failure or inability of the reporter to make all or any part of the transcript, the appellant may, within five days after expiration of the time for filing such transcript, move the trial court for leave to file amendments to the statement to cover the matters originally proposed to be in the transcript. If the trial court grants the motion, the appellant shall serve and file amendments within 15 days after the making of the order and such amendments and the original statement shall be settled and certified as provided in rule 8.788. If the appellant fails to serve and file a proposed statement on appeal within the time limited by these rules, or any lawful extension thereof, the right to have a statement settled and certified shall forthwith terminate.

(Subd (d) amended effective January 1, 2007.)

Rule 8.784 amended and renumbered effective January 1, 2007; adopted as rule 184; previously amended effective July 31, 1938, January 6, 1947, and July 1, 1980.

Rule 8.785. Amendments to statement or transcript

The respondent may within 15 days after such statement is filed, or notice is given of the filing of such transcript, serve on the appellant and file proposed amendments to the statement or transcript, or both.

Rule 8.785 renumbered effective January 1, 2007; adopted as rule 185; previously amended effective January 1, 1973, and July 1, 1980.

Rule 8.786. Counsel on appeal

(a) Standards for appointment

On application of defendant-appellant, the appellate department shall appoint counsel on appeal for any defendant-appellant convicted of a misdemeanor who is subject to incarceration or a fine of more than $500 (including penalty and other

assessments), or who is likely to suffer significant adverse collateral consequences as a result of the conviction, if the defendant-appellant was represented by appointed counsel in the trial court. On application, the appellate department shall appoint counsel for any other such defendant-appellants who establish their indigency as in the Courts of Appeal. A defendant is subject to incarceration or a fine if the incarceration or fine is in a sentence, or is a condition of probation, or may be ordered if the defendant violates probation. The appellate department may appoint counsel for any other indigent defendant-appellant.

(b) Application; duty of trial counsel

If defense trial counsel believes that the client is indigent and will file an appeal, counsel shall prepare and file in the trial court an application to the appellate department for appointment of counsel. If the defendant-appellant was represented by appointed counsel in the trial court, the application shall include counsel's declaration to that effect. If the defendant-appellant was not represented by appointed counsel in the trial court, the application shall include a declaration of indigency supported by evidence in the form required by the Court of Appeal for the district where the court is located. The trial court shall transmit the application to the appellate department along with the record on appeal. A defendant-appellant may, however, apply directly to the appellate department for appointment of counsel at any time after the notice of appeal is filed.

The appellate department may take a reasonable time to confirm that the defendant-appellant still seeks the appointment of counsel. In the case of a defendant-appellant not represented by appointed counsel in the trial court, the appellate department may take a reasonable time to confirm the facts stated in the declaration of indigency.

(c) Defendant found able to pay in trial court

If a defendant was represented by appointed counsel in the trial court and was found able to pay all or part of the cost of the trial counsel in proceedings under Penal Code section 987.8 or 987.81, the findings in those proceedings shall be included in the record of any appeal by the defendant or, if made after the record on appeal is transmitted to the appellate department, shall be transmitted to the appellate department as an augmentation of the record. In those cases, the appellate department shall conduct appropriate proceedings to determine the defendant's ability to pay or contribute to the expense of counsel on appeal, and if it finds that the defendant is able, shall order the defendant to pay all or part of the cost.

Rule 8.786 renumbered effective January 1, 2007; adopted as rule 185.5 effective January 1, 1994.

Rule 8.787. Extensions of time and relief from default

(a) Extensions of time

The court from which the appeal is taken, or a judge thereof, may for good cause shown by affidavit make an order granting not more than a total of 15 days additional to the time limited in these rules for serving and filing the statement, or for filing the transcript and giving notice thereof, or for proposing amendments thereto, or for engrossing the statement or transcript, or both, and presenting the same for certification. The superior court to which an appeal is taken, or if the appeal is to be heard in an appellate department, the presiding judge thereof, may, for good cause shown by affidavit, further extend the time for doing any act required by these rules, except the time for filing the notice of appeal. Every such extension shall be made upon application as provided in rule 8.766 before the time extended, including any previous extensions thereof, has expired.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1974.)

(b) Relief from default

The superior court may for good cause relieve a party from a default occasioned by any failure to comply with these rules, except failure to give timely notice of appeal.

(Subd (b) amended effective July 1, 1971; previously amended effective January 6, 1947.)

Rule 8.787 amended and renumbered effective January 1, 2007; adopted as rule 186; previously amended effective January 6, 1947, and July 1, 1971.

Rule 8.788. Settlement of statement or transcript

Upon the filing of such proposed amendments or the expiration of the time for filing them, the trial judge shall forthwith fix a time for settlement of the statement or transcript, or both, which time shall be as early as the business of the court will permit, either in chambers or in open court, and cause notice to be mailed, at least five days before the time fixed, to each party, or, if any party appears by attorney, then to the attorney, if the mailing address of the party or attorney appears in the files of the case in which the appeal is taken. The trial judge shall at the time fixed, or any other time to which the matter may be continued, settle the statement or transcript, or both, and the amendments proposed, if any, correcting, altering, or rewriting the statement or transcript, or both, as may be necessary to make it set forth fairly and truly the evidence and proceedings relating to the specified grounds of appeal or the matters set forth by the appellant in support of it.

The appellant's specifications of grounds of appeal shall not in any case be eliminated from the settled statement. At the time of settlement the judge may direct the appellant to engross the statement or transcript, or both, as settled. Thereupon the appellant shall engross the statement or transcript, or both, as corrected and settled and present it to the judge for certification within five days from the date of settlement, and if the appellant fails to do so within that period or any lawful extension, the right to have the statement or transcript settled or certified shall terminate. If a statement or transcript is settled and engrossed, if engrossment is ordered, the trial judge shall certify to its correctness. A judge may settle and certify the statement or transcript after or before ceasing to be the trial judge. If the trial judge dies, is removed from office, becomes disqualified, or is absent from the state at the time for settling or certifying a statement or transcript, it may be settled or certified by any other judge of the court qualified to act.

The clerk of the trial court shall promptly mail copies of the statement, as settled and certified by the judge, to counsel for the parties and to unrepresented parties, unless the judge certifies that the statement proposed and filed by the appellant was settled without significant change.

Rule 8.788 renumbered effective January 1, 2007; adopted as rule 187; previously amended effective July 1, 1989.

Rule 8.789. Experimental rule on use of recordings to facilitate settlement of statements

(a) Scope of experiment

Notwithstanding any other rule, a municipal of justice court may provide by local rule that this rule applies to every appeal in a misdemeanor case in which all or part of the proceedings were officially recorded electronically.

(Subd (a) amended effective January 1, 2007.)

(b) Appellate counsel

Counsel retained for the appeal shall file notice of his or her appearance in the trial court. The clerk of the reviewing court shall send the trial court notice of the appointment of counsel on appeal, which shall be filed as an appearance by the trial court.

(c) Trial court clerk's duties

(1) The clerk of the trial court shall retain custody of the original sound recording, unless ordered to deliver it to the reviewing court.

(2) To the extent feasible, the clerk shall make the original sound recording available to the parties and counsel for listening in court facilities during normal business hours.

(3) Within ten days after the notice of appeal is filed, the clerk of the trial court shall prepare and label one copy of the original sound recording for each party and a copy for the court's file; the copies shall be on standard audio cassette tapes or on CD-ROM.

(4) The clerk shall promptly mail a copy of the sound recording to counsel on appeal, if known to the clerk, for each party to the appeal. If the clerk has not received notice of the appointment or retention of counsel on appeal, the copy shall be mailed to trial counsel and to each party unrepresented at trial and on appeal. Each copy shall be accompanied by a copy of this rule and an information leaflet published by the Administrative Office of the Courts.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(d) Proposed statement

Counsel for the appellant (or the appellant, if unrepresented at trial and on the appeal) shall prepare a proposed statement of the case which shall include:

(1) A summary of the grounds of the appeal complying with rule 8.784(b).

(2) A narrative statement summarizing the basic events in the case, and as much of the evidence and rulings of the court as are relevant to the appeal. Any portion of the statement may be in the form of a verbatim transcription of the sound recording. The proposed statement shall, within 30 days after the mailing of the copy of the sound recording, be served on the opposing counsel of record or on the opposing party if unrepresented and filed in the trial court. If the proposed statement is not served and filed within that time, or any extension, the appellant may not proceed with the appeal unless relieved from the default.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(e) Obligation of counsel

Unless counsel on appeal has been appointed or retained, the preparation, service and filing of the proposed statement as set forth in subdivision (e), and the other

obligations imposed on counsel by this rule, are part of the obligation of representing a party at trial.

If counsel on appeal has been appointed or retained, that counsel has the primary responsibility for complying with subdivision (d) and fulfilling the other obligations imposed on counsel by this rule; and trial counsel has the duty to cooperate fully with appellate counsel to facilitate compliance.

(f) Proposed corrections and additions

Within 20 days after service of the proposed statement, counsel for the respondent (or the respondent, if unrepresented) shall serve on the person who served the proposed statement and file either a written acceptance of the proposed statement as accurate or proposed corrections and additions to the proposed statement. Unless good cause is shown in a motion for an order permitting late filing, failure to timely serve and file proposed corrections and additions is deemed an acceptance.

If proposed corrections and additions are served and filed, counsel for the parties have an obligation to confer in person or by telephone and seek to arrive at a stipulated final statement or to narrow the area of disagreement. This obligation is not applicable when a party is unrepresented.

A stipulated final statement, or stipulated summary of remaining points of disagreement, shall be prepared and filed in the trial court by the appellant within 10 days after service of proposed corrections and additions.

(g) Resolution of disputes

If the respondent files proposed corrections and additions, the clerk shall refer the file to the judge who tried the case or, in the judge's absence, to another judge of the court:

(1) Forthwith after a stipulated summary of points of disagreement is filed; or

(2) Forthwith after the respondent files proposed corrections and additions, if one of the parties was unrepresented at trial and remains unrepresented; or

(3) Twenty days after the respondent files proposed corrections and additions, if no stipulated final statement nor stipulated summary of points of disagreement has been filed.

The judge shall resolve all disputed issues of fact, using the available sound recordings of the proceedings to supplement the judge's memory and notes of the

case. No hearing or conference shall be held unless ordered by the judge. A party may suggest that a hearing be ordered.

Within 20 days from the date the file is referred by the clerk, the judge shall certify in writing the resolution of the disputed issues. The clerk shall promptly file the judge's certificate and mail copies to counsel for the parties and to unrepresented parties

(h) Certification and transmittal

The clerk of the trial court shall certify and transmit to the reviewing court as part of the trial court file, pursuant to subdivision (j), either:

(1) A proposed statement which has been expressly accepted and the respondent's acceptance forthwith upon filing of the acceptance; or

(2) A proposed statement as to which no proposed correction and additions have been timely filed promptly after expiration of time within which to file proposed corrections and additions, along with the clerk's certificate that corrections and additions were not proposed. If the respondent has moved for an order permitting late filing of proposed corrections and additions, the clerk shall defer certification and transmittal until the motion is decided; and if it is denied, the clerk shall thereupon certify and transmit the file, including the proposed statement and all papers pertaining to the motion; or

(3) A stipulated final statement forthwith upon its filing; or

(4) The judge's certificate resolving disputed issues pursuant to subdivision (g) and all proposed statements, proposed corrections and additions, and stipulations of the parties forthwith upon filing the judge's certificate resolving disputed issues.

(i) Returning of copy of the sound recording

Upon signing a stipulated final statement, or upon receiving a copy of the judge's certificate resolving disputed issues, or upon receiving notice of the filing of the record in the reviewing court, or at the request of the reviewing court, trial counsel and any unrepresented party without counsel on appeal shall deliver the copy of the sound recording to the clerk of the superior court appellate division for the use of any counsel on appeal; or, if trial counsel is in the same law office as counsel on appeal, shall deliver the copy to counsel on appeal and promptly file a notice with the appellate division stating that it has been delivered or will be delivered to counsel on appeal when the appeal is assigned.

(Subd (i) amended effective January 1, 2003.)

(j) In lieu of the clerk's record on appeal specified in rule 8.783, the clerk shall transmit to the reviewing court the complete trial court file on the case with a copy of all docket entries in the trial court. The original or a copy of the docket entries shall be retained in the trial court. The file copy of the sound recording shall be transmitted as part of the file.

(Subd (j) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(k) The provisions of rule 8.761 concerning augmentation and correction of the record apply. The reviewing court may order from the trial court the original sound recording to clarify any question concerning the trial court proceedings. The clerk of the reviewing court shall return the original sound recording to the trial court as soon as possible but no later than the time when the decision of the reviewing court is final.

(Subd (k) amended effective January 1, 2007.)

(l) The provisions of rule 8.787 concerning extensions of time and relief from default apply to this rule.

(Subd (l) amended effective January 1, 2007.)

(m) This rule does not limit a court's power to order a full verbatim transcript of the proceedings. If a transcript is ordered, this rule is inapplicable to the case.

Rule 8.789 amended and renumbered effective January 1, 2007; adopted as rule 187.5 effective January 1, 1983; previously amended effective January 1, 2003.

Rule 8.790. Abandonment of appeal

An appellant may at any time abandon his appeal by filing a written abandonment thereof. Such abandonment shall be filed in the trial court if the record has not yet been filed in the superior court, or in the superior court if the record has been filed in that court. Upon the filing of a written abandonment in the trial court the jurisdiction of that court shall thereby be restored and it shall at once take such proceedings as may be necessary to enforce its judgment or order as if no such appeal had been taken. Upon the filing of such abandonment in the superior court, that court shall dismiss the appeal and issue its remittitur forthwith.

Rule 8.790 renumbered effective January 1, 2007; adopted as rule 188; previously amended effective January 6, 1947.

Rule 8.791. Additions to record

On a sufficient showing by affidavit, or otherwise, that evidence was taken or proceedings were had in the trial court or that papers are there on file which are material to a disposition of the appeal and are not included in the record on appeal, and a showing of good cause why the same have not been included in said record, the superior court may authorize the trial judge to make a further certificate as to such evidence or other proceedings or papers, and direct the same, when so certified, to be added to the record.

Rule 8.791 renumbered effective January 1, 2007; adopted as rule 189.

Rule 8.792. Hearings and dismissals

Appeals to the superior court in criminal cases shall be calendared, argued and determined, notice of hearings shall be given, and petitions for rehearing and answers thereto shall be filed and acted upon as prescribed in the rules adopted by the Judicial Council for appellate departments of the superior court.

If the appeal is not brought to a hearing within the time limited, or the appellant otherwise fails to prosecute it with diligence, or if the appeal is irregular in any substantial respect, the superior court may, on motion of the respondent or on its own motion, after written notice to the appellant, order it dismissed.

Rule 8.792 renumbered effective January 1, 2007; adopted as rule 190; previously effective January 1, 1977.

Rule 8.793. Remittiturs

(a) Issuance and transmission

Upon the expiration of the period during which a transfer may be ordered, unless a new trial is to be had in the superior court, the clerk of the superior court shall remit to the court from which the appeal was taken a certified copy of the judgment of the superior court and of its opinion, if any, and also all the original exhibits, orders, affidavits, papers and documents which were sent to said superior court in connection with said appeal, except the statement or transcript on appeal and the notice of appeal. After such certified copy of the judgment has been remitted to the court below, the superior court has no further jurisdiction of the appeal or of the proceedings thereon, and the lower court shall make all orders necessary to carry its judgment or order into effect or otherwise proceed in conformity to the decision on appeal.

(Subd (a) amended effective July 1, 1964; previously amended effective January 2, 1962.)

(b) Issuance forthwith

The court may direct the immediate issuance of the remittitur on stipulation of the parties.

(Subd (b) adopted effective July 1, 1964.)

(c) Stay of issuance

The court, for good cause, may stay the issuance of the remittitur for a reasonable period.

(Subd (c) adopted effective July 1, 1964.)

(d) Recall of remittitur

A remittitur may be recalled by order of the court on its own motion, on motion after notice supported by affidavits, or on stipulation setting forth the facts which would justify the granting of a motion.

(Subd (d) adopted effective July 1, 1964.)

Rule 8.793 renumbered effective January 1, 2007; adopted as rule 191; previously amended effective January 2, 1962, and July 1, 1964.

Division 3. Trial of Small Claims Cases on Appeal

Rule 8.900. Application
Rule 8.902. Definitions
Rule 8.904. Filing the appeal
Rule 8.907. Record on appeal
Rule 8.910. Continuances
Rule 8.913. Abandonment, dismissal, and judgment for failure to bring to trial
Rule 8.916. Examination of witnesses

Rule 8.900. Application

The rules in this division supplement article 7 of the Small Claims Act, Code of Civil Procedure sections 116.710 et seq., providing for new trials of small claims cases on appeal, and must be read in conjunction with those statutes.

Rule 8.900 amended and renumbered effective January 1, 2007; adopted as rule 151 effective July 1, 1964; previously amended effective January 1, 1977, and January 1, 2005.

Rule 8.902. Definitions

The definitions in rule 1.6 apply to these rules unless the context or subject matter requires otherwise. In addition, the following definitions apply to these rules:

(1) "Small claims court" means the trial court from which the appeal is taken.

(2) "Appeal" means a new trial before a different judge on all claims, whether or not appealed.

(3) "Appellant" means the party appealing; "respondent" means the adverse party. "Plaintiff" and "defendant" refer to the parties as they were designated in the small claims court.

Rule 8.902 amended and renumbered effective January 1, 2007; adopted as rule 158 effective July 1, 1964; previously amended and renumbered as rule 156 effective July 1, 1991; previously amended effective January 1, 2005.

Rule 8.904. Filing the appeal

(a) Notice of appeal

To appeal from a judgment in a small claims case, an appellant must file a notice of appeal in the small claims court. The appellant or the appellant's attorney must sign the notice. The notice is sufficient if it states in substance that the appellant appeals from a specified judgment or, in the case of a defaulting defendant, from the denial of a motion to vacate the judgment. A notice of appeal must be liberally construed.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1973, January 1, 1977, January 1, 1979, January 1, 1984, July 1, 1991, and January 1, 2005.)

(b) Notification by clerk

(1) The clerk of the small claims court must promptly mail a notification of the filing of the notice of appeal to each other party at the party's last known address.

(2) The notification must state the number and title of the case and the date the notice of appeal was filed. If a party dies before the clerk mails the notification, the mailing is a sufficient performance of the clerk's duty.

(3) A failure of the clerk to give notice of the judgment or notification of the filing of the notice of appeal does not extend the time for filing the notice of appeal or affect the validity of the appeal.

(Subd (b) amended effective January 1, 2007; previously amended and relettered effective January 1, 1977; previously amended effective July 1, 1991, and January 1, 2005.)

(c) Premature notice of appeal

A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry. A notice of appeal filed after the judge has announced an intended ruling but before judgment is rendered may, in the discretion of the reviewing court be treated as filed immediately after entry of the judgment.

(Subd (c) amended effective January 1, 2007; adopted as subd (d) effective July 1, 1964; relettered effective January 1, 1977; previously amended effective July 1, 1991, and January 1, 2005.)

Rule 8.904 amended and renumbered effective January 1, 2007; adopted as rule 152 effective July 1, 1964; previously amended effective July 1, 1973, January 1, 1977, January 1, 1979, January 1, 1984, July 1, 1991, and January 1, 2005.

Rule 8.907. Record on appeal

Within five days after the filing of the notice of appeal and the payment of any fees required by law, the clerk of the small claims court must transmit the file and all related papers, including the notice of appeal, to the clerk of the court assigned to hear the appeal.

Rule 8.907 amended and renumbered effective January 1, 2007; adopted as rule 153 effective July 1, 1964; previously amended effective July 1, 1972, July 1, 1973, January 1, 1977, and January 1, 2005.

Rule 8.910. Continuances

For good cause, the court assigned to hear the appeal may continue the trial. A request for a continuance may be presented by one party or by stipulation. The court may grant a continuance not to exceed 30 days, but in a case of extreme hardship the court may grant a continuance exceeding 30 days.

Rule 8.910 renumbered effective January 1, 2007; adopted as rule 154 effective July 1, 1964; previously amended effective January 1, 1977, July 1, 1991, and January 1, 2005.

Rule 8.913. Abandonment, dismissal, and judgment for failure to bring to trial

(a) Before the record is filed

Before the record has been transmitted to the court assigned to hear the appeal, the appellant may file in the small claims court an abandonment of the appeal or a stipulation to abandon the appeal. Either filing operates to dismiss the appeal and return the case to the small claims court.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1972, January 1, 1977, and January 1, 2005.)

(b) After the record is filed

After the record has been transmitted to the court assigned to hear the appeal, the court may dismiss the appeal on the appellant's written request or the parties' stipulation filed in that court.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(c) Dismissal or judgment by the court

(1) The court must dismiss the appeal if the case is not brought to trial within one year after the date of filing the appeal. If a new trial is ordered, the court must dismiss the appeal if the case is not brought to trial within one year after the entry date of the new trial order.

(2) Notwithstanding (1), the court must not order dismissal or enter judgment if there was in effect a written stipulation extending the time for trial or on a showing that the appellant exercised reasonable diligence to bring the case to trial.

(3) Notwithstanding (1) and (2), the court must dismiss the appeal if the case is not brought to trial within three years after either the notice of appeal is filed or the most recent new trial order is entered in the court assigned to hear the appeal.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1977, July 1, 1991, and January 1, 2005.)

(d) Notification by clerk

If an appellant files an abandonment, the clerk of the court in which it is filed must immediately notify the adverse party of the filing. The clerk of the court assigned to hear the appeal must immediately notify the parties of any order of dismissal or any judgment for defendant made by the court under (c).

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(e) Return of papers

If an appeal is dismissed, the clerk of the court assigned to hear the appeal must promptly transmit to the small claims court a copy of the dismissal order and all original papers and exhibits sent to the court assigned to hear the appeal. The small claims court must then proceed with the case as if no appeal had been taken.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2005.)

(f) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal in which a new trial has been ordered, the court assigned to hear the appeal may, before ruling on the compromise, hear and determine whether the proposed compromise is for the best interest of the ward or conservatee.

(Subd (f) amended effective January 1, 2007; previously amended effective January 1, 2005.)

Rule 8.913 amended and renumbered effective January 1, 2007; adopted as rule 157 effective July 1, 1964; amended and renumbered as rule 155 effective July 1, 1991; previously amended effective January 1, 1972, July 1, 1972, and January 1, 2005.

Rule 8.916. Examination of witnesses

The court may allow parties or attorneys representing parties to the appeal to conduct direct and cross-examination, subject to the court's discretion to control the manner, mode, and duration of examination in keeping with informality and the circumstances.

Rule 8.916 amended and renumbered effective January 1, 2007; adopted as rule 157 effective July 1, 1999.

Division 4. Transfer of Appellate Division Cases to the Court of Appeal

Rule 8.1000. Application
Rule 8.1002. Transfer authority
Rule 8.1005. Certification
Rule 8.1008. Transfer
Rule 8.1010. Record on transfer
Rule 8.1012. Briefs
Rule 8.1014. Proceedings in the appellate division after certification

Rule 8.1016. Disposition of transferred case
Rule 8.1018. Remittitur

Rule 8.1000. Application

Rules 8.1000–8.1018 apply to proceedings for transferring cases within the appellate jurisdiction of the superior court—other than appeals in small claims cases—to the Court of Appeal for review. Unless the context requires otherwise, the term "case" as used in these rules means cases within that jurisdiction.

Rule 8.1000 amended and renumbered effective January 1, 2007; repealed and adopted as rule 61 effective January 1, 2003.

Rule 8.1002. Transfer authority

A Court of Appeal may order a case transferred to it for hearing and decision if the appellate division certifies under rule 8.1005—or the Court of Appeal determines under rule 8.1008—that transfer is necessary to secure uniformity of decision or to settle an important question of law.

Rule 8.1002 amended and renumbered effective January 1, 2007; repealed and adopted as rule 62 effective January 1, 2003.

Rule 8.1005. Certification

(a) Authority to certify

(1) The appellate division may certify a case for transfer to the Court of Appeal on its own motion or on a party's application.

(2) A case may be certified by a majority of the appellate division judges to whom the case has been assigned or who decided the appeal or, if the case has not yet been assigned, by any two appellate division judges. If an assigned or deciding judge is unable to act on the certification, a judge designated or assigned to the appellate division by the chair of the Judicial Council may act in that judge's place.

(Subd (a) amended effective January 1, 2007.)

(b) Application for certification

(1) A party may serve and file an application for certification at any time after the record on appeal is filed in the appellate division and within 15 days after

judgment is pronounced or a modification order changing the appellate judgment is filed. The party may include the application in a petition for rehearing.

(2) The application must explain why transfer is necessary to secure uniformity of decision or to settle an important question of law.

(3) Within five days after the application is filed, any other party may serve and file an opposition.

(4) No hearing will be held on the application. Failure to certify the case is deemed a denial of the application.

(c) Finality of appellate division judgments

An appellate division judgment is final in that court as provided in rule 8.708.

(Subd (c) amended effective January 1, 2007.)

(d) Time to certify

A case may be certified at any time after the record on appeal is filed in the appellate division and before the appellate division judgment is final in that court.

(e) Contents of certification

A certification must:

(1) Briefly describe any conflict of decision—citing the decisions creating the conflict—or important question of law to be settled; and

(2) State whether there was a judgment on appeal and, if so, its date and disposition.

(Subd (e) amended effective January 1, 2007.)

(f) Superior court clerk's duties

(1) If the appellate division orders certification, the clerk must promptly send a copy of the order to the Court of Appeal clerk, the parties, and, in a criminal case, the Attorney General.

(2) If the appellate division denies an application by order, the clerk must promptly send a copy to the parties.

Rule 8.1005 amended and renumbered effective January 1, 2007; repealed and adopted as rule 63 effective January 1, 2003.

Rule 8.1008. Transfer

(a) Authority to transfer on Court of Appeal's own motion or a party's petition

The Court of Appeal may order transfer of a case on the court's own motion or on a party's petition to transfer.

(b) Petition to transfer

(1) If the appellate division denies an application for certification and does not certify its opinion for publication, a party may serve and file in the Court of Appeal a petition to transfer the case to that court.

(2) The petition must be served and filed within eight days after the appellate division judgment is final in that court and must show delivery of a copy to the appellate division.

(3) The petition must explain why transfer is necessary to secure uniformity of opinion or to settle an important question of law.

(4) Within seven days after the petition is filed, any other party may serve and file an answer.

(5) The petition and any answer must comply as nearly as possible with rule 8.504.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2003.)

(c) Time to transfer

(1) The Court of Appeal may order transfer:

(A) After certification or on its own motion, within 20 days after the record on transfer is filed in the Court of Appeal; or

(B) On petition to transfer, within 20 days after the petition is filed.

(2) Within either period specified in (1), the Court of Appeal may order an extension not exceeding 20 days.

(3) If the Court of Appeal does not timely order transfer, transfer is deemed denied.

(Subd (c) amended effective January 1, 2007.)

(d) Letter supporting or opposing transfer

(1) Except when a party files a petition to transfer under (b), any party may send the Court of Appeal a letter supporting or opposing transfer within 10 days after a record on transfer is filed in that court. The letter must be served on all other parties.

(2) The letter must be double-spaced and must not exceed 1,400 words if produced on a computer or five pages if typewritten.

(e) Limitation of issues

(1) On or after ordering transfer, the Court of Appeal may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in those issues.

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire case.

(f) Court of Appeal clerk's duties

(1) When a transfer order is filed, the clerk must promptly send a copy to the superior court clerk, the parties, and, in a criminal case, the Attorney General.

(2) With the copy of the transfer order sent to the parties and the Attorney General, the clerk must send notice of the time to serve and file any briefs ordered under rule 8.1012 and, if specified by the Court of Appeal, the issues to be briefed and argued.

(3) If the court denies transfer after certification or petition, the clerk must return the record on transfer and any exhibits to the superior court clerk and promptly send notice of the denial to the parties and, in a criminal case, the Attorney General.

(4) Failure to send any order or notice under this subdivision does not affect the jurisdiction of the Court of Appeal.

(Subd (f) amended effective January 1, 2007.)

Rule 8.1008 amended and renumbered effective January 1, 2007; repealed and adopted as rule 64 effective January 1, 2003; previously amended effective July 1, 2003.

Rule 8.1010. Record on transfer

(a) Contents

The record on transfer must contain:

(1) The original record on appeal prepared under rules 8.753–8.761 in a limited civil case or under rules 8.783–8.785 in a criminal case;

(2) Any briefs filed in the appellate division; and

(3) Any order or opinion of the appellate division.

(Subd (a) amended effective January 1, 2007.)

(b) Clerks' duties

(1) The superior court clerk must promptly send the record on transfer to the Court of Appeal and notify the parties that the record was sent when:

(A) The appellate division certifies a case;

(B) The superior court clerk sends a copy of an appellate division opinion certified for publication to the Court of Appeal under rule 8.707;

(C) The superior court clerk receives a copy of a petition to transfer; or

(D) The superior court receives a request from the Court of Appeal for the record on transfer.

(2) The Court of Appeal clerk must promptly notify the parties when the record on transfer is filed.

(Subd (b) amended effective January 1, 2007.)

Rule 8.1010 amended and renumbered effective January 1, 2007; repealed and adopted as rule 65 effective January 1, 2003.

Rule 8.1012. Briefs

(a) Who may file

(1) After transfer, the parties may file briefs in the Court of Appeal only if ordered on a party's application or the court's own motion. The court must prescribe the briefing sequence in any briefing order.

(2) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related case.

(b) Time to file

(1) The opening brief must be served and filed within 20 days after entry of the briefing order.

(2) The responding brief must be served and filed within 20 days after the opening brief is filed.

(3) Any reply brief must be served and filed within 10 days after the responding brief is filed.

(c) Additional service requirements

(1) Any brief of a defendant in a criminal case must be served on the prosecuting attorney and the Attorney General.

(2) Every brief must show delivery of a copy to the appellate division from which the case was transferred.

(d) Form

No brief may exceed 5,600 words if produced on a computer or 20 pages if typewritten. In all other respects briefs must comply with rule 8.204.

(Subd (d) amended effective January 1, 2007.)

Rule 8.1012 amended and renumbered effective January 1, 2007; repealed and adopted as rule 66 effective January 1, 2003.

Rule 8.1014. Proceedings in the appellate division after certification

When the appellate division certifies a case or the Court of Appeal orders transfer, further action by the appellate division is limited to preparing and sending the record until termination of the proceedings in the Court of Appeal.

Rule 8.1014 renumbered effective January 1, 2007; repealed and adopted as rule 67 effective January 1, 2003.

Rule 8.1016. Disposition of transferred case

(a) Decision on limited issues

The Court of Appeal may decide fewer than all the issues raised and may retransfer the case to the appellate division for decision on any remaining issues.

(b) Retransfer without decision

(1) The Court of Appeal may vacate a transfer order without decision and retransfer the case to the appellate division with or without directions to conduct further proceedings.

(2) If the appellate division pronounced judgment before transfer and the Court of Appeal directs no further proceedings, the judgment is final when the appellate division receives the order vacating transfer, and its clerk must promptly issue a remittitur.

(Subd (b) amended effective January 1, 2007.)

Rule 8.1016 amended and renumbered effective January 1, 2007; repealed and adopted as rule 68 effective January 1, 2003.

Rule 8.1018. Remittitur

(a) Court of Appeal remittitur

The Court of Appeal clerk must promptly issue a remittitur when a decision of the court is final. The clerk must address the remittitur to the appellate division and send that court two copies of the remittitur and two file-stamped copies of the Court of Appeal opinion or order.

(b) Appellate division remittitur

On receiving the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(c) Documents to be returned

Each reviewing court clerk must return all original records, documents, and exhibits with the remittitur but need not return any certification, transcripts on appeal, briefs, or notice of appeal.

Rule 8.1018 renumbered effective January 1, 2007; repealed and adopted as rule 69 effective January 1, 2003.

Division 5. Publication of Appellate Opinions

Rule 8.1100. Authority
Rule 8.1105. Publication of appellate opinions
Rule 8.1110. Partial publication
Rule 8.1115. Citation of opinions
Rule 8.1120. Requesting publication of unpublished opinions
Rule 8.1125. Requesting depublication of published opinions

Rule 8.1100. Authority

The rules governing the publication of appellate opinions are adopted by the Supreme Court under section 14 of article VI of the California Constitution and published in the California Rules of Court at the direction of the Judicial Council.

Rule 8.1100 adopted effective January 1, 2007.

Rule 8.1105. Publication of appellate opinions

(a) Supreme Court

All opinions of the Supreme Court are published in the Official Reports.

(b) Courts of Appeal and appellate divisions

Except as provided in (d), an opinion of a Court of Appeal or a superior court appellate division is published in the Official Reports if a majority of the rendering court certifies the opinion for publication before the decision is final in that court.

(c) Standards for certification

No opinion of a Court of Appeal or a superior court appellate division may be certified for publication in the Official Reports unless the opinion:

(1) Establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;

(2) Resolves or creates an apparent conflict in the law;

(3) Involves a legal issue of continuing public interest; or

(4) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(Subd (c) amended effective January 1, 2007.)

(d) Changes in publication status

(1) Unless otherwise ordered under (2), an opinion is no longer considered published if the Supreme Court grants review or the rendering court grants rehearing.

(2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order publication of an opinion, in whole or in part, at any time after granting review.

(e) Editing

(1) Computer versions of all opinions of the Supreme Court and Courts of Appeal must be provided to the Reporter of Decisions on the day of filing. Opinions of superior court appellate divisions certified for publication must be provided as prescribed in rule 8.707.

(2) The Reporter of Decisions must edit opinions for publication as directed by the Supreme Court. The Reporter of Decisions must submit edited opinions to the courts for examination, correction, and approval before finalization for the Official Reports.

(Subd (e) amended effective January 1, 2007.)

Rule 8.1105 amended and renumbered effective January 1, 2007; repealed and adopted as rule 976 effective January 1, 2005.

Rule 8.1110. Partial publication

(a) Order for partial publication

A majority of the rendering court may certify for publication any part of an opinion meeting a standard for publication under rule 8.1105.

(Subd (a) amended effective January 1, 2007.)

(b) Opinion contents

The published part of the opinion must specify the part or parts not certified for publication. All material, factual and legal, including the disposition, that aids in the application or interpretation of the published part must be published.

(c) Construction

For purposes of rules 8.1105, 8.1115, and 8.1120, the published part of the opinion is treated as a published opinion and the unpublished part as an unpublished opinion.

(Subd (c) amended effective January 1, 2007.)

Rule 8.1110 amended and renumbered effective January 1, 2007; repealed and adopted as rule 976.1 effective January 1, 2005.

Rule 8.1115. Citation of opinions

(a) Unpublished opinion

Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) Exceptions

An unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

(Subd (b) amended effective January 1, 2007.)

(c) Citation procedure

A copy of an opinion citable under (b) or of a cited opinion of any court that is available only in a computer-based source of decisional law must be furnished to the court and all parties by attaching it to the document in which it is cited or, if the citation will be made orally, by letter within a reasonable time in advance of citation.

(d) When a published opinion may be cited

A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

Rule 8.1115 amended and renumbered effective January 1, 2007; repealed and adopted as rule 977 effective January 1, 2005.

Advisory Committee Comment

A footnote to a previous version of this rule stated that a citation to an opinion ordered published by the Supreme Court after grant of review should include a reference to the grant of review and to any subsequent Supreme Court action in the case. This footnote has been deleted because it was not part of the rule itself and the event it describes rarely occurs in practice.

Rule 8.1120. Requesting publication of unpublished opinions

(a) Request

(1) Any person may request that an unpublished opinion be ordered published.

(2) The request must be made by a letter to the court that rendered the opinion, concisely stating the person's interest and the reason why the opinion meets a standard for publication.

(3) The request must be delivered to the rendering court within 20 days after the opinion is filed.

(4) The request must be served on all parties.

(b) Action by rendering court

(1) If the rendering court does not or cannot grant the request before the decision is final in that court, it must forward the request to the Supreme Court with a copy of its opinion, its recommendation for disposition, and a brief statement of its reasons. The rendering court must forward these materials within 15 days after the decision is final in that court.

(2) The rendering court must also send a copy of its recommendation and reasons to all parties and any person who requested publication.

(c) Action by Supreme Court

The Supreme Court may order the opinion published or deny the request. The court must send notice of its action to the rendering court, all parties, and any person who requested publication.

(d) Effect of Supreme Court order to publish

A Supreme Court order to publish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Rule 8.1120 renumbered effective January 1, 2007; repealed and adopted as rule 978 effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). This rule previously required generally that a publication request be made "promptly," but in practice the term proved so vague that requests were often made after the Court of Appeal had lost jurisdiction. To assist persons intending to request publication and to give the Court of Appeal adequate time to act, this rule was revised to specify that the request must be made within 20 days after the opinion is filed. The change is substantive.

Subdivision (b). This rule previously did not specify the time within which the Court of Appeal was required to forward to the Supreme Court a publication request that it had not or could not have granted. In practice, however, it was not uncommon for the court to forward such a request after the Supreme Court had denied a petition for review in the same case or, if there was no such petition, had lost jurisdiction to grant review on its own motion. To assist the Supreme Court in timely processing publication requests, therefore, this rule was revised to require the Court of Appeal to forward the request within 15 days after the decision is final in that court. The change is substantive.

Rule 8.1125. Requesting depublication of published opinions

(a) Request

(1) Any person may request the Supreme Court to order that an opinion certified for publication not be published.

(2) The request must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages.

(3) The request must concisely state the person's interest and the reason why the opinion should not be published.

(4) The request must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal.

(5) The request must be served on the rendering court and all parties.

(b) Response

(1) Within 10 days after the Supreme Court receives a request under (a), the rendering court or any person may submit a response supporting or opposing the request. A response submitted by anyone other than the rendering court must state the person's interest.

(2) A response must not exceed 10 pages and must be served on the rendering court, all parties, and any person who requested depublication.

(c) Action by Supreme Court

(1) The Supreme Court may order the opinion depublished or deny the request. It must send notice of its action to the rendering court, all parties, and any person who requested depublication.

(2) The Supreme Court may order an opinion depublished on its own motion, notifying the rendering court of its action.

(d) Effect of Supreme Court order to depublish

A Supreme Court order to depublish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Rule 8.1125 renumbered effective January 1, 2007; repealed and adopted as rule 979 effective January 1, 2005.

Advisory Committee Comment

Subdivision (a). This subdivision previously required depublication requests to be made "by letter to the Supreme Court," but in practice many were incorporated in petitions for review. To clarify and emphasize the requirement, the subdivision was revised specifically to state that the request "must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages." The change is not substantive.