

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR13-02

Title	Action Requested
Appellate Procedure: Appellate Division Rules and Forms	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 8.874 and 8.924; amend rules 8.810, 8.822, 8.823, 8.834 ¹ , 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927; and revise forms APP-101-INFO, APP-102, APP-103, APP-104, APP-105, and APP-110 relating to appeals in limited civil cases; CR- 131-INFO, CR-132, CR-133, CR-134, CR- 135, and CR-136 relating to appeals in misdemeanor cases; and CR-141-INFO, CR- 142, CR-143, and CR-144 relating to appeals in infraction cases	January 1, 2014
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Proposed by	
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	

Executive Summary and Origin

This proposal is intended to provide costs savings and efficiencies for trial courts and for litigants by, among other things: (1) setting a time frame for the court to decide whether to grant applications for appointment of counsel for indigent defendants in misdemeanor appeals; (2) clarifying the trial court's authority to adopt local rules establishing procedures to determine whether a full verbatim transcript is necessary in misdemeanor and infraction appeals; (3) expanding the options when an appellant in a misdemeanor and infraction case learns of the

¹ Please note that in a separate invitation to comment relating to the reporter's transcripts in civil appeals, the Appellate Advisory Committee and the Court Executives Advisory Committee are proposing other changes to rule 8.834.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

cost for a record of the oral proceedings or that he or she must pay this cost; (4) adding a rule to address defaults in procurement of the record in misdemeanor and infraction appeals; (5) providing that only the appellate division can grant an extension of the time to prepare a transcript in an appeal to the appellate division; and (6) specifically permitting the trial court judge to order the appellant to incorporate corrections or modifications into a statement on appeal. This proposal originated from suggestions made by superior court judges serving in the appellate division, trial court administrators and staff attorneys, a county bar association, an attorney in a public defender's office, and other attorneys.

Background

Effective January 1, 2009, the Judicial Council adopted a new set of rules and forms for the superior court appellate division.² When these proposed new rules and forms were circulated for public comment, the committee received some suggestions that were beyond the scope of the committee's proposal. The committee indicated that it would consider these suggestions at a later time. Since the adoption of these rules and forms, the committee has also received a number of additional suggestions for amending the rules or revising the forms from superior court judges serving in the appellate division, trial court administrators and staff attorneys, a county bar association, an attorney in a public defender's office, and other attorneys.

Appointment of counsel in misdemeanor appeals

Rule 8.851 addresses appointment of counsel for indigent defendants in misdemeanor appeals. This rule does not currently establish a time frame for the appointment of counsel. It is the committee's understanding that there is sometimes delay in the appointment of counsel. This results in delaying the resolution of the appeal.

Rule 8.851 includes a provision allowing the appellate division to order a defendant to pay all or part of that cost of counsel on appeal if the appellate division finds the defendant able to pay that cost. The Judicial Council form for seeking appointment of counsel, *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133), does not currently alert defendants of this possibility.

Record on appeal in misdemeanor and infraction cases

The new appellate division rules that took effect in January 2009 made significant changes to the prior rules governing records on appeal in misdemeanor and infraction cases. Among other things, the rules now allow appellants to elect the form of the record of the oral proceedings that they would like to use (such as a reporter's transcript, transcript from an official electronic recording, or a statement on appeal) and clarify that defendants who are not indigent must pay the cost of this record. The rules also identify what must ordinarily be included in a clerk's transcript and reporter's transcript in such proceedings. In recognition both of case law regarding the state's authority to determine the appropriate content and form of the record of the oral

² The February 8, 2008 report to the Judicial Council recommending adoption of these new rules and forms is available at: www.courts.ca.gov/documents/022208item7.pdf

proceedings provided at public expense and of the local variances in what forms of the record may be available, the current rules were also intended to provide flexibility to courts.

Records for indigent defendants. Rules 8.865 and 8.918, relating, respectively, to the contents of reporter's transcripts in misdemeanor and infraction appeals, specifically provide that the trial court can order that items normally included in the reporter's transcript are not necessary for the proper determination of a particular appeal. This provision is intended to recognize case law holding that while an indigent appellant in a criminal case is constitutionally entitled, at public expense, to a record of sufficient completeness to permit proper consideration of the issues on appeal, it does not necessarily mean that a full verbatim transcript is needed in all cases (see *Mayer v. City of Chicago* (1971) 404 U.S. 189 and *March v. Municipal Court* (1972) 7 Cal.3d 422). In some cases, a partial transcript or a settled statement may provide an acceptable alternative to a full transcript. The minimum record that is constitutionally required depends on what issues are being raised on appeal.

In addition, rules 8.866 and 8.819, relating to preparation of reporter's transcripts in misdemeanor and infraction appeals, provide for immediate preparation of reporter's transcripts when either the state or an indigent defendant appeals "unless the court has a local rule providing otherwise." The quoted provision is intended to recognize that a court may establish a local procedure for determining in these cases, where the record will be provided at public expense, whether or not a full reporter's transcript is necessary or whether a settled statement or partial transcript would be sufficient for an appeal in the particular case. The court's authority to do this is also explained in the information sheets concerning misdemeanor and infraction appeals (CR-131-INFO and CR-141-INFO).

Although the intent of these rules was to provide flexibility to courts to adopt local procedures and to make orders regarding the appropriate content and form of the record in these appeals, the committee has received a number of comments suggesting that the rules are not sufficiently clear in this regard. The rules regarding transcripts prepared from official electronic recordings also do not currently address the contents of such transcripts.

Record options and defaults when defendants are not indigent. As noted above, the new appellate division rules that took effect in 2009 clarified that defendants in misdemeanor and infraction cases who are not indigent must pay the cost of preparing a reporter's transcript, an official electronic recording, or a transcript prepared from an official electronic recording for an appeal. Because defendants who appeal may be unaware when they elect to use these forms of the record how much these records will cost or that they will be required to pay this cost, rules 8.866, 8.868, 8.917, and 8.919, which address preparation of reporter's transcripts and records when the trial court proceedings have been officially electronically recorded in misdemeanor and infraction appeals, allow such appellants to elect to use a statement on appeal when they learn the cost of this record. Currently, however, these rules do not provide such appellants with other options, such as filing a waiver of the deposit signed by the court reporter, depositing previously purchased transcripts, or electing to proceed without a record of the oral proceedings, that are available to appellants in civil appeals under rule 8.824. In addition, there is not currently a

general rule that establishes what the consequences are if such an appellant defaults in the procurement of the record, such as rule 8.842 relating to defaults in the procurement of the record in limited civil appeals.

Limited record in certain appeals. Rules 8.860 and 8.910 indicate what must ordinarily be included in the normal record on appeal in misdemeanor and infraction cases, respectively. Subdivision (b) in each of these rules provides that if the appellant and the respondent stipulate in writing that any part of the record is not required for proper determination of the appeal and file that stipulation in the trial court, that part of the record must not be prepared or sent to the appellate division. The Judicial Council forms for appellants to notify the court of their elections relating to the record on appeal do not currently include space for an appellants to indicate that they have stipulated to such a limited record.

Rule 8.867 also provides for a more limited record, including requiring fewer documents in the clerk's transcript and fewer proceedings in the reporter's transcript or other record of the oral proceedings in certain misdemeanor appeals, such as those in which the People appeal from a judgment on a demurrer to the complaint or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial in a case. There are also certain other identifiable types of misdemeanor appeals that are not currently listed in rule 8.867, such as pretrial appeals of orders under Penal Code section 1538.5, in which a more limited record is needed than is required for an appeal of the final judgment.

Extensions of time to prepare transcript

Rule 8.60, relating to extension of time in appeals to the Court of Appeal, and rules 8.130, 8.336, and 8.409, relating to preparation of reporter's transcripts in civil, felony, and juvenile appeals to the Court of Appeal, provide that only the reviewing court may extend the time to prepare a reporter's transcript in these cases. Currently, there is no similar provision in the appellate division rules. In some cases, this has resulted in lengthy extensions of time being granted for the preparation of reporter's transcripts, which delay the resolution of appeals.

Preparation of statements on appeal

Rules 8.837, 8.869, and 8.916 address the preparation of statements on appeal (summaries of the trial court proceedings that are approved by the trial court) in limited civil, misdemeanor, and infraction appeals, respectively. These rules currently require the appellant to prepare a proposed statement on appeal that includes a statement of the grounds for the appeal and a condensed narrative of the trial court proceedings that contains "as much of the evidence or proceeding as necessary to support the stated grounds." Some appellants, particularly self-represented appellants, do not include a sufficient summary of the proceedings in their proposed statements on appeal. Correcting this can take additional time for the trial court judge and can delay resolution of the appeal.

The rules governing statements on appeal also require the trial judge to review proposed statements prepared by the appellant and to modify or correct these statements to ensure that they provide an accurate summary of the trial court proceedings. These rules do not currently include

provisions that specifically authorize trial judges to order that the appellant correct or modify a proposed statement on appeal, rather than the judge making the necessary changes to the statement himself or herself. However, the February 6, 2008 report to the Judicial Council recommending adoption of these rules suggested that it would be permissible for a judge to ask the appellant to make such modifications or corrections. In appropriate circumstances, having the appellant modify or correct a statement on appeal as directed by the trial judge can save the judge's time and thus trial court resources.

The Proposal

This proposal is intended to provide significant costs savings and efficiencies for trial courts and for litigants in appellate division proceedings by making several changes to the appellate division rules and forms. The proposed rule amendments and form revisions are discussed below and shown in the attachments. In addition, each proposed rule amendment in the attachment is followed by drafters' notes describing the proposed change. These notes are intended only to help readers understand these proposed amendments and will not be included in any rules presented to the Judicial Council for adoption.

Appointment of counsel in misdemeanor appeals

In response to suggestions received by the committee, this proposal would make two changes to rule 8.851 relating to appointment of counsel in misdemeanor appeals and to the Judicial Council form for requesting appointment of counsel, *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133), including:

- **Requiring the appellate division to decide whether to appoint counsel within 30 days:**
To ensure that counsel is timely appointed for eligible defendants in misdemeanor appeals and thus to reduce delay in these appeals, this proposal would require that the appellate division grant or deny a defendant's application for appointment of counsel within 30 days after the application is filed. The committee would particularly appreciate comments on whether this is the appropriate amount of time for reviewing and acting on such applications.
- **Revising the application form to reflect the existing rule on payment of counsel costs:**
As noted above, rule 8.851 includes a provision allowing the appellate division to order a defendant to pay all or part of that cost of counsel on appeal if the appellate division finds the defendant able to pay that cost. This proposal would add a note to *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to alert defendants of this possibility.

Record on appeal in misdemeanor and infraction cases

In response to suggestions received by the committee, this proposal would make several changes to the rules and forms relating to the record on appeal in misdemeanor and infraction cases.

Records for indigent defendants. This proposal would make changes intended to clarify courts' authority to adopt local rules establishing procedures, consistent with case law, for determining, in cases where the record will be provided at public expense, whether or not a full verbatim

transcript is necessary or whether a settled statement or partial transcript would be sufficient for an appeal in the particular case, including:

- **Specifically authorizing local procedures for determining the content and form of the record of the oral proceedings:** Amending rules 8.865 and 8.918, relating to the contents of reporter’s transcripts in misdemeanor and infraction appeals, respectively, to specifically provide that a court may adopt a local rule that establishes procedures for determining whether any of the items ordinarily required to be included in a reporter’s transcript is not required for proper determination of the appeal or whether a form of the record other than a reporter’s transcript will be sufficient for proper determination of the appeal. New advisory committee comments accompanying these rules would note that *Mayer v. Chicago* and *March v. Municipal Court, supra*, make clear that the constitutionally required “record of sufficient completeness” does not necessarily mean a complete verbatim transcript; the record that is necessary depends on the grounds for the appeal in the particular case. These advisory committee comments would also provide examples of local procedures used by some courts.
- **Establishing the contents of transcripts prepared from official electronic recordings:** Amending rules 8.868 and 8.917, relating to records when the trial proceedings were officially electronically recorded, to include a new provision regarding the contents of transcripts prepared from such recordings. This new provision would clarify that, except in appeals when either the parties have stipulated or the trial court has ordered that any of these items is not required for proper determination of the appeal, the rules regarding the content of reporter’s transcripts govern the contents of a transcript of an official electronic recording. This provision would make applicable to transcripts prepared from official electronic recordings any local procedure for determining the whether any of the items ordinarily required to be included in a reporter’s transcript is not required for proper determination of the appeal or whether another form of the record will be sufficient for proper determination of the appeal

Record options and defaults when defendants are not indigent. This proposal includes several possible rule changes intended to reduce defaults in the procurement of the record in misdemeanor and infraction appeals and to clarify the consequences in the event that there is a default:

- **Expanding the options when defendant learns record cost or that must pay this cost:** This proposal would amend rules 8.866 and 8.919, which address preparation of reporter’s transcripts, and rules 8.868 and 8.917, which address records when the trial court proceedings have been officially electronically recorded, to provide additional options when non-indigent appellants learn the cost of a reporter’s transcript, official electronic recording, or a transcript prepared from such a recording. Similar amendments would also provide appellants who sought a record at public expense with additional options when they are informed that the court has concluded they are not indigent.

- **Establishing consequences for failure to procure record:** This proposal includes possible new rules that would establish the consequences when a party in a misdemeanor or infraction appeal fails to take the steps necessary to procure the record. Like rule 8.842 relating to failures to procure the record in limited civil cases, these rules would require notice to the defaulting party, would permit the appellate division to impose different consequences for appellants and respondents, and would note the authority of the court to reverse the consequences in appropriate circumstances. Also, like rule 8.882 relating to briefs in limited civil and misdemeanor appeals, the proposed rule for misdemeanor appeals would establish different consequences in cases in which the defaulting party was represented by appointed counsel on appeal. Note that while many of the potential defaults covered by these new rules would relate to payment for a record by a non-indigent defendant, these rules would also apply to defaults in the procurement of the record by indigent defendants and the People, such as failing to timely file a record election or failing to timely serve and file a proposed statement on appeal.

Limited record in certain appeals. This proposal includes several possible rule and form changes intended to reduce costs associated with unnecessary inclusion of items in the record on appeal, including:

- Revising the Judicial Council forms used to notify the court of record elections in misdemeanor and infraction appeals—*Notice Regarding Record of Oral Proceedings (Misdemeanor)* (form CR-134) and *Notice of Appeal and Record of Oral Proceedings (Infraction)* (form CR-142)—to include a place where the appellant can indicate that he or she has stipulated with the respondent that certain items are not needed for the record on appeal in the case. To reflect this change, the form names would also be changed to *Notice Regarding Record on Appeal (Misdemeanor)* and *Notice of Appeal and Record on Appeal (Infraction)*, respectively.
- Amending rule 8.867, which provides for a limited record in misdemeanor appeals in which the People appeal from a judgment on a demurrer to the complaint or in which the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial in a case, to also provide for limited record in:
 - Pretrial appeals of orders under Penal Code section 1538.5; and
 - Appeals from the final judgment that challenge only the conditions of probation.
 The committee would particularly appreciate input on whether:
 - The items that would be included in the limited records established under this proposal are appropriate and sufficient for these types of appeals; and
 - There are other types of appeals for which limited records should be specified in this rule.
- Revising *Notice of Appeal (Misdemeanor)* (form CR-132) to provide spaces that appellants can use to identify those cases that would fall within the proposed new categories of cases with limited records under rule 8.867.

Extensions of time to prepare transcript

This proposal includes several possible rule changes intended to reduce delay in appellate division proceedings associated with extensions of time to prepare the record on appeal, including:

- Amending rule 8.810, relating to extensions of time in appellate division proceedings, to specifically provide that, as in cases appealed to the Court of Appeal, the trial court cannot extend the time for a court reporter to prepare a transcript and to clarify that the requirement for filing an application to extend time applies to extensions of time to prepare a transcript from either a court reporter or a person preparing a transcript of an official electronic recording.
- Amending rules 8.834, 8.866, and 8.919, relating to the preparation of reporter's transcripts in limited civil, misdemeanor, and infraction appeals, to provide, similar to rule 8.130 relating to civil cases appealed to the Court of Appeal, that only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript.

Preparation of statements on appeal

This proposal includes several possible rule changes intended to assist litigants in understanding what should be included in a statement on appeal and to reduce burdens on trial court judges associated with reviewing and correcting proposed statements, including:

- Replacing the requirement that the proposed statement on appeal "include as much of the evidence or proceeding as necessary to support the stated grounds" for the appeal with a requirement that the condensed narrative portion of the statement "include a concise factual summary of the testimony of each witness and other evidence that is relevant to the points" that the appellant indicates he or she is raising on appeal. The intent of this change is to provide more specific direction about what must be in a proposed statement and reduce the number of times that appellants submit statements that contain an insufficient summary of the proceedings in the trial court. This same proposed new language would also be used to indicate what the trial judge must ensure is in the final statement on appeal.
- Specifically permitting the trial judge to order that the appellant either submit a new proposed statement if the initial one does not contain required material or prepare a statement that incorporates necessary corrections or modifications identified by the judge.

Other changes

In response to suggestions received by the committee, the proposal also includes the following additional changes to the appellate division rules:

- In the rules relating to appeals in limited civil cases, replacing references to the trial court clerk *mailing* the judgment or order or notice of its entry with references to the clerk *servicing* these documents. This would conform the language of these rules with the current language

of the rules relating to civil appeals to the Court of Appeal and encompass situations in which the clerk electronically serves such documents.

- Amending the rules on briefs to fill a gap by including the potential consequences if the People fail to file a respondent's brief.
- Amending the rules on decisions to require that appellate division decisions that are certified for publication are sent to the Reporter of Decisions as soon as they are certified.
- Revising the information sheets on appeals in limited civil, misdemeanor, and infraction cases (forms APP-101-INFO, CR-131-INFO, and CR-141-INFO) to reflect the proposed changes to the appellate division rules.

Alternatives Considered

The committee considered not proposing any changes to the appellate division rules or forms at this time. However, the committee concluded that, given the current fiscal crisis in the courts, it was important to make changes to the rules and forms designed to reduce costs for courts associated with the preparation of records in appellate division proceedings. To conserve resources, the committee also concluded that it would be preferable to develop and circulate a single proposal relating to the appellate division rules and forms, rather than developing separate proposals relating to the potential changes in areas beyond record preparation.

The committee considered but decided not to pursue a wide variety of alternatives related to specific substantive areas covered by the appellate division rules, including:

- The committee considered providing that when an appellant defaults in procuring a record of the oral proceedings that the appellant elected to use, one potential sanction would be for the appellate division to consider the appeal on the record of the documents from the trial court proceeding alone. The committee decided, instead, to give appellants more options when they learn of the cost of the record or that they must pay this cost—including deciding to proceed without a record of the oral proceedings. The committee concluded that this approach was preferable because it allows the appellant to determine whether and how to proceed, rather than placing that burden on the appellate division.
- The committee considered a suggestion that the appellate division be required to issue written opinions in all appeals but concluded that such an increase in the burden on the appellate division was not appropriate during the current fiscal crisis.

Implementation Requirements, Costs, and Operational Impacts

There would be some costs for trial courts associated with implementing the proposed changes in procedures, including, potentially, costs to train staff concerning these procedures and to modify case management systems to reflect these procedures. These training and case management system costs should be one-time costs that are offset by ongoing reductions in costs associated with preparing records on appeal in appellate division cases.

There would also be some costs for trial courts associated with implementing the proposed new procedures giving appellants more options when they learn of the cost of a reporter's transcript, official electronic recording, or transcript prepared from an official electronic recording. These costs should be offset by decreases in costs associated with potentially issuing default notices, entering dismissals, and vacating dismissals in these cases.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- Is 30 days from the filing of an application for appointment of counsel for an indigent defendant in a misdemeanor appeal an appropriate time period for the appellate division to decide whether grant or deny the application?
- Are the items that would be included under the amendment to rule 8.867 in the limited record for pretrial appeals of orders under Penal Code section 1538.5 and appeals challenging only the conditions of probation appropriate and sufficient for these types of appeals?
- Should rule 8.867 also provide for a limited record in posttrial appeals that only challenge orders under Penal Code section 1538.5?
- Are there other specific types of appeals for which rule 8.867 should specify a limited record?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Rules 8.874 and 8.924 of the California Rules of Court would be adopted and rules 8.810, 8.822, 8.823, 8.834, 8.835, 8.837, 8.851, 8.864, 8.865, 8.866, 8.867, 8.868, 8.869, 8.882, 8.887, 8.915, 8.916, 8.917, 8.918, 8.919, and 8.927 would be amended, effective January 1, 2014, to read:

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Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 1. General Rules Applicable to Appellate Division Proceedings

Rule 8.810. Extending time

(a) * * *

(b) **Extension by trial court**

(1) For good cause and except as these rules provide otherwise, the presiding judge of the trial court, or his or her designee, may extend the time to do any act to prepare the record on appeal.

(2) The trial court may not extend:

(A) The time to do an act if that time—including any valid extension—has expired;
or

(B) The time for a court reporter to prepare a transcript.

(3) Notwithstanding anything in these rules to the contrary, the trial court may grant an initial extension to any party to do any act to prepare the record on appeal on an ex parte basis.

DRAFTERS' NOTES:³ This proposed amendment is part of the changes intended to address extensions of time to prepare transcripts of the oral proceedings in cases appealed to the superior court appellate division. It would provide that the trial court presiding judge or his or her designee does not have the authority to extend the time for a court reporter to prepare a transcript. By default, this authority would then rest with the presiding judge of the appellate division under subdivision (c) below. This would make the authority with respect to such extensions in appellate division proceedings similar to the authority with respect to such extensions in Court of Appeal proceedings. Under rule 8.60(e), a superior court may not extend the time to do any act to prepare the appellate record in a Court of Appeal case, including extending the time for a court reporter to prepare a transcript; that authority rests with the presiding justice of the Court of Appeal or his or her designee.

³ Drafters' Notes are included in this invitation to comment following the proposed amendments to help explain the changes that are being proposed; they are not part of the rules proposal and will not appear in any rules ultimately adopted by the Judicial Council.

1 (c) **Extension by appellate division**

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3 For good cause and except as these rules provide otherwise, the presiding judge of the
4 appellate division, or his or her designee, may extend the time to do any act required or
5 permitted under these rules, except the time to file a notice of appeal.
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7 (d) **Application for extension**

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9 (1) An application to extend time, including an application requesting an extension of
10 time to prepare a transcript from either a court reporter or a person preparing a
11 transcript of an official electronic recording, must include a declaration stating facts,
12 not mere conclusions, and must be served on all parties. For good cause, the
13 presiding judge of the appellate division, or his or her designee, may excuse advance
14 service.
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16 (2) The application must include a declaration stating facts, not mere conclusions, that
17 establish good cause for granting the extension. For applications filed by counsel or
18 self-represented litigants, the facts provided to establish good cause must be
19 consistent with the policies and factors stated in rule 8.811.
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21 ~~(2)~~(3) The application must state:

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

23 (B) The length of the extension requested; and

24 (C) Whether any earlier extensions have been granted and, if so, their lengths; ~~and~~

25 (D) ~~Good cause for granting the extension, consistent with the policies and factors~~
26 ~~stated in rule 8.811.~~
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29 **DRAFTERS' NOTES:** This proposed amendment is part of the changes intended to address
30 extensions of time to prepare transcripts of the oral proceedings in cases appealed to the
31 superior court appellate division. It would clarify that a court reporter or a person preparing a
32 transcript from an electronic recording must serve and file an application in the appellate
33 division requesting to extend the time to prepare a reporter's transcript. It would also consolidate
34 and clarify the provisions relating to the declaration of facts establishing good cause for the
35 extension.
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40 (e) * * *

1 **Chapter 2. Appeals and Records in Limited Civil Cases**

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3 **Article 1. Taking Civil Appeals**

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5 **Rule 8.822. Time to appeal**

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7 **(a) Normal time**

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9 (1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on
10 or before the earliest of:

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12 (A) 30 days after the trial court clerk ~~mails~~ serves the party filing the notice of
13 appeal a document entitled “Notice of Entry” of judgment or a file-stamped
14 copy of the judgment, showing the date ~~either it was mailed~~ served;

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16 (B)–(C) * * *

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18 (2)–(3) * * *

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20 **(b)–(d) * * ***

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22 **DRAFTERS’ NOTES:** These proposed amendments are part of the changes intended to make
23 the language of the appellate division rules regarding the time to appeal in limited civil cases
24 parallel with the language in the rules relating to civil appeals in the Court of Appeal. This
25 change would also make clear that if the trial court electronically serves the notice of entry, that
26 service date will trigger the start of the appeal period.

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29 **Rule 8.823. Extending the time to appeal**

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31 **(a) * * ***

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33 **(b) Motion for a new trial**

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35 If any party serves and files a valid notice of intention to move for a new trial, the
36 following extensions of time apply:

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38 (1) If the motion is denied, the time to appeal from the judgment is extended for all
39 parties until the earliest of:

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41 (A) 15 days after the trial court clerk ~~mails~~, or a party serves, an order denying the
42 motion or a notice of entry of that order;

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44 (B)–(C) * * *

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46 (2) * * *

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(c) Motion to vacate judgment

If, within the time prescribed by rule 8.822 to appeal from the judgment, any party serves and files a valid notice of intention to move to vacate the judgment 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) 15 days after the trial court clerk ~~mails~~, or a party serves, an order denying the motion or a notice of entry of that order;

(2)–(3) * * *

(d) 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) 15 days after the trial court clerk ~~mails~~, or a party serves, an order denying the motion or a notice of entry of that order;

(B)–(C) * * *

(2) * * *

(e) 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(a), the time to appeal from that order is extended for all parties until the earliest of:

(1) 15 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)–(3) * * *

(f) * * *

(g) 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 10 days after the trial court clerk ~~mails~~ serves notification of the first appeal.

1 (2) If an appellant timely appeals from an order granting a motion for a new trial, an
2 order granting—within 75 days after entry of judgment—a motion to vacate the
3 judgment, or a judgment notwithstanding the verdict, the time for any other party to
4 appeal from the original judgment or from an order denying a motion for judgment
5 notwithstanding the verdict is extended until 10 days after the
6 clerk ~~mails~~ serves notification of the first appeal.

7
8 **(h) ~~Showing date of order or notice; Proof of service~~**

9
10 ~~(1) An order or notice mailed by the clerk under this rule must show the date it was~~
11 ~~mailed.~~

12
13 (2)—Service under this rule may be by any method permitted by the Code of Civil
14 Procedure, including electronic service when permitted under Code of Civil
15 Procedure section 1010.6 and rules 2.250–2.261. An order or notice that is served by
16 ~~a party~~ must be accompanied by proof of service.

17
18 **DRAFTERS’ NOTES:** These proposed amendments are part of the changes intended to make
19 the language of the appellate division rules regarding the time to appeal in limited civil cases
20 parallel with the language in the rules relating to civil appeals in the Court of Appeal. This
21 change would also make clear that if the trial court electronically serves the notice of entry, that
22 service date will trigger the start of the appeal period.

23
24
25 **Article 2. Record in Civil Appeals**

26
27 **Rule 8.834. Reporter’s transcript⁴**

28
29 **(a)–(c) * * ***

30
31 **(d) Filing the reporter’s transcript; copies; payment**

32
33 (1) Within 20 days after the clerk notifies the reporter to prepare the transcript under
34 (b)(2)—or the reporter receives the fees from the appellant—the reporter must
35 prepare and certify an original of the reporter’s transcript and file it in the trial court.
36 The reporter must also file one copy of the original transcript or more than one copy
37 if multiple appellants equally share the cost of preparing the record. Only the
38 presiding judge of the appellate division, or his or her designee, may extend the time
39 to prepare the reporter’s transcript (see rule 8.810).

40
41 **(2)–(4) * * ***

42
43 **DRAFTERS’ NOTES:** This proposed amendment is part of the changes intended to address
44 extensions of time to prepare transcripts of the oral proceedings in cases appealed to the

⁴ Please note that in a separate invitation to comment relating to the reporter’s transcripts in civil appeals, the Appellate Advisory Committee and the Court Executives Advisory Committee are proposing other changes to rule 8.834.

1 superior court appellate division. It would add language, similar to that in rule 8.130, relating to
2 reporter's transcripts in civil appeals in the Court of Appeal, indicating that only the reviewing
3 court may extend the time to prepare a reporter's transcript.
4

5
6 **(e)(f) Notice when proceedings cannot be transcribed**
7

8 (1) If any portion of the designated proceedings were not reported or cannot be
9 transcribed, the trial court clerk must so notify the designating party by mail; the
10 notice must:

11
12 (A) Indicate whether the identified proceedings were officially electronically
13 recorded under Government Code section 69957; and
14

15 (B) Show the date it was mailed.
16

17 (2) Within 10 days after the notice under (1) is mailed, the designating party must file a
18 new election notifying the court whether the party elects to proceed with or without a
19 record of the identified oral proceedings ~~that were not reported or cannot be~~
20 ~~transcribed~~. If the party elects to proceed with a record of these oral proceedings, the
21 notice must specify which form of the record listed in rule 8.830(a)(2) ~~other than a~~
22 ~~reporter's transcript~~ the party elects to use.
23

24 (A) The party may not elect to use a reporter's transcript.
25

26 (B) The party may not elect to use an official electronic recording or a transcript
27 prepared from an official electronic recording under rule 8.835 unless the
28 clerk's notice under (1) indicates that proceedings were officially electronically
29 recorded under Government Code section 69957.
30

31 (C) The party must comply with the requirements applicable to the form of the
32 record elected.
33

34 (3) This remedy supplements any other available remedies.
35

36 **DRAFTERS' NOTES:** These proposed amendments are part of the changes intended to
37 eliminate delay in preparation of the record in situations in which a reporter's transcript cannot
38 be prepared for all or part of the oral proceedings originally designated by a party. These
39 amendments would:
40

- 41 • Require the court's notice that the proceedings were not reported or cannot be transcribed
42 to indicate whether the proceedings were officially electronically recorded;
- 43
- 44 • Provide that the party cannot elect the record preparation options that rely on an electronic
45 recording if the proceedings were not officially electronically recorded.
46

1 **Rule 8.835. Record when trial proceedings were officially electronically recorded**

2
3 (a)–(c) * * *

4
5 (d) **Notice when proceedings were not officially electronically recorded or cannot be**
6 **transcribed**

7
8 (1) If the appellant elects under rule 8.831 to use a transcript prepared from an official
9 electronic recording or the recording itself, the trial court clerk must notify the
10 appellant by mail if any portion of the designated proceedings was not officially
11 electronically recorded or cannot be transcribed. The notice must:

12
13 (A) Indicate whether the identified proceedings were reported by a court reporter;
14 and

15
16 (B) Show the date it was mailed.

17
18 (2) Within 10 days after the notice under (1) is mailed, the appellant must file a new
19 election notifying the court whether the appellant elects to proceed with or without a
20 record of the oral proceedings that were not recorded or cannot be transcribed. If
21 the party appellant elects to proceed with a record of these oral proceedings, the
22 notice must specify which form of the record listed in rule 8.830(a)(2) ~~other than an~~
23 ~~electronic recording~~ the appellant elects to use.

24
25 (A) The appellant may not elect to use an official electronic recording or a
26 transcript prepared from an official electronic recording.

27
28 (B) The appellant may not elect to use a reporter’s transcript unless the clerk’s
29 notice under (1) indicates that proceedings were reported by a court reporter.

30
31 (C) The appellant must comply with the requirements applicable to the form of the
32 record elected.

33
34 **DRAFTERS’ NOTES:** These proposed amendments are part of the changes intended to
35 eliminate delay in preparation of the record in situations in which an electronic recording is not
36 available or cannot be transcribed for all or part of the oral proceedings as originally designated
37 by a party. These amendments would:

- 38
39 • Require the court’s notice that the proceedings were not officially electronically recorded or
40 cannot be transcribed to indicate whether the proceedings were reported by a court reporter;
41
42 • If the proceedings were not reported by a court reporter, provide that the party cannot elect
43 to proceed by reporter’s transcript.
44
45
46

1 **Rule 8.837. Statement on appeal**

2
3 **(a) Description**

4
5 A statement on appeal is a summary of the trial court proceedings that is approved by the
6 trial court. An appellant can elect under rule 8.831 to use a statement on appeal as the
7 record of the oral proceedings in the trial court, replacing the reporter’s transcript.
8

9 **(b) Preparing the proposed statement**

- 10
11 (1) If the appellant elects in its notice designating the record under rule 8.831 to use a
12 statement on appeal, the appellant must serve and file a proposed statement within 20
13 days after filing the notice under rule 8.831. If the appellant does not serve and file a
14 proposed statement within this time, rule 8.842 applies. the trial court clerk must
15 promptly notify the appellant by mail that it must file the proposed statement within
16 15 days after the notice is mailed and that failure to comply will result in the appeal
17 being dismissed.
18
19 (2) Appellants who are not represented by an attorney must file their proposed statement
20 on *Statement on Appeal (Limited Civil Case)* (form APP-104). For good cause, the
21 court may permit the filing of a statement that is not on form APP-104.
22

23 **DRAFTERS’ NOTES:** Under this proposal, the second sentence of rule 8.837(b)(1) would be
24 replaced with a cross-reference to rule 8.842. Rule 8.842 establishes a general requirement for
25 notice from the court of any failure relating to procurement of the record, a 15-day period to cure
26 the default, and potential dismissal of the appeal if the appellant fails to timely cure the default.
27
28

29 **(c) Contents of the proposed statement**

30
31 The proposed statement must contain:

- 32
33 ~~(1) A condensed narrative of the oral proceedings that the appellant believes necessary~~
34 ~~for the appeal and a summary of the trial court’s holding and judgment. Subject to~~
35 ~~the court’s approval, the appellant may present some or all of the evidence by~~
36 ~~question and answer.~~
37
38 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. If the condensed
39 narrative under ~~(A)~~(3) covers only a portion of the oral proceedings, then the appeal
40 is limited to the points identified in the statement unless the appellate division
41 determines that the record permits the full consideration of another point or, on
42 motion, the appellate division permits otherwise.
43
44 (A) The statement must specify the intended grounds of appeal by clearly stating
45 each point to be raised but need not identify each particular ruling or matter to
46 be challenged.
47

1 ~~(B) The statement must include as much of the evidence or proceeding as~~
2 ~~necessary to support the stated grounds. Any evidence or portion of a~~
3 ~~proceeding not included will be presumed to support the judgment or order~~
4 ~~appealed from.~~

5
6 ~~(C)(B)~~ If one of the grounds of appeal is insufficiency of the evidence, the statement
7 must specify how it is insufficient.
8

9 ~~(D) If one of the grounds of appeal challenges the giving, refusal, or modification~~
10 ~~of a jury instruction, the statement must include any instructions submitted~~
11 ~~orally and identify the party that requested the instruction and any~~
12 ~~modification.~~

13
14 (2) A summary of the trial court’s rulings and judgment.

15
16 (3) A condensed narrative of the oral proceedings that the appellant believes necessary
17 for the appeal.

18
19 (A) The condensed narrative must include a concise factual summary of the
20 evidence and the testimony of each witness that is relevant to the points the
21 appellant states under (1) are being raised on appeal. Any evidence or portion
22 of a proceeding not included will be presumed to support the judgment or order
23 appealed from.

24
25 (B) If one of the points the appellant states under (1) is being raised on appeal is a
26 challenge to the giving, refusal, or modification of a jury instruction, the
27 condensed narrative must include any instructions submitted orally and not in
28 writing and must identify the party that requested the instruction and any
29 modification.

30
31
32 **DRAFTERS’ NOTES:** Under this proposal, there would be two main changes to 8.837(c):

- 33
- 34 • Several provisions of rule 8.837(c) would be reorganized and modified to clarify what the
35 appellant must include in the condensed narrative portion of a proposed statement on
36 appeal. Currently, some of the provisions in 8.837(c)(2), which addresses the statement of
37 the points that the appellant is raising on appeal, appear to establish requirements for items
38 that must be addressed in the narrative of the oral proceedings. Under this proposal, these
39 requirements would be moved into 8.837(c)(1), which addresses the condensed narrative of
40 the oral proceedings.
 - 41
42 • The current requirement that the proposed statement “include as much of the evidence or
43 proceeding as necessary to support the stated grounds” of appeal would be replaced with a
44 more specific requirement that the condensed narrative portion of the statement include “a
45 concise factual summary of the evidence and the testimony of each witness that is relevant”
46 to the points the appellant indicates he or she is raising on appeal.
47

1
2 **(d) Review of the appellant’s proposed statement**
3

4 (1) Within 10 days after the appellant files the proposed statement, the respondent may
5 serve and file proposed amendments to that statement.
6

7 (2) No later than 10 days after the respondent files proposed amendments or the time to
8 do so expires, a party may request a hearing to review and correct the proposed
9 statement. No hearing will be held unless ordered by the trial court judge, and the
10 judge will not ordinarily order a hearing unless there is a factual dispute about a
11 material aspect of the trial court proceedings.
12

13 ~~(4)~~(3) Except as provided in (6), if no hearing is ordered, no later than 10 days after the
14 time for requesting a hearing expires, the trial court judge must review the proposed
15 statement and any proposed amendments filed by the respondent and take one of the
16 following actions:
17

18 (A) If the proposed statement does not contain material required under (c), the trial
19 judge may order the appellant to prepare a new proposed statement. The order
20 must identify the additional material that must be included in the statement to
21 comply with (c) and the date by which the new proposed statement must be
22 served and filed. If the appellant does not serve and file a new proposed
23 statement as directed, rule 8.842 applies.
24

25 (B) If the trial judge does not issue an order under (A), the trial judge
26 must ~~and~~ either:
27

28 (i) Make any corrections or modifications to the statement necessary to
29 ensure that it is an accurate summary of the ~~trial court proceedings~~
30 evidence and the testimony of each witness that is relevant to the points
31 the appellant states under (c)(1) are being raised on appeal; or
32

33 (ii) Identify the necessary corrections and modifications and order the
34 appellant to prepare a statement incorporating these corrections and
35 modifications. ~~If a hearing is ordered, the trial court judge must make~~
36 any corrections or modifications to the statement within 10 days after the
37 hearing.
38

39 ~~(3)~~(4) If a hearing is ordered, the court must promptly set the hearing date and provide the
40 parties with at least 5 days’ written notice of the hearing date. No later than 10 days
41 after the hearing, the trial court judge must either:
42

43 (A) Make any corrections or modifications to the statement necessary to ensure
44 that it is an accurate summary of the evidence and the testimony of each
45 witness that is relevant to the points the appellant states under (c)(1) are being
46 raised on appeal; or

1
2 (B) Identify the necessary corrections and modifications and order the appellant to
3 prepare a statement incorporating these corrections and modifications.
4

5 (5) The trial court judge must not eliminate the appellant’s specification of grounds of
6 appeal from the proposed statement.
7

8 (6) If the trial court proceedings were reported by a court reporter or officially
9 electronically recorded under Government Code section 69957 and the trial court
10 judge determines that it would save court time and resources, instead of correcting a
11 proposed statement on appeal:
12

13 (A) If the court has a local rule for the appellate division permitting the use of an
14 official electronic recording as the record of the oral proceedings, the trial
15 court judge may order that the original of an official electronic recording of the
16 trial court proceedings, or a copy made by the court, be transmitted as the
17 record of these oral proceedings without being transcribed. The court will pay
18 for any copy of the official electronic recording ordered under this subdivision;
19 or
20

21 (B) ~~Unless~~ If the court has a local rule ~~providing otherwise permitting this,~~ the trial
22 court judge may order that a transcript be prepared as the record of the oral
23 proceedings. The court will pay for any transcript ordered under this
24 subdivision.
25

26 **DRAFTERS’ NOTES:** Under this proposal, several changes would be made to rule 8.837(d),
27 relating to review of the appellant’s proposed statement:
28

- 29 • To make the rule simpler and easier to understand, the procedures applicable when the trial
30 judge orders a hearing to settle the statement would be moved to a separate subdivision
31 from the procedures applicable if the judge does not order such a hearing;
32
- 33 • To address situations in which the proposed statement is so inadequate that the trial judge
34 would be placed in the position of preparing the statement rather than reviewing it, the rule
35 would be amended to clarify that the judge may, in such circumstances, order the appellant
36 to prepare, serve, and file a new proposed statement. This option would only be available in
37 circumstances in which the trial court judge does not order a hearing to settle the statement
38 because it is assumed that the judge would not order such a hearing if the statement is
39 inadequate.
40
- 41 • To ensure that the burden of making substantial modifications or corrections to a proposed
42 statement does not necessarily fall on the trial judge, the rule would be amended to clarify
43 that the judge has the option of ordering the appellant to prepare a statement incorporating
44 necessary modifications or corrections.
45
- 46 • Paragraph (6) would be modified to affirmatively require adoption of a local rule allowing the
47 trial judge to order a transcript in lieu of reviewing a proposed statement on appeal rather
48 than allowing this practice in the absence of a local rule forbidding it.

1 (e) **Review of the corrected statement**

- 2
- 3 (1) If the trial court judge makes any corrections or modifications to the proposed
- 4 statement under (d), the clerk must send copies of the corrected or modified
- 5 statement to the parties. If under (d) the trial court judge orders the appellant to
- 6 prepare a statement incorporating corrections and modifications, the appellant must
- 7 serve and file the corrected or modified statement within the time ordered by the
- 8 court. If the appellant does not serve and file a corrected or modified statement as
- 9 directed, rule 8.842 applies.
- 10
- 11 (2) Within 10 days after the corrected or modified statement is sent to the parties by the
- 12 court or served by the appellant, any party may serve and file proposed modifications
- 13 or objections to the statement.
- 14
- 15 (3) Within 10 days after the time for filing proposed modifications or objections under
- 16 (2) has expired, the judge must review the corrected or modified statement and any
- 17 proposed modifications or objections to the statement filed by the parties. The
- 18 procedures in (d)(3) or (4) apply if the judge determines that further corrections or
- 19 modifications are necessary to ensure that the statement is an accurate summary of
- 20 the evidence and the testimony of each witness relevant to the points the appellant
- 21 states under (c)(1) are being raised on appeal.
- 22

23 **DRAFTERS' NOTES:** Under this proposal, several changes would be made to rule 8.837(e),

24 relating to review of a corrected or modified statement:

25

- 26 • To reflect the proposed amendment to rule 8.837(d) allowing the trial court judge to order
- 27 that the appellant prepare a statement incorporating necessary modifications and
- 28 corrections, rule 8.837(e) would be amended to require service and filing of such
- 29 statements.
- 30
- 31 • The requirements now in subdivision (f) relating to the trial judge's review of parties'
- 32 proposed modifications or objections to a corrected or modified statement would be moved
- 33 up to become rule 8.837(e)(3). These requirements would also be modified to:
- 34 ○ Give the judge 10, rather than 5, days to review the proposed modifications or
- 35 objections; and
- 36 ○ By cross-referencing back to rule 8.837(d)(3) and (4), give the trial judge the
- 37 authority to either correct a statement him or herself or order the appellant to do so,
- 38 either with or without holding a hearing.
- 39

40

41 (f) **Certification of the statement on appeal**

42

- 43 (1)—If the trial court judge does not make or order any corrections or modifications to the
- 44 proposed statement under (d)(3), (d)(4), or (e)(3) and does not order either the use of
- 45 an official electronic recording or the preparation of a transcript in lieu of correcting
- 46 the proposed statement under (d)(6), the judge must promptly certify the statement.
- 47

1 (2) ~~If the trial court judge corrects or modifies an appellant’s proposed statement under~~
2 ~~(d), within five days after the time for filing proposed modifications or objections~~
3 ~~has expired, the judge must review any proposed modifications or objections to the~~
4 ~~statement filed by the parties, make any corrections or modifications to the statement~~
5 ~~necessary to ensure that it is an accurate summary of the trial court proceedings, and~~
6 ~~certify the statement.~~

7
8 **DRAFTERS’ NOTES:**

9 Rule 8.837(f) would be amended to reflect the proposed amendments to rule 8.837(d) and (e)
10 allowing the trial court judge to order that the appellant prepare a statement incorporating
11 necessary modifications and corrections and the proposed new description of what must be
12 included in a statement.

13
14
15 **Advisory Committee Comment**

16
17 **Subdivision (b)(2).** *Proposed Statement on Appeal (Limited Civil Case)* (form AP-104) is available at
18 any courthouse or county law library or online at www.courtinfo.ca.gov/forms
19 www.courts.ca.gov/forms.htm.

20
21 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.

22
23 **Subdivisions (d)(3)(B), (d)(4), and (f).** The judge need not ensure that the statement as modified or
24 corrected is complete, but only that it is an accurate summary of the evidence and testimony relevant to
25 the issues identified by the appellant.

26
27 **DRAFTERS’ NOTES:** The advisory committee comment would be amended to clarify that the
28 trial court judge is not required to ensure that the statement on appeal is a complete record of all
29 of the trial court proceedings, but only that it is an accurate summary of the evidence and
30 testimony relevant to the issues identified by the appellant.

31
32
33 **Chapter 3. Appeals and Records in Misdemeanor Cases**

34
35 **Article 1. Taking Appeals in Misdemeanor Cases**

36
37 **Rule 8.851. Appointment of appellate counsel**

38
39 (a) ***

40
41 (b) **Application; duties of trial counsel and clerk**

42
43 (1) If defense trial counsel has reason to believe that the client is indigent and will file an
44 appeal, counsel must prepare and file in the trial court an application to the appellate
45 division for appointment of counsel.

- 1 (2) If the defendant was represented by appointed counsel in the trial court, the
 2 application must include trial counsel’s declaration to that effect. If the defendant
 3 was not represented by appointed counsel in the trial court, the application must
 4 include a declaration of indigency in the form required by the Judicial Council.
 5
 6 (3) ~~When the trial court receives~~ Within 3 court days after an application is filed in the
 7 trial court, the clerk must promptly send it to the appellate division. A defendant
 8 may, however, apply directly to the appellate division for appointment of counsel at
 9 any time after filing the notice of appeal.
 10
 11 (4) The appellate division must grant or deny a defendant’s application for appointment
 12 of counsel within 30 days after the application is filed.
 13

14 (c) * * *

15
 16 **DRAFTERS’ NOTES:** To reduce delay in the appointment of counsel for indigent appellants in
 17 misdemeanor appeals, this proposed amendment would require that the appellate division
 18 decide whether or not to grant an application for appointment of counsel within 30 days after
 19 such an application is filed.
 20

21
 22 **Article 2. Record in Misdemeanor Appeals**
 23

24 **Rule 8.864. Record of oral proceedings**
 25

26 (a)–(b) * * *

27
 28 (c) **Failure to file election**
 29

30 If the appellant does not file an election within the time specified in (b), rule 8.874 applies.
 31 ~~the trial court clerk must promptly notify the appellant by mail that the election must be~~
 32 ~~filed within 15 days after the notice is mailed and that failure to comply will result in the~~
 33 ~~appeal proceeding without a record of the oral proceedings.~~
 34

35 **DRAFTERS’ NOTES:** This proposed amendment would replace the current provision in this
 36 rule establishing the sanctions when an appellant fails to file a record election with a cross-
 37 reference to proposed new rule 8.874, which would generally address failures relating to
 38 procurement of the record.
 39

40
 41 ~~(d) Statement on appeal when proceedings cannot be transcribed or were not recorded~~
 42

43 ~~(1) If the appellant elects under (a) to use a reporter’s transcript or a transcript prepared~~
 44 ~~from an official electronic recording or the recording itself, the trial court clerk must~~
 45 ~~notify the appellant within 10 days after the appellant files this election if any portion~~
 46 ~~of the oral proceedings listed in rule 8.865 was not reported or officially recorded~~
 47 ~~electronically or cannot be transcribed. The notice must indicate that the appellant~~

1 ~~may use a statement on appeal as the record of the portion of the proceedings that~~
2 ~~was not recorded or cannot be transcribed.~~

3
4 ~~(2) Within 15 days after this notice is mailed by the clerk, the appellant must file a~~
5 ~~notice with the court stating whether the appellant elects to use a statement on appeal~~
6 ~~as the record of the portion of the proceedings that was not recorded or cannot be~~
7 ~~transcribed.~~

8
9 **DRAFTERS' NOTES:** Under this proposal, the deleted subdivision above would be replaced by
10 new provisions added to rules 8.866 and 8.668 addressing situations in which the form of the
11 record of the oral proceedings originally elected by the appellant is not available in whole or in
12 part.

13
14
15 **Rule 8.865. Contents of reporter's transcript**

16
17 **(a) Normal contents**

18
19 Except in appeals covered by rule 8.867, ~~or~~ when the parties have filed a stipulation under
20 rule 8.860(b), or when, under a procedure established by a local rule adopted pursuant to
21 (b), the trial court has ordered that any of these items is not required for proper
22 determination of the appeal, the reporter's transcript must contain:

- 23
24 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
25
26 (2) The oral proceedings on any motion in limine;
27
28 (3) The oral proceedings at trial, but excluding the voir dire examination of jurors and
29 any opening statement;
30
31 (4) Any jury instructions given orally;
32
33 (5) Any oral communication between the court and the jury or any individual juror;
34
35 (6) Any oral opinion of the court;
36
37 (7) The oral proceedings on any motion for new trial;
38
39 (8) The oral proceedings at sentencing, granting or denying probation, or other
40 dispositional hearing;
41
42 (9) If the appellant is the defendant, the reporter's transcript must also contain:
43
44 (A) The oral proceedings on any defense motion denied in whole or in part except
45 motions for disqualification of a judge;
46
47 (B) Any closing arguments; and

1
2 (C) Any comment on the evidence by the court to the jury.
3

4 **(b) Local procedure for determining contents**
5

6 A court may adopt a local rule that establishes procedures for determining whether any of
7 the items listed in (a) is not required for proper determination of the appeal or whether a
8 form of the record other than a reporter’s transcript constitutes a record of sufficient
9 completeness for proper determination of the appeal.
10

11
12 **Advisory Committee Comment**
13

14 **Subdivision (b).** Both the United States Supreme Court and the California Supreme Court have held that,
15 where the State has established a right to appeal, an indigent defendant convicted of a criminal offense
16 has a constitutional right to a “record of sufficient completeness” to permit proper consideration of [his]
17 claims.” (*Mayer v. Chicago* (1971) 404 U.S. 189, 193–194; *March v. Municipal Court* (1972) 7 Cal.3d
18 422, 427–428.) The California Supreme Court has also held that an indigent appellant is denied his or her
19 right under the Fourteenth Amendment to the competent assistance of counsel on appeal if counsel fails to
20 obtain an appellate record adequate for consideration of appellant’s claims of errors (*People v. Barton*
21 (1978) 21 Cal.3d 513, 518–520.)
22

23 The *Mayer* and *March* decisions make clear, however, that the constitutionally required “record of
24 sufficient completeness” does not necessarily mean a complete verbatim transcript; other forms of the
25 record, such as a statement on appeal, or a partial transcript may be sufficient. The record that is
26 necessary depends on the grounds for the appeal in the particular case. Under these decisions, where the
27 grounds of appeal make out a colorable need for a complete transcript, the burden is on the State to show
28 that only a portion of the transcript or an alternative form of the record will suffice for an effective appeal
29 on those grounds. The burden of overcoming the need for a verbatim reporter’s transcript appears to be
30 met where a verbatim recording of the proceedings is provided. (*Mayer, supra*, 404 U.S. at p. 195; cf.
31 *Eyrich v. Mun. Court* (1985) 165 Cal.App.3d 1138, 1140 [“Although use of a court reporter is one way of
32 obtaining a verbatim record, it may also be acquired through an electronic recording when no court
33 reporter is available”].)
34

35 Some courts have adopted local rules that establish procedures for determining whether only a portion of
36 a verbatim transcript or an alternative form of the record will be sufficient for an effective appeal,
37 including (1) requiring the appellant to specify the points the appellant is raising on appeal; (2) requiring
38 the appellant and respondent to meet and confer about the content and form of the record; and (3) holding
39 a hearing on the content and form of the record. Local procedures can be tailored to reflect the methods
40 available in a particular court for making a record of the trial court proceedings that is sufficient for an
41 effective appeal.
42

43 **DRAFTERS’ NOTES:** This proposed new subdivision and accompanying advisory committee
44 comment are intended to clarify the courts’ authority to adopt procedures for determining
45 whether a full transcript is necessary in a particular appeal.
46
47
48

1 **Rule 8.866. Preparation of reporter's transcript**

2
3 **(a) When preparation begins**

- 4
5 (1) Unless the court has adopted a local rule under rule 8.865(b) that provides ~~providing~~
6 otherwise, the reporter must immediately begin preparing the reporter's transcript if
7 the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates either:
8
9 (A) That the defendant was represented by appointed counsel at trial; or
10
11 (B) That the appellant is the People.
12
13 (2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the
14 appellant is the defendant and that the defendant was not represented by appointed
15 counsel at trial:
16
17 (A) Within 10 days after the date the clerk mailed the notice under rule 8.864(a)(1),
18 the reporter must file with the clerk the estimated cost of preparing the
19 reporter's transcript; ~~and~~
20
21 (B) The clerk must promptly notify the appellant and his or her counsel of the
22 estimated cost of preparing the reporter's transcript. The notification must
23 show the date it was mailed.
24
25 (C) Within 10 days after the date the clerk mailed the notice under (B), the
26 appellant must do one of the following:
27
28 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
29 the transcript;
30
31 (ii) File a waiver of the deposit signed by the reporter;
32
33 ~~(iii)~~ (iii) File a declaration of indigency supported by evidence in the form
34 required by the Judicial Council; or
35
36 (iv) File a certified transcript of all of the proceedings required to be included
37 in the reporter's transcript under rule 8.865. The transcript must comply
38 with the format requirements of rule 8.144;
39
40 ~~(iii)~~ (v) Notify the clerk by filing a new election that he or she will be using a
41 statement on appeal instead of a reporter's transcript. The appellant must
42 prepare, serve, and file a proposed statement on appeal within 20 days
43 after serving and filing the notice and must otherwise comply with the
44 requirements for statements on appeal under rule 8.869; or
45

1 (vi) Notify the clerk by filing a new election that he or she now elects to
2 proceed without a record of the oral proceedings in the trial court; or

3
4 (vii) Notify the clerk that he or she is abandoning the appeal.

5
6 (D) If the trial court determines that the appellant is not indigent, within 10 days
7 after the date the clerk mails notice of this determination to the appellant, the
8 appellant must do one of the following:

9
10 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
11 the transcript;

12
13 (ii) File with the clerk a waiver of the deposit signed by the reporter;

14
15 (iii) File a certified transcript of all of the proceedings required to be included
16 in the reporter's transcript under rule 8.865. The transcript must comply
17 with the format requirements of rule 8.144;

18
19 (iv) Notify the clerk by filing a new election that he or she will be using a
20 statement on appeal instead of a reporter's transcript. The appellant must
21 prepare, serve, and file a proposed statement on appeal within 20 days
22 after serving and filing the notice and must otherwise comply with the
23 requirements for statements on appeal under rule 8.869;

24
25 (v) Notify the clerk by filing a new election that he or she now elects to
26 proceed without a record of the oral proceedings in the trial court; or

27
28 (vi) Notify the clerk that he or she is abandoning the appeal.

29
30 ~~(D)~~(E) The clerk must promptly notify the reporter to begin preparing the
31 transcript when:

32
33 (i) The clerk receives the required deposit under (C)(i) or (D)(i);

34
35 (ii) The clerk receives a waiver of the deposit signed by the reporter under
36 (C)(ii) or (D)(ii); or

37
38 ~~(ii)~~(iii) The trial court determines that the ~~defendant~~ appellant is indigent and
39 orders that the ~~defendant~~ appellant receive the transcript without cost.

40
41 **DRAFTERS' NOTES:**

- 42 • The proposed amendments to rule 8.866(a)(2)(C) are part of the changes intended to give
43 the appellant, on receipt of the reporter's estimate of the cost of the reporter's transcript, the
44 additional options of (1) obtaining a waiver of a deposit from the court reporter; (2)
45 substituting previously purchased transcripts of the proceedings; (3) notifying the court that
46 he or she elects to proceed without a record of the oral proceedings; or (4) notifying the
47 court that he or she is abandoning the appeal. These amendments would also clarify that if

1 the appellant elects to use a statement on appeal, he or she must serve and file the
2 proposed statement within 20 days after serving and filing the notice of this election.
3

- 4 • The proposed addition of new rule 8.866(a)(2)(D) would specify what must be done if the
5 court determines that a defendant/appellant is not indigent and thus not entitled to a
6 reporter's transcript at public expense. The options provided are similar to those under
7 subdivision (2)(C).
8
9

10 **(b)–(c) * * ***

11
12 **(d) When preparation must be completed**

13
14 The reporter must deliver the original and all copies to the trial court clerk as soon as they
15 are certified but no later than 20 days after the reporter is required to begin preparing the
16 transcript under (a). Only the presiding judge of the appellate division or his or her
17 designee may extend the time to prepare the reporter's transcript (see rule 8.810).
18

19 **DRAFTERS' NOTES** This proposed amendment is part of the changes intended to address
20 extensions of time to prepare transcripts of the oral proceedings in cases appealed to the
21 superior court appellate division. It would add language, similar to that in rule 8.130, relating to
22 reporter's transcripts in civil appeals in the Court of Appeal, indicating that only the reviewing
23 court may extend the time to prepare a reporter's transcript.
24
25

26 **(e) * * ***

27
28 **(f) Notice when proceedings were not reported or cannot be transcribed**

29
30 (1) If any portion of the oral proceedings to be included in the reporter's transcript was
31 not reported or cannot be transcribed, the trial court clerk must so notify the parties
32 by mail. The notice must:
33

34 (A) Indicate whether the identified proceedings were officially electronically
35 recorded under Government Code section 69957; and
36

37 (B) Show the date it was mailed.
38

39 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
40 file a notice with the court stating whether the appellant elects to proceed with or
41 without a record of the identified proceedings. When the party elects to proceed with
42 a record of these oral proceedings:
43

44 (A) If the clerk's notice under (1) indicates that the proceedings were officially
45 electronically recorded under Government Code section 69957, the appellant's
46 notice must specify which form of the record listed in rule 8.864(a) other than

1 a reporter's transcript the appellant elects to use. The appellant must comply
2 with the requirements applicable to the form of the record elected.

3
4 (B) If the clerk's notice under (1) indicates that the proceedings were not officially
5 electronically recorded under Government Code section 69957, the appellant
6 must prepare, serve, and file a proposed statement on appeal within 20 days
7 after serving and filing the notice.
8

9 **DRAFTERS' NOTES:** This proposed new subdivision and a companion one in rule 8.868 below
10 would replace the current provision for situations in which portions of a record were not
11 recorded or cannot be transcribed that is now in rule 8.864(d). The language is modeled on a
12 combination of current rule 8.864(d); rules 8.834(e) and 8.835(d), relating to limited civil cases in
13 which the appellant elected a reporter's transcript or electronic recording but that form of the
14 record is not available or cannot be transcribed; and rule 8.130(g), relating to civil cases in the
15 Court of Appeal in which portions of a record were not recorded or cannot be transcribed. This
16 proposed provision:
17

- 18 • Would be located in the rule relating to reporter's transcripts, as it is in rules 8.130 and
19 8.834, rather than in the rule regarding elections relating to the record of the oral
20 proceedings.
21
- 22 • Would not set a time frame within which the court must notify the appellant that the
23 proceedings were not recorded or cannot be transcribed. This is consistent with current
24 rules 8.130, 8.864, and 8.865 as well as rule 8.346, relating to felony cases in the Court of
25 Appeal in which portions of a record were not recorded or cannot be transcribed. Instead,
26 this proposed provision would set a deadline for the appellant to act after receiving notice
27 from the court.
28
- 29 • Would give the appellant the option of electing to proceed without a record of the oral
30 proceedings, as in current rules 8.834(e) and 8.835(d).
31
- 32 • As in the proposed amendments to 8.834(e), to eliminate delay in preparation of the record
33 that might occur if the appellant subsequently requested that the record be in the form of an
34 electronic recording or a transcript of such a recording when such a recording is not
35 available, this proposed provision would require the court's notice that the proceedings were
36 not reported or cannot be transcribed to indicate whether the proceedings were officially
37 electronically recorded.
38
- 39 • If the proceedings were not officially electronically recorded, as in current rule 8.864(d), and
40 in rule 8.346, relating to settled statements in felony appeals in the Court of Appeal, the only
41 alternative form of the record available to the appellant would be a settled statement.
42

43 **Advisory Committee Comment**

44
45 **Subdivision (a).** If the appellant was not represented by the public defender or other appointed counsel in
46 the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of*
47 *Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency.
48 This form is available at any courthouse or county law library or online
49 at ~~www.courtinfo.ca.gov/forms~~ www.courts.ca.gov/forms.htm.
50

1 **Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii).** Sometimes a party in a trial court proceeding will purchase
2 reporter's transcripts of all or part of the proceedings before any appeal is filed. In recognition of the fact
3 that such transcripts may already have been purchased, this rule allows an appellant, in lieu of depositing
4 funds for a reporter's transcript, to deposit with the trial court a certified transcript of the proceedings
5 necessary for the appeal. Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) make clear that the certified
6 transcript may be filed in lieu of a deposit for a reporter's transcript only where the certified transcript
7 contains all of the proceedings required under rule 8.865 and the transcript complies with the format
8 requirements of rule 8.144.

9
10 **DRAFTERS' NOTES:** The proposed new paragraph in the advisory committee comment is
11 intended to provide an explanation of the use of previously purchased transcripts in lieu of a
12 deposit for a reporter's transcript.

13
14
15 **Rule 8.867. Limited normal record in certain appeals**

16
17 **(a) Application and additions**

18
19 This rule establishes a limited normal record for certain appeals. This rule does not
20 preclude either an application in the superior court under (e) for additions to the limited
21 normal record or a motion in the reviewing court for augmentation under rule 8.841.

22
23 **(b) Pre-trial appeals of rulings on motions under Penal Code section 1538.5**

24
25 If before trial either the defendant or the People appeal a ruling on a motion under Penal
26 Code section 1538.5 for the return of property or the suppression of evidence, the normal
27 record is composed of:

28
29 (1) Record of the documents filed in the trial court

30
31 A clerk's transcript or original trial court file containing:

32
33 (A) The complaint, including any notice to appear, and any amendment;

34
35 (B) The motion under Penal Code section 1538.5, with supporting and opposing
36 memoranda, and attachments;

37
38 (C) The order on the motion under Penal Code section 1538.5;

39
40 (D) Any court minutes relating to the order; and

41
42 (E) The notice of appeal.

43
44 (2) Record of the oral proceedings in the trial court

45
46 If an appellant wants to raise any issue that requires consideration of the oral
47 proceedings in the trial court, a reporter's transcript, a transcript prepared under rule

1 8.868, an official electronic recording under rule 8.868, or a statement on appeal
2 under rule 8.869 summarizing any oral proceedings incident to the order on the
3 motion under Penal Code section 1538.5.
4

5 **(c) Appeals from judgments on demurrers or certain appealable orders**
6

7 If the People appeal from a judgment on a demurrer to the complaint, including any notice
8 to appear, or if the defendant or the People appeal from an appealable order other than a
9 ruling on a motion for new trial or a ruling covered by (a), the normal record is composed
10 of:
11

12 (1) *Record of the documents filed in the trial court*
13

14 A clerk's transcript or original trial court file containing:
15

- 16 (A) The complaint, including any notice to appear, and any amendment;
- 17 (B) Any demurrer or other plea;
- 18 (C) Any motion or notice of motion granted or denied by the order appealed from,
19 with supporting and opposing memoranda and attachments;
- 20 (D) The judgment or order appealed from and any abstract of judgment or
21 commitment;
- 22 (E) Any court minutes relating to the judgment or order appealed from and:
23 (i) If there was a trial in the case, any court minutes of proceedings at the
24 time the original verdict is rendered and any subsequent proceedings; or
25 (ii) If the original judgment of conviction is based on a guilty plea or nolo
26 contendere plea, any court minutes of the proceedings at the time of entry
27 of such plea and any subsequent proceedings;
- 28 (F) The notice of appeal; and
- 29 (G) If the appellant is the defendant, all probation officer reports.

30
31
32
33
34
35
36
37
38 (2) *Record of the oral proceedings in the trial court*

39 If an appellant wants to raise any issue which requires consideration of the oral
40 proceedings in the trial court:
41

- 42 (A) A reporter's transcript, a transcript prepared under rule 8.868, an official
43 electronic recording under rule 8.868, or a statement on appeal under rule
44
45

1 8.869 summarizing any oral proceedings incident to the judgment or order
2 being appealed.
3

4 (B) If the appeal is from an order after judgment, a reporter's transcript, a transcript
5 prepared under rule 8.868, an official electronic recording under rule 8.868, or
6 a statement on appeal under rule 8.869 summarizing any oral proceedings
7 from:
8

9 (i) The original sentencing proceeding; and
10

11 (ii) If the original judgment of conviction is based on a guilty plea or nolo
12 contendere plea, the proceedings at the time of entry of such plea.
13

14 **(d) Appeals of the conditions of probation**
15

16 If a defendant's appeal of the judgment contests only the conditions of probation, the
17 normal record is composed of:
18

19 (1) Record of the documents filed in the trial court
20

21 A clerk's transcript or original trial court file containing:
22

23 (A) The complaint, including any notice to appear, and any amendment;
24

25 (B) The judgment or order appealed from and any abstract of judgment or
26 commitment;
27

28 (C) Any court minutes relating to the judgment or order appealed from and:
29

30 (i) If there was a trial in the case, any court minutes of proceedings at the
31 time the original verdict is rendered and any subsequent proceedings; or
32

33 (ii) If the original judgment of conviction is based on a guilty plea or nolo
34 contendere plea, any court minutes of the proceedings at the time of entry
35 of such plea and any subsequent proceedings;
36

37 (D) The notice of appeal; and
38

39 (E) All probation officer reports.
40

41 (2) Record of the oral proceedings in the trial court
42

43 If an appellant wants to raise any issue that requires consideration of the oral
44 proceedings in the trial court, a reporter's transcript, a transcript prepared under rule
45 8.868, an official electronic recording under rule 8.868, or a statement on appeal
46 under rule 8.869 summarizing any oral proceedings from:
47

1 (A) The sentencing proceeding; and

2
3 (B) If the judgment of conviction is based on a guilty plea or nolo contendere plea,
4 the proceedings at the time of entry of such plea.

5
6 **(e) Additions to the record**

7
8 Either the People or the defendant may apply to the superior court for inclusion in the
9 record under (b), (c), or (d) of any item that would ordinarily be included in the clerk’s
10 transcript under rule 8.861 or a reporter’s transcript under rule 8.865.

11
12 (1) An application for additional record must describe the material to be included and
13 explain how it may be useful in the appeal.

14
15 (2) The application must be filed in the superior court with the notice of appeal or as
16 soon thereafter as possible, and will be treated as denied if it is filed after the record
17 is sent to the reviewing court.

18
19 (3) The clerk must immediately present the application to the trial judge.

20
21 (4) Within five days after the application is filed, the judge must order that the record
22 include as much of the additional material as the judge finds proper to fully present
23 the points raised by the applicant. Denial of the application does not preclude a
24 motion in the reviewing court for augmentation under rule 8.841.

25
26 (5) If the judge does not rule on the application within the time prescribed by (4), the
27 requested material—other than exhibits—must be included in the clerk’s transcript
28 or the reporter’s transcript without a court order.

29
30 (6) The clerk must immediately notify the reporter if additions to the reporter’s
31 transcript are required under (4) or (5).

32
33 **Advisory Committee Comment**

34
35 **Subdivisions (b)(1)(D), (c)(1)(E), and (d)(1)(C).** ~~This rule identifies~~ These provisions identify the
36 minutes that must be included in the record. The trial court clerk may include additional minutes beyond
37 those identified in these subdivisions if that would be more cost-effective.

38
39 **Subdivisions (c)(1)(G) and (d)(1)(E).** Rule 8.862(c) addresses the appropriate handling of probation
40 officers’ reports that must be included in the clerk’s transcript ~~under (1)(G).~~

41
42 **DRAFTERS’ NOTES:** The proposed addition of subdivisions (b) and (d) is intended to reduce
43 record preparation costs by identifying additional types of appeals in which only a limited record
44 on appeal is necessary. The addition of proposed subdivision (e), which is modeled on
45 language from rule 8.834 relating to felony appeals, is intended to clarify the parties’ ability to
46 request that additional items be included in the record when necessary.

1 **Rule 8.868. Record when trial proceedings were officially electronically recorded**

2
3 (a)–(c) * * *

4
5 **(d) Contents**

6
7 Except in appeals when either the parties have filed a stipulation under rule 8.860(b) or the
8 trial court has ordered that any of these items is not required for proper determination of the
9 appeal, rules 8.865 and 8.867 govern the contents of a transcript of an official electronic
10 recording.

11
12 **DRAFTERS' NOTES:** This proposed new provision is intended to clarify that the limitations on
13 the contents of the reporter's transcripts established by rule 8.867 or by local rule under rule
14 8.865 also apply to transcripts of electronic recordings.

15
16
17 **(d)(e) When preparation begins**

- 18
19 (1) If the appellant files an election under rule 8.864 to use a transcript of an official
20 electronic recording or a copy of the official electronic recording as the record of the
21 oral proceedings, unless the trial court has a local rule providing otherwise,
22 preparation of a transcript or a copy of the recording must begin immediately if
23 either:
24
25 (A) The defendant was represented by appointed counsel at trial; or
26
27 (B) The appellant is the People.
28
29 (2) If the appellant is the defendant and the defendant was not represented by appointed
30 counsel at trial:
31
32 (A) Within 10 days after the date the defendant files the election under rule
33 8.864(a)(1), the clerk must notify the appellant and his or her counsel of the
34 estimated cost of preparing the transcript or the copy of the recording. The
35 notification must show the date it was mailed.
36
37 (B) Within 10 days after the date the clerk mailed the notice under (A), the
38 appellant must do one of the following:
39
40 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
41 the transcript or the copy of the recording;
42
43 (ii) File a declaration of indigency supported by evidence in the form
44 required by the Judicial Council; ~~or~~
45
46 (iii) Notify the clerk by filing a new election that he or she will be using a
47 statement on appeal instead of a transcript or copy of the recording. The

1 appellant must prepare, serve, and file a proposed statement on appeal
2 within 20 days after serving and filing the notice and must otherwise
3 comply with the requirements for statements on appeal under rule 8.869;
4

5 (iv) Notify the clerk by filing a new election that he or she now elects to
6 proceed without a record of the oral proceedings in the trial court; or
7

8 (v) Notify the clerk that he or she is abandoning the appeal.
9

10 (C) If the trial court determines that the appellant is not indigent, within 10 days
11 after the date the clerk mails notice of this determination to the appellant, the
12 appellant must do one of the following:
13

14 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
15 the transcript or the copy of the recording;
16

17 (ii) Notify the clerk by filing a new election that he or she will be using a
18 statement on appeal instead of a reporter's transcript. The appellant must
19 prepare, serve, and file a proposed statement on appeal within 20 days
20 after serving and filing the notice and must otherwise comply with the
21 requirements for statements on appeal under rule 8.869;
22

23 (iii) Notify the clerk by filing a new election the clerk that he or she now
24 elects to proceed without a record of the oral proceedings in the trial
25 court; or
26

27 (iv) Notify the clerk that he or she is abandoning the appeal.
28

29 ~~(C)~~(D) Preparation of the transcript or the copy of the recording must begin when:
30

31 (i) The clerk receives the required deposit under (B)(i) or (C)(i); or
32

33 (ii) The trial court determines that the defendant is indigent and orders that
34 the defendant receive the transcript or the copy of the recording without
35 cost.
36

37 **DRAFTERS' NOTES:**

- 38 • In rule 8.868(e)(2)(B), two new options, modeled on those that would be added to rule 8.866
39 relating to reporter's transcripts, have been added for when the appellant receives the
40 court's estimate of the cost of an electronic recording or transcript prepared from an
41 electronic recording: (1) notifying the court that he or she elects to proceed without a record
42 of the oral proceedings or (2) notifying the court that he or she is abandoning the appeal.
43
- 44 • A new provision, modeled on the one that would be added to rule 8.866 relating to reporter's
45 transcripts, has been added to address what happens if the trial court finds that the
46 appellant is not indigent and thus not entitled to a transcript or copy of an official electronic
47 recording at public expense.

1 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
2 **transcribed**
3

4 (1) If any portion of the oral proceedings to be included in the transcript was not
5 officially electronically recorded under Government Code section 69957 or cannot
6 be transcribed, the trial court clerk must so notify the parties by mail. The notice
7 must:
8

9 (A) Indicate whether the identified proceedings were reported by a court reporter;
10 and
11

12 (B) Show the date it was mailed.
13

14 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
15 file a notice with the court stating whether the appellant elects to proceed with or
16 without a record of the identified oral proceedings. When the party elects to proceed
17 with a record of these oral proceedings:
18

19 (A) If the clerk's notice under (1) indicates that the proceedings were reported by a
20 court reporter, the appellant's notice must specify which form of the record
21 listed in rule 8.864(a) other than an official electronic recording or a transcript
22 prepared from an official electronic recording the appellant elects to use. The
23 appellant must comply with the requirements applicable to the form of the
24 record elected.
25

26 (B) If the clerk's notice under (1) indicates that proceedings the proceedings were
27 not reported by a court reporter, the appellant must prepare, serve, and file a
28 proposed statement on appeal within 20 days after serving and filing the notice.
29

30 **DRAFTERS' NOTES:** This proposed new subdivision is part of the changes equivalent to
31 proposed new rule 8.866(f), but in the context of situations where a proceeding was either not
32 officially electronically recorded or such a recording cannot be transcribed. Please see the
33 drafters' notes under rule 8.866(f).
34
35

36 **Rule 8.869. Statement on appeal**
37

38 **(a) Description**
39

40 A statement on appeal is a summary of the trial court proceedings that is approved by the
41 trial court. An appellant can elect under rule 8.864 to use a statement on appeal as the
42 record of the oral proceedings in the trial court, replacing the reporter's transcript.
43
44

1 **(b) Preparing the proposed statement**

- 2
- 3 (1) If the appellant elects under rule 8.864 to use a statement on appeal, the appellant
- 4 must prepare, serve, and file a proposed statement within 20 days after filing the
- 5 record preparation election.
- 6
- 7 (2) Appellants who are not represented by an attorney must file their proposed statement
- 8 on *Proposed Statement on Appeal (Misdemeanor)* (form CR-135). For good cause,
- 9 the court may permit the filing of a statement that is not on form CR-135.
- 10
- 11 (3) If the appellant does not serve and file a proposed statement within the time specified
- 12 in (1), rule 8.874 applies. the trial court clerk must promptly notify the appellant by
- 13 mail that the proposed statement must be filed within 15 days after the notice is
- 14 mailed and that failure to comply will result in the appeal being dismissed.
- 15

16 **DRAFTERS' NOTES:** Under this proposal, rule 8.869(b)(3) would be amended to replace the

17 current provision with a cross-reference to proposed new rule 8.874, which would generally

18 address failures relating to procurement of the record in misdemeanor appeals.

19

20

21 **(c) Contents of the proposed statement on appeal**

22

23 A proposed statement prepared by the appellant must contain:

24

- 25 ~~(1) A condensed narrative of the oral proceedings that the appellant believes necessary~~
- 26 ~~for the appeal and a summary of the trial court's holding and the sentence imposed on~~
- 27 ~~the defendant. Subject to the court's approval, the appellant may present some or all~~
- 28 ~~of the evidence by question and answer; and~~
- 29
- 30 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. The appeal is then
- 31 limited to those points unless the appellate division determines that the record
- 32 permits the full consideration of another point.
- 33
- 34 (A) The statement must specify the intended grounds of appeal by clearly stating
- 35 each point to be raised but need not identify each particular ruling or matter to
- 36 be challenged.
- 37
- 38 ~~(B) The statement must include as much of the evidence or proceeding as~~
- 39 ~~necessary to support the stated grounds. Any evidence or portion of a~~
- 40 ~~proceeding not included will be presumed to support the judgment or order~~
- 41 ~~appealed from.~~
- 42
- 43 (C) If one of the grounds of appeal is insufficiency of the evidence, the statement
- 44 must specify how it is insufficient.
- 45
- 46 ~~(D) If one of the grounds of appeal challenges the giving, refusal, or modification~~
- 47 ~~of a jury instruction, the statement must include any instructions submitted~~

1 orally and identify the party that requested the instruction and any
2 modification.
3

4 (2) A summary of the trial court’s rulings and the sentence imposed on the defendant.

5
6 (3) A condensed narrative of the oral proceedings that the appellant believes necessary
7 for the appeal.

8
9 (A) The condensed narrative must include a concise factual summary of the
10 evidence and the testimony of each witness that is relevant to the points the
11 appellant states under (1) are being raised on appeal. Any evidence or portion
12 of a proceeding not included will be presumed to support the judgment or order
13 appealed from.

14
15 (B) If one of the points the appellant states under (1) is being raised on appeal is a
16 challenge to the giving, refusal, or modification of a jury instruction, the
17 condensed narrative must include any instructions submitted orally and not in
18 writing and must identify the party that requested the instruction and any
19 modification.
20

21 **DRAFTERS’ NOTES:** Under this proposal, there would be two main changes to rule 8.869(c):
22

- 23 • Several provisions of rule 8.869(c) would be reorganized and modified to clarify what the
24 appellant must include in the condensed narrative portion of a proposed statement on
25 appeal. Currently, some of the provisions in rule 8.869(c)(2), which addresses the statement
26 of the points that the appellant is raising on appeal, appear to establish requirements for
27 items that must be addressed in the narrative of the oral proceedings. Under this proposal,
28 these requirements would be moved into rule 8.869(c)(1), which addresses the condensed
29 narrative of the oral proceedings.
30
- 31 • The current requirement that the proposed statement “include as much of the evidence or
32 proceeding as necessary to support the stated grounds” of appeal would be replaced with a
33 more specific requirement that the condensed narrative portion of the statement include “a
34 concise factual summary of the evidence and the testimony of each witness that is relevant”
35 to the points the appellant indicates he or she is raising on appeal.
36
37

38 **(d) Review of the appellant’s proposed statement**

39
40 (1) Within 10 days after the appellant files the proposed statement, the respondent may
41 serve and file proposed amendments to that statement.
42

43 (2) No later than 10 days after either the respondent files proposed amendments or the
44 time to do so expires, a party may request a hearing to review and correct the
45 proposed statement. No hearing will be held unless ordered by the trial court judge,
46 and the judge will not ordinarily order a hearing unless there is a factual dispute
47 about a material aspect of the trial court proceedings.

1
2 (4)(3) Except as provided in (6), if no hearing is ordered, no later than 10 days after the
3 time for requesting a hearing expires, the trial court judge must review the proposed
4 statement and any proposed amendments filed by the respondent and take one of the
5 following actions:
6

7 (A) If the proposed statement does not contain material required under (c), the trial
8 court judge may order the appellant to prepare a new proposed statement. The
9 order must identify the additional material that must be included in the
10 statement to comply with (c) and the date by which the new proposed
11 statement must be served and filed. If the appellant does not serve and file a
12 new proposed statement as directed, rule 8.874 applies.
13

14 (B) If the trial court judge does not issue an order under (A), the trial court judge
15 must ~~and~~ either:
16

17 (i) Make any corrections or modifications to the statement necessary to
18 ensure that it is an accurate summary of the ~~trial court proceedings~~
19 evidence and the testimony of each witness that is relevant to the points
20 the appellant states under (c)(1) are being raised on appeal; or
21

22 (ii) Identify the necessary corrections and modifications and order the
23 appellant to prepare a statement incorporating these corrections and
24 modifications. ~~If a hearing is ordered, the trial court judge must make~~
25 any corrections or modifications to the statement within 10 days after the
26 hearing.
27

28 (3)(4) If a hearing is ordered, the court must promptly set the hearing date and provide the
29 parties with at least 5 days' written notice of the hearing date. No later than 10 days
30 after the hearing, the trial court judge must either:
31

32 (A) Make any corrections or modifications to the statement necessary to ensure
33 that it is an accurate summary of the evidence and the testimony of each
34 witness that is relevant to the points the appellant states under (c)(1) are being
35 raised on appeal; or
36

37 (B) Identify the necessary corrections and modifications and order the appellant to
38 prepare a statement incorporating these corrections and modifications.
39

40 (5) The trial court judge must not eliminate the appellant's specification of grounds of
41 appeal from the proposed statement.
42

43 (6) If the trial court proceedings were reported by a court reporter or officially
44 electronically recorded under Government Code section 69957 and the trial court
45 judge determines that it would save court time and resources, instead of correcting a
46 proposed statement on appeal:

1
2 (A) If the court has a local rule for the appellate division permitting the use of an
3 official electronic recording as the record of the oral proceedings, the trial
4 court judge may order that the original of an official electronic recording of the
5 trial court proceedings, or a copy made by the court, be transmitted as the
6 record of these oral proceedings without being transcribed. The court will pay
7 for any copy of the official electronic recording ordered under this subdivision;
8 or
9

10 (B) ~~Unless~~ If the court has a local rule ~~providing otherwise permitting this~~, the trial
11 court judge may order that a transcript be prepared as the record of the oral
12 proceedings. The court will pay for any transcript ordered under this
13 subdivision.
14

15 **DRAFTERS' NOTES:** Under this proposal, several changes would be made to rule 8.869(d),
16 relating to review of the appellant's proposed statement:
17

- 18 • To make the rule simpler and easier to understand, the procedures applicable when the trial
19 judge orders a hearing to settle the statement would be moved to a separate subdivision
20 from the procedures if the judge does not order such a hearing.
21
- 22 • To address situations in which the proposed statement is so inadequate that the trial judge
23 would be placed in the position of preparing the statement rather than reviewing it, the rule
24 would be amended to clarify that the judge may order the appellant to prepare, serve, and
25 file a new proposed statement if the original proposed statement does not include material
26 required under rule 8.869(c). This option would only be available in circumstances in which
27 the trial court judge does not order a hearing to settle the statement because it is assumed
28 that the judge would not order such a hearing if the statement is inadequate.
29
- 30 • To ensure that the burden of making substantial modifications or corrections to a proposed
31 statement does not necessarily fall on the trial judge, the rule would be amended to clarify
32 that the judge has the option of ordering the appellant to prepare a statement incorporating
33 necessary modifications or corrections.
34
- 35 • Paragraph (6) would be modified to affirmatively require the adoption of a local rule allowing
36 the trial judge to order a transcript in lieu of reviewing a proposed statement on appeal
37 rather than allowing this practice in the absence of a local rule forbidding it.
38
39

40 (e) **Review of the corrected or modified statement**
41

- 42 (1) If the trial court judge makes any corrections or modifications to the proposed
43 statement under (d), the clerk must send copies of the corrected or modified
44 statement to the parties. If under (d) the trial court judge orders the appellant to
45 prepare a statement incorporating corrections and modifications, the appellant must
46 serve and file the corrected or modified statement within the time ordered by the
47 court. If the appellant does not serve and file a corrected or modified statement as
48 directed, rule 8.874 applies.

1
2 (2) Within 10 days after the corrected or modified statement is sent to the parties by the
3 court or served by the appellant, any party may serve and file proposed modifications
4 or objections to the statement.

5
6 (3) Within 10 days after the time for filing proposed modifications or objections under
7 (2) has expired, the judge must review the corrected or modified statement and any
8 proposed modifications or objections to the statement filed by the parties. The
9 procedures in (d)(3) or (4) apply if the judge determines that further corrections or
10 modifications are necessary to ensure that the statement is an accurate summary of
11 the evidence and the testimony of each witness relevant to the points the appellant
12 states under (c)(1) are being raised on appeal.

13
14 **DRAFTERS' NOTES:** Under this proposal, several changes would be made to rule 8.869(e),
15 relating to review of a corrected or modified statement:

- 16
17 • To reflect the proposed amendment to rule 8.869(d) allowing the trial judge to order that the
18 appellant prepare a statement incorporating necessary modifications and corrections, rule
19 8.869(e)(1) and (2) would be amended to require service and filing of such party-prepared
20 statements;
- 21
22 • The requirements now in subdivision (f) relating to the trial judge's review of parties'
23 proposed modifications or objections to a corrected or modified statement would be moved
24 up to become rule 8.869(e)(3). These requirements would also be modified to:
- 25 ○ Give the judge 10, rather than 5, days to review the proposed modifications or
 - 26 objections; and
 - 27 ○ By cross-referencing back to rule 8.869(d)(3) and (4), give the trial judge the
 - 28 authority to either correct a statement him or herself or order the appellant to do so,
 - 29 either with or without holding a hearing.
- 30
31

32 **(f) Certification of the statement on appeal**

33
34 (1)—If the trial court judge does not make or order any corrections or modifications to the
35 proposed statement under (d)(3), (d)(4), or (e)(3) and does not order either the use of
36 an official electronic recording or preparation of a transcript in lieu of correcting the
37 proposed statement under (d)(6), the judge must promptly certify the statement.

38
39 (2)—~~If the trial court judge corrects or modifies an appellant's proposed statement under~~
40 ~~(d), within five days after the time for filing proposed modifications or objections~~
41 ~~under (e) has expired, the judge must review any proposed modifications or~~
42 ~~objections to the statement filed by the parties, make any corrections or~~
43 ~~modifications to the statement necessary to ensure that it is an accurate summary of~~
44 ~~the trial court proceedings, and certify the statement.~~

45
46 **DRAFTERS' NOTES:**

47 Rule 8.869(f) would be amended to reflect the proposed amendment to rule 8.837(d) and (e),
48 including those (1) moving the content of current (f)(2) into (e); (2) allowing the trial judge to

1 order that the appellant prepare a statement incorporating necessary modifications and
2 corrections; and (3) establishing a new description of what must be included in a statement.
3

4
5 **(g) Extensions of time**

6
7 For good cause, the trial court may grant an extension of not more than 15 days to do any
8 act required or permitted under this rule.
9

10 **Advisory Committee Comment**

11
12 Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.
13

14 **Subdivision (b)(2).** *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) is available at any
15 courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~ www.courts.ca.gov/forms.htm.
16

17 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.
18

19 **Subdivisions (d)(3)(B), (d)(4), and (f).** The judge need not ensure that the statement as modified or
20 corrected is complete, but only that it is an accurate summary of the evidence and testimony relevant to
21 the issues identified by the appellant.
22

23 **DRAFTERS’ NOTES:** The advisory committee comment would be amended to clarify that the
24 trial judge is not required to ensure that the statement on appeal is a complete record of all of
25 the trial court proceedings, but only that it is an accurate summary of the evidence and
26 testimony relevant to the issues identified by the appellant.
27

28
29 **Rule 8.874. Failure to procure the record**

30
31 **(a) Notice of default**

32
33 If a party fails to do any act required to procure the record, the trial court clerk must
34 promptly notify that party by mail that it must do the act specified in the notice within 15
35 days after the notice is mailed and that, if it fails to comply, the appellate division may
36 impose the following sanctions:
37

38 **(1) When the defaulting party is the appellant:**

39
40 **(A) If the appellant is the defendant and is represented by appointed counsel on**
41 **appeal, the appellate division may relieve that appointed counsel and appoint**
42 **new counsel; or**

43
44 **(B) If the appellant is the People or the appellant is the defendant and is not**
45 **represented by appointed counsel, the appellate division may dismiss the**
46 **appeal.**
47

1 (2) When the defaulting party is the respondent:

2
3 (A) If the respondent is the defendant and is represented by appointed counsel on
4 appeal, the appellate division may relieve that appointed counsel and appoint
5 new counsel; or

6
7 (B) If the respondent is the People or the respondent is the defendant and is not
8 represented by appointed counsel, the appellate division may proceed with the
9 appeal on the record designated by the appellant.

10
11 **(b) Sanctions**

12
13 If the party fails to take the action specified in a notice given under (a), the trial court clerk
14 must promptly notify the appellate division of the default and the appellate division may
15 impose the sanction specified in the notice. If the appellate division dismisses the appeal,
16 it may vacate the dismissal for good cause. If the appellate division orders the appeal to
17 proceed on the record designated by the appellant, the respondent may obtain relief from
18 default under rule 8.812.

19
20 **DRAFTERS' NOTES:** This proposed new rule would establish a general requirement for notice
21 of defaults in the procurement of the record in misdemeanor appeals similar to rule 8.842 for
22 such defaults in civil appeals. This would replace the provision currently in rule 8.869 that
23 requires notice of a failure to timely file a proposed statement on appeal and cover other
24 defaults, such as failure to timely submit a required deposit for a reporter's transcript. The
25 language on available sanctions is different from that in rule 8.842 and is instead modeled on
26 rule 8.360, relating to failure to file a brief in a felony appeal in the Court of Appeal, and rule
27 8.882(c)(2), relating to failure to file a brief in a misdemeanor appeal in the superior court
28 appellate division. To address concerns about punishing criminal defendants for defaults by
29 appointed counsel, these rules call for replacement of counsel rather than other sanctions for
30 such defaults. Like rule 8.842, this proposed rule would also specifically note that the appellate
31 division can provide relief from sanctions that have been imposed.

32
33
34 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

35
36 **Rule 8.882. Briefs by parties and amici curiae**

37
38 **(a)–(b) * * ***

39
40 **(c) Failure to file a brief**

41
42 (1) If a party in a civil appeal fails to timely file an appellant's opening brief or a
43 respondent's brief, the appellate division clerk must promptly notify the party by
44 mail that the brief must be filed within 15 days after the notice is mailed and that if
45 the party fails to comply, the court may impose one of the following sanctions:

46
47 (A) If the brief is an appellant's opening brief, the court may dismiss the appeal; or

1
2 (B) If the brief is a respondent's brief, the court may decide the appeal on the
3 record, the appellant's opening brief, and any oral argument by the appellant.
4

5 (2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the
6 appellate division clerk must promptly notify the appellant by mail that the brief
7 must be filed within 30 days after the notice is mailed and that if the appellant fails to
8 comply, the court may impose one of the following sanctions:
9

10 (A) If the appellant is the defendant and is represented by appointed counsel on
11 appeal, the court may relieve that appointed counsel and appoint new counsel;
12 or
13

14 (B) In all other cases, the court may dismiss the appeal.
15

16 (3) If the respondent in a misdemeanor appeal ~~is the defendant and the respondent~~ fails
17 to timely file a brief, the appellate division clerk must promptly notify the respondent
18 by mail that the brief must be filed within 30 days after the notice is mailed and that
19 if the respondent fails to comply, the court ~~will~~ may impose one of the following
20 sanctions:
21

22 (A) If the respondent is the defendant and is represented by appointed counsel on
23 appeal, the court may relieve that appointed counsel and appoint new counsel;
24 or
25

26 (B) In all other cases, the court may decide the appeal on the record, the
27 appellant's opening brief, and any oral argument by the appellant.
28

29 (4) If a party fails to comply with a notice under (1), (2), or (3), the court may impose
30 the sanction specified in the notice.
31

32 (d)–(e) * * *

33
34 **DRAFTERS' NOTES:** These proposed amendments would establish the consequences when
35 the People are the respondent and the respondent fails to file a brief.
36

37
38 **Rule 8.887. Decisions**
39

40 (a)–(b) * * *

41
42 (c) **Opinions certified for publication**
43

44 (1) Opinions certified for publication must comply to the extent practicable with the
45 *California Style Manual*.
46

1 (2) ~~When the decision is final as to the appellate division in a case in which the opinion~~
2 ~~is certified for publication, the clerk must immediately send:~~

3
4 (A) Two paper copies and one electronic copy to the Reporter of Decisions in a
5 format approved by the Reporter.

6
7 (B) One copy to the Court of Appeal for the district. The copy must bear the
8 notation “This opinion has been certified for publication in the Official
9 Reports. It is being sent to assist the Court of Appeal in deciding whether to
10 order the case transferred to the court on the court’s own motion under rules
11 8.1000–8.1018.” The Court of Appeal clerk must promptly file that copy or
12 make a docket entry showing its receipt.
13

14 **DRAFTERS’ NOTES:** This proposed amendment provides for earlier transmission of appellate
15 division opinions that are certified for publication to the Reporter of Decisions.
16
17

18 Chapter 5. Appeals in Infraction Cases

19 Article 2. Record in Infraction Appeals

20 Rule 8.915. Record of oral proceedings

21
22
23 (a)–(b) * * *

24 (c) Failure to file election

25
26 If the appellant does not file an election within the time specified in (b), rule 8.924
27 applies. ~~the trial court clerk must promptly notify the appellant by mail that the election~~
28 ~~must be filed within 15 days after the notice is mailed and that failure to comply will result~~
29 ~~in the appeal proceeding without a record of the oral proceedings.~~
30
31

32
33 **DRAFTERS’ NOTES:** This proposed amendment would replace the current provision specifying
34 what happens when an appellant fails to file an election regarding the record on appeal with a
35 cross-reference to proposed new rule 8.924, which would generally address failures relating to
36 procurement of the record.
37
38

39 ~~(d) Statement on appeal when proceedings cannot be transcribed or were not recorded~~

40
41 ~~(1) If the appellant elects under (a) to use a reporter’s transcript or a transcript prepared~~
42 ~~from an official electronic recording or the recording itself, the trial court clerk must~~
43 ~~notify the appellant within 10 days after the appellant files this election if any portion~~
44 ~~of the oral proceedings listed in rule 8.918 was not reported or officially recorded~~
45 ~~electronically or cannot be transcribed. The notice must indicate that the appellant~~
46 ~~may use a statement on appeal as the record of the portion of the proceedings that~~
47 ~~was not recorded or cannot be transcribed.~~

1
2 (2) ~~Within 15 days after this notice is mailed by the clerk, the appellant must serve and~~
3 ~~file a notice with the court stating whether the appellant elects to use a statement on~~
4 ~~appeal as the record of the portion of the proceedings that was not recorded or cannot~~
5 ~~be transcribed.~~
6

7 **DRAFTERS' NOTES:** The deleted subdivision would be replaced by new provisions added to
8 rules 8.917 and 8.919 below addressing situations in which the form of the record of the oral
9 proceedings originally elected by the appellant is not available in whole or in part.
10

11
12 **Rule 8.916. Statement on appeal**

13
14 **(a) Description**

15
16 A statement on appeal is a summary of the trial court proceedings that is approved by the
17 trial court.
18

19 **(b) Preparing the proposed statement**

20
21 (1) If the appellant elects under rule 8.915 to use a statement on appeal, the appellant
22 must prepare and file a proposed statement within 20 days after filing the record
23 preparation election. If the defendant is the appellant and the prosecuting attorney
24 appeared in the case, the defendant must serve a copy of the proposed statement on
25 the prosecuting attorney. If the People are the appellant, the prosecuting attorney
26 must serve a copy of the proposed statement on the respondent.
27

28 (2) Appellants who are not represented by an attorney must file their proposed
29 statements on *Proposed Statement on Appeal (Infraction)* (form CR-143). For good
30 cause, the court may permit the filing of a statement that is not on form CR-143.
31

32 (3) If the appellant does not serve and file a proposed statement within the time specified
33 in (1), rule 8.924 applies. ~~the trial court clerk must promptly notify the appellant by~~
34 ~~mail that the proposed statement must be filed within 15 days after the notice is~~
35 ~~mailed and that failure to comply will result in the appeal being dismissed.~~
36

37 **DRAFTERS' NOTES:** Under this proposal, rule 8.916(b)(3) would be amended to replace the
38 current provision regarding what happens if an appellant fails to file a proposed statement on
39 appeal with a cross-reference to proposed new rule 8.924, which would generally address
40 failures relating to procurement of the record in infraction appeals.
41

42
43 **(c) Contents of the proposed statement on appeal**

44
45 A proposed statement prepared by the appellant must contain:
46

1 ~~(1) A condensed narrative of the oral proceedings that the appellant believes necessary~~
2 ~~for the appeal and a summary of the trial court's holding and the sentence imposed~~
3 ~~on the defendant. Subject to the court's approval, the appellant may present some or~~
4 ~~all of the evidence by question and answer; and~~
5

6 ~~(2)~~(1) A statement of the points the appellant is raising on appeal. The appeal is then
7 limited to those points unless the appellate division determines that the record
8 permits the full consideration of another point.
9

10 (A) The statement must specify the intended grounds of appeal by clearly stating
11 each point to be raised but need not identify each particular ruling or matter to
12 be challenged.
13

14 ~~(B) The statement must include as much of the evidence or proceeding as~~
15 ~~necessary to support the stated grounds. Any evidence or portion of a~~
16 ~~proceeding not included will be presumed to support the judgment or order~~
17 ~~appealed from.~~
18

19 ~~(C)~~(B) If one of the grounds of appeal is insufficiency of the evidence, the
20 statement must specify how it is insufficient.
21

22 (2) A summary of the trial court's rulings and the sentence imposed on the defendant.
23

24 (3) A condensed narrative of the oral proceedings that the appellant believes necessary
25 for the appeal. The condensed narrative must include a concise factual summary of
26 the evidence and the testimony of each witness that is relevant to the points the
27 appellant states under (1) are being raised on appeal. Any evidence or portion of a
28 proceeding not included will be presumed to support the judgment or order appealed
29 from.
30

31 **DRAFTERS' NOTES:** Under this proposal, there would be two main changes to rule 8.916(c):
32

- 33 • Some provisions of rule 8.916(c) would be reorganized and modified to clarify what the
34 appellant must include in the condensed narrative portion of a proposed statement on
35 appeal. Currently, one of the provisions in rule 8.916(c)(2), which addresses the statement
36 of the points that the appellant is raising on appeal, appears to establish a requirement for
37 an item that must be addressed in the narrative of the oral proceedings. Under this proposal,
38 this requirement would be moved into rule 8.916(c)(3), which addresses the condensed
39 narrative of the oral proceedings.
40
- 41 • The current requirement that the proposed statement "include as much of the evidence or
42 proceeding as necessary to support the stated grounds" of appeal would be replaced with a
43 more specific requirement that the condensed narrative portion of the statement include "a
44 concise factual summary of the evidence and the testimony of each witness that is relevant"
45 to the points the appellant indicates he or she is raising on appeal.

1
2
3 **(d) Review of the appellant’s proposed statement**
4

5 (1) Within 10 days after the appellant files the proposed statement, the respondent may
6 serve and file proposed amendments to that statement.
7

8 (2) No later than 10 days after the respondent files proposed amendments or the time to
9 do so expires, a party may request a hearing to review and correct the proposed
10 statement. No hearing will be held unless ordered by the trial court judge, and the
11 judge will not ordinarily order a hearing unless there is a factual dispute about a
12 material aspect of the trial court proceedings.
13

14 ~~(4)~~(3) Except as provided in (6), if no hearing is ordered, no later than 10 days after the
15 time for requesting a hearing expires, the trial court judge must review the proposed
16 statement and any proposed amendments filed by the respondent and take one of the
17 following actions:
18

19 (A) If the proposed statement does not contain material required under (c), the trial
20 court judge may order the appellant to prepare a new proposed statement. The
21 order must identify the additional material that must be included in the
22 statement to comply with (c) and the date by which the new proposed
23 statement must be served and filed. If the appellant does not serve and file a
24 new proposed statement as directed, rule 8.924 applies.
25

26 (B) If the trial court judge does not issue an order under (A), the trial court judge
27 must either:
28

29 (i) Make any corrections or modifications to the statement necessary to
30 ensure that it is an accurate summary of the ~~trial court~~
31 ~~proceedings~~ evidence and the testimony of each witness that is relevant
32 to the points the appellant states under (c)(1) are being raised on appeal;
33 or
34

35 (ii) Identify the necessary corrections and modifications and order the
36 appellant to prepare a statement incorporating these corrections and
37 modifications. If a hearing is ordered, the trial court judge must make
38 any corrections or modifications to the statement within 10 days after the
39 hearing.
40

41 ~~(3)~~(4) If a hearing is ordered, the court must promptly set the hearing date and provide the
42 parties with at least 5 days’ written notice of the hearing date. No later than 10 days
43 after the hearing, the trial court judge must either:
44

45 (A) Make any corrections or modifications to the statement necessary to ensure
46 that it is an accurate summary of the evidence and the testimony of each

1 witness that is relevant to the points the appellant states under (c)(1) are being
2 raised on appeal; or

3
4 (B) Identify the necessary corrections and modifications and order the appellant to
5 prepare a statement incorporating these corrections and modifications.

6
7 (5) The trial court judge must not eliminate the appellant's specification of grounds of
8 appeal from the proposed statement.

9
10 (6) If the trial court proceedings were reported by a court reporter or
11 officially electronically recorded under Government Code section 69957 and the trial
12 court judge determines that it would save court time and resources, instead of
13 correcting a proposed statement on appeal:

14
15 (A) If the court has a local rule for the appellate division permitting the use of an
16 official electronic recording as the record of the oral proceedings, the trial
17 court judge may order that the original of an official electronic recording of the
18 trial court proceedings, or a copy made by the court, be transmitted as the
19 record of these oral proceedings without being transcribed. The court will pay
20 for any copy of the official electronic recording ordered under this subdivision;
21 or

22
23 (B) ~~Unless~~ If the court has a local rule ~~providing otherwise permitting this,~~ the trial
24 court judge may order that a transcript be prepared as the record of the oral
25 proceedings. The court will pay for any transcript ordered under this
26 subdivision.

27
28 **DRAFTERS' NOTES:** Under this proposal, several changes would be made to rule 8.916(d),
29 relating to review of the appellant's proposed statement:

- 30
- 31 • To make the rule simpler and easier to understand, the procedures applicable when the trial
32 judge orders a hearing to settle the statement would be moved to a separate subdivision
33 from the procedures if the judge does not order such a hearing.
 - 34
35 • To address situations in which the proposed statement is so inadequate that the trial judge
36 would be placed in the position of preparing the statement rather than reviewing it, the rule
37 would be amended to clarify that the judge may order the appellant to prepare, serve, and
38 file a new proposed statement if the original proposed statement does not include material
39 required under rule 8.916(c). This option would only be available in circumstances in which
40 the trial court judge does not order a hearing to settle the statement because it is assumed
41 that the judge would not order such a hearing if the statement is inadequate.
 - 42
43 • To ensure that the burden of making substantial modifications or corrections to a proposed
44 statement does not necessarily fall on the trial judge, the rule would be amended to clarify
45 that the judge has the option of ordering a party to prepare a statement incorporating
46 necessary modifications or corrections.
- 47

- 1 • Paragraph (6) would be modified to affirmatively require that adoption of a local rule allowing
2 the trial judge to order a transcript in lieu of reviewing a proposed statement on appeal
3 rather than allowing this practice in the absence of a local rule forbidding it.
4

5
6 **(e) Review of the corrected or modified statement**
7

- 8 (1) If the trial court judge makes any corrections or modifications to
9 the proposed statement under (d), the clerk must send copies of the corrected or
10 modified statement to the parties. If under (d) the trial court judge orders the
11 appellant to prepare a statement incorporating corrections and modifications, the
12 appellant must serve and file the corrected or modified statement within the time
13 ordered by the court. If the prosecuting attorney did not appear at the trial, ~~the clerk~~
14 will not send a no copy of the statement is to be sent to or served on the prosecuting
15 attorney. If the appellant does not serve and file a corrected or modified statement as
16 directed, rule 8.924 applies.
17
18 (2) Within 10 days after the statement is sent to the parties, any party may serve and file
19 proposed modifications or objections to the statement.
20
21 (3) Within 10 days after the time for filing proposed modifications or objections under
22 (2) has expired, the judge must review the corrected or modified statement and any
23 proposed modifications or objections to the statement filed by the parties. The
24 procedures in (d)(3) or (d)(4) apply if the judge determines that further corrections or
25 modifications are necessary to ensure that the statement is an accurate summary of
26 the evidence and the testimony of each witness relevant to the points the appellant
27 states under (c)(1) are being raised on appeal.
28

29 **DRAFTERS' NOTES:** Under this proposal, several changes would be made to rule 8.916(e),
30 relating to review of a corrected or modified statement:
31

- 32 • To reflect the proposed amendment to rule 8.869(d) allowing the trial judge to order that the
33 appellant prepare a statement incorporating necessary modifications and corrections, rule
34 8.916(e)(1) and (2) would be amended to require service and filing of such party-prepared
35 statements;
36 • The requirements now in subdivision (f) relating to the trial judge's review of parties'
37 proposed modifications or objections to a corrected or modified statement would be moved
38 up to become rule 8.916(e)(3). These requirements would also be modified to:
39 ○ Give the judge 10, rather than 5, days to review the proposed modifications or
40 objections; and
41 ○ By cross-referencing back to subdivision (d)(3) and (4), give the trial judge the
42 authority to either correct a statement him or herself or order the appellant to do so,
43 either with or without holding a hearing.
44
45
46

1 **(f) Certification of the statement on appeal**

2
3 (1)—If the trial court judge does not make or order any corrections or modifications to the
4 proposed statement under (d)(3), (d)(4), or (e)(3) and does not direct the preparation
5 of a transcript in lieu of correcting the proposed statement under (d)(6), the judge
6 must promptly certify the statement.

7
8 (2)—~~If the trial court judge corrects or modifies an appellant’s proposed statement under~~
9 ~~(d), within five days after the time for filing proposed modifications or objections~~
10 ~~under (e) has expired, the judge must review any proposed modifications or~~
11 ~~objections to the statement filed by the parties, make any corrections or~~
12 ~~modifications to the statement necessary to ensure that it is an accurate summary of~~
13 ~~the trial court proceedings, and certify the statement.~~

14
15 **DRAFTERS’ NOTES:**

16 Rule 8.916(f) would be amended to reflect the proposed amendments to subdivisions (d) and
17 (e), including those (1) moving the content of (f)(2) into (e); (2) allowing the trial judge to order
18 that the appellant prepare a statement incorporating necessary modifications and corrections;
19 and (3) establishing a new description of what must be included in a statement.

20
21
22 **(g) Extensions of time**

23
24 For good cause, the trial court may grant an extension of not more than 15 days to do any
25 act required or permitted under this rule.

26
27 **Advisory Committee Comment**

28
29 Rules 8.806, 8.810, and 8.812 address applications for extensions of time and relief from default.

30
31 **Subdivision (b)(2).** *Proposed Statement on Appeal (Infraction)* (form CR-143) is available at any
32 courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~ www.courts.ca.gov/forms.htm.

33
34 **Subdivision (d).** Under rule 8.804, the term “judge” includes a commissioner or a temporary judge.

35
36 **Subdivisions (d)(3)(B), (d)(4), and (f).** The judge need not ensure that the statement as modified or
37 corrected is complete, but only that it is an accurate summary of the evidence and testimony relevant to
38 the issues identified by the appellant.

39
40 **DRAFTERS’ NOTES:** The advisory committee comment would be amended to clarify that the
41 trial judge is not required to ensure that the statement on appeal is a complete record of all of
42 the trial court proceedings, but only that it is an accurate summary of the evidence and
43 testimony relevant to the issues identified by the appellant.

1 **Rule 8.917. Record when trial proceedings were officially electronically recorded**

2
3 (a)–(c) * * *

4
5 **(d) Contents**

6
7 Except in appeals when either the parties have filed a stipulation under rule 8.910(b) or the
8 trial court has ordered that any of these items is not required for proper determination of the
9 appeal, rules 8.918 and 8.920 govern the contents of a transcript of an official electronic
10 recording.

11
12 **DRAFTERS' NOTES:** This proposed new subdivision is intended to clarify that the limitations
13 on the contents of the reporter's transcripts established by rule 8.920 or by local rule under rule
14 8.918 also apply to transcripts of electronic recordings.

15
16
17 **(d)(e) When preparation begins**

- 18
19 (1) If the appellant is the People, preparation of a transcript or a copy of the recording
20 must begin immediately after the appellant files an election under rule 8.915(a) to
21 use a transcript of an official electronic recording or a copy of the official electronic
22 recording as the record of the oral proceedings.
23
- 24 (2) If the appellant is the defendant:
- 25
- 26 (A) Within 10 days after the date the appellant files the election under rule
27 8.915(a), the clerk must notify the appellant and his or her counsel of the
28 estimated cost of preparing the transcript or the copy of the recording. The
29 notification must show the date it was mailed.
30
- 31 (B) Within 10 days after the date the clerk mailed the notice under (A), the
32 appellant must do one of the following:
- 33
- 34 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
35 the transcript or the copy of the recording;
36
- 37 (ii) File a declaration of indigency supported by evidence in the form
38 required by the Judicial Council; or
39
- 40 (iii) Notify the clerk by filing a new election that he or she will be using a
41 statement on appeal instead of a transcript or copy of the recording. The
42 appellant must prepare, serve, and file a proposed statement on appeal
43 within 20 days after serving and filing the notice and must otherwise
44 comply with the requirements for statements on appeal under rule 8.869;
45
- 46 (iv) Notify the clerk by filing a new election that he or she now elects to
47 proceed without a record of the oral proceedings in the trial court; or

1
2 (v) Notify the clerk that he or she is abandoning the appeal.

3
4 (C) If the trial court determines that the appellant is not indigent, within 10 days
5 after the date the clerk mails notice of this determination to the appellant, the
6 appellant must do one of the following:

7
8 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
9 the transcript or the copy of the recording;

10
11 (ii) Notify the clerk by filing a new election that he or she will be using a
12 statement on appeal instead of a reporter's transcript. The appellant must
13 prepare, serve, and file a proposed statement on appeal within 20 days
14 after serving and filing the notice and must otherwise comply with the
15 requirements for statements on appeal under rule 8.869;

16
17 (iii) Notify the clerk by filing a new election that he or she now elects to
18 proceed without a record of the oral proceedings in the trial court; or

19
20 (iv) Notify the clerk that he or she is abandoning the appeal.

21
22 ~~(C)~~(D) Preparation of the transcript or the copy of the recording must begin when:

23
24 (i) The clerk receives the required deposit under (B)(i) or (C)(i); or

25
26 (ii) The trial court determines that the defendant is indigent and orders that
27 the defendant receive the transcript or the copy of the recording without
28 cost.

29
30 **DRAFTERS' NOTES:**

- 31 • In rule 8.917(e)(2)(B), two new options, modeled on those that would be added to rule 8.866
32 relating to reporter's transcripts, have been added when the appellant receives the court's
33 estimate of the cost of an electronic recording or transcript prepared from an electronic
34 recording: (1) notifying the court that he or she elects to proceed without a record of the oral
35 proceedings; or (2) notifying the court that he or she is abandoning the appeal.
36
37 • A new provision, modeled on the one that would be added to rule 8.866 relating to reporter's
38 transcripts, has been added to address what happens if the trial court finds that the
39 appellant is not indigent and thus not entitled to a transcript or copy of an official electronic
40 recording at public expense.

41
42
43 **(f) Notice when proceedings were not officially electronically recorded or cannot be**
44 **transcribed**

45
46 (1) If any portion of the oral proceedings to be included in the transcript were not
47 officially electronically recorded under Government Code section 69957 or cannot

1 be transcribed, the trial court clerk must so notify the parties by mail. The notice
2 must:

3
4 (A) Indicate whether the identified proceedings were reported by a court reporter;
5 and

6
7 (B) Show the date it was mailed.

8
9 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
10 file a notice with the court stating whether the appellant elects to proceed with or
11 without a record of the identified proceedings. When the party elects to proceed with
12 a record of these oral proceedings:

13
14 (A) If the clerk's notice under (1) indicates that the proceedings were reported by a
15 court reporter, the appellant's notice must specify which form of the record
16 listed in rule 8.915(a) other than an official electronic recording or a transcript
17 prepared from an official electronic recording the appellant elects to use. The
18 appellant must comply with the requirements applicable to the form of the
19 record elected.

20
21 (B) If the clerk's notice under (1) indicates that the proceedings were not reported
22 by a court reporter, the appellant must prepare, serve, and file a proposed
23 statement on appeal within 20 days after serving and filing the notice.

24
25 **DRAFTERS' NOTES:** This proposed new provision and a companion one in rule 8.919 below
26 would replace the current provision regarding situations in which portions of a record were not
27 recorded or cannot be transcribed that is now in rule 8.915(d). The language is modeled on a
28 combination of current rule 8.915(d); rules 8.834(e) and 8.835(d), relating to limited civil cases in
29 which the appellant elected a reporter's transcript or electronic recording but that form of the
30 record is not available or cannot be transcribed; and rule 8.130(g), relating to civil cases in the
31 Court of Appeal in which portions of a record were not recorded or cannot be transcribed. This
32 proposed provision:
33

- 34 • Would be located in the rule relating to reporter's transcripts, as it is in rules 8.130 and
35 8.884, rather than in the rule regarding elections relating to the record of the oral
36 proceedings.
- 37
38 • Would not set a time frame within which the court must notify the appellant that the
39 proceedings were not recorded or cannot be transcribed. This is consistent with current
40 rules 8.130, 8.864, and 8.865 as well as rule 8.346, relating to felony cases in the Court of
41 Appeal in which portions of a record were not recorded or cannot be transcribed. Instead,
42 this proposed provision would set a deadline for the appellant to act after receiving notice
43 from the court.
- 44
45 • Would give the appellant the option of electing to proceed without a record of the oral
46 proceedings, as in current rules 8.834(e) and 8.835(d).
- 47

- 1 • As in the proposed amendments to rule 8.835(d), to eliminate delay in preparation of the
2 record that might occur if the appellant subsequently requested that the record be in the
3 form of a reporter's transcript when the proceedings were not reported by a court reporter,
4 this proposed provision would require the court's notice that the proceedings were not
5 reported or cannot be transcribed to indicate whether the proceedings were reported by a
6 court reporter.
7
- 8 • If the proceedings were reported by a court reporter, as in current rule 8.915(d) and in rule
9 8.346, relating to settled statements in felony appeals in the Court of Appeal, the only
10 alternative form of the record available to the appellant would be a settled statement.
11

12 **Rule 8.918. Contents of reporter's transcript**

13 **(a) Normal contents**

14
15 Except in appeals covered by rule 8.920, ~~or~~ when the parties have filed a stipulation under
16 rule 8.910(b), or when, under a procedure established by a local rule adopted pursuant to
17 (b), the trial court has ordered that any of these items is not required for proper
18 determination of the appeal, the reporter's transcript must contain:
19

- 20 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
- 21 (2) The oral proceedings on any motion in limine;
- 22 (3) The oral proceedings at trial, but excluding any opening statement;
- 23 (4) Any oral opinion of the court;
- 24 (5) The oral proceedings on any motion for new trial;
- 25 (6) The oral proceedings at sentencing or other dispositional hearing;
- 26 (7) If the appellant is the defendant, the reporter's transcript must also contain:
 - 27 (A) The oral proceedings on any defense motion denied in whole or in part except
28 motions for disqualification of a judge; and
 - 29 (B) The closing arguments.

30 **(b) Local procedure for determining contents**

31
32 A trial court may adopt a local rule that establishes procedures for determining whether any
33 of the items listed in (a) is not required for proper determination of the appeal or whether a
34 form of the record other than a reporter's transcript constitutes a record of sufficient
35 completeness for proper determination of the appeal.
36
37
38
39
40

1
2
3 **Advisory Committee Comment**

4 **Subdivision (b).** Both the United States Supreme Court and the California Supreme Court have held that,
5 where the State has established a right to appeal, an indigent defendant convicted of a criminal offense
6 has a constitutional right to a “record of sufficient completeness” to permit proper consideration of [his]
7 claims.” (*Mayer v. Chicago* (1971) 404 U.S. 189, 193–194; *March v. Municipal Court* (1972) 7 Cal.3d
8 422, 427–428.) The California Supreme Court has also held that an indigent appellant is denied his or her
9 right under the Fourteenth Amendment to the competent assistance of counsel on appeal if counsel fails to
10 obtain an appellate record adequate for consideration of appellant’s claims of errors (*People v. Barton*
11 (1978) 21 Cal.3d 513, 518–520).

12 The *Mayer* and *March* decisions make clear, however, that the constitutionally required “record of
13 sufficient completeness” does not necessarily mean a complete verbatim transcript; other forms of the
14 record, such as a statement on appeal or a partial transcript, may be sufficient. The record that is
15 necessary depends on the grounds for the appeal in the particular case. Under these cases, where the
16 grounds of appeal make out a colorable need for a complete transcript, the burden is on the State to show
17 that only a portion of the transcript or an alternative form of the record will suffice for an effective appeal
18 on those grounds. The burden of overcoming the need for a verbatim reporter’s transcript appears to be
19 met where a verbatim recording of the proceedings is provided. (*Mayer, supra*, 404 U.S. at p. 195; cf.
20 *Eyrich v. Mun. Court* (1985) 165 Cal.App.3d 1138, 1140 [“Although use of a court reporter is one way of
21 obtaining a verbatim record, it may also be acquired through an electronic recording when no court
22 reporter is available”].)

23
24 Some courts have adopted local rules that establish procedures for determining whether only a portion of
25 a verbatim transcript or an alternative form of the record will be sufficient for an effective appeal,
26 including: (1) requiring the appellant to specify the points the appellant is raising on appeal; (2) requiring
27 the appellant and respondent to meet and confer about the content and form of the record; and (3) holding
28 a hearing on the content and form of the record. Local procedures can be tailored to reflect the methods
29 available in a particular court for making a record of the trial court proceedings that is sufficient for an
30 effective appeal.

31
32 **DRAFTERS’ NOTES:** This proposed new subdivision and accompanying advisory committee
33 comment are intended to clarify the courts’ authority to adopt procedures for determining
34 whether a full transcript is necessary in a particular appeal.
35
36

37 **Rule 8.919. Preparation of reporter’s transcript**

38
39 **(a) When preparation begins**

- 40
41 (1) Unless the court has adopted a local rule under rule 8.920(b) that provides otherwise,
42 the reporter must immediately begin preparing the reporter’s transcript if the notice
43 sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is
44 the People.
45
46 (2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the
47 appellant is the defendant:
48

- 1 (A) Within 10 days after the date the clerk mailed the notice under rule 8.915(a)(3),
2 the reporter must file with the clerk the estimated cost of preparing the
3 reporter's transcript; and
4
- 5 (B) The clerk must promptly notify the appellant and his or her counsel of the
6 estimated cost of preparing the reporter's transcript. The notification must
7 show the date it was mailed.
8
- 9 (C) Within 10 days after the date the clerk mailed the notice under (B), the
10 appellant must do one of the following:
11
- 12 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
13 the transcript;
14
- 15 (ii) File a waiver of the deposit signed by the reporter;
16
- 17 ~~(ii)~~(iii) File a declaration of indigency supported by evidence in the form
18 required by the Judicial Council; or
19
- 20 (iv) File a certified transcript of all of the proceedings required to be included
21 in the reporter's transcript under rule 8.918. The transcript must comply
22 with the format requirements of rule 8.144;
23
- 24 ~~(iv)~~(v) Notify the clerk by filing a new election that he or she will be using a
25 statement on appeal instead of a reporter's transcript. The appellant must
26 prepare, serve, and file a proposed statement on appeal within 20 days
27 after serving and filing the notice and must otherwise comply with the
28 requirements for statements on appeal under rule 8.916;
29
- 30 ~~(iii)~~(vi) Notify the clerk by filing a new election that he or she now elects to
31 proceed without a record of the oral proceedings in the trial court; or
32
- 33 (vii) Notify the clerk that he or she is abandoning the appeal.
34
- 35 (D) If the trial court determines that the appellant is not indigent, within 10 days
36 after the date the clerk mails notice of this determination to the appellant, the
37 appellant must do one of the following:
38
- 39 (i) Deposit with the clerk an amount equal to the estimated cost of preparing
40 the transcript;
41
- 42 (ii) File with the clerk a waiver of the deposit signed by the reporter;
43
- 44 (iii) File a certified transcript of all of the proceedings required to be included
45 in the reporter's transcript under rule 8.918. The transcript must comply
46 with the format requirements of rule 8.144;

1
2 (iv) Notify the clerk by filing a new election that he or she will be using a
3 statement on appeal instead of a reporter’s transcript. The appellant must
4 prepare, serve, and file a proposed statement on appeal within 20 days
5 after serving and filing the notice and must otherwise comply with the
6 requirements for statements on appeal under rule 8.916;

7
8 (v) Notify the clerk by filing a new election that he or she now elects to
9 proceed without a record of the oral proceedings in the trial court; or

10
11 (vi) Notify the clerk that he or she is abandoning the appeal.

12
13 ~~(D)~~(E) The clerk must promptly notify the reporter to begin preparing the
14 transcript when:

15
16 (i) The clerk receives the required deposit under (C)(i) or ~~(D)~~(i); or

17
18 (ii) The clerk receives a waiver of the deposit signed by the reporter under
19 (C)(ii) or (D)(ii); or

20
21 ~~(ii)~~(iii) The trial court determines that the defendant is indigent and orders
22 that the defendant receive the transcript without cost.
23

24 **DRAFTERS’ NOTES:**

- 25 • The proposed amendments to rule 8.919(a)(2)(C) would give the appellant, on receipt of the
26 reporter’s estimate of the cost of the reporter’s transcript , the additional options of (1)
27 obtaining a waiver of a deposit from the court reporter; (2) substituting previously purchased
28 transcripts of the proceedings; (3) notifying the court that he or she elects to proceed without
29 a record of the oral proceedings; or (4) notifying the court that he or she is abandoning the
30 appeal. These amendments would also clarify that if the appellant elects to use a statement
31 on appeal, he or she must serve and file the proposed statement within 20 days after
32 serving and filing the notice of this election.
33
- 34 • The proposed addition of a new 8.919(a)(2)(D) would specify what must be done if the court
35 determines that a defendant/appellant is not indigent and thus not entitled to a reporter’s
36 transcript at public expense.
37

38
39 **(b)–(c) * * ***

40
41 **(d) When preparation must be completed**

42
43 The reporter must deliver the original and all copies to the trial court clerk as soon as they
44 are certified but no later than 20 days after the reporter is required to begin preparing the
45 transcript under (a). Only the presiding judge of the appellate division or his or her
46 designee may extend the time to prepare the reporter’s transcript (see rule 8.810).
47

1 **DRAFTERS' NOTES:** This proposed amendment is part of the changes intended to address
2 extensions of time to prepare transcripts of the oral proceedings in cases appealed to the
3 superior court appellate division. It would add language, similar to that in rule 8.130, relating to
4 reporter's transcripts in civil appeals in the Court of Appeal, indicating that only the reviewing
5 court may extend the time to prepare a reporter's transcript.
6

7
8 (e) * * *

9
10 **(f) Notice when proceedings cannot be transcribed**

11
12 (1) If any portion of the oral proceedings to be included in the reporter's transcript was
13 not reported or cannot be transcribed, the trial court clerk must so notify the parties
14 by mail. The notice must:

15
16 (A) Indicate whether the identified proceedings were officially electronically
17 recorded under Government Code section 69957; and

18
19 (B) Show the date it was mailed.

20
21 (2) Within 15 days after this notice is mailed by the clerk, the appellant must serve and
22 file a notice with the court stating whether the appellant elects to proceed with or
23 without a record of the identified proceedings. When the party elects to proceed with
24 a record of these oral proceedings:

25
26 (A) If the clerk's notice under (1) indicates that the proceedings were officially
27 electronically recorded under Government Code section 69957, the appellant's
28 notice must specify which form of the record listed in rule 8.915(a) other than
29 a reporter's transcript the appellant elects to use. The appellant must comply
30 with the requirements applicable to the form of the record elected.

31
32 (B) If the clerk's notice under (1) indicates that the proceedings were not officially
33 electronically recorded under Government Code section 69957, the appellant
34 must prepare, serve, and file a proposed statement on appeal within 20 days
35 after serving and filing the notice.

36
37 **DRAFTERS' NOTES:** This proposed new subdivision is equivalent to proposed new rule
38 8.917(e), but in the context of situations where a proceeding was either not reported by a court
39 reporter or cannot be transcribed. Please see the drafters' notes under rule 8.917(e).

40
41 **Advisory Committee Comment**

42
43 **Subdivision (a).** The appellant must use *Defendant's Financial Statement on Eligibility for Appointment*
44 *of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show
45 indigency. This form is available at any courthouse or county law library or online
46 at www.courtinfo.ca.gov/forms www.courts.ca.gov/forms.htm.
47

1 **Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii).** Sometimes a party in a trial court proceeding will purchase
2 reporter's transcripts of all or part of the proceedings before any appeal is filed. In recognition of the fact
3 that such transcripts may already have been purchased, this rule allows an appellant, in lieu of depositing
4 funds for a reporter's transcript, to deposit with the trial court a certified transcript of the proceedings
5 necessary for the appeal. Subdivisions (a)(2)(C)(iv) and (a)(2)(D)(iii) make clear that the certified
6 transcript may be filed in lieu of a deposit for a reporter's transcript only where the certified transcript
7 contains all of the proceedings required under rule 8.865 and the transcript complies with the format
8 requirements of rule 8.144.

9
10 **DRAFTERS' NOTES:** The proposed new paragraph in the advisory committee comment is
11 intended to provide an explanation of the use of previously purchased transcripts in lieu of a
12 deposit for a reporter's transcript.

13
14
15 **Rule 8.924. Failure to procure the record**

16
17 **(a) Notice of default**

18
19 If a party fails to do any act required to procure the record, the trial court clerk must
20 promptly notify that party by mail that it must do the act specified in the notice within 15
21 days after the notice is mailed and that, if it fails to comply, the reviewing court may
22 impose the following sanctions:

23
24 (1) If the defaulting party is the appellant, the court may dismiss the appeal or, if the
25 default relates only to procurement of the record of the oral proceedings, may
26 proceed on the clerk's transcript or other record of the written documents from the
27 trial court proceedings; or

28
29 (2) If the defaulting party is the respondent, the court may proceed with the appeal on
30 the record designated by the appellant.

31
32 **(b) Sanctions**

33
34 If the party fails to take the action specified in a notice given under (a), the trial court clerk
35 must promptly notify the appellate division of the default and the appellate division may
36 impose the sanction specified in the notice. If the appellate division dismisses the appeal,
37 it may vacate the dismissal for good cause. If the appellate division orders the appeal to
38 proceed on the record designated by the appellant, the respondent may obtain relief from
39 default under rule 8.812.

40
41 **DRAFTERS' NOTES:** This proposed new rule would establish a general requirement for notice
42 of defaults in the procurement of the record in infraction appeals similar to rule 8.842 for such
43 defaults in civil appeals. Like the proposed amendments to rule 8.842 and proposed rule 8.874,
44 this proposed rule would also specifically note that the appellate division can provide relief from
45 sanctions that have been imposed.

1 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**
2
3

4 **Rule 8.927. Briefs**
5

6 (a) * * *

7
8 (b) **Failure to file a brief**
9

- 10 (1) If the appellant fails to timely file an opening brief, the appellate division clerk must
11 promptly notify the appellant by mail that the brief must be filed within 20 days after
12 the notice is mailed and that if the appellant fails to comply, the court may dismiss
13 the appeal.
14
15 (2) If the respondent is ~~the defendant and the respondent~~ fails to timely file a brief, the
16 appellate division clerk must promptly notify the respondent by mail that the brief
17 must be filed within 20 days after the notice is mailed and that if the respondent fails
18 to comply, the court will decide the appeal on the record, the appellant’s opening
19 brief, and any oral argument by the appellant.
20
21 (3) If a party fails to comply with a notice under (1) or (2), the court may impose the
22 sanction specified in the notice.
23

24 (c) * * *

25
26 **DRAFTERS’ NOTES:** These proposed amendments would establish the consequences if the
27 People are the respondent and the respondent fails to file a brief.
28

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is \$25,000 or less.

If you are the party who is appealing (asking for the trial court’s decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

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

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

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

- **Prejudicial error:** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”).

Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury’s or trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.



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

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

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

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

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm in the Getting Started section.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court’s decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

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

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

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at www.leginfo.ca.gov/calaw.html.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.



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

“Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the notice of appeal to the other party or parties in the way required by law.
- Make a record that the notice of appeal has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail or in person), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

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

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a “Notice of Entry” of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier. **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at www.courts.ca.gov/7646.htm (note that the “Appeal and Writ Related Fees” section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

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

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at www.leginfo.ca.gov/calaw.html). These kinds of judgments or orders will be postponed, or “stayed,” only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court’s judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

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

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.



Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

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

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the notice to the other party or parties in the way required by law.
- Make a record that the notice has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail or in person), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

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

There are three parts of the official record:

- a. A record of the documents filed in the trial court (other than exhibits)

- b. A record of what was said in the trial court (this is called the “oral proceedings”)
- c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

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

a. Record of the documents filed in the trial court

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

- (1) A *clerk’s transcript*
- (2) The original *trial court file* or
- (3) An *agreed statement*

Read below for more information about these options.

(1) Clerk’s transcript

Description: A clerk’s transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk’s transcript. These documents are listed in rule 8.832(a) of the California Rules of Court and in *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

If you want any documents other than those listed in rule 8.832(a) to be included in the clerk’s transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk’s transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.



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

Cost: The appellant is responsible for paying for preparing a clerk’s transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk’s transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

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

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

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk’s transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk’s transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

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

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

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties (see rule 8.836 of the California Rules of Court).

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk’s transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to



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

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

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

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- (1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”

- (2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree (“stipulate”) to this, you can use the *official electronic recording* itself instead of a transcript.
- (3) You can use an *agreed statement*.
- (4) You can use a *statement on appeal*.

Read below for more information about these options.

(1) Reporter’s transcript

Description: A reporter’s transcript is a written record (sometimes called a “verbatim” record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose (“elect”) to have the court reporter prepare a reporter’s transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use the same form you used to tell the court you wanted to use a reporter’s transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter’s transcript, the respondent also has the right to designate additional proceedings to be included in the reporter’s transcript. If you elect to proceed without a reporter’s transcript, however, the



respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at: www.courtreportersboard.ca.gov/consumers/index.shtml#rtf. If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

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

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the

oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Cost: The appellant is responsible for paying for preparing this transcript or making a copy of the official electronic recording. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an



appeal in this case (why the appellate division has “jurisdiction”), and describe the rulings of the trial court relating to the points to be raised on appeal.

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

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

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court’s rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the proposed statement to the respondent in the way required by law.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on



the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on

appeal, but the clerk will not include any exhibits in the clerk’s transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

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

14 What happens after the official record has been prepared?

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

15 What is a brief?

Description: A “brief” is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

Contents: If you are the appellant, your brief, called an “appellant’s opening brief,” must clearly explain what



you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and about proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of*

Time to File Brief (Limited Civil Case) (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

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

18 What is "oral argument?"

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.



19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

INFORMATION FOR THE RESPONDENT

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

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

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.

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

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

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

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

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

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

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

(a) Clerk's transcript

If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.



To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible

substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at:

www.courtreportersboard.ca.gov/consumers/index.shtml#trf. The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript or one of the permissible substitutes or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(c) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated he or she is raising on appeal. "Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or



- deliver (“serve”) the proposed amendments to the appellant in the way required by law.
- Make a record that the proposed amendments have been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail or in person), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

25 What happens after the official record has been prepared?

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

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including

requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

The appellant serves and files the first brief, called an “appellant’s opening brief.” You may, but are not required to, respond by serving and filing a respondent’s brief within 30 days after the appellant’s opening brief is filed. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the other parties in the way required by law.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106) to ask the court for an extension.

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

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

26 What happens after all the briefs have been filed?

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

“Oral argument” is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

Clerk stamps date here when form is filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below:

Appellate Division Case Number:

Instructions

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

1 Your Information

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

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

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

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

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

Fax (*if available*): () _____

Trial Court Case Name: _____

2 This is (check a or b):

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

3 Judgment or Order You Are Appealing

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

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



Trial Court Case Name: _____

3 (continued)

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

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

4 Record Preparation Election

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

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

- a. I have/My client has completed Appellant’s Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) and attached it to this notice of appeal.
- b. I/My client will complete Appellant’s Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

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

Date: _____

Type or print your name

▶ _____
Signature of appellant/cross-appellant or attorney

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

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms/htm.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:
Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

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

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

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

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

Fax (*if available*): () _____

Trial Court Case Name: _____

Information About Your Appeal

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

Record of the Documents Filed in the Trial Court

③ I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

a. **Clerk’s Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.

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

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

(2) **Additional documents.** If you want any documents in addition to the required documents listed in (1) above to be included in the clerk’s transcript, you must identify those documents here.

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

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

Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-103, item 3a(2).”

Trial Court Case Name: _____

3 a. (continued)

(3) Exhibits.

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

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

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. (Check a or b.)

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (i) or (ii) and attach the checked document*):
- (i) An order granting a waiver of the cost under rules 3.50–3.58
- (ii) An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- b. **Agreed statement.** (*You must complete item 5d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.*)

Record of Oral Proceedings in the Trial Court

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

4 I elect (choose)/My client elects to proceed (*check a or b*):

- a. WITHOUT a record of the oral proceedings in the trial court (*skip 5*; *sign and date this form*). I understand that if I elect to proceed without a record of the oral proceedings in the trial court, the appellate division will not be able to consider what was said during those proceedings in determining whether a legal error was made.

(*Write initials here*): _____



Trial Court Case Name: _____

4 (continued)

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

(Write initials here): _____

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

- a. **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

- (1) **Designation of proceedings to be included in reporter’s transcript.** I request that the following proceedings in the trial court be included in the reporter’s transcript.

(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.)

Date	Department	Description	Court Reporter’s Name
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			

- Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”*

- (2) The proceedings designated in (1) include do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (*Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.*)

- Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write “APP-103, item 5a(2).”*

Trial Court Case Name: _____

5 a. (continued)

- (3) **Payment for reporter's transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division. (*Write initials here*): _____

- I request that the reporters provide (*check one*):
- (i) My copy of the reporter's transcript in paper format.
 - (ii) My copy of the reporter's transcript in computer-readable format.
 - (iii) My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division authorizing parties to use the official electronic recording itself as the record of the court proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.58
 - (b) An application for a waiver of court fees and costs under rules 3.50–3.58 (*Use Request to Waive Court Fees (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

Trial Court Case Name: _____

5 (continued)

OR

- d. **Agreed Statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case. *(Check (1) or (2).):*
- (1) I have attached an agreed statement to this notice.
- (2) All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

- e. **Statement on Appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case. *(Check (1) or (2).):*
- (1) I have attached my proposed statement on appeal to this notice of appeal. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.)*
- (2) I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name



Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms/htm.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

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

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

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

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

Fax (*if available*): () _____



Trial Court Case Name: _____

Information About Your Appeal

- 2 On (fill in the date): _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): _____ I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

Proposed Statement

4 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

- a. There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the decision was not supported by substantial evidence): _____

- b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you/your client were harmed by that error):
 - (1) Describe the error: _____

 - Describe how you were/your client was harmed by the error: _____



Trial Court Case Name: _____

(2) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

(3) Describe the error: _____

Describe how you were/your client was harmed by the error: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 4."

5 The Dispute

a. In the trial court, I/my client was the (check one):

- plaintiff (the party who filed the complaint in the case).
- defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about (briefly describe what was claimed in the complaint filed with the trial court): _____

c. The defendant's response to this complaint was (briefly describe how the defendant responded to the complaint filed with the trial court): _____

Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 5."

Trial Court Case Name: _____

6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **4** for this appeal?

- Yes (fill out b)
- No (skip to **7**).

b. In the spaces below, please describe the motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **4** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

(If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing): _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 6b(1)."

(2) Describe the second motion: _____

The motion was filed by the plaintiff. defendant.

There was was not a hearing on this motion.

(If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing): _____

The trial court granted this motion. did not grant this motion.



Trial Court Case Name: _____

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, item 6b(2)."

(3) Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, item 6b(3)."

(7) Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (skip items b, c, d, and e and go to item (8))

Yes (check (1) or (2) and complete items b, c, d, and e)

(1) Jury trial

(2) Trial by judge only

b. Did you/your client testify at the trial?

No

Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7b."

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in (4) for this appeal?

No

Yes (complete items (1), (2), and (3)):

(1) The witness's name is (fill in the witness's name): _____

(2) The witness testified on behalf of the (check one): plaintiff. defendant.



Trial Court Case Name: _____

(3) This witness testified that *(Write a complete and accurate summary of the witness’s testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness’s testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: _____

Check here if you need more space to summarize this witness’s testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-104, Item 7c.”

d. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning this witness’s testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write “APP-104, Item 7d.”

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in 4 for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.)*:

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write “APP-104, Item 7e.”

8 The Trial Court's Findings

Did the trial court make findings in the case?

No

Yes *(describe the findings made by the trial court)*: _____

Check here if you need more space to describe the trial court’s findings and attach a separate page or pages describing these findings. At the top of each page, write “APP-104, Item 8.”



Trial Court Case Number: _____

Trial Court Case Name: _____

9 The Trial Court's Final Judgment

The trial court issued the following final judgment in this case (*check all that apply and fill in any required information*):

a. I/My client was required to:

pay the other party damages of (*fill in the amount of the damages*): \$ _____

do the following (*describe what you were ordered to do*): _____

b. The other party was required to:

pay me/my client damages of (*fill in the amount of the damages*): \$ _____

do the following (*describe what the other party was ordered to do*): _____

c. Other (*describe*): _____

Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 9."

Date: _____

Type or print your name

Signature of appellant or attorney

**Order Concerning Appellant's
Proposed Statement on Appeal
(Limited Civil Case)**

Clerk stamps date here when form is filed.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case:

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

Clerk fills in the number below:

Appellate Division Case Number:

① The court has received and reviewed the *Proposed Statement on Appeal* (form APP-104) filed by the appellant on *(fill in date)*: _____

② The court makes the following order:

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

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

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

(2) The appellant is ordered to prepare a statement incorporating the modifications listed below and to serve and file this modified statement.

(a) _____

(b) _____

(c) _____

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

Trial Court Case Number:

Trial Court Case Name: _____

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

The appellant is ordered to prepare a new proposed statement that includes this material.

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

e. This superior court has a local rule for the appellate division authorizing the use of an official electronic recording as the record of the oral proceedings. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____

Signature of trial court judicial officer

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

Clerk stamps date here when form is filed.

Instructions

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

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

Trial Court Case Number:
Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

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

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

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

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

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

Phone: () _____ E-mail (*if available*): _____

Fax (*if available*): () _____

Trial Court Case Name: _____

Information About the Appeal

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

Record of the Documents Filed in the Trial Court

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

(1) Documents

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

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

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

(2) Exhibits

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

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

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

Trial Court Case Name: _____

4 (continued)

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

Record of Oral Proceedings in the Trial Court

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

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

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

Date	Department	Description	Court Reporter’s Name
(a)			
(b)			
(c)			
(d)			
(e)			
(f)			
(g)			

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

Trial Court Case Name: _____

5 a. (continued)

(2) Copy of reporter’s transcript.

- (a) I request a copy of the reporter’s transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter’s estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk’s office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.
- (b) I request that the court reporter provide:
 - (i) My copy of the reporter’s transcript in paper format.
 - (ii) My copy of the reporter’s transcript in computer-readable format.
 - (iii) My copy of the reporter’s transcript in paper format and a second copy of the reporter’s transcript in computer-readable format.

OR

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

OR

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

Date: _____

Type or print your name

▶ _____
Signature of respondent or attorney

1 What does this information sheet cover?

This information sheet tells you about appeals in misdemeanor cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in misdemeanor cases. To learn more, you should read rules 8.800–8.816 and 8.850–8.890 of the California Rules of Court, which set out the procedures for misdemeanor appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

2 What is a misdemeanor?

A misdemeanor is a crime that can be punished by jail time of up to one year, but not by time in state prison. (See Penal Code sections 17 and 19.2. You can get a copy of these laws at www.leginfo.ca.gov/calaw.html.) If you were also charged with or convicted of a felony, then your case is a felony case, not a misdemeanor case.

3 What is an appeal?

An appeal is a request to a higher court to review a decision made by a lower court. **In a misdemeanor case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the “trial court” in this information sheet—is the superior court.**

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

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”). Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect

For information about appeal procedures in other cases, see:

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

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury’s or trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in a misdemeanor case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you are representing yourself, you must put your address, telephone number, fax number, and e-mail



address (if available) on the cover of every document you file with the court and let the court know of this contact information changes so that the court can contact you if needed.

5 How do I get a lawyer to represent me?

The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:

- Your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments) or
- You are likely to suffer other significant harm as a result of being convicted.

The court may, but is not required to, appoint a lawyer to represent you on appeal in other circumstances if you are indigent. You are automatically considered indigent if you were represented by the public defender or other court-appointed lawyer in the trial court. You will also be considered indigent if you can show that your income and assets are too low to pay for a lawyer.

If you think you are indigent, you can ask the court to appoint a lawyer to represent you for your appeal. You may use *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) to ask the court to appoint a lawyer to represent you on appeal in a misdemeanor case. You can get form CR-133 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

If you want a lawyer and you are not indigent or if the court turns down your request to appoint a lawyer, you must hire a lawyer at your own expense. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp.htm at the “Getting Started” tab.

6 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in a misdemeanor case, this is usually the party

convicted of committing the misdemeanor. The other party is called the RESPONDENT; in a misdemeanor case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

7 Can I appeal any decision that the trial court made?

No. Generally, you may appeal only the final judgment—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. With the exception listed below, rulings made by the trial court before final judgment generally cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In a misdemeanor case, the party convicted of committing a misdemeanor usually appeals that conviction or the sentence (punishment) ordered by the trial court. In a misdemeanor case, a party can also appeal:

- Before the trial court issues a final judgment in the case, from an order granting or denying a motion to suppress evidence (Penal Code section 1538.5(j))
- From an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B))

You can get a copy of these laws at www.leginfo.ca.gov/calaw.html.

8 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court’s decision. You may use *Notice of Appeal (Misdemeanor)* (form CR-132) to prepare and file a notice of appeal in a misdemeanor case. You can get form CR-132 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

9 Is there a deadline for filing my notice of appeal?

Yes. Except in the very limited circumstances listed in rule 8.853(b), in a misdemeanor case, you must file your notice of appeal within **30 days** after the trial court



makes (“renders”) its final judgment in your case or issues the order you are appealing. (You can get a copy of rule 8.853 at any courthouse or county law library or online at www.courts.ca.gov/rules.htm) The date the trial court makes its judgment is normally the date the trial court issues its order saying what your punishment is (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

10 How do I file my notice of appeal?

To file the notice of appeal in a misdemeanor case, you must bring or mail the original notice of appeal to the clerk of the trial court that made the judgment or issued the order you are appealing. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in a misdemeanor case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice of appeal to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

11 If I file a notice of appeal, do I still have to go to jail or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone your punishment, such as serving time in jail, paying fines, or probation conditions.

If you have been sentenced to jail in a misdemeanor case, you have a right to be released either with or without bail while your appeal is waiting to be decided, but you must ask the court to set bail or release you. If the trial court has not set bail or released you after your notice of appeal has been filed, you must ask the trial court to set bail or release you. If the trial court denies your release or sets the bail amount higher than you think it should be, you can apply to the appellate division for release or for lower bail.

Other parts of your punishment, such as fines or probation conditions, will be postponed (“stayed”) only if you request a stay and the court grants your request. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. If you do not get a stay and you do not pay your fine or complete another part of your punishment by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

12 What do I need to do after I file my appeal?

You must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. You may use *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134) for this notice. (You can get form CR-134 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm) You must file this notice either:

- (1) within 20 days after you file your notice of appeal, or, if it is later
- (2) within 10 days after the court decides whether to appoint a lawyer to represent you (if you ask the court to appoint a lawyer within 20 days after you file your notice of appeal).

13 In what cases does the appellate division need a record of what was said in the trial court?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the



judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these oral proceedings must be prepared and sent to the appellate division for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of this record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive this record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

14 What are the different forms of the record?

There are three ways a record of the oral proceedings in the trial court can be prepared and provided to the appellate division in a misdemeanor case:

- a. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording; or if the court has a local rule permitting this and you and the respondent (the prosecuting agency) agree (“stipulate”) to this, you can use the *official electronic recording* itself as the record, instead of a transcript.
- c. You can use a *statement on appeal*.

Read below for more information about these options.

a. Reporter’s transcript

When available: In some misdemeanor cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral

proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter’s transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.866 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.866 you can decide to use a different form of the record or take other action instead of proceeding with a reporter’s transcript.

If, however, you are indigent (you cannot afford to pay the cost of a reporter’s transcript), you may be able to get a free transcript. If you were represented by the public defender or another court-appointed lawyer in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210), to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision



you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.866.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.866 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send the reporter's transcript to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from an official recording

When available: In some misdemeanor cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared from that official electronic recording. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. As with reporter's transcripts, some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of preparing a transcript. You should check with the trial court to see if your

case was officially electronically recorded and check to make sure there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing a transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.866.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or recording), you may be able to get a free transcript or recording. If you were represented by the public defender or another court-appointed attorney in the trial court, you are automatically considered indigent. If you were not represented by a court-appointed lawyer in the trial court, you can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. As with reporter's transcripts, whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral



proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.868.

Completion and delivery: Once you deposit the estimated cost of the transcript or the official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted those proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment, or if you do not want to use either of these forms of the record, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.869 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Misdemeanor)* (form CR-135) to prepare your proposed statement. You can get form CR-135 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

Serving and filing a proposed statement: You must serve and file your proposed statement in the trial court within 20 days after you file your notice regarding the record of the oral proceedings. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) a copy of the proposed statement to the prosecuting attorney and any other party in the way required by law.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.



You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the statement needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.

15 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the

written documents filed in your case, called a “clerk’s transcript,” and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.861 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm)

- **Exhibits submitted during trial:** Exhibits, such as photographs, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider such an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent’s brief is filed in the appellate division. (See rule 8.870 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.) Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.

16 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk’s transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

17 What is a brief?

A brief is a party’s written description of the facts in the case, the law that applies, and the party’s argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.880–8.891 of the California Rules of Court, which set out the requirements for preparing,



serving, and filing briefs in misdemeanor appeals, including requirements for the format and length of those briefs. You can get copies of these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

Contents: If you are the appellant (the party who is appealing), your brief, called the “appellant’s opening brief,” must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk’s transcript and the reporter’s transcript (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the brief to the respondent (the prosecuting agency) and any other party in the way required by law.
- Make a record that the brief has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at www.courts.ca.gov/selfhelp-serving.htm.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

18 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent’s brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant’s brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent’s brief was served, you may, but are not required to, serve and file another brief replying to the respondent’s brief. This is called a “reply brief.”

19 What happens after all the briefs have been filed?

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

20 What is oral argument?

“Oral argument” is the parties’ chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you choose to participate in oral argument, you will have up to 10 minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.



21 What happens after oral argument?

After the oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Misdemeanor)* (form CR-137) to file this notice in a misdemeanor case. You can get form CR-137 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised on the appeal. If you were released from custody with or without bail or your sentence or any probation conditions were stayed during the appeal, you may be required to start serving your sentence or complying with your probation conditions immediately after your appeal is dismissed.

Clerk stamps date here when form is filed.

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant’s lawyer in the trial court. (2) is the appellant’s lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

Fax (if available): () _____

Trial Court Case Name: _____

2 Judgment or Order You Are Appealing

I am/My client is appealing (*check one*):

- a. The final judgment of conviction in this case (Penal Code section 1466(2)(A)).
 - I am/My client is contesting only the conditions of the probation.
- b. The following order made after judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(2)(B)).
 - An order modifying the conditions of probation.
 - Other (describe the order): _____
- c. The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).
- d. Other action (*describe the action you are appealing and give the date the trial court took the action*): _____

3 Record on Appeal

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

(Check a or b):

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

4 Court-Appointed Lawyer

- a. I/My client was was not represented by the public defender or another court-appointed lawyer in the trial court.
- b. I am/My client is (*check (1) or (2)*):
 - (1) asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.
 - (2) **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

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

Date: _____

Type or print your name

▶

Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a person who is appealing in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
 - your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments), or
 - you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:**Trial Court Case Name:**The People of the State of California
v.

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

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

- a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

- b. Appellant's lawyer in the trial court (skip this if the appellant is filling out this form):

Name: _____ State Bar number: _____

Street address: _____
Street City State ZipMailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

Fax (if available): () _____



Trial Court Case Name: _____

Information About Your Case

- 2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (Check a or b.)
 - a. Yes
 - b. No (Complete and attach Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.)

- 3 Describe the punishment the trial court gave you/your client in this case (check all that apply and fill in any required information):
 - a. Jail time
 - b. A fine (including penalty and other assessments) (fill in the amount of the fine): \$ _____
 - c. Restitution (fill in the amount of the restitution): \$ _____
 - d. Probation (fill in the amount of time on probation): _____
 - e. Other punishment (describe any other punishment that the trial court gave you/your client in this case):

- 4 Describe any significant harm that you are/your client is likely to suffer because of this conviction:

Notice to Appellant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or a part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: _____

Type or print your name

▶ _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for giving the court notice about the record on appeal in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131 INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
 - (1) 20 days after you file your notice of appeal, or, if it is later
 - (2) 10 days after the court appoints a lawyer to represent you on appeal (if you file a request for a court appointed lawyer within 20 days after you file your notice of appeal).

If you do not file this form on time, the court will not be able to consider what was said in the trial court in deciding whether a legal error was made in the trial court proceedings.

- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.

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

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant’s lawyer in the trial court. (2) is the appellant’s lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

Fax (if available): () _____



Trial Court Case Name: _____

Information About Your Appeal

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

Stipulation for limited record

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

Your Choices (Election) About the Record of the Oral Proceedings

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

④ I elect (choose)/My client elects to proceed *(check a or b)*:

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

(Write initials here): _____

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

(Write initials here): _____



Trial Court Case Name: _____

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

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

OR

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

OR



Trial Court Case Name: _____

5 (continued)

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

OR

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

Date: _____

Type or print your name

▶

Signature of appellant or attorney

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in a **misdemeanor case**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.
- This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v.

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

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant’s lawyer in the trial court. (2) is the appellant’s lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

Fax (if available): () _____



Trial Court Case Number: _____

Trial Court Case Name: _____

Information About Your Appeal

- 2 On (fill in the date): _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- 3 On (fill in the date): _____, I/my client filed a *Notice Regarding Record on Appeal*, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

4 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-INFO to learn about these legal errors):

- *There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.*
- *A “prejudicial error” was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence.*
- *Cannot consider whether witnesses were telling the truth or lying.*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.*

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

a. There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal that is being appealed in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):* _____

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error):*

(1) *Describe the error:* _____

Describe how this error harmed you/your client: _____



Trial Court Case Name: _____

4 b. (continued)

(2) Describe the error: _____

Describe how this error harmed you/your client: _____

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors, and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 4."

5 The Charges Against Me/My Client

a. The charges against me/my client were (list all of the charges indicated on the complaint or citation filed with the court by the prosecutor): _____

b. I/My client (check (1), (2), or (3)):

- (1) pleaded not guilty to all the charges.
- (2) pleaded guilty to only the following charges: _____

- (3) pleaded guilty to all of these charges.



Trial Court Case Name: _____

6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **4** for this appeal?

Yes (fill out b) No (skip to **7**).

b. In the spaces below, please describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **4** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) Describe the first motion: _____

The motion was filed by the prosecutor. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, item 6b(1)."

(2) Describe the second motion: _____

The motion was filed by the prosecutor. defendant.

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, item 6b(2)."



Trial Court Case Name: _____

6 b. (continued)

- (3) Check here if any other motions were filed that are relevant to the reasons you gave in 4 for this appeal, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "CR-135, item 6b(3)."

7 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

- No (skip items b, c, d, e, and f and go to item 8)
- Yes (check (1) or (2) and complete items b, c, d, e, and f)

- (1) Jury trial
- (2) Trial by judge only

b. Did you/your client testify at the trial?

- No
- Yes (Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in 4 for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 7b."

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (check one):

- No
- Yes (complete (1) and (2)).

- (1) The name of the officer who testified is (fill in the officer's name): _____
- (2) This officer testified that (Write a complete and accurate summary of the officer's testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer's testimony or any exhibits the officer asked to present and whether these objections were sustained.): _____

Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 7c."



Trial Court Case Name: _____

7 (continued)

d. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in 4 for this appeal?

No

Yes (fill out (1)-(4)):

(1) The witness's name is (fill in the witness's name): _____

(2) This witness was or was not an officer from the police department, sheriff's office, or other government agency that charged me/my client.

(3) This witness testified on behalf of me/my client. the prosecution.

(4) This witness testified that (Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in 4 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether those objections were sustained.): _____

Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, item 7d."

e. Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in 4 for this appeal. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client's behalf or the prosecution's behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 4 for this appeal, and indicating whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether those objections were sustained. At the top of each page, write "CR-135, item 7e"

f. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in 4 for this appeal (Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment or give your opinion about this evidence.) _____

Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write "CR-135, Item 7f."



Trial Court Case Name: _____

8 The Trial Court's Findings

- a. I/My client was found guilty of the following offenses (*list all of the offenses for which you were/your client was found guilty*): _____

- b. I/My client was found not guilty of the following offenses (*list all of the offenses for which you were/your client was found not guilty*): _____


9 The Sentence

The trial court ordered the following punishment for me/my client in this case (*check all that apply and fill in any required information*):

- a. Jail time (*fill in the amount of time you are/your client is required to spend in jail*): _____
- b. A fine (including penalty and other assessments) (*fill in the amount of the fine*): \$ _____
- c. Restitution (*fill in the amount of the restitution*): \$ _____
- d. Probation (*fill in the amount of time you are/your client is required to be on probation*): _____
- e. Other punishment (*describe any other punishment that the trial court imposed in this case*): _____

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

Date: _____

_____  _____

Type or print name *Signature of appellant or attorney*

**Order Concerning Appellant's
Proposed Statement on Appeal
(Misdemeanor)**

Clerk stamps date here when form is filed.

1 The court has received and reviewed the *Proposed Statement on Appeal* (form CR-143) filed by the appellant on (fill in date): _____

2 The court makes the following order:

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

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

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

(2) The appellant is ordered to prepare a statement incorporating the modifications listed below and to serve and file this modified statement.

(a) _____

(b) _____

(c) _____

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
V. _____

Clerk fills in the number below:

Appellate Division Case Number:

(3) More corrections than could be listed above were needed in order for parts 4 through 8 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 3 are the reasons for this appeal. A list of the required modifications is attached. The appellant is ordered to prepare a statement incorporating those modifications and to serve and file this modified statement.

Trial Court Case Name: _____

- c. The proposed statement does not contain the following material required by rule 8.869 _____

The appellant is ordered to prepare a new proposed statement that includes this material.

- d. The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.869(d)(6)(B) that a transcript be prepared as the record of these proceedings. (Check the court's local rules to make sure the court has adopted a rule providing that this option is available.)
- e. This superior court has a local rule for the appellate division authorizing the use of an official electronic recording as the record of the oral proceedings. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____

Signature of trial court judicial officer

1 What does this information sheet cover?

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at www.leginfo.ca.gov/calaw.html.) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

An appeal is a request to a higher court to review a ruling or decision made by a lower court. **In an infraction case, the court hearing the appeal is the appellate division of the superior court, and the lower court—called the “trial court” in this information sheet—is the superior court.**

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

- **Prejudicial error:** The party that appeals (called the “appellant”) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called “prejudicial error”). Prejudicial error can include

For information about appeal procedures in other cases, see:

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

You can get these forms at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- **No substantial evidence:** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the trial court’s conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-lowcosthelp.htm.



If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

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

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B). You can get a copy of this law at www.leginfo.ca.gov/calaw.html.)

7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get

form CR-142 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes (“renders”) its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a “stay” of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in



your application to the appellate division that you first asked the trial court for a stay and that the trial court unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court (1) whether you have agreed with the respondent (“stipulated”) that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the “oral proceedings”) sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these

responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

- a. You can use a *statement on appeal*.
- b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree (“stipulate”), you can use the official electronic recording itself as the record, instead of a transcript.
- c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a “*reporter’s transcript*.”

Read below for more information about these options.

a. Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings approved by the trial court judge who conducted the trial court proceedings (the term “judge” includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use either of these forms of the record, you can choose (“elect”) to use a statement on appeal as the record of the oral proceedings in the trial court (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter’s transcript or electronic recording, if they are available).



Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court’s rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

Serving and filing a proposed statement: You must serve and file your proposed statement within 20 days after you file your notice of appeal. “Serve and file” means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver (“serve”) the proposed statement to the prosecuting attorney and any other party in the way required by law. If the prosecuting attorney did not appear in your case, you do not need to serve the prosecuting attorney.
- Make a record that the proposed statement has been served. This record is called a “proof of service.” *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail or in person), and the date the proposed statement was served.

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

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called “amendments”) to this statement. The trial judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge’s statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk’s transcript.



b. Official electronic recording or transcript from official recording

When available: In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree (“stipulate”), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a “stipulation”) to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.917.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are

indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.917.

Completion and delivery: Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk’s transcript.

c. Reporter’s transcript

When available: In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a “reporter’s transcript.” You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to



consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.919 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.919 you can decide to use a different form of the record or take other action instead of proceeding with a reporter's transcript.

If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm. The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.919.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.919 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

14 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- **Documents filed in the trial court:** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.)
- **Exhibits submitted during trial:** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.)

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for the exhibit to be sent to the appellate division, the party who has the exhibit must deliver that exhibit to the appellate division as soon as possible.



15 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

16 What is a brief?

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at www.courts.ca.gov/rules.htm.

Contents: If you are the appellant (the party who is appealing), your brief, called the "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the statement on appeal (or other record of the oral proceedings) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. **If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**

"Serve and file" means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the brief to the respondent (the prosecuting agency) and any other party in the way required by law.

- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail or in person), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and at www.courts.ca.gov/selfhelp-serving.htm.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent (the prosecuting agency) may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent serves and files a brief, within 20 days after the respondent's brief was served, you may, but are not required to, serve and file another brief replying to the respondent's brief. This is called a "reply brief."

18 What happens after all the briefs have been filed?

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

19 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person.



You do not have to participate in oral argument, if you do not want to; you can notify the appellate division that you want to “waive” oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

20 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of that decision.

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called “abandoning”) your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at www.courts.ca.gov/forms.htm.

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

Clerk stamps date here when form is filed.

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California v.

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

b. Appellant’s lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):

(1) was the appellant’s lawyer in the trial court. (2) is the appellant’s lawyer for this appeal.

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Phone: () _____ E-mail (if available): _____

Fax (if available): () _____



Trial Court Case Name: _____

2 Judgment or Order You Are Appealing

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

- a. the final judgment of conviction in the case (Penal Code section 1466(2)(A)).
The trial court issued (rendered) this judgment on (*fill in the date*): _____
- b. an order made by the trial court after judgment that affects an important (substantial) right of mine/my client (Penal Code section 1466 (2)(B)).
The trial court issued this order on (*fill in the date*): _____
- c. other (*describe the action you are appealing and indicate the date the trial court took the action*):

3 Stipulation for Limited Record

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

Record of the Oral Proceedings

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

4 I elect (choose)/My client elects to proceed (*check a or b*):

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

(Write initials here): _____

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

(Write initials here): _____

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

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



Trial Court Case Name: _____

5 a. (continued)

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

OR

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

OR

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



Trial Court Case Name: _____

5 (continued)

OR

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

REMINDER: Except in the very limited circumstances listed in rule 8.902(b), you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: _____

Type or print your name

▶ _____
Signature of appellant or attorney

Clerk stamps date here when form is filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

The People of the State of California v.

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

Appellate Division Case Number:

Instructions

- This form is only for preparing a statement on appeal in an infraction case, such as a case about a traffic ticket.
Before you fill out this form, read Information on Appeal Procedures for Infractions (form CR-141-INFO) to know your rights and responsibilities.
This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed no later than 20 days after you file your notice of appeal.
Fill out this form and make a copy of the completed form for your records and for each of the other parties.
You must serve a copy of the completed form on each of the other parties in the case and keep proof of this service.
Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same trial court that issued the judgment or order you are appealing.

1 Your Information

a. Appellant (the party who is filing this appeal):

Name:
Street address:
Mailing address (if different):
Phone: E-mail (if available):

b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):
(1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.
Name: State Bar number:
Street address:
Mailing address (if different):
Phone: E-mail (if available):
Fax (if available):

Trial Court Case Name: _____

Trial Court Case Number: _____

Information About Your Appeal

2 On (fill in the date): _____, I/my client filed a *Notice of Appeal and Record on Appeal (Infraction)*, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

3 **Reasons for Your Appeal**

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- There was not “substantial evidence” supporting the judgment, order, or other decision you are appealing.
- A “prejudicial error” was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence.
- Cannot consider whether witnesses were telling the truth or lying.
- Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court’s decision.

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

a. There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): _____

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: _____

Describe how this error harmed you/your client: _____

(2) Describe the error: _____

Describe how this error harmed you/your client: _____



3 (continued)

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 3."

4 The Charges Against Me/My Client

a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): _____

b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): _____

c. I/My client (check (1), (2), or (3))

(1) pleaded not guilty to all of the charges.

(2) pleaded guilty to only the following charges: _____

(3) pleaded guilty to all of the charges.

5 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in **3** for this appeal?

Yes (fill out b) No (skip to item **6**)

b. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in **3** for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

(1) I/My client made the following requests (motions) in the trial court (check all that apply):

(a) To submit a photograph or photographs as evidence (describe the photographs):

There was was not a hearing on this motion.

5 b(1)(a) (continued)

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the photographs.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(a)."

(b) To submit a map or maps as evidence (describe the maps): _____

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(b)."

(c) To submit other material as evidence (describe what you asked to submit as evidence):

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(c)."

(d) Other (describe any other request you made in the trial court and whether the court granted or denied this request): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(d)."

5 b. (continued)

(2) The prosecutor made the following request (motion) in the trial court (*describe any request the prosecutor made in the trial court and whether the court granted or denied this request*):

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not grant this motion.

Other (*describe any other action the trial court took on this motion*): _____

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(2)."

(3) Check here if other motions were filed that are relevant to the reasons you gave in 3 for this appeal, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 5b(3).

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No (*skip items b, c, d, e and f, and go to item 7*)

Yes (*complete items b, c, d, e, and f*)

b. Did you/your client testify at the trial?

No

Yes (*Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in 3 for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.*): _____

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6b."

6 (continued)

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (*Check one*):

No

Yes (*complete (1) and (2)*):

(1) The name of the officer who testified is (*fill in the officer's name*): _____

(2) This officer testified that (*Write a complete and accurate summary of the officer's testimony that is relevant to the reasons you gave in 3 for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer's testimony or any exhibits the officer asked to present and whether these objections were sustained.*): _____

Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6c."

d. Were there any other witnesses at the trial?

No

Yes (*fill out (1)-(4)*):

(1) The witness's name is (*fill in the witness's name*): _____

(2) The witness was was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of me/my client. the prosecution.

(4) This witness testified that (*Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in 3 for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained.*): _____

e. Check here if other witnesses gave testimony at the trial that is relevant to the reasons you gave in 3 for this appeal. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in 3 for this appeal, and indicating whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "CR-143, item 6e."



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6 (continued)

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in **3** for this appeal (*Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.*):

Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-143, Item 6f."

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses (*list all of the offenses for which you were/your client was found guilty*): _____

b. I/My client was found not guilty of the following offenses (*list all of the offenses for which you were/your client was found not guilty*): _____

c. The following charges were dismissed after proof of correction was shown to the judge (*list all of the charges that were dismissed*): _____

8 The Sentence

The trial court imposed the following fine or other punishment on me/my client (*check all that apply and fill in any required information*):

a. A fine of (*fill in the amount of the fine*): \$ _____

b. Traffic school

c. Community service (*fill in the number of hours*): _____

d. Other punishment (*describe any other punishment that the court imposed in this case*):

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

Date: _____

Type or print name

▶ _____
Signature of appellant or attorney

Order Concerning Appellant's Proposed Statement on Appeal (Infraction)

Clerk stamps date here when form is filed.

1 The court has received and reviewed the *Proposed Statement on Appeal* (form CR-143) filed by the appellant on (fill in date): _____

2 The court makes the following order:

a. The court certifies that parts 4 through 8 of the statement as proposed by the appellant are an accurate summary of the testimony and other evidence that is relevant to the issues that the appellant indicated in item 3 are the reason for this appeal. This statement is ready to be sent to the appellate division.

b. Corrections are needed in order for parts 4 through 8 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 3 are the reason for this appeal.

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

(2) The appellant is ordered to prepare a statement incorporating the modifications listed below and to serve and file this modified statement.

(a) _____

(b) _____

(c) _____

(3) More corrections than could be listed above were needed in order for parts 4 through 8 of the statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated in item 3 are the reasons for this appeal. A list of the required modifications is attached. The appellant is ordered to prepare a statement incorporating those modifications and to serve and file this modified statement.

Clerk fills in the name and street address of the court:

Superior Court of California, County of

Clerk fills in the number and name of the case:

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
V. _____

Clerk fills in the number below:

Appellate Division Case Number:

Trial Court Case Name: _____

- c. The proposed statement does not contain the following material required by rule 8.916 _____

The appellant is ordered to prepare a new proposed statement that includes this material.

- d. The trial court proceedings in this case were reported by a court reporter or officially recorded electronically under Government Code section 69957. Instead of correcting this statement, the court orders under rule 8.916(d)(6)(B) that a transcript be prepared as the record of these proceedings. (Check the court's local rules to make sure the court has adopted a rule providing that this option is available.)
- e. This superior court has a local rule for the appellate division authorizing the use of an official electronic recording as the record of the oral proceedings. The trial court proceedings in this case were officially electronically recorded. Instead of correcting this statement, the court orders that a copy of that electronic recording be prepared as the record of these proceedings at the court's expense.

Date: _____

Signature of trial court judicial officer