



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 23-145*

For business meeting on: September 19, 2023

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**Title**

Appellate Procedure: Notice of Appeal

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Revise forms APP-002 and APP-102

**Effective Date**

January 1, 2024

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

**Date of Report**

June 29, 2023

**Contact**

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### Executive Summary

The Appellate Advisory Committee recommends revising *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney; (2) add an optional item by which the appellant can attach a copy of the judgment or order being appealed; and (3) on form APP-002, reorganize item 1 to ensure that the item requesting the date of the judgment or order being appealed was entered is not overlooked.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise the following forms to add an item by which attorneys can indicate they are appealing to challenge a sanctions order, add an item to allow appellants to attach the order or judgment being appealed, and make other minor additions or corrections:

- *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002)
- *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102)

The proposed revised forms are attached at pages 6–9.

### **Relevant Previous Council Action**

*Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) was adopted by the Judicial Council effective January 1, 2004. *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) was adopted by the Judicial Council effective January 1, 2009. Both forms have been revised since adoption (most recently in 2017 for form APP-002 and 2019 for form APP-102), but these prior revisions are not relevant for the council’s consideration of this proposal.

### **Analysis/Rationale**

This proposal recommends revising the civil notice of appeal forms (forms APP-002 and APP-102) as follows.

#### **Addition of item for attorneys to indicate they are appealing a sanction order**

In 2020, the Supreme Court in *K.J. v. Los Angeles Unified School District*<sup>1</sup> addressed whether a Court of Appeal has jurisdiction to review an order directing an attorney to pay sanctions when the notice of appeal only identifies the attorney’s client as appellant. Relying on the rule of liberal construction of the notice of appeal,<sup>2</sup> the Supreme Court held that the Court of Appeal has appellate jurisdiction over the sanctions order, even if the attorney omitted themselves as an appellant on the notice of appeal, so long as it is “clear from the record that the omitted attorney intended to participate in the appeal and the respondent was not misled or prejudiced by the omission.”<sup>3</sup> The court noted, however, that to avoid any unnecessary litigation on this question, the “better practice is for the attorney to file a notice of appeal that expressly identifies himself or herself as an appealing party.”<sup>4</sup>

To encourage the “better practice” identified by the Supreme Court, item 1d on *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and item 3c on *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102)<sup>5</sup> have been added for the attorney to indicate that the judgment or order being appealed directed the attorney to pay sanctions and that the attorney is appealing that order.

#### **Optional item for appellant to attach the judgment or order being appealed**

Items 3 and 3d have been added to forms APP-002 and APP-102, respectively, to allow the appellant to indicate that they are attaching a copy of the judgment or order being appealed. The committee believes that allowing an appellant to attach the judgment or order to the notice of

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<sup>1</sup> *K.J. v. Los Angeles Unified School District* (2020) 8 Cal.5th 875.

<sup>2</sup> Cal. Rules of Court, rule 8.100(a)(2).

<sup>3</sup> *K.J. v. Los Angeles Unified School District*, *supra*, 8 Cal.5th 878.

<sup>4</sup> *Id.* at p. 889.

<sup>5</sup> To comply with Judicial Council form style guidelines, the titles of the forms have been revised to *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) and *Notice of Appeal/Cross-Appeal—Limited Civil Case* (form APP-102).

appeal would aid a litigant who was uncertain about how to classify the order or judgment in item 2c (on form APP-002) or item 3b (on form APP-102) and would, in such cases, help the court determine the proper scope of the appeal.

### **Reformatting of item 1 on form APP-002**

Currently item 1 on form APP-002 contains no subitems and requires appellants to list their name, provide the date on which the judgment or order being appealed was entered, and then specify which judgment or order is being appealed. The committee received feedback from the Family Violence Appellate Project that a significant number of self-represented litigants with whom they interact overlook the “date” portion of this item, making it more difficult to determine if an appeal is timely.

Under rule 8.104(a)(1) of the California Rules of Court, a notice of appeal must be filed on or before the earliest of “(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of the judgment.” A timely filed notice of appeal is a jurisdictional prerequisite to an appeal.<sup>6</sup>

To ensure that an appellant fills out all required information, item 1 on form APP-002 has been reformatted to provide subitems, each with its own line. In subitem a, an appellant provides their name. Subitem b asks for the date on which the judgment and each order being appealed was entered. Subitem c is a list of judgments or orders, with check boxes for the appellant to indicate the type of order or judgment being appealed. Finally, item 1d, as discussed above, would permit an attorney to indicate they are also appealing a judgment or order directing them to pay sanctions.

### **Policy implications**

The above revisions to forms APP-002 and APP-102 will make these notice of appeal forms clearer and will help avoid unnecessary litigation over the scope or jurisdiction of the appeal. These revisions are therefore consistent with *The Strategic Plan for California’s Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

### **Comments**

This proposal circulated for public comment between March 30 and May 12, 2023 as part of the regular spring invitation-to-comment cycle. The committee received six comments: three from organizations of appellate practitioners; one from the Family Violence Appellate Project, one from a county bar association, and one from a superior court. Five commentors agreed with the proposed changes and one agreed if amended. The principal comments are summarized below. A

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<sup>6</sup> See, e.g., *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.

chart with the full text of the comments received and the committee's responses is attached at pages 10–18.

The Family Violence Appellate Project and Los Angeles County Bar Association Appellate Courts Section recommended further revisions to reflect the fact that an appellant may be appealing from multiple orders. To account for this possibility, form APP-002 has been further revised as follows: (1) the parenthetical in item 1b has been revised to read “*(list the date or dates the judgment and each order being appealed was entered)*”; and (2) item 1c has been revised to add the parenthetical “*(check all that apply)*.” Similarly, the parenthetical at item 3 on form APP-102 has been revised to read “*(check a, b, or both)*,” and the parenthetical at item 3b has been revised to include the parenthetical “*(check all that apply)*.”

The Los Angeles County Bar Association Appellate Courts Section also recommended that a box be added to item 1c for the appellant to specify that the appeal is from a collateral order. The committee believes that an appeal from a collateral order would fit within the “other” box (item 1c in form APP-002 and item 3(b)(9) in form APP-102) and that a specific box for collateral orders is unnecessary. To make clear that the “other” box can be used where a nonstatutory basis for appellate jurisdiction over an order exists, however, the phrase “other authority” has been added to the parenthetical on the “other” box on form APP-002. The parenthetical has been revised to read “*(describe and specify the code section or other authority that authorizes this appeal)*.”

The Orange County Bar Association stated that it did not believe it is necessary to add an option by which an appellant could indicate that the judgment or order being appealed is attached. The committee agrees with the commenter that attaching a copy of the judgment or order being appealed is not necessary for the notice of appeal to be effective. However, for the reasons stated above, the committee believes it may be useful to self-represented appellants and the court in certain cases.

### **Alternatives considered**

The committee considered taking no action, but ultimately concluded that the revisions would aid both appellants in filling out the civil notice of appeal forms and courts in processing the notices.

Because an appellant may seek to appeal from multiple orders, the committee considered using the plural “orders” throughout forms APP-002 and APP-102. However, the committee concluded that using “orders” may be confusing in those cases where only a single order or judgment is being appealed. The committee believes that the revisions discussed above sufficiently account for cases where an appellant is appealing from multiple orders.

The committee considered adding items to the criminal and juvenile notice of appeal forms similar to the new item 1c on form APP-002 and item 3c on form APP-102 relating to sanctions orders. In response to a request for specific comment on this point, the Superior Court for San Diego County stated that the other notice of appeal forms should be revised. However, in the

absence of any indication that attorney appeals from sanction orders in criminal or juvenile cases have created jurisdictional issues similar to those addressed in *K.J. v. Los Angeles Unified School District*, the committee decided not to recommend revising the criminal or juvenile notices of appeal at this time.

### **Fiscal and Operational Impacts**

Fiscal or operational impacts, if any, are expected to be minimal and there are no apparent barriers to implementation.

### **Attachments and Links**

1. Forms APP-002 and APP-102, at pages 6–9
2. Chart of comments, at pages 10–18

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY  <b>DRAFT</b> <b>06.22.2023</b> <b>Not approved</b> <b>by Judicial</b> <b>Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<input type="checkbox"/> <b>NOTICE OF APPEAL</b> <input type="checkbox"/> <b>CROSS-APPEAL</b> <b>(UNLIMITED CIVIL CASE)</b>	CASE NUMBER: _____

**Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.**

1. NOTICE IS HEREBY GIVEN that:

- a. (Name): \_\_\_\_\_ appeals from a judgment or order in this case.
- b. The judgment or order was entered on \_\_\_\_\_ (list the date or dates the judgment and each order being appealed were entered):
- c. The appeal is from the following order or judgment (check all that apply):
  - ☐ Judgment after jury trial
  - ☐ Judgment after court trial
  - ☐ Default judgment
  - ☐ Judgment after an order granting a summary judgment motion
  - ☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
  - ☐ Judgment of dismissal after an order sustaining a demurrer
  - ☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
  - ☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
  - ☐ Other (describe and specify the code section or other authority that authorizes this appeal): \_\_\_\_\_
- d. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney (name): \_\_\_\_\_ appeals.

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal: \_\_\_\_\_
- b. Date superior court clerk mailed notice of original appeal: \_\_\_\_\_
- c. Court of Appeal case number (if known): \_\_\_\_\_

3. ☐ The judgment or order being appealed is attached (optional).

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



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

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

## Instructions

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the [Self-Help Guide to the California Courts](https://selfhelp.courts.ca.gov/) at <https://selfhelp.courts.ca.gov/>.
- 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.

Clerk stamps date here when form is filed.

**DRAFT**  
**06.22.2023**  
**Not approved**  
**by Judicial**  
**Council**

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

## 1 Your Information

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

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

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

Street address:

Street City State Zip  
Mailing address (if different):

Street City State Zip  
Phone: Email:

- 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: Email:

Fax:



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

Trial Court Case Number: \_\_\_\_\_

**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, b, or both):

- 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 (check all that apply):
- (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): \_\_\_\_\_
- (8) ☐ An order appointing a receiver.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_





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

Trial Court Case Number: \_\_\_\_\_

**3** (continued)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney (name): \_\_\_\_\_ appeals.

d. ☐ The order or judgment being appealed is attached (optional).

**4 Record Preparation Election**

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

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

a. ☐ I will serve and file a notice designating the record on appeal together with this notice of appeal.

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

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

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

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

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

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

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

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

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

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

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	A	The California Academy of Appellate Lawyers (“CAAL”) is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	The committee notes the commenter’s support for the proposal.
2.	California Lawyers Association by Kelly Woodruff, Chair Litigation Section, Committee on Appellate Courts	A	<p>In Invitation to Comment SPR23-07, the AAC proposed three changes to the notice of appeal (NOA) form. First, it adds an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney. Second, it adds an optional item by which the appellant can attach a copy of the judgment or order being appealed. Third, the form will be reformatted to break out the request for the date of the order or judgment being appealed.</p> <p>The CAC supports all three recommendations. Members of the CAC, especially those who practice in family law, can attest to mistakes on the NOA committed primarily by pro se litigants. In particular, the date of the order or judgment being appealed is often overlooked, which creates additional work for court staff. Both the reformatting of the NOA and the option to attach a copy of the order or judgment being appealed will assist the court in determining whether the NOA was timely filed.</p>	The committee appreciates the commenter’s feedback on this proposal and notes the commenter’s support for the proposal.
3.	Family Violence Appellate Project by Cory Hernandez Senior Staff Attorney	A	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council’s Invitation to	The committee notes the commenter’s support for the proposal and addresses the individual points below.

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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	Commenter	Position	Comment	Committee Response
			<p>Comment number SPR23-07. We support the recommendations, and wanted to make three more recommendations below, for the benefit of courts and parties, whether represented or not.</p> <p>FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors.</p> <p>We first want to express our appreciation for the Council in responding to our suggestion for amending form APP-002 to make it clearer for parties that they need to include the date of the order being appealed from. The proposed changes to item 1, and elsewhere, on form APP-002, responded well to our suggestion and, we think, will make it easier for parties and courts to understand the exact order(s) being appealed.</p>	<p>No response necessary.</p> <p>The committee notes the commenter's support for the proposal.</p>

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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	Commenter	Position	Comment	Committee Response
			We also have three additional suggestions outlined below.	
			<p><b>I. FORM APP-002</b></p> <p>We think the changes on APP-002 in the proposal look great.</p> <p>One additional suggestion for new item 1(c) is to add a parenthetical saying, emphasis added for our suggestion: “The appeal is from the following order or judgment (<i>check all that apply</i>):” We suggest this addition because often more than one box would apply in any given appeal. Plus, some appeals are from multiple orders. And in particular with self-represented litigants, those parties are less likely to know exactly which one statute applies, or may know a statute applies but be confused between, say “Judgment after court trial” and “order . . . under [CCP], § 904.1(a)(2),” because both boxes could apply in, e.g., child custody cases.</p>	The committee agrees with the proposed revision. The parenthetical has been added to item 1c.
			<p><b>II. CITING NONPUBLISHED OPINIONS</b></p> <p>Currently, rule 8.1115(b) of the California Rules of Court disallows citation of nonpublished state court opinions, except in two limited</p>	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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

	Commenter	Position	Comment	Committee Response
			<p>circumstances, (b)(1) (law of case or estoppel) and (b)(2) (same defendant, reasons from prior opinion). We respectfully request the Council consider adding two more limited circumstances, which, from our experience, are already effectively allowed in practice in most courts. These two additional circumstances could be added in (b)(3) and (b)(4), described below.</p> <p>This (b)(3) could say: “When the opinion is relevant to a request for publication, partial publication, or depublication, or opposition thereto.” Citing nonpublished cases can be useful to show the rule 8.1105(c) factors are (or are not) met—e.g., that publication of a specific opinion would be helpful for settling or creating a conflict of law, to show the opinion involves an issue of widespread public importance (e.g., many nonpublished opinions on this issue, but nothing precedential), or to show the sparsity of case law on the issue.</p> <p>And this (b)(4) could say: “When the opinion is relevant for seeking review in the Supreme Court.” Nonpublished opinions can be helpful to show why review should be granted pursuant to rule 8.500(b)—e.g., a split of authority, differences in legal reasoning, or the statewide importance of an issue.</p>	

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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	Commenter	Position	Comment	Committee Response
			<p>We have seen nonpublished opinions cited in both fashions discussed above, and thus adding these (b)(3) and (b)(4) to rule 8.1115(b) would not drastically change the law or current practice, but basically codify and clarify current procedures. These suggested (b)(3) and (b)(4) are narrowly tailored to avoid unduly expanding the use of nonpublished cases as precedential authority, and since they essentially codify extant practice, adding them will not open the floodgates to start adding in even more exceptions to rule 8.1115(b).</p>	
			<p><b>III. MEDIATION ON APPEAL</b></p> <p>The Third District has a local rule 1 that suspends the typical rules of appellate procedure, for a time, until it rules on whether to send particular appeals to mediation. The local rule automatically exempts only certain types of cases: conservatorships, guardianships, and sterilization matters. No explanation is provided in the rule for why these cases are exempted, and others are not. Notably, civil restraining orders, including domestic violence restraining orders, are not automatically exempted—but they should be.</p> <p>In our experience, appeals from civil restraining order cases are never selected for this mediation program. As such, this local rule 1 just adds</p>	<p>This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.</p>

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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

	Commenter	Position	Comment	Committee Response
			<p>extra steps to an already lengthy, detailed appellate process.</p> <p>And from a policy perspective, these cases should not be selected for mediation. Civil restraining order appeals necessarily involve a power imbalance between the restrained party (abuser) and protected party (survivor). Mediation serves only to give the abuser another opportunity to exert their power and control, coerce the survivor into dropping their case or defense. Indeed, even before mediation happens, just knowing that mediation with their abuser may happen is likely to discourage survivors from seeking appeals at all, or continuing their appeal after learning of the possibility of mediation. Having to mediate with their abuser can be traumatizing for survivors. This understanding is reflected in the policy behind, e.g., rule 5.215 of the California Rules of Court, which forbids forcing survivors of domestic violence into joint child custody mediation with their abuser.</p> <p>We thus recommend adding a rule in Title 8 of the California Rules of Court—maybe in Article 1 of Chapter 1 of Division 1, perhaps a new rule 8.21 or something—that forbids local appellate courts, districts and divisions, from adopting local rules that require parties in civil restraining order cases (or at least domestic violence restraining order cases) to participate in mediation programs.</p>	

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

**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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

	Commenter	Position	Comment	Committee Response
			Alternatively stated, the rule could require local appellate courts to automatically exempt civil restraining order appeals (or at least domestic violence restraining order appeals) from mediation, if the court has a mediation program.	
4.	Los Angeles County Bar Association, Appellate Courts Section by John A. Taylor, Jr. Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-07 for the reasons stated in the proposal, with additional proposed modifications to forms APP-002 and APP-102. The LACBA-ACS suggests that in section 1, a box be added for an appeal from a collateral order, such as an order awarding attorney fees. (See, e.g., <i>Madrigal v. Hyundai Motor America</i> (Cal. Ct. App., Apr. 11, 2023, No. C090463) 2023 WL 2883009; <i>Apex LLC v. Korusfood.com</i> (2013) 222 Cal.App.4th 1010, 1015.) In addition, we suggest adding “(s)” to the term “order” in section 1.a.-c., and enough blank space to accommodate multiple dates when an appeal challenges not only the judgment but also other appealable orders (e.g., denial of JNOV, an attorney fees award, etc.)	<p>The committee believes that appeals from collateral orders would properly fit within item 1c’s “Other” box on form APP-002. However, the committee has revised the parenthetical after the “Other” box to make clear that nonstatutory authority (such as the collateral order doctrine) can authorize the appeal. The parenthetical has been revised to read “<i>(describe and specify code section or other authority that authorizes this appeal).</i>”</p> <p>The committee agrees that an appellant may be appealing multiple orders. The committee, however, declines to replace “order” with “order(s)” as such construction can be ambiguous to self-represented parties and therefore inconsistent with the Judicial Council form format. Instead, to address this point, the committee has made the following revisions to form APP-002: (1) the parenthetical in item 1b now reads “<i>(list the date or dates the judgment and each order being appealed was entered)</i>”; and (2) item 1c now includes the parenthetical “<i>(check all that apply).</i>” Similarly, item 3b on form APP-102</p>

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



**SPR23-07****Appellate Procedure: Notice of Appeal Forms** (Revise forms APP-002 and APP-102)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
				has been revised to include the parenthetical “(check all that apply).”
5.	Orange County Bar Association by Michael A. Gregg President	AM	1. We agree with the modification that allows the attorney to more clearly appeal a sanctions order.	The committee appreciates the feedback.
			2. We do not think it is necessary to modify the forms to add the “d.” option for attaching the order or judgment being appealed. Attaching the order/judgment is not necessary for the notice of appeal to be effective, and adding an explicitly option for attachments could lead to more confusion.	The committee agrees that attaching an order or judgment being appealed is not necessary in order for the notice of appeal to be effective. However, the committee believes the item will be useful to self-represented appellants and the courts in cases where the appellant is uncertain how to describe the order being appealed.
6.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? <b>Yes.</b></li> <li>• Should similar changes be made to other notice of appeal forms? <b>Yes.</b></li> <li>• Would the proposal provide cost savings? If so, please quantify. <b>No.</b></li> <li>• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <b>Minimal or none.</b></li> <li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes.</b></li> </ul>	The committee appreciates the information.

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

## SPR23-07

### Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)

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

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"><li>• How well would this proposal work in courts of different sizes? <b>This proposal would work well in the San Diego Superior Court (a large court).</b></li></ul>	

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