



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-148

For business meeting on September 20, 2024

Title

Appellate Procedure: Expanded Clerk's
Transcripts in Felony Appeals

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.320

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Date of Report

August 27, 2024

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Executive Summary

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.320 to authorize the Courts of Appeal to require, by local rule, that the clerk's transcript in felony appeals include additional court records from the superior court file beyond those currently required in rule 8.320(b) or (d)(1). This amendment is intended to help minimize delays in felony appeals occasioned by the need to cure omissions from, or make augmentations to, the clerk's transcript.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend California Rules of Court, rule 8.320 to authorize the Courts of Appeal to require, by local rule, that the clerk's transcript in felony appeals include any or all additional court records in the superior court file beyond those required by rule 8.320(b) or (d)(1).

The proposed amended rule is attached at pages 8–12.

Relevant Previous Council Action

Rule 8.320, governing the normal record on appeal in felony appeals, was adopted as rule 31 in 2004 and renumbered in 2007. Rule 8.320 has previously been amended effective January 1, 2007, January 1, 2010, and January 1, 2013, to require the clerk’s transcript to contain certain materials. The advisory committee comment on rule 8.320 was amended effective January 1, 2014, to state that rules 8.45 and 8.46 address the appropriate handling of sealed and confidential records. Other amendments to the rule are not relevant to this proposal.

Analysis/Rationale

Under California Rules of Court, rule 8.320,¹ the record on appeal in a felony case consists of both a clerk’s transcript and a reporter’s transcript. Rule 8.320(b) governs the contents of the clerk’s transcript in appeals from a judgment of conviction (or an appeal from an order granting a new trial), while rule 8.320(d)(1) governs the clerk’s transcript when the People appeal from a judgment on a demurrer to the accusatory pleading or either party appeals from an appealable order. Both rules provide a list of filings, orders, and other items from the superior court proceedings that the superior court clerk must include in the clerk’s transcript.²

Rule 8.340 provides procedures for (1) correcting omissions from the clerk’s transcript and (2) requesting that the clerk’s transcript be augmented or corrected.³ In its December 2022 report, the Appellate Caseflow Workgroup recognized that the “need to cure omissions from and to make augmentations to the standard criminal record are two of the most significant causes for record preparation delay.”⁴

To help reduce the delay that may result from a need to correct omissions from or make augmentations to the clerk’s transcript, the committee recommends amending rule 8.320 to add a new subdivision (g) which authorizes the Courts of Appeal to require, by local rule, that the clerk’s transcript include “any or all additional court records contained in the superior court file” in addition to those required by rule 8.320(b) or (d)(1).

¹ All further references are to the California Rules of Court.

² See rules 8.320(b)(1)–(13) and 8.320(d)(1)(A)–(G); see also rule 8.336(c) & (g) (requiring the superior court clerk to prepare and send the clerk’s transcript to the reviewing court and copies to the parties).

³ Rule 8.340(b) & (c).

⁴ Appellate Caseflow Workgroup, Report to the Chief Justice (Dec. 6, 2022), p. 20, newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf. The Workgroup was appointed by former Chief Justice Tani G. Cantil-Sakauye in June 2022. The Chief Justice directed the Workgroup to “review policies, procedures, and management and administrative practices of the Courts of Appeal, and to recommend measures to promote transparency, accountability, and efficiency in issuing timely judgments.” (*Id.* at p. 1.)

The new subdivision defines “court records” as having the same meaning used in rule 2.502(3).⁵ In addition, the new subdivision would allow these local rules to require the clerk’s transcript to include copies of exhibits admitted into evidence, refused, or lodged.

The committee has concluded that authorizing the Courts of Appeal to adopt local rules in this area is preferable to a statewide rule expanding clerk’s transcripts. An expanded clerk’s transcript might impose burdens on both the Court of Appeal and superior court clerks. A Court of Appeal would receive a larger record on appeal that could include a number of items irrelevant to the issues on appeal, complicating the record review process. Additionally, requiring superior court clerks to compile larger clerk’s transcripts would impose responsibilities and costs that would vary based on staffing levels and technological capabilities. For example, some superior courts maintain paper records. In those courts, the time and expense of copying and scanning additional court records, or all court records in the court file, could be significant. Even in superior courts that maintain electronic records, the case management systems employed may vary in their capabilities such that what is easy to do in one court may be difficult in another.

The Courts of Appeal are in a position to assess the needs and capabilities in their districts and weigh the potential benefits and burdens of preparing or reviewing a larger record on appeal. They could consider a local rule that would require commonly needed records or exhibits to be included in the clerk’s transcript. This could minimize record preparation-related delays.

Policy implications

This proposal strives to balance potential burdens and costs with the possible benefits of requiring an expanded clerk’s transcript in felony appeals. The proposal authorizes Courts of Appeal to enact local rules rather than imposing a statewide rule expanding the contents of the clerk’s transcript. Because this proposal could help improve appellate efficiency, it is consistent with the *Strategic Plan for California’s Judicial Branch*, specifically the goal of Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment from March 29 to May 3, 2024, as part of the regular spring comment cycle. Eight responsive comments were received: one from the Court of Appeal, Fourth Appellate District, Division One; two from superior courts (for Los Angeles County and Orange County); one from a court supervisor with the Superior Court of Stanislaus County; one from the San Diego County District Attorney’s Office; one from the Orange County Bar Association; one from the California Lawyers Association, Committee on Appellate Courts (CAC); and one from the Judicial Council’s Joint Rules Subcommittee of the Trial Court

⁵ Rule 2.502(3) (defining court record as, in relevant part, “any document, paper, or exhibit filed in an action or proceeding; any order or judgment of the court; and any item listed in Government Code section 68151(a)—excluding any reporter’s transcript for which the reporter is entitled to receive a fee—that is maintained by the court in the ordinary course of the judicial process. The term does not include the personal notes or preliminary memoranda of judges or other judicial branch personnel . . .”).

Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS). With one exception, the commenters were supportive of the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 13–33. The principal comments and responses are summarized below.

Whether the rule text should include reference to rule 2.502(3)

As circulated for comment, the proposed rule language provided that a reviewing court's local rule could include either "All contents of the superior court file" or "Additional filings, orders, or other documents contained in the superior court file." The advisory committee comment in the rule then stated that, for purposes of the rule, "items excluded from the definition of 'court records' under rule 2.502(3) are not considered part of the superior court file." The committee sought specific comment on whether the rule 2.502(3) definition should be included in the rule text.

The commenters who addressed this question uniformly supported including the definition in the rule text. The commenters noted this would improve clarity and would prevent the definition from being overlooked. JRS recommended that the relevant parts of the rule replace "superior court file" with "superior court file as defined by Rule 2.502(3)."

In light of these comments, the committee has modified the proposed rule to improve clarity and to eliminate potential confusion as to the scope of the rule. The proposed rule now states that local rules may require the clerk's transcript to include "any or all additional court records contained in the superior court file." It then provides that "For purposes of this provision, 'court records' has the meaning provided in rule 2.502(3)."

Whether the rule should also include exhibits

The committee sought comment on whether the proposal should include a provision allowing for the reviewing court's local rule to require inclusion of exhibits in the clerk's transcripts. The Court of Appeal, Fourth Appellate District, Division One; the Superior Court of Orange County; CAC; and the San Diego County District Attorney's Office expressed support for such a provision.

CAC noted that an "appellate record without the exhibits does not give the reader the complete picture of what happened at trial." While recognizing that rule 8.224 includes a process for exhibits to be officially transmitted to the reviewing court, CAC noted that appellate attorneys often need access to the exhibits when initially reviewing the record, evaluating the case, and crafting arguments. It also stated that the frequent need to file requests to have exhibits transferred to the reviewing court consumes valuable judicial resources and delays adjudication of the appeal. Similarly, the Court of Appeal, Fourth Appellate District, Division One, noted that the rule 8.224 procedure "sometimes delays record completion, particularly in matters where exhibits are essential to a party's argument," and that a local rule directing superior courts to routinely request exhibits would reduce delays.

Additionally, the San Diego County District Attorney's Office encouraged the committee to consider "potential hurdles related to the multitude of forms that evidence can take" and the way these forms of evidence could be transmitted to the reviewing court. The Superior Court of Orange County recommended that the reviewing courts add to their local rules a provision as to "how" they want the exhibits transmitted and exhibited.

In light of these comments, the committee has decided to keep a provision in the proposed rule authorizing the reviewing court's local rule to require inclusion in the clerk's transcript of exhibits admitted, refused, or lodged in the superior court. To implement this provision, the proposal would also amend rule 8.320(e) to provide that exhibits may be transmitted pursuant to the new rule 8.320(g)(2) or the existing rule 8.224 procedure.

Finally, for the reasons discussed above as to why the committee believes local rules are preferable in this area, the committee believes that questions of how, and in what form, exhibits should be transmitted are best addressed by the local rules promulgated pursuant to this proposal.

Whether the rule should include a stipulation requirement

The committee sought comment on whether the proposed rule should include a requirement that the parties stipulate to the use of an expanded clerk's transcript. The commenters did not support including such a requirement. CAC noted that such a requirement would essentially nullify the rule, given that attorneys are frequently not appointed until the record is certified and the Attorney General's Office does not assign attorneys until the opening brief is filed. The San Diego County District Attorney's Office felt that such a requirement would impose an unwarranted additional step.

Given these comments, the committee does not recommend such a requirement be included in the proposed rule. First, the committee notes that use of an expanded clerk's transcript based on local rule would not prejudice the parties, either in a financial sense (since the parties do not pay for preparation of the clerk's transcript) or in their ability to present their arguments. Second, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk's transcript in misdemeanor and infraction appeals, respectively, do not require the parties' stipulation.

Whether the proposed rule should encompass appeals covered by rule 8.320(d)

The committee sought specific comment on whether rule 8.320(d) should be similarly amended to allow the reviewing court's local rule to expand the clerk's transcript in appeals governed by that rule. The commenters split on this question.

On the one hand, the Court of Appeal, Fourth Appellate District, Division One; the Superior Court of Los Angeles County; and the San Diego County District Attorney's Office supported including rule 8.320(d) in the proposal. The Court of Appeal, Fourth Appellate District, Division One, notes that appeals from postjudgment motions are growing in complexity and frequently require a detailed review of complete records. It suggested that a local rule expanding the clerk's transcript in those cases would allow for such appeals to proceed more expeditiously. Similarly,

the San Diego County District Attorney's Office noted that it frequently encounters issues with obtaining an adequate clerk's transcript in appeals covered by the rule.

On the other hand, the Superior Court of Orange County opposed including rule 8.320(d) in the proposed rule. Additionally, a court supervisor from the Superior Court of Stanislaus County noted that appeals covered by rule 8.320(d) may frequently involve older case files that may not be digitized and may be housed in offsite storage. She thus cautioned that expanding the clerk's transcript in those cases may impose a significant burden on clerk staff to digitize and build the expanded transcript.

The committee has revised the proposed rule to authorize reviewing courts to adopt local rules that would expand the clerk's transcript in appeals covered by rule 8.320(d). The committee is cognizant of the potential costs and burdens expanded clerks' transcripts may impose on superior courts. It envisions that those burdens will be considered by the Courts of Appeal in determining whether to adopt a local rule authorized by this proposal and, if so, the scope of such a local rule.

Statewide applicability versus local rules; burden on superior courts

A court supervisor from the Superior Court of Stanislaus County disagreed with the proposal authorizing the Courts of Appeal to adopt local rules expanding the clerk's transcript. She felt that a statewide approach would be less confusing for parties and their counsel and more fair to all litigants regardless of where their case is filed.

She also cautioned that expanding the clerk's transcript can have significant costs on superior courts. For example, she noted that in superior courts maintaining paper records, expanded clerk's transcripts could add significant personnel costs due to the additional time needed to scan and index paper files to prepare the record. She also stated it could result in courts having to purchase additional equipment to digitize paper records. Finally, she noted that such burdens would depend largely on the staffing level of each superior court's appeals department and whether the court's records are primarily paper or electronic.

Although a statewide rule might provide certain benefits, the committee does not recommend a statewide rule at the present time, for reasons discussed above. Differences in staffing and record management in the superior courts, referenced by the commenter, make a one-size-fits-all approach to expanding the clerk's transcript difficult at best. As for the risk of confusion, counsel should be aware of the need to look for, and comply with, local rules.

The committee also concludes that all parties, regardless of where their case is pending, will receive fair process under the proposal. It will not deprive a party of any process to which they were entitled previously: rule 8.320(b) and (d)(1) will continue to require certain materials be automatically included in the clerk's transcript, and parties may still utilize rule 8.340 to augment or correct the record. What this proposal does is allow Courts of Appeal to assess their local conditions and craft a local rule in an effort to improve the efficiency of the record preparation process.

Alternatives considered

The committee considered the alternative of taking no action but concluded that the proposal could help reduce delays in the appellate process.

The committee also considered recommending a statewide rule that would expand the clerk's transcript in felony appeals but does not recommend such an approach for reasons stated above.

Finally, the Appellate Caseflow Workgroup encouraged the Judicial Council to consider "adopting a rule of court that would allow litigants in criminal cases to stipulate to the use of the superior court file in lieu of a clerk's transcript."⁶ As stated in the invitation to comment, the committee concluded that such a rule would add complexity to the rules and record designation process. By contrast, the committee believes this proposal advances the workgroup's goal of seeking to streamline the record preparation process and does so within the clerk's transcript procedures.

Fiscal and Operational Impacts

If a Court of Appeal adopts a local rule expanding the clerk's transcript in a felony appeal as authorized by this proposal, superior court clerks might need to take additional time to compile the expanded clerk's transcript, and they may need to purchase additional equipment to digitize paper records. As detailed above, the committee believes these potential impacts will vary among superior courts based on the staffing level and case management system employed in each court.

The committee envisions that the Courts of Appeal will consider the potential impact on the superior courts in their district before adopting a local rule authorized by this proposal. However, the committee anticipates that local rules expanding the clerk's transcript in felony appeals could reduce appellate delays caused by the need to correct omissions from, or make augmentations to, the clerk's transcript.

Attachments and Links

1. Cal. Rules of Court, rule 8.320, at pages 8–12
2. Chart of comments, at pages 13–33

⁶ Appellate Caseflow Workgroup, *supra*, at p. 2.

Rule 8.320 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 8.320. Normal record; exhibits**

2
3 **(a) Contents**

4
5 If the defendant appeals from a judgment of conviction, or if the People appeal
6 from an order granting a new trial, the record must contain a clerk’s transcript and a
7 reporter’s transcript, which together constitute the normal record.
8

9 **(b) Clerk’s transcript**

10
11 The clerk’s transcript must contain:

- 12
13 (1) The accusatory pleading and any amendment;
14
15 (2) Any demurrer or other plea;
16
17 (3) All court minutes;
18
19 (4) All jury instructions that any party submitted in writing and the cover page
20 required by rule 2.1055(b)(2) indicating the party requesting each instruction,
21 and any written jury instructions given by the court;
22
23 (5) Any written communication between the court and the jury or any individual
24 juror;
25
26 (6) Any verdict;
27
28 (7) Any written opinion of the court;
29
30 (8) The judgment or order appealed from and any abstract of judgment or
31 commitment;
32
33 (9) Any motion for new trial, with supporting and opposing memoranda and
34 attachments;
35
36 (10) The notice of appeal and any certificate of probable cause filed under rule
37 8.304(b);
38
39 (11) Any transcript of a sound or sound-and-video recording furnished to the jury
40 or tendered to the court under rule 2.1040;
41
42 (12) Any application for additional record and any order on the application;
43

1 (13) And, if the appellant is the defendant:
2

3 (A) Any written defense motion denied in whole or in part, with supporting
4 and opposing memoranda and attachments;
5

6 (B) If related to a motion under (A), any search warrant and return and the
7 reporter's transcript of any preliminary examination or grand jury
8 hearing;
9

10 (C) Any document admitted in evidence to prove a prior juvenile
11 adjudication, criminal conviction, or prison term;
12

13 (D) The probation officer's report; and
14

15 (E) Any court-ordered diagnostic or psychological report required under
16 Penal Code section 1203.03(b) or 1369.
17

18
19 **(c) Reporter's transcript**
20

21 The reporter's transcript must contain:
22

23 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
24

25 (2) The oral proceedings on any motion in limine;
26

27 (3) The oral proceedings at trial, but excluding the voir dire examination of
28 jurors and any opening statement;
29

30 (4) All instructions given orally;
31

32 (5) Any oral communication between the court and the jury or any individual
33 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 of probation, or other
40 dispositional hearing;
41

42 (9) And, if the appellant is the defendant:
43

- 1 (A) The oral proceedings on any defense motion denied in whole or in part
2 except motions for disqualification of a judge and motions under Penal
3 Code section 995;
4
5 (B) The closing arguments; and
6
7 (C) Any comment on the evidence by the court to the jury.
8
9

10 **(d) Limited normal record in certain appeals**
11

12 If the People appeal from a judgment on a demurrer to the accusatory pleading, or
13 if the defendant or the People appeal from an appealable order other than a ruling
14 on a motion for new trial, the normal record is composed of:
15

16 (1) *Clerk's transcript*
17

18 A clerk's transcript containing:
19

- 20 (A) The accusatory pleading and any amendment;
21
22 (B) Any demurrer or other plea;
23
24 (C) Any written motion or notice of motion granted or denied by the order
25 appealed from, with supporting and opposing memoranda and
26 attachments;
27
28 (D) The judgment or order appealed from and any abstract of judgment or
29 commitment;
30
31 (E) Any court minutes relating to the judgment or order appealed from and:
32
33 (i) If there was a trial in the case, any court minutes of proceedings
34 at the time the original verdict is rendered and any subsequent
35 proceedings; or
36
37 (ii) If the original judgment of conviction is based on a guilty plea or
38 nolo contendere plea, any court minutes of the proceedings at the
39 time of entry of such plea and any subsequent proceedings;
40
41 (F) The notice of appeal; and
42

1 (G) If the appellant is the defendant, all probation officer reports and any
2 court-ordered diagnostic report required under Penal Code section
3 1203.03(b).
4

5 (2) *Reporter's transcript*
6

7 (A) A reporter's transcript of any oral proceedings incident to the judgment
8 or order being appealed; and
9

10 (B) If the appeal is from an order after judgment, a reporter's transcript of:
11

12 (i) The original sentencing proceeding; and
13

14 (ii) If the original judgment of conviction is based on a guilty plea or
15 nolo contendere plea, the proceedings at the time of entry of such
16 plea.
17

18
19 **(e) Exhibits**
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21 Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but
22 may be transmitted to the reviewing court only as provided in (g)(2) or rule 8.224.
23
24

25 **(f) Stipulation for partial transcript**
26

27 If counsel for the defendant and the People stipulate in writing before the record is
28 certified that any part of the record is not required for proper determination of the
29 appeal, that part must not be prepared or sent to the reviewing court.
30

31 **(g) Additional clerk's transcript materials required by local rule**
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33 In addition to the items listed in (b) and (d)(1), the reviewing court may, by local
34 rule, require the clerk's transcript to include any or all additional court records
35 contained in the superior court file.
36

37 (1) For purposes of this provision, "court records" has the meaning provided in
38 rule 2.502(3).
39

40 (2) The reviewing court's local rule may require the clerk's transcript to include
41 copies of exhibits admitted into evidence, refused, or lodged.
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43 **Advisory Committee Comment**

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Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal. Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Subdivision (d)(1)(E). This rule identifies the minutes that must be included in the record. The trial court clerk may include additional minutes beyond those identified in this rule if that would be more cost-effective.

Subdivision (g). This rule authorizes the Courts of Appeal to adopt local rules that require additional court records, as defined by rule 2.502(3), to be included in the clerk’s transcript, up to all court records in the superior court file. For purposes of this rule, items excluded from the definition of “court records” under rule 2.502(3) are not considered part of the superior court file.

Rule 8.483 governs the normal record and exhibits in civil commitment appeals.

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
1.	Sandy Almansa Court Supervisor, Appeals Division Superior Court of Stanislaus County	AM	<p>1. "Does the proposal appropriately address the stated purpose?"</p> <p>Not in my opinion. The proposal aims to address the stated purpose, however, allowing for local rules that might differ in each Court of Appeal could make the appellate process more confusing for parties and their counsel, especially if they are litigating cases in different appellate districts. This may result in additional omissions and/or augment motions, which could also delay perfecting the record.</p> <p>Changes should be the same in all courts, for the sake of clarity and for it to be a fair process to all litigants, regardless of where their case is filed.</p>	<p>The committee appreciates the feedback.</p> <p>The committee believes that such a statewide rule is not feasible at this time. The superior courts differ in case management systems, technological capabilities, and staffing. These differences mean that a rule expanding the clerk’s transcript may impose a significant burden on one superior court, while having a negligible impact on another. The Courts of Appeal are in a better position to determine the capabilities of the superior courts in their districts and weigh the potential time-saving benefits against the potential costs inherent in preparing and reviewing a larger record on appeal. The committee anticipates that the Courts of Appeal would undertake this balancing approach in deciding whether, and if so how, to craft a local rule for their district.</p> <p>The committee believes the risk is low that counsel who appear in different appellate districts will be confused. Presumably, counsel is aware of the need to comply with the local rules of the courts in which they practice. Further, under the proposal, rule 8.320 still requires certain materials to be included in the clerk’s transcript. Thus, regardless of where a case is pending, counsel will know that the clerk’s transcript will include certain documents at a minimum.</p> <p>Finally, the committee does not believe that this proposal undermines litigants’ right to a fair process. The proposal does not authorize a Court</p>

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

	Commenter	Position	Comment	Committee Response
				<p>of Appeal to constrict the items required to be included in the clerk’s transcript under rule 8.320. Additionally, litigants retain the ability to move for augmentation of the record to include additional items filed or lodged in the superior court but not included in the clerk’s transcript. This proposal simply allows the Court of Appeal to assess local conditions and consider crafting a local rule to improve the efficiency of the record preparation process.</p>
			<p>2. "Should the rule text define “superior court file” as excluding items not considered “court records” as defined by rule 2.502(3), or is it enough to have this limitation addressed in the advisory committee comment? "</p> <p>Excluded items should be specified, as noted in the comments, otherwise it may be too vague and leave things open to interpretation. The focus should be on clarity.</p>	<p>The committee has revised the proposed rule so it now provides that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” It then states that “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).” The committee concludes that rule 2.502(3)’s definition, and the proposed rule text’s reference to that definition, is sufficiently clear.</p>
			<p>3. "Should the proposal include a provision allowing for a Court of Appeal’s local rule to require inclusion of exhibits in the clerk’s transcript?"</p> <p>If it is required in one Court of Appeal, it should be required in all districts, for the same reasons noted in prior question number one.</p>	<p>The committee appreciates the feedback. See previous response to commenter’s first comment.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>4. "In addition to authorizing Courts of Appeal to adopt a local rule expanding the contents of the clerk’s transcript, should the proposal include a requirement that the parties stipulate before an expanded clerk’s transcript is used?"</p> <p>My thought is that the California Rules of Court should be changed to require either the entire case file, or in the alternative, to modify the rules of court to define specific additional items that should be included in an expanded case file. It should not be a local rule, and it should not require parties to have to stipulate to an expanded case file.</p>	<p>The committee appreciates the feedback. As to the feasibility of a statewide rule, see previous response to commenter’s first comment.</p> <p>As to a requirement that the parties stipulate, the committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript.</p> <p>Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.</p>
			<p>5. "Should rule 8.320(d) be similarly amended to allow the Courts of Appeal to adopt a local rule expanding the contents of the clerk’s transcript in appeals governed by that rule?"</p> <p>While it may be a good idea to expand the contents of the clerk’s transcript in a limited record appeal, I feel the Judicial Council should simply modify the California Rules of Court to include specifics that should be included in a</p>	<p>As to the feasibility of a statewide rule, see previous response to commenter’s first comment.</p> <p>The committee appreciates the feedback about the potential burden an expanded clerk’s transcript could pose to courts in cases covered by rule 8.320(d), particularly in limited record appeals where the underlying criminal record is in paper or in off-site storage.</p>

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Appellate Procedure: Expanded Clerk’s Transcript in Criminal Appeals (amend Cal. Rules of Court, rule 8.320)

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

	Commenter	Position	Comment	Committee Response
			<p>limited record appeal, so it may apply in all Courts of Appeal, so it may be implemented statewide.</p> <p>For Courts that do not have all of their records digitized, expanding the definitions of a limited record, or requiring the use of an entire case file for the limited record could be a significant issue because limited record appeals can involve older case files that are not digitized, and may be housed off-site in storage.</p> <p>For example, most of the limited record appeals our court has filed in the last year are appeals after decisions on petitions for resentencing. Most of these cases are paper records, or they are a combination of digital and paper records. This could add a significant impact in the process as to the time required for digitizing and building the transcripts with these older records.</p>	<p>The committee has included in the proposed rule a provision authorizing the Courts of Appeal to adopt a local rule expanding the clerk’s transcript beyond the items identified in 8.320(d)(1). The committee anticipates that the costs and burdens identified by the commenter would be considered by the Courts of Appeal in determining whether, and how, to craft a local rule under the proposed rule.</p>
			<p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>1. "Would the proposal provide cost savings? If so, please quantify."</p> <p>It would not provide cost savings. In fact, it has the potential to add significant personnel costs due to additional staff time spent on scanning and indexing paper files to prepare the record. It may even require allocating additional staff in some</p>	<p>The committee appreciates the feedback on the nature of the burden a local rule adopted pursuant to the proposed rule would place on superior courts that maintain paper files. The committee anticipates that the potential costs and burdens identified by the commenter would be considered by the Courts of Appeal in deciding whether, and how, to craft a local rule pursuant to the proposed rule.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Courts as well as purchasing equipment to digitize paper records.</p> <p>2. 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?</p> <p>The following factors would need to be considered if this is implemented as is:</p> <p>a. Additional staff may be required to be added to Appeals Units in some Courts, depending on whether their records are already digitized. That may require recruitment and the hiring process, which takes time.</p> <p>b. Additional costs that may be required for equipment, scanners, etc. Budget-related limitations may impact acquisition of equipment and personnel needed to accomplish the new rules.</p> <p>c. If the "Local Rules" options are approved, then it will take each Court of Appeal some time to determine what they will require - full case file or expanded transcripts, exhibits or not, etc. The timeline for this is unknown and may vary in each Court of Appeal.</p> <p>d. Up to 1 month to review “Local Rules” of the Appellate Court and to revise procedures (if Local Rules are implemented)</p> <p>e. Up to 1 month of training on new procedures.</p>	<p>The committee appreciates the feedback on the potential implementation costs of a local rule adopted pursuant to this proposal. The committee anticipates that the potential costs and burdens identified by the commenter would be considered by the Courts of Appeal in deciding whether, and how, to craft a local rule pursuant to the proposed rule.</p>

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	Commenter	Position	Comment	Committee Response
			<p>3. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>For our court, it might be sufficient, depending on whether a local rule provision is included for the Courts of Appeal, and what decision is made as to what will be required. A more realistic timeline would be six months.</p>	<p>The committee appreciates the feedback.</p>
			<p>4. How well would this proposal work in courts of different sizes?</p> <p>In some of the larger courts, it might not be as much of an impact, as these courts typically have fully staffed appeals department. If the court’s records are primarily paper, then it could be a significant impact – process development, equipment, a possible need for more staff and additional training.</p> <p>In medium sized courts, it may have a significant impact as well, and may result in increased workload, additional costs, and additional staffing and training. Again, the unknown factors are whether or not all records are digitized and what each local Court of Appeal decides to do with the Local Rule options.</p> <p>In smaller sized courts, it may be a tremendous impact with increased workloads, increase in costs related to staffing, equipment, training, and they have less staff available to apply their time to this</p>	<p>The committee appreciates the feedback regarding the potential impact the proposal may have on courts of different sizes. The committee anticipates that the potential costs and burdens identified by the commenter would be considered by the Courts of Appeal in deciding whether, and how, to craft a local rule pursuant to the proposed rule.</p>

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	Commenter	Position	Comment	Committee Response
			process. The unknown factors again are regarding the digitization of their court’s records, and what the Court of Appeal in their area will require.	
2.	California Lawyers Association Litigation Section, Committee on Appellate Courts by Saul Bercovitch, Associate Executive Director, Governmental Affairs	AM	<p>The Committee on Appellate Courts (CAC) of the California Lawyers Association’s Litigation Section submits this response to the Invitation to Comment on SPR24-03. Established in 2018, the California Lawyers Association is a nonprofit, voluntary organization comprising thousands of licensed attorneys that is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas. As part of its mission, the CAC frequently shares its views regarding proposals to change rules that govern appellate practice.</p> <p>In SPR24-03, the Advisory Appellate Committee (AAC) proposes to amend California Rules of Court, rule 8.230 to authorize Courts of Appeal to create local rules requiring that the clerk’s transcript in felony appeals include: (1) all contents of the superior court file or (2) additional items from the superior court file beyond those currently listed in rule 8.320(b). A proposed new paragraph would also authorize local rules to require the clerk’s transcript to include copies of exhibits admitted into evidence, refused, or lodged. The CAC supports these changes. The</p>	<p>No response necessary.</p> <p>The committee notes the commenter’s support for the proposal.</p>

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	Commenter	Position	Comment	Committee Response
			<p>CAC also cautions against requiring a stipulation before an expanded clerk’s transcript is used.</p> <p>1. CAC Recognizes the Need for Complete Transcripts The CAC recognizes the need for intervention in the criminal appellate record creation process. We frequently see incomplete clerk’s transcripts which require omission letters (Rule 8.340(b)) or motions to augment with documents necessary to competently consider arguable issues. Incomplete clerk transcripts often take months to correct by curing omissions or augmenting the record. These delays extend the timeline of the case, sometimes to the extent that an appellate decision is not issued until after the underlying criminal sentence is served.</p> <p>CAC agrees with the AAC’s proposal to give individual Courts of Appeal the flexibility to decide how best to quickly and accurately prepare the necessary record. As an example, the Second District has a local rule which expands the contents of the clerk’s transcript in criminal and juvenile delinquency appeals. (See Local Rule 1 https://www.courts.ca.gov/2133.htm.) Creating local rules in other Courts of Appeal would facilitate more complete records when the clerk’s transcript is initially assembled, requiring fewer omission letters or motions to augment in the Court of Appeal.</p>	<p>The committee appreciates the information regarding the delay caused by incomplete clerk’s transcripts and the need to cure omissions or to augment the record. The committee also appreciates the commenter’s feedback that the proposal will help alleviate these delays. Finally, the committee notes the Second District Court of Appeal’s local rule.</p>

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	Commenter	Position	Comment	Committee Response
			<p>2. Requested Feedback Supporting Inclusion of Trial Exhibits In response to the AAC’s request for feedback regarding exhibits, the CAC strongly supports giving Courts of Appeal greater flexibility regarding exhibits. As the invitation notes, trial exhibits are technically deemed part of the record on appeal (Rule 8.320(e)), but they traditionally are not included in the clerk’s transcript on appeal and thus not automatically provided to attorneys. An appellate record without the exhibits does not give the reader the complete picture of what happened at trial. In testimony and argument, witnesses and attorneys often reference diagrams, maps, cell phone logs, social media posts or other documentary exhibits that can and should be photocopied/scanned and included in a clerk’s transcript. While it is true that exhibits can be officially transmitted to the reviewing court (Rule 8.224), the appellate attorneys need access to the exhibits when initially reviewing the record, evaluating the case, and crafting arguments. Appellate attorneys do not always live in the county where the trial took place, making it difficult to view exhibits in person at the courthouse where exhibits are stored.</p>	<p>The committee appreciates the feedback. The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency. Additionally, the committee believes that this provision will give the Courts of Appeal flexibility to determine in their local rules how various forms of exhibits included in the clerk’s transcript should be transmitted.</p>
			<p>Similarly, limiting access to a physical location often poses significant challenges to attorneys and clients with mobility impairments.</p>	<p>See above response.</p>

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			<p>Consequently, a rule including <i>documentary</i> exhibits (relevant marked documents, photos, cell phone call logs, social media posts, maps, etc.) in the clerk’s transcript would provide both parties in the appeal the critical full picture of the trial up front and also minimizes the need for extensions of time for attorneys on both sides to view exhibits in person or prepare motions to augment in the Court of Appeal. Again, the Second District already has a local rule (Local Rule 1(a)(7)) on this subject</p>	<p>See above response.</p>
			<p>3. Requested Feedback against Requiring a Stipulation The CAC strongly cautions against a requirement that parties must stipulate before an expanded clerk’s transcript is used. Attorneys are not usually appointed until the record on appeal is certified and the Attorney General’s Office does not assign an attorney to a criminal appeal until the opening brief is filed. Thus, an appointed defense attorney and a deputy attorney general are unlikely to be able to stipulate to an expanded record when a case is first initiated.</p>	<p>The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript.</p> <p>Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.</p>
3.	Fourth District Court of Appeal, Division One	A	I write in response to the advisory committee’s invitation to comment on SPR24-03, which	No response necessary.

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	Commenter	Position	Comment	Committee Response
	by Karen M. Harkins, Managing Attorney		proposes amending California Rules of Court, rule 8.320.	
First, authorizing Courts of Appeal to adopt a local rule to require the transcript to include “[a]dditional filings, orders, or other documents contained in the superior court file,” would permit the Courts of Appeal to specify what additional documents should routinely be included. This would allow courts to explore augmentation requests and identify the types of documents that records from superior courts in their region routinely omit. Courts of Appeal can then craft local rules that meet their unique needs, ultimately saving time while limiting the burden.		The committee appreciates the feedback.		
Second, the proposed rule does not modify rule 8.320(e), which requires exhibits to be transmitted as provided in rule 8.224. The procedure detailed in rule 8.224 sometimes delays record completion, particularly in matters where exhibits are essential to a party’s argument. Allowing a local rule directing superior courts to include routinely requested exhibits would reduce delays in the record gathering process, improving efficiency.		<p>The committee appreciates the information regarding the delay that can result from exhibits being transmitted to the Court of Appeal under rule 8.224.</p> <p>The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency. Additionally, the committee believes that this provision will give the Courts of Appeal flexibility</p>		

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	Commenter	Position	Comment	Committee Response
				<p>to determine how various forms of exhibits included in the clerk’s transcript should be transmitted.</p>
			<p>Third, the advisory committee comment to rule 8.320 currently references sealed and confidential records, noting their appropriate handling is addressed in Rules 8.45-8.46. Confidential and sealed records are frequent subjects of requests for augmentation. To improve efficiency, it would be helpful to include a clarification in the advisory committee comments specifying that sealed and confidential records are part of the superior court record and should be transmitted as part of the clerk’s transcript, consistent with rules 8.45-8.46. Authorizing adoption of a local rule, as discussed above, would also permit Courts of Appeal to direct inclusion of specific, routinely requested confidential or sealed documents.</p>	<p>The committee declines to provide any further clarification in the advisory committee comment regarding handling of sealed and confidential records. The committee believes such clarification is unnecessary.</p> <p>The definition of “court record” contained in rule 2.502(3) is incorporated into the proposal. In relevant part, this definition includes “any document, paper, or exhibit filed in an action or proceeding.” Sealed or confidential records fit within this definition. Further, the advisory committee comment states that “Rules 8.45-8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal.”</p> <p>Accordingly, the committee concludes that it is sufficiently clear that the proposal authorizes the Courts of Appeal to require, by local rule, that sealed or confidential documents be included in the clerk’s transcript. Such sealed or confidential documents would be handled pursuant to Rules 8.45 and 8.46.</p>
			<p>Finally, given the growing complexity and need for detailed review of complete records of</p>	<p>The committee appreciates the feedback. The committee has included in the proposal a provision</p>

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	Commenter	Position	Comment	Committee Response
			conviction in appeals from postjudgment motions like those brought pursuant to Penal Code section 1172.6, it makes sense to amend rule 8.320(d) to allow Courts of Appeal to similarly adopt a local rule expanding the contents of the clerk’s transcript in appeals governed by that rule. A local rule expanding the clerk’s transcript in those matters from the outset would permit them to proceed more expeditiously.	allowing the Courts of Appeal to require the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee concludes that such a provision will help avoid delays resulting from motions to augment the record in appeals covered by this rule.
4.	Orange County Bar Association By Christina Zabat-Fran, President	A	Expanding the Clerk’s Transcript is appropriate.	The committee notes the commenter’s support for the proposal.
5.	San Diego County District Attorney's Office by Emmaline Campbell, Deputy District Attorney	A	The San Diego County District Attorney’s Office submits this comment in support of SPR-24-03. We thank the Committee for identifying an important issue and drafting an excellent proposal that would reduce confusion and delays in the preparation of records on appeal. We now turn to the questions posed by the Request for Specific Comments.	The committee appreciates the feedback.
			First, we believe the proposal does appropriately address the stated purpose, though we believe additional provisions would improve the proposal. These are outlined below.	The committee appreciates the feedback.
			Second, we believe that articulating the definition of “superior court file” within the text of the rule is preferable to relegating the issue to the advisory	The committee declines to define “superior court file” because it has revised the proposal. The proposed rule now reads that the “reviewing court

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	Commenter	Position	Comment	Committee Response
			<p>comments section, as advisory comments can often be inadvertently overlooked.</p>	<p>may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” Instead of defining “superior court file,” the proposed rule provides that “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).” As a result, items that are excluded from rule 2.502(3)’s definition of “court records” (such as notes or preliminary memoranda) are not covered by the proposed rule.</p> <p>With this revision, the committee concludes that the proposed rule is sufficiently clear regarding its scope.</p>
			<p>Third, we strongly agree with including a provision requiring inclusion of exhibits in the record on appeal. Exhibits are often critical evidence for the reviewing court to consider on appeal. The San Diego County District Attorney’s Office regularly must file requests to transmit exhibits in our own appellate work and often must address requests from the Attorney General and other appellate counsel to provide District Attorney working-versions of exhibits, which may not reflect any changes made in court to the admitted exhibit. This current procedure needlessly consumes judicial resources and can result in delays in the adjudication of the appeal.</p>	<p>The committee appreciates the information regarding the delay that can result from exhibits being transmitted to the Court of Appeal pursuant to rule 8.224.</p> <p>The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency.</p>
			<p>Further, as to the exhibits issue, we encourage the Committee to consider potential hurdles related to</p>	<p>The committee appreciates the feedback. The committee believes that the proposal as drafted</p>

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	Commenter	Position	Comment	Committee Response
			<p>the multitude of forms that evidence can take. Evidence might include: evidence stored in digital form (videos, audio, data, etc.), physical evidence (guns, narcotics, etc.), and color photographs. Additional language clarifying the form of exhibits to be transmitted could be helpful. For example, digital evidence could be shared with the reviewing court by secured upload links; physical evidence could be represented via an accompanying photograph that was marked into evidence by the trial court at the time of the hearing; and color photographs could be copied via a color copier or shared digitally. These may be issues more appropriately handled by each Court of Appeal in formulating their local rule, but we suggest the Committee flag the issue within an advisory comment or other appropriate avenue.</p>	<p>will give the Courts of Appeal flexibility to determine how various forms of exhibits included in the clerk’s transcript should be transmitted.</p>
			<p>Fourth, we believe that requiring a stipulation to the use of an expanded clerk’s transcript would create an unwarranted additional procedural step in the appellate process. Should a party believe that items in the record are not properly before the reviewing court, the onus should remain on that party to seek remediation, rather than a frontloaded stipulation requirement.</p>	<p>The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript.</p> <p>Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court</p>

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	Commenter	Position	Comment	Committee Response
				file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.
			Fifth, we urge the Committee to similarly amend rule 8.320(d)(1). This subdivision governs many of our People’s appeals, where we frequently encounter issues with obtaining an adequate clerk’s transcript for purposes of the appeal, thus causing delay. Amending both subdivisions (b) and (d)(1) would avoid confusion and streamline the preparation of clerk’s transcripts in criminal appeals.	The committee appreciates the feedback. The committee has included in the proposal a provision allowing the Courts of Appeal to require the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee concludes that such a provision will help avoid delays resulting from motions to augment the record in appeals covered by this rule.
			Finally, we recommend that the Committee consider a similar amendment to rule 8.861, which governs the record for misdemeanors appeals handled by the Superior Court Appellate Division. Identical concerns to those raised by the Committee vis-à-vis felony appeals are present in the case of misdemeanor appeals; thus, a global amendment to the relevant Rules of Court governing all criminal appeals seems prudent.	Amending rule 8.861 is outside the scope of this proposal. The committee will consider the issue in the future as time and resources allow. The committee notes that rule 8.863 authorizes superior courts to adopt a local rule utilizing the trial court file in lieu of a clerk’s transcript.
6.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.	See responses to specific comments below.

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	Commenter	Position	Comment	Committee Response
			In response to SPR24-03, “Appellate Procedure: Expanded Clerk’s Transcript in Felony Appeals,” the Court agrees with the proposal, if modified.	The committee notes the commenter’s general support for the proposal.
			It is insufficient to mention Rule 2.502(3) in the advisory committee comment. It should be referenced in Rule 8.320(b)(2)(A).	The committee has revised the proposed rule to read that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” The proposed rule then provides “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).”
			Additionally, the proposal should not include a requirement that parties stipulate before an expanded clerk’s transcript is used. There is currently no such provision for stipulation for augmentation or omission.	The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Use of an expanded clerk’s transcript would not prejudice either party to an appeal, either financially or in their ability to present their case. Unlike in civil cases, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript. Additionally, the committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.

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	Commenter	Position	Comment	Committee Response
			Finally, the Court agrees that Rule 8.320(d) should be similarly amended.	The committee appreciates the feedback. The committee has included in the proposal a provision allowing the Courts of Appeal to require the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee concludes that such a provision will help avoid delays resulting from motions to augment the record in appeals covered by this rule.
7.	Superior Court of Orange County By Elizabeth Flores, Operations Analyst	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal appropriately addresses the stated purpose.</p> <hr/> <p>Should the rule text define “superior court file” as excluding items not considered “court records” as defined by rule 2.502(3), or is it enough to have this limitation addressed in the advisory committee comment?</p> <p>Yes. Additionally, those requirements should be specified.</p> <hr/> <p>Should the proposal include a provision allowing for a Court of Appeal’s local rule to require inclusion of exhibits in the clerk’s transcript?</p> <p>Yes, we recommend that Court of Appeal add their provision as to “how” they want the exhibits</p>	<p>The committee appreciates the feedback.</p> <hr/> <p>The committee has revised the proposed rule to read that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” The proposed rule then provides “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).” As a result, items that are excluded from rule 2.502(3)’s definition of “court records” (such as notes or preliminary memoranda) are not covered by the proposed rule.</p> <hr/> <p>The committee has included in the proposal a provision authorizing the Courts of Appeal to adopt local rules requiring that the clerk’s transcript include exhibits admitted into evidence, refused, or lodged. This provision will allow the Court of Appeal to assess its needs and the</p>

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	Commenter	Position	Comment	Committee Response
			<p>transmitted and how it should be indexed. We recommend extending the timeline for the submission of the clerk’s transcript to account for the additional documents and exhibits that will be required.</p>	<p>capabilities of the superior courts in its district and determine whether including exhibits in the clerk’s transcript will improve appellate efficiency. Additionally, the committee believes that this provision will give the Courts of Appeal flexibility to determine how various forms of exhibits included in the clerk’s transcript should be transmitted.</p> <p>Expanding the timeline for submission of the clerk’s transcript is outside the scope of the instant proposal.</p>
			<p>In addition to authorizing Courts of Appeal to adopt a local rule expanding the contents of the clerk’s transcript, should the proposal include a requirement that the parties stipulate before an expanded clerk’s transcript is used?</p> <p>If the intent of the proposal is to streamline the appeal process, requiring a stipulation from the parties would likely cause a delay. Attorneys may request more time to review the records in the clerk’s transcript that would have been defined by the proposed local rule.</p>	<p>The committee appreciates the feedback. The committee has determined that the proposal should not include a requirement that the parties stipulate to the use of an expanded clerk’s transcript. Unlike in the civil context, where the parties must stipulate before the superior court file can be used in lieu of a clerk’s transcript (see rule 8.128(a)), parties in felony appeals do not pay for preparation of the clerk’s transcript. An expanded clerk’s transcript will not impose a financial cost on the parties. The committee notes that rules 8.863 and 8.914, which allow the use of the trial court file in lieu of a clerk’s transcript in misdemeanor and infraction appeals, respectively, do not require the parties’ stipulation.</p>
			<p>Should rule 8.320(d) be similarly amended to allow the Courts of Appeal to adopt a local rule</p>	<p>The committee appreciates the feedback. The committee has included in the proposal a provision allowing the Courts of Appeal to require by local</p>

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			<p>expanding the contents of the clerk’s transcript in appeals governed by that rule?</p> <p>No.</p>	<p>rule that the clerk’s transcript to include additional items beyond those required by rule 8.320(d)(1). The committee believes that this provision will give the Courts of Appeal the flexibility to assess the relative costs and benefits of requiring additional materials in cases governed by rule 8.320(d)(1) and, if appropriate, adopt a local rule which will improve appellate efficiency in these cases.</p>
			<p>Would the proposal provide cost savings? If so, please quantify.</p> <p>Yes, minimizes delays in felony appeals and eliminates additional work in augmenting transcripts.</p>	<p>The committee appreciates the feedback.</p>
			<p>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?</p> <p>Collaboration with our Records and Exhibit Management Department, update procedure and process.</p>	<p>The committee appreciates the feedback.</p>
			<p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	<p>The committee appreciates the feedback. The committee concludes that three months from Judicial Council approval until the proposal’s effective date is sufficient because the proposal</p>

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			No, recommend 6 months.	does not impose any obligations on parties or the courts. Rather, it simply authorizes the Courts of Appeal to adopt local rules, a process that would necessarily take additional time beyond the proposal’s effective date (see rule 10.1030).
			How well would this proposal work in courts of different sizes? The impact is not affected by the size of the court.	The committee appreciates the feedback.
8.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC) Joint Rules Subcommittee	AM	It is suggested that Rule 8.320(b)(2)(A) should read “superior court file as defined by Rule 2.502(3).”	The committee appreciates the feedback. The committee has revised the proposed rule to provide that the “reviewing court may, by local rule, require the clerk’s transcript to include any or all additional court records contained in the superior court file.” The revised proposed rule then provides “For purposes of this provision ‘court records’ has the meaning provided in rule 2.502(3).”
9.	Michael M. Ward Retired Disabled Veteran Redding, California	AM	*[The comment addresses the details of a specific case and does not address any of the issues in the proposal and is not included in the comment chart.]	No response is required.