



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

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Title

Appellate Procedure: Juvenile Proceedings

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.400 and 8.407

Effective Date

January 1, 2017

Date of Report

August 17, 2016

Recommended by

Appellate Advisory Committee  
Hon. Raymond J. Ikola, Chair

Contact

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### Executive Summary

The Appellate Advisory Committee recommends amending the rule that identifies the proceedings governed by the juvenile appellate rules to clarify that these rules apply to appeals of orders terminating parental rights under Probate Code section 1516.5 and Family Code section 7662 et seq. The committee also recommends amending the rule that lists what must be included in the normal record in juvenile appeals to clarify that the clerk's transcript must include various notices under the Indian Child Welfare Act and to add hearings at which certain advisements are to be given to the hearings that must be included in the reporter's transcript. This proposal, which originated from a suggestion submitted by an attorney at one of the appellate projects that assist the Courts of Appeal with appointed counsel in juvenile appeals, is intended to save time and costs for courts associated with requests to augment or receive copies of the record on appeal, and the costs associated with preparing and transmitting supplemental clerk's and reporter's transcripts when such requests are granted.

## **Recommendation**

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rule 8.400 of the California Rules of Court to provide that the rules regarding juvenile appeals apply to appeals of orders:
  - a. Terminating parental rights under Probate Code section 1516.5; and
  - b. Requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and
2. Amend rule 8.407 of the California Rules of Court to:
  - a. Require that the oral proceedings of hearings at which certain advisements are to be given to the hearings be included in the reporter's transcript in juvenile appeals; and
  - b. Clarify that in appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the reporter's transcript must include all section 366.26 hearings; and
3. Amend the advisory committee comment to rule 8.407 to clarify that the clerk's transcript in juvenile appeals must include various notices and responses under the Indian Child Welfare Act.

The text of the amended rules is attached at pages 11–14.

## **Previous Council Action**

### **Juvenile rules**

The Judicial Council adopted a rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. As originally adopted, this rule applied only to appeals from the juvenile court. Effective July 1, 1987, the council amended this rule to make it applicable to appeals in actions under Civil Code section 232 (now Family Code section 7800 et seq.) to declare a child free from parental custody and control. This rule has subsequently been amended and renumbered as rule 8.400, but its provision regarding application of the rules on juvenile appeals remains substantively unchanged.

### **Clerk's transcript**

Rule 39, as originally adopted, also addressed the contents of the normal record in juvenile appeals. With respect to the clerk's transcript, this rule identified several specific types of reports and filings that were required to be included in the transcript. This rule was subsequently amended several times to add and modify the contents of the clerk's transcript. On January 1, 2005, all of the rules relating to juvenile appeals were repealed by the Judicial Council and replaced with new rules. The new rule regarding the clerk's transcript required the transcript to include, among other things, "any report or other document submitted to the court." The rule regarding the record on appeal was subsequently renumbered as rule 8.407, but this provision remains substantively unchanged.

### **Reporter's transcript**

With respect to the reporter's transcript, rule 39, as adopted in 1977, generally provided that the transcript was to include "the oral proceedings taken at the jurisdiction and disposition hearing, but excluding opening statements and oral arguments." This rule was subsequently amended several times to add and modify the contents of the reporter's transcript. As of December 2004, it provided that the reporter's transcript was to include "the oral proceedings taken at the jurisdiction, disposition, review, and hearings under section 366.26 of the Welfare and Institutions Code, including oral arguments to the court and any oral opinions of the court, but excluding opening statements." In addition, there was a separate rule relating to appeals from orders terminating parental rights, which required that reporter's transcripts include only "the portions of the hearing from which the appeal is taken."

On January 1, 2005, the Judicial Council adopted a new rule regarding the record on appeal in juvenile cases that essentially adopted the approach of the former rule on appeals from orders terminating parental rights, providing that, except in appeals from dispositional orders, the reporter's transcript must include only the oral proceedings at any hearing that resulted in the order or judgment being appealed and any oral opinion of the court. In appeals from dispositional orders, the rule provided that the reporter's transcript must include the oral proceedings at hearings on jurisdiction and disposition, any motion by the appellant that was denied in whole or in part, and any oral opinion of the court. The reason given for this substantive change was to achieve consistent record requirements in all juvenile appeals and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal. This provision regarding reporter's transcripts remains substantively unchanged.

### **Rationale for Recommendation**

#### **Rule 8.400**

Chapter 5 of title 8, division 1 of the California Rules of Court, which is entitled "Juvenile Appeals and Writs," sets out the procedures for appeals and writ proceedings in juvenile delinquency and dependency proceedings and certain other similar proceedings. Rule 8.400 identifies the proceedings that are governed by chapter 5. Currently, the proceedings listed in rule 8.400 include appeals from judgments or appealable orders in actions to free a child from parental custody and control under Family Code section 7800 et seq.

The rules in chapter 5 differ from the rules governing other civil appeals in several important ways. Among other things, these rules specify the contents of the record on appeal, rather than requiring parties to designate the items to be included in the record. In addition, these rules do not include procedures for charging advance fees to parties for their copy of the record. This structure reflects statutory provisions that provide for immediate preparation and transmission of

the record on appeal without the advance payment of fees for the record in proceedings under the Welfare and Institutions Code<sup>1</sup> and under Family Code section 7800 et seq.<sup>2</sup>

Like proceedings under Family Code section 7800 et seq., Probate Code section 1516.5 pertains to the termination of parental rights, but in the context of a probate guardianship. Section 1516.5 specifically provides that these probate proceedings may be brought in accordance with the procedures set out in Family Code section 7800 et seq.<sup>3</sup> Similarly, Family Code section 7669 provides that an order under Family Code section 7662 et seq. requiring or dispensing with an alleged father's consent for the adoption of a child<sup>4</sup> may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court. Currently, however, rule 8.400 does not identify appeals in proceedings under Probate Code section 1516.5 or under Family Code section 7662 et seq. as being among the proceedings governed by the juvenile appellate rules. This has caused confusion in some appeals about whether the record should be prepared and sent to counsel without the necessity of filing a designation or the advance payment of fees for the record. Consequently, appellate counsel have had to prepare and file requests to have the record prepared, resulting in delay and additional costs to the courts.

To eliminate confusion about the record preparation process in these cases and to reduce the delay and costs associated with requests for preparation of the record, the committee recommends that rule 8.400 be amended to clarify that appeals under Probate Code section 1516.5 and appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq. be included among the proceedings governed by the juvenile appellate rules.

#### **Rule 8.407**

Rule 8.407 sets out the content of the normal record in juvenile appeals. Subdivision (a)(4) of this rule currently requires that the clerk's transcript in these appeals include, among other

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<sup>1</sup> Welf. & Inst. Code, § 395(a)(4) provides that in juvenile appeals "[t]he record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees."

<sup>2</sup> Fam. Code, § 7895(c) provides that in appeals under Fam. Code, § 7800 et seq., "[t]he reporter's and clerk's transcripts shall be prepared and transmitted immediately after filing of the notice of appeal, at court expense and without advance payment of fees."

<sup>3</sup> Prob. Code, § 1516.5 provides, in relevant part: "A proceeding to have a child declared free from the custody and control of one or both parents may be brought in accordance with the procedures specified in [Fam. Code, § 7800 et seq.]. It also provides: "The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section."

<sup>4</sup> Under these Family Code sections, the determination of whether the father's consent is needed is essentially the determination of whether to terminate the father's parental rights. Fam. Code, § 7664(c) provides: "If the court finds that it is in the best interest of the child that the biological father should be allowed to retain his parental rights, the court shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the biological father, or that if he is the biological father it is in the child's best interest that an adoption be allowed to proceed, the court shall order that the consent of that man is not required for an adoption. This finding terminates all parental rights and responsibilities with respect to the child."

things, “[a]ny report or other document submitted to the court.” Subdivision (b) requires that the reporter’s transcript in juvenile appeals generally include the oral proceedings at any hearing that resulted in the order or judgment being appealed, but that in appeals from dispositional orders, it include the oral proceedings at the hearings on jurisdiction and disposition and any motion by the appellant that was denied in whole or in part. Under subdivision (c), any party or Indian tribe that has intervened in the proceedings may apply to the superior court for the inclusion of additional oral proceedings in the reporter’s transcript. Under rule 8.410, either on the motion of a party or on its own motion, the Court of Appeal can also order that additional items be included in the record on appeal.

Under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and related California law (see Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.481 et seq.), in juvenile proceedings the trial court has an affirmative and continuing duty to inquire whether a child for whom a juvenile petition is to be, or has been, filed is or may be an Indian child and if the court knows or has reason to know that an Indian child is involved, notices must be sent to, among others, the child’s Indian custodian, if any, and the child’s tribe (see Welf. & Inst. Code, §§ 224.2, 224.3). The failure to comply with ICWA inquiry and notice requirements can be the basis for seeking to invalidate the trial court decision.

In the experience of committee members, the normal record on appeal in juvenile dependency cases may not always include all of the written documents or transcripts of the hearings that are needed to determine whether there was appropriate compliance with these ICWA inquiry and notice requirements. The Court of Appeal, Fourth Appellate District, has a local order that requires that reporter’s transcripts in dependency appeals include additional hearings, such as the detention hearing. In other appellate districts, if additional items are needed in the record, they must be requested either through an application to the superior court under rule 8.407(c) or through a motion to augment under rule 8.410. However, it takes additional time and resources for counsel to prepare and for the courts to consider such applications and motions. For those parties who are represented by appointed counsel, the time spent by counsel on such requests or motions constitutes an additional cost for the Courts of Appeal. Furthermore, if the superior courts or Courts of Appeal routinely grant these applications or motions, it does not save trial courts any record preparation costs *not* to have included these hearings in the original clerk’s or reporter’s transcript. In fact, it may actually cost trial courts more to separately prepare and transmit to the reviewing court supplemental transcripts at a later time.

To reduce the delay and costs associated with augmentation requests, the committee recommends that rule 8.407(b), which identifies the hearings that must be included in the reporter’s transcript as part of the normal record in juvenile appeals, be amended to require that, in juvenile dependency appeals, the following also be included:

- The detention hearing; and
- The hearing(s) at which the child’s parent(s) first appeared.

These hearings have been identified as those at which ICWA inquiries are likely to be conducted, and thus it is the committee's understanding that transcripts of these hearing are likely to be routinely needed in dependency appeals to determine if there has been compliance with the ICWA.

The committee also recommends two amendments to provide clarifications about materials that should already be included in the normal record in juvenile appeals:

- Amend subdivision (b) of rule 8.407 to clarify that in appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the reporter's transcript must including all section 366.26 hearings; and
- Amend the advisory committee comment to subdivision (a) of rule 8.407 to clarify that the clerk's transcript must include written ICWA notices and responses submitted to the court.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

The proposed amendments to rules 8.400 and 8.407 were circulated for public comment between April 15 and June 14, 2016 as part of the regular spring comment cycle. Ten organizations submitted comments on this proposal. Four commentators agreed with the proposal, five agreed with the proposal if modified, and one did not indicate a position on the proposal but provided substantive comments. A chart with the full text of these external public comments received and the committee's responses is attached at pages 15-29.

The committee also received internal comments from the Family and Juvenile Law Advisory Committee.

The main comments and the committee responses to these comments are discussed below.

### ***Rule 8.400***

As circulated for public comment, the proposal would have amended rule 8.400 to provide that the rules for juvenile appeals apply to appeals of orders terminating parental rights under Probate Code section 1516.5. No commentator expressed opposition to this proposed amendment. The committee is therefore recommending this amendment for adoption as circulated for public comment.

The invitation to comment also specifically asked whether rule 8.400 should be further amended to provide that appeals of actions under Family Code section 7662 et seq., relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, are governed by the juvenile appellate rules. Four commentators provided input on this issue:

- Two superior courts supported making this change. The Superior Court of San Diego County indicated that it already treats appeals of actions under Family Code section 7662 et seq. as under the juvenile appellate rules;

- One commentator responded that there is no need for this information unless the issue on appeal relates to Family Code section 7662 et seq.; and
- The Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee did not indicate a preference, but stated that any steps the courts can take up front to provide all necessary information are likely to improve the outcome and efficiency of processing the case.

The committee also received internal comments on this issue from the Family and Juvenile Law Advisory Committee. Members of that committee expressed support for amending rule 8.400 to provide that appeals of actions under Family Code section 7662 et seq. are governed by the juvenile appellate rules.

Based on all of these comments and the language of Family Code section 7669,<sup>5</sup> the committee recommends that rule 8.400 be amended to provide that appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq. are governed by the juvenile appellate rules.

### ***Rule 8.407***

#### **Clerk's transcript**

No commentator expressed opposition to the concept of clarifying that ICWA notices and responses filed with the court should be included in the clerk's transcript. However, one commentator suggested that this clarification should be included in the text of rule 8.407, rather than the advisory committee comment to the rule. The committee considered this suggestion, but concluded that the existing rule text requiring inclusion in the clerk's transcript of "[a]ny report or other document submitted to the court" already requires inclusion of these ICWA notices in the transcript and, therefore, that it was unnecessary to modify the rule text. The purpose of the amendment to the advisory committee comment that was circulated for public comment is not to add any substantive requirements, but only to provide examples of the types of documents already required to be included in the clerk's transcript under the rule. To make this intent clearer, the committee has modified the proposed language of the comment to specify that ICWA notices are just an example of the types of documents that must be included in the clerk's transcript under this rule.

Commentators also suggested some nonsubstantive changes to the advisory committee comment. The committee made several changes to the proposed advisory committee comment text in response to these public comments.

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<sup>5</sup> As noted above, this section provides, in relevant part "An order requiring or dispensing with an alleged father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court."

**Reporter's transcript.** A number of commentators provided input on the proposed changes to subdivision (b) of rule 8.407 relating to the content of reporter's transcripts.

The invitation to comment asked for specific input on two interrelated questions the hearings that should be included in the normal record in juvenile dependency appeals:

- *Are transcripts of the detention hearing and of the hearing at which a child's parent(s) first appeared routinely needed in the substantial majority of the juvenile dependency appeals?* This question was included because, while automatically including transcripts of these hearings in the record will reduce costs if routinely needed for appellate review in these cases, it may increase costs if they are not needed.
- *Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?* This question was included because one Court of Appeal district has already adopted such a local rule and because such an approach could be used to accommodate local differences.

The commentators who provided specific input were split about whether the transcripts of the proposed additional hearings are needed in all cases, but the weight of the comments indicated that these transcripts are needed to assess compliance with ICWA and should be included in the record on appeal. The specific responses to this inquiry included:

- Two bar organizations indicated that these transcripts are routinely needed.
- The Superior Court of Los Angeles County indicated that these transcripts are not routinely needed, although it also indicated that they are needed to determine whether the ICWA inquiry was done.
- The Superior Court of San Diego County, which is in a Court of Appeal District that has adopted a local rule requiring that additional hearings be included in the reporter's transcript, responded "Unknown";
- The TCPJAC/CEAC Joint Rules Subcommittee did not state a preference but noted that some courts have already begun including these records, finding that while the workload has increased initially, the up-front work has demonstrated a lower reversal rate and fewer requests to augment the record on appeal; and
- Members of the Family and Juvenile Law Advisory Committee generally supported including these hearings in the transcript.

In addition to these specific comments, four commentators expressed general support for the proposal as circulated, which included amendments to add transcripts of these hearings to the normal record.

There was a split among the commentators regarding whether there should be a statewide rule on this or whether each district should be able to adopt its own local rule:



- One of the bar organizations and the TCPJAC/CEAC Joint Rules Subcommittee expressed support for a statewide rule; and
- The superior courts of Los Angeles and San Diego Counties expressed support for local rules.

In discussing these comments, the committee noted that the practices in the two superior courts that supported the local rule approach would not be impacted by the adoption of a statewide rule requiring inclusion of these transcripts in the normal record since the Courts of Appeal for the districts in which these superior courts are located already have local rules that require the inclusion of these transcripts, and more, in the normal record.<sup>6</sup> Thus, in both these courts, the transcripts at issue would have to be prepared regardless of whether a statewide rule is adopted.

Based on the weight of the public comments and the committee's conclusion that having these transcripts prepared as part of the normal record would reduce overall costs for the courts and reduce delay in these cases, the committee decided to recommend that, as proposed in the invitation to comment, subdivision (b) of rule 8.407 be amended to provide that transcripts of the detention hearing and the hearing at which a parent of the child made his or her initial appearance be part of the normal record in juvenile dependency appeals.

Two commentators expressed concern that subdivision (b) of rule 8.407, as circulated, was hard to follow and made suggestions to improve its clarity. In response to these comments, the committee recommends that subdivision (b) be reorganized, including that each hearing that must be included in the reporter's transcript be listed in a separately lettered or numbered paragraph or item.

### **Alternatives**

In addition to the alternatives considered as part of the public comment process, which are discussed above, the committee also considered whether it would be preferable not to propose any amendments to either rule 8.400 or rule 8.407 at this time. The committee concluded, however, that the amendments recommended in this report would save time and reduce the costs for courts associated with requests to augment or receive copies of the record on appeal and the costs associated with preparing and transmitting supplemental clerk's and reporter's transcripts when such requests are granted, and therefore that it would be beneficial to propose these amendments at this time.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will require changes in existing procedures relating to what material is included in the reporter's transcripts in juvenile dependency cases and, in some courts, relating to the

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<sup>6</sup> The Court of Appeal, Fourth Appellate District, in which appeals from cases in the Superior Court of San Diego County are considered, has for some time had a standing order requiring the inclusion of these transcripts in the record in juvenile dependency appeals. The Court of Appeal, Second Appellate District, in which appeals from cases in the Superior Court of Los Angeles County are considered, has recently adopted a local rule amendment requiring the inclusion of these transcripts in the record.

preparation of the record in appeals of orders terminating parental rights under Probate Code section 1516.5. This is likely to require some additional training for court clerks and court reporters. However, the intent of this proposal is to decrease overall costs and improve efficiency by:

- Reducing Court of Appeal expenses for appointed counsel in juvenile dependency cases associated with preparing motions to augment;
- Reducing costs for the trial courts and Courts of Appeal in considering requests to prepare the record and motions to augment the record; and
- Reducing trial court costs and saving time associated with preparing and transmitting supplemental clerk's and reporter's transcripts.

The TCPJAC/CEAC Joint Rules Subcommittee indicated that these rules changes would likely not have significant fiscal and/or administrative impacts on the trial courts.

### **Attachments and Links**

1. California Rules of Court, rules 8.400 and 8.407, at pages 11–14
2. Chart of comments, at pages 15–29

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

## **Title 8. Appellate Rules**

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

#### **Chapter 5. Juvenile Appeals and Writs**

##### **Article 1. General provisions**

###### **Rule 8.400. Application**

The rules in this chapter govern:

- (1) Appeals from judgments or appealable orders in:
  - (A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and
  - (B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5; and
- (2) Appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and
- ~~(2)~~(3) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

##### **Article 2. Appeals**

###### **Rule 8.407. Record on appeal**

###### **(a) Normal record: clerk's transcript**

The clerk's transcript must contain:

- (1) The petition;
- (2) Any notice of hearing;
- (3) All court minutes;
- (4) Any report or other document submitted to the court;

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

- (5) The jurisdictional and dispositional findings and orders;
- (6) The judgment or order appealed from;
- (7) Any application for rehearing;
- (8) The notice of appeal and any order pursuant to the notice;
- (9) Any transcript of a sound or sound-and-video recording tendered to the court under rule 2.1040;
- (10) Any application for additional record and any order on the application;
- (11) Any opinion or dispositive order of a reviewing court in the same case; and;
- (12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

**(b) Normal record: reporter's transcript**

The reporter's transcript must contain any oral opinion of the court and:

~~(1) Except as provided in (2), the oral proceedings at any hearing that resulted in the order or judgment being appealed;~~

~~(2)~~(1) In appeals from dispositional orders, the oral proceedings at hearings on:

(A) Jurisdiction; ~~and~~

(B) Disposition; ~~and~~

~~(B)(C)~~ Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

- 1           (3) ~~Any oral opinion of the court.~~ In all other appeals, the oral proceedings at any hearing  
2           that resulted in the order or judgment being appealed.  
3

4       **(c) Application in superior court for addition to normal record**  
5

- 6           (1) Any party or Indian tribe that has intervened in the proceedings may apply to the  
7           superior court for inclusion of any oral proceedings in the reporter's transcript.  
8  
9           (2) An application for additional record must describe the material to be included and  
10          explain how it may be useful in the appeal.  
11  
12          (3) The application must be filed in the superior court with the notice of appeal or as  
13          soon thereafter as possible, and will be treated as denied if it is filed after the record  
14          is sent to the reviewing court.  
15  
16          (4) The clerk must immediately present the application to the trial judge.  
17  
18          (5) Within five days after the application is filed, the judge must order that the record  
19          include as much of the additional material as the judge finds proper to fully present  
20          the points raised by the applicant. Denial of the application does not preclude a  
21          motion in the reviewing court for augmentation under rule 8.155.  
22  
23          (6) If the judge does not rule on the application within the time prescribed by (5), the  
24          requested material—other than exhibits—must be included in the clerk's transcript  
25          or the reporter's transcript without a court order.  
26  
27          (7) The clerk must immediately notify the reporter if additions to the reporter's  
28          transcript are required under (5) or (6).  
29

30       **(d) Agreed or settled statement**  
31

32          To proceed by agreed or settled statement, the parties must comply with rule 8.344 or  
33          8.346, as applicable.  
34

35       **(e) Transmitting exhibits**  
36

37          Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the  
38          reviewing court as provided in rule 8.224.  
39  
40

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

**Advisory Committee Comment**

Rules 8.45–8.47 address the appropriate handling of sealed or confidential records that must be included in the record on appeal. Examples of confidential records include records of proceedings closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

**Subdivision (a)(4).** Examples of the documents that must be included in the clerk’s transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries regarding a child under the Indian Child Welfare Act (*Indian Child Inquiry Attachment* [form ICWA-010(A)]), any *Parental Notification of Indian Status* (form ICWA-020), any *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) sent, any signed return receipts for the mailing of form ICWA-030, and any responses received to form ICWA-030.

**Subdivision (b).** Subdivision (b)(1) provides that only the reporter’s transcript of a hearing that resulted in the order being appealed must be included in the normal record. This provision is intended to achieve consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Subdivision (b)(2)(1)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing dispositional order. The rule therefore specifically provides that a reporter’s transcript of jurisdictional proceedings must be included in the normal record on appeal from a dispositional order.

Subdivision (b)(2)(B)(1)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

**SPR16-03****Appellate Procedure: Juvenile Proceedings** (amend rules 8.400 and 8.407)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Court Reporters Association by Karen Kronquest Director, District B	A	CCRA agrees that transcripts of the suggested hearings in juvenile dependency cases should be automatically included in appeals.	The committee notes the commentator's support for the proposal; no response required.
2.	Office of the County Counsel, County of Los Angeles by Alyssa Skolnick Principal Deputy County Counsel	NI	See comments on specific provisions below.	
3.	Orange County Bar Association by Todd G. Friedland, President	AM	The suggested changes are well-taken and useful in clarifying record-preparation procedures in juvenile dependency matters.  See comments on specific provisions below.	
4.	State Bar of California, Committee on Appellate Courts by Paul J. Killion Chair	A	The State Bar of California's Committee on Appellate Courts supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
5.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair	A	See comments on specific provisions below.	
6.	Superior Court of Los Angeles County	AM	See comments on specific provisions below.	
7.	Superior Court of Orange County, Family and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	See comments on specific provisions below.	

**SPR16-03****Appellate Procedure: Juvenile Proceedings** (amend rules 8.400 and 8.407)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
8.	Superior Court of Riverside County by Marita Ford Senior Management Analyst	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
9.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	See comments on specific provisions below.	
10.	TCPJAC/CEAC Joint Rules Subcommittee	AM	See comments on specific provisions below.	

<b>Does the proposal appropriately addresses the stated purpose?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	Yes, the proposal is appropriate because it includes that rule 8.400 be amended to also include appeals under Probate Code 1516.5 among the proceedings governed by the juvenile appellate rule and to require that, in juvenile dependency appeals, the detention hearing and the hearing(s) at which the child's parent(s) first appeared be included in the reporter's transcript. These changes will help to eliminate confusion and provide clarity to the appellate counsel.	The committee appreciates this input.
Superior Court of Los Angeles County	Yes	The committee appreciates this input.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Yes, but as noted below, it may be preferable to have each appellate district determine whether to adopt relevant local rules.	The committee appreciates this input.



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#### Appellate Procedure: Juvenile Proceedings (amend rules 8.400 and 8.407)

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

Does the proposal appropriately addresses the stated purpose?		
Commentator	Comment	Committee Response
TCPJAC/CEAC Joint Rules Subcommittee	Yes, the rule proposal addresses preparing and transmitting supplemental transcripts for proceedings related to orders terminating parental rights and notices regarding ICWA.	The committee appreciates this input.

Should appeals of actions under Family Code sections 7662–7666, relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, also be added to the list of proceedings governed by the juvenile appellate rules?		
Commentator	Comment	Committee Response
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	No, there is no need for this information unless the issue on appeal relates to Family Code sections 7662-7666.	Based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.400 be amended to encompass appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code sections 7662–7666. This would mean that any such appeals would be governed by the juvenile appellate rules, rather than the rules for other civil appeals.
Superior Court of Los Angeles County	Yes	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Yes. The proposal states, “The committee decided not to include [appeals of actions under Fam. Code §§ 7662-7666] in this proposal because ... it was not clear whether the statutes contemplated that the record in these proceedings would be	The Committee notes that Government Code section 98926 addresses only the fees for filing a notice of appeal. There are separate statutes that also specifically state that no advance fee for the record is to be collected

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Should appeals of actions under Family Code sections 7662–7666, relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, also be added to the list of proceedings governed by the juvenile appellate rules?		
Commentator	Comment	Committee Response
	<p>prepared and transmitted without the advance payment of fees.” (SPR16-03, p. 4, ¶ 1.) However, Government Code section 68926(c) clearly states, “A fee may not be charged in appeals from, nor petitions for writs involving, juvenile cases or <b>proceedings to declare a minor free from parental custody or control</b> ....” Thus, there is no basis for an argument that such appeals might require the advance payment of fees.</p> <p>Family Code section 7662-7666 actions are handled in the juvenile court in San Diego, and appeals from those actions are already being handled in the same manner as dependency appeals.</p>	<p>in either juvenile appeals or appeals under Family Code section 7800 et seq. (see Welf. &amp; Inst. Code sec. 395(a)(4) and Fam. Code sec. 7895(c)). There is no equivalent statutory provision specifically providing that no advance fees are to be charged for the record in appeals under Family Code sec. 7662 et seq.. However, as noted above, based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.400 be amended to encompass appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code sections 7662–7666.</p> <p>The committee appreciates this information.</p>
TCPJAC/CEAC Joint Rules Subcommittee	Any steps the courts can take up front to provide all necessary information are likely to improve the outcome and efficiency of processing the case. See comments below as well.	The committee appreciates this input. Please see response above to the comments of the Superior Court of Los Angeles County.

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

<b>Are transcripts of the detention hearing and of the hearing at which a child’s parent(s) first appeared routinely needed in the substantial majority of the juvenile dependency appeals?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Orange County Bar Association by Todd G. Friedland, President	As for the request for specific comments, transcripts for the hearings specifically referenced in the proposed changed – namely, for the detention hearing and/or for the parents’ first appearances – are indeed necessary. Any review of an appellate record for possible reversible error will include review for Indian Child Welfare Act compliance. The early hearings mentioned in these proposed changes will typically include the most germane portions of the entire record on those compliance issues. Further, these hearing dates are extremely unlikely to be cited in a parent’s notice of appeal, making their standard inclusion desirable to avoid delays engendered by augmentation requests.	The committee appreciates this input. Based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.407 be amended to require that the reporter’s transcript in juvenile dependency appeals include the transcript of the detention hearing and the hearing at with the child’s parent(s) first appear.
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	Yes, such transcripts are needed in both areas. Having a transcript of a detention hearing will provide appellate counsel with information that is needed to conduct appellate review.	The committee appreciates this input. Please see the response above to the comments of the Orange County Bar Association.
Superior Court of Los Angeles County	<p>Normally, it is not needed. It would only be needed to:</p> <ol style="list-style-type: none"><li>1. Determine if inquiry re ICWA was done; or</li><li>2. If an appellant appeals from an order made during the time of the detention hearing.</li></ol> <p>We propose that the addition to rule 8.407 (b)(2)(A) “<u>Detention and at which a parent of the child made his or her initial appearance in cases under Welfare and Institutions Code sections 300 et seq.</u>,” be removed or amended because it would cause increased costs to the court. . . . Please note the following chart.</p>	The main focus of this proposal is to ensure that the appellate courts have the necessary information to determine if there was compliance with ICWA inquiry and notice requirements. Based on the weight of the public comments, including this commentator’s acknowledgment that transcripts proposed to be included in the normal records are needed for this purpose, the committee is recommending that rule 8.407 be amended to require that the reporter’s transcript in juvenile dependency appeals include the transcript of the detention hearing and the hearing at with the child’s parent(s) first appear. In addition, the committee notes that the Court of Appeal, Second Appellate District has

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

<b>Are transcripts of the detention hearing and of the hearing at which a child's parent(s) first appeared routinely needed in the substantial majority of the juvenile dependency appeals?</b>					
<b>Commentator</b>	<b>Comment</b>				<b>Committee Response</b>
		Notice of Appeal/Intent	Augmentation	Rule 8	recently amended its local rules to require that these transcripts be included in the record. Therefore, the impact on the Superior Court of Los Angeles County, in terms of preparing these transcripts, would be the same even if rule 8.407 were not amended to require these transcripts.
	2014	1,426	102	209	
	2015	1,462	138	221	
	2016 (end of March)	428	35	63	
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Unknown.				The committee appreciates this input.
TCPJAC/CEAC Joint Rules Subcommittee	It is noted that some courts have already begun including these records finding that while the workload has increased initially the upfront work has demonstrated a lower reversal rate and fewer requests to augment the record on appeal.				The committee appreciates this input. Please see the response above to the comments of the Orange County Bar Association.

<b>Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?</b>					
<b>Commentator</b>	<b>Comment</b>				<b>Committee Response</b>
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	For consistency purposes, rule 8.407 should be amended as a single statewide rule and not as to each appellate district. Having a uniform statewide rule would cut down on any confusion and would be more efficient and beneficial to self-				The committee appreciates this input. Based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.407 be

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<b>Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	represented litigants.	amended.
Superior Court of Los Angeles County	We would prefer that each appellate district should establish its own local rule to address the issue.	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services. In addition, the committee notes that the Court of Appeal, Second Appellate District has recently amended its local rules to require that these transcripts be included in the record. Therefore, the adoption of a statewide rule addressing this issue will not have a practical impact on record preparation by the superior court.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Perhaps it would be preferable to have each appellate district determine whether to adopt local rules (4 <sup>th</sup> DCA already has local Order No. 091515 in place to address it; and each district court of appeal can determine if current augment practice requires modification).	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services.
TCPJAC/CEAC Joint Rules Subcommittee	Statewide consistency is preferred regarding appellate rules. Inconsistency often creates confusion, which can eventually lead to a statewide implementation and in the meantime creates costs increase for varying agencies attempting to follow the inconsistent rules.	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services.

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

Cost saving and workload/implementation impact		
Commentator	Comment	Committee Response
Superior Court of Los Angeles County	<p><b>Would the proposal provide cost savings? If so please quantify.</b> It will not provide cost savings for the appeals unit because the responsibility of obtaining and providing these items in the record on appeal will shift from the augmentation/ rule 8 clerk to the appeals clerk preparing the initial record on appeal. In fact, the amount of time to prepare the record will increase if the ICWA inquiry did not happen during the detention hearing. The appeal clerk will have to go through each minute order to determine when the inquiry happened.</p> <p><b>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</b> All appeals clerks will have to be trained. The training can last approximately one week. The appeal processes involving the preparation of the notice to reporters and the preparation of the clerk's transcript will need to be revised. The training will need to include how to identify what hearings to include on the notice to reporter and what documents to include in the clerk's transcript.</p> <p>Ideally, we would like our current Case Management System to generate a docket so that the appeals clerks can review the case without printing each and every minute order (if the file is not available).</p> <p><b>Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b> Yes</p>	The committee appreciates this information.

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

<b>Cost saving and workload/implementation impact</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of San Diego County by Michael M. Roddy Executive Officer	<p><b>Would the proposal provide cost savings?</b> No.</p> <p><b>What are the implementation requirements for courts?</b> Division One of the 4<sup>th</sup> DCA already has a local Order requiring RTs including all 366.26 termination hearings (see 4<sup>th</sup> DCA Order No. 091515, scanned and attached). In addition to the need to revise or vacate the local Order to the extent necessary, the proposal would require additional clerk time and training. The clerks will need to review the trial court record to determine the additional hearing(s) to be transcribed (e.g., the hearing(s) at which the parent(s) first appeared, etc.).</p> <p><b>Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation?</b> Yes.</p>	The committee appreciates this information.
TCPJAC/CEAC Joint Rules Subcommittee	<p><b>Would the proposal provide cost savings?</b> <u>Comment:</u> This change could potentially provide some cost savings in that appellate requests would be addressed at one time rather than follow up requests for documents later regarding other matters should they become known. However, cost savings would likely not be significant. The change is more significant in relation to efficiency of processing.</p> <p><b>What would the implementation requirements be for courts?</b> <u>Comment:</u> Courts may need to implement new forms and train staff. The amount of time and number of staff depend upon the size of the court. A small court may have one designated juvenile court and a back-up position whereas a large court may have an entire division of juvenile clerks and several supervisors or a manager. Whether small or large, most</p>	The committee appreciates this information.

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Cost saving and workload/implementation impact		
Commentator	Comment	Committee Response
	<p>courts tend to have general staffing meeting updates wherein these types of changes can be addressed. Training time would be minimal, potentially anywhere from 2 – 10 hours depending upon number of staff and updating of written procedures. Case management system updates for action codes or other pertinent data information would also be minimal for this rule change.</p> <p>[While this rule change does increase workload, some courts that have already implemented this process based upon the request of their court's appellate district have found that their reversal rate has dropped and requests for additional transcripts on appeal are reduced. Ultimately with this outcome, the likelihood of handling the case or related cases once and providing all information upfront balances out the cost of multiple requests and re-handling files multiple times.</p> <p>This rules change would likely not have significant fiscal and/or administrative impacts on the trial courts. Some training for personnel would be necessary in regards to transcripts and other documents, forms related to the change, however, this is common with any rule change whether local or statewide and could not be classified as significant. The overall changes in the rule would provide for improved clarification. ]</p> <p><b>Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b> <u>Comment:</u> 120 days is a more realistic timeframe to allow for dissemination of information, arranging for training time, updating materials, and making case management system changes.</p>	<p>Based on the weight of the comments received on this issue, the committee is not recommending a change in the proposed January 1, 2017 effective date.</p>



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Cost saving and workload/implementation impact		
Commentator	Comment	Committee Response
	<b>Suggested Modification:</b> The concern noted at this time is that two months from implementation is not enough time for courts to add any necessary code changes or additions to case management systems and to provide training for staff. The JRS therefore requests that the implementation period be extended to at least 120 days to provide the courts with sufficient time for case management system changes and staff training.	

Suggested Modifications		
Commentator	Comment	Committee Response
Office of the County Counsel, County of Los Angeles by Alyssa Skolnick Principal Deputy County Counsel	(b)(2)(A) – this is confusing; perhaps it should be broken up into two subdivisions: (i) detention hearing; (ii) hearing at which a parent makes his/her first appearance  (b)(3) – WIC 366.26 appeals – the amendment states the normal record should include the oral proceedings at all WIC 366.26 hearings. The normal record for a WIC 366.26 appeal should also include the oral proceedings from: (1) the detention hearing, (2) the hearing at which a parent makes his/her first appearance, (3) the jurisdiction hearing, (4) the disposition hearing, (5) the hearing at which the WIC 366.26 hearing is set, (6) and all WIC 366.26 hearings. Perhaps the better practice, though less cost effective, would be to return to the original way in which appellate records were generated to include all the oral proceedings for every hearing in the case.	Based on this and other comments, the committee has revised the proposal to individually list each hearing that must be included in the reporter's transcript.  The committee sought input from its members in each Court of Appeal district and from the appellate projects on what is routinely needed in the record on appeal in these cases. The responses were mixed, with some, including a representative of the appellate project in Los Angeles, indicating that the materials suggested by the commentator are not routinely needed. Both because practices appear to vary, and because any proposal to modify the rule to require these additional materials could not be recommended for adoption without first being circulated for public comment, the committee is not recommending modifying the rule as suggested by the commentator at this time.

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

Suggested Modifications		
Commentator	Comment	Committee Response
	<p>(b)(4) – This is unclear – for what hearing? It would seem to include all oral proceedings for every hearing.</p> <p>The additions to subdivision (c) are unlikely to be helpful as appellate attorneys usually will not know what is missing from the record until after the record is filed.</p>	<p>This provision is in the current rule and was included in the invitation to comment, unchanged other than being renumbered. The intent is to require that the reporter’s transcript in all cases include any oral opinion of the court. The committee has revised the proposal to make this clearer.</p> <p>The committee did not propose any changes to subdivision (c) of rule 8.407; the existing provisions of the rule were included for reference only.</p>
Orange County Bar Association by Todd G. Friedland, President	<p>One modification would make these changes more effective. On the Advisory Committee Comment to rule 8.407, Subdivision (a)(4) should begin:</p> <p>“The documents that must be included in the clerk’s transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries . . .”</p> <p>This modification to the proposed changes would clarify that all Indian Child Welfare Act documents, not just the ones delineated in the original proposed change, should be included in the clerk’s transcript. Agencies sometimes produce additional documents (such as tracking logs for sent notices) that are filed with the juvenile court, and all such filings should be included in the appellate record.</p>	<p>The committee agrees with this suggestion and has modified the proposal accordingly.</p>
Superior Court of Orange County, Family and Juvenile Court Managers by Michelle Wang	<p>We recommend further clarification as to rule 8.407, if this should be limited to alleged, presumed and/or biological parents only. We are unsure about defacto parents, but would like clarification from JCC. We recommend further defining</p>	<p>Rule 5.481, relating to ICWA inquiries and notices uses the term “parent.” The committee’s view is that rule 8.407, should use the same terminology to encompass hearings at which this inquiry is made.</p>

**Appellate Procedure: Juvenile Proceedings** (amend rules 8.400 and 8.407)

Suggested Modifications		
Commentator	Comment	Committee Response
Program Coordinator Specialist	transcripts for hearings where biological parents make first appearance.	
Superior Court of San Diego County by Michael M. Roddy Executive Officer	<p><b>CRC 8.400(1)(B)</b>            (B) Actions to free a child from parental custody and control under Family Code sections 7662 et seq. and 7800 et seq. and Probate Code section 1516.5; and            Alternatively:            (B) Actions to free a child from parental custody and control under Family Code sections 7662, 7664, 7665, 7669, 7671, and 7800 et seq. and Probate Code section 1516.5; and</p> <p>Note: The proposed change to CRC 8.400 would also impact the probate division.</p> <p><b>CRC 8.407</b>            Our Court of Appeal already has a local order requiring additional transcripts. For clarity, the subdivisions within the proposed rule should separately list the various oral proceedings:            (2) In appeals from dispositional orders, the oral proceedings at the following hearings:            (A) The hearing at which a parent of the child made his or her initial appearance in cases under Welfare and Institutions Code sections 300 et seq.;            (B) Detention;            (C) Jurisdiction;            (D) Disposition; and            (E) A hearing on any motion by the appellant that was denied in whole or in part;</p> <p><b>CRC 8.407(a)(11)</b></p>	<p>The committee agrees with this suggestion regarding the format of the citation to these Family Code sections and has modified the proposal accordingly.</p> <p>Based on this and other comments, the committee has revised the proposal to individually list each hearing that must be included in the reporter's transcript.</p>

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Suggested Modifications		
Commentator	Comment	Committee Response
	<p>(11) Any opinion or dispositive order of a reviewing court in the same case; and;</p> <p><b>CRC 8.407(b)(2)-(3)</b> (2) ...</p> <p>(A) Detention and at which a parent of the child made his or her initial appearance in cases under Welfare and Institutions Code sections 300 et seq.;</p> <p>(B) Jurisdiction and disposition; and</p> <p>(C) Any motion by the appellant that was denied in whole or in part;</p> <p>(3) The oral proceedings at all section 366.26 hearings in appeals from an order terminating parental rights under Welfare and Institutions Code sections 300 et seq.; and</p> <p><b>Advisory Committee Comment:</b> The proposed new Comment contains substantive information that should be in the body of the rule.</p>	<p>The committee agrees with this suggestion and has modified the proposal accordingly.</p> <p>The committee agrees with this suggestion and has modified the proposal accordingly.</p> <p>The committee specifically considered whether to include language regarding ICWA notices in the text of the rule itself. The committee concluded, however, that the existing rule text requiring inclusion in the clerk's transcript of "[a]ny report or other document submitted to the court;" already requires inclusion of these ICWA notices in the transcript and, therefore, that it was unnecessary to modify the rule text. The committee concluded that it would be appropriate for the advisory committee comment to include examples of the types of documents required by this rule text, as other advisory committee comments, including the first paragraph of the</p>

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

Suggested Modifications		
Commentator	Comment	Committee Response
	<p><b>CRC 8.407 Advisory Comm. Comment, ¶ 2</b> Subdivision (a)(4). The documents that must be included in the clerk’s transcript under this provision include all inquiries regarding a child under the Indian Child Welfare Act (Indian Child Inquiry Attachment [form ICWA-010(A)]), any Parental Notification of Indian Status (form ICWA-020), any Notice of Child Custody Proceeding for Indian Child (form ICWA-030) sent to an Indian tribe <b>or the Bureau of Indian Affairs</b>, any signed return receipts for the mailing of form ICWA-030, and any responses to form ICWA-030 from an Indian tribe <b>or the Bureau of Indian Affairs</b>.</p> <p><b>CRC 8.407 Advisory Comm. Comment, ¶ 5</b> For consistency with previous paragraph: Subdivision (b)(2)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a dispositional order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent dispositional order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.</p>	<p>comment to rule 8.407 provide similar examples. In response to this comment, the committee has, however, modified the proposed language of the comment to make it clearer that ICWA notices are just an example of the types of documents that must be included in the clerk’s transcript under this rule text.</p> <p>The committee appreciates this suggestion. The suggestion highlighted for the committee there are several potential recipients of form ICWA-030, including the Indian tribe, the Bureau of Indian Affairs, and the Department of Interior. Rather than listing all of these, the committee has modified the proposal to simply note that the documents required to be included in the clerk’s transcript include any form ICWA-030 sent and any responses to form ICWA-030 that are received.</p> <p>The committee agrees with the suggestion that the rule should use consistent terminology when referring to these orders. However, the committee concluded that the more appropriate term was “disposition order” and has therefore recommended amending the rule to use this term throughout.</p>