



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

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Title

Appellate Procedure: Payment for Partially  
Prepared Reporters' Transcripts

Agenda Item Type

Action Required

Effective Date

January 1, 2018

Rules, Forms, Standards, or Statutes Affected  
Amend Cal. Rules of Court, rules 8.866 and  
8.919

Date of Report

July 17, 2017

Recommended by

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

Contact

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### Executive Summary

The Appellate Advisory Committee recommends amending the rules regarding the preparation of reporters' transcripts in misdemeanor and infraction appeals to add language providing for payment of court reporters for portions of transcripts prepared at the point appeals are abandoned or dismissed out of funds deposited by appellants.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.866 and 8.919, to provide that if the appellant in a misdemeanor or infraction appeal deposited funds with the court for a reporter's transcript and the appeal is abandoned or dismissed, the clerk will pay the court reporter out of these deposited funds for any portion of the transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

The text of the proposed amendments to the rules is attached at page 4.

## **Previous Council Action**

The Judicial Council adopted rules 8.866 and 8.919 effective January 1, 2009, as part of a comprehensive set of new rules and forms for appellate division proceedings. The council has amended these rules several times since their adoption, but the provisions regarding deposit of the estimated cost of preparing a reporter's transcript have remained substantively unchanged.

## **Rationale for Recommendation**

In appeals in civil cases and some misdemeanor and infraction cases, an appellant who wishes to use a reporter's transcript as the record of the oral proceedings in the trial court is required to pay for the transcript. One of the ways that an appellant can pay for a reporter's transcript in these cases is to deposit with the trial court the estimated cost of preparing the transcript. The rules relating to reporters' transcripts in civil appeals in both the Court of Appeal and the superior court appellate division address what happens to this deposit if the appeal is abandoned or dismissed. Subdivision (f) of rule 8.130 and subdivision (d) of rule 8.834 both provide that the funds deposited by the appellant must be used to pay court reporters for any portions of transcripts that were already completed at the point an appeal is abandoned or dismissed and that any remaining funds must be refunded to the appellant.

Currently, rules 8.866 and 8.919, which address the preparation of reporters' transcripts in misdemeanor and infraction appeals, respectively, do not contain provisions addressing what happens to a deposit for a reporter's transcript if the appeal is abandoned or dismissed. To fill this gap, the committee is proposing amendments to these rules to add language similar to that in rules 8.130 and 8.834 providing that the clerk will pay the court reporter out of these deposited funds for any portion of the transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

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

### **External comments**

This proposal circulated for public comment from February 27 to April 28, 2017, as part of the regular spring comment cycle. Six individuals or organizations submitted comments on this proposal. Four commenters agreed with the proposed changes, one agreed with the proposed changes if modified, and one did not indicate a position on the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 5–7.

The commenter that agreed with the proposed changes if modified suggested that the rules should include language to require the reporter to provide the appellant with any portion of the transcript that was prepared at the time the appeal was abandoned or dismissed. Because this requirement is not currently in rule 8.130, upon which this proposal is based, and would be a substantive change that was not circulated for public comment, the committee declined to recommend the change at this time but will instead consider this suggestion when it develops its annual agenda for the next committee year.

### **Alternatives**

In addition to the provision considered in connection with the comments received, the committee considered not proposing amendments to rules 8.866 and 8.919. The committee concluded, however, that it would be appropriate for these rules to treat deposits for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed consistently with the way these deposits are treated in civil appeals. The committee therefore concluded that recommending these amendments for adoption was appropriate.

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

No appreciable implementation requirements, costs, or operational impacts are anticipated. The two courts that provided input on implementation requirements indicated that the requirements would be minimal. The representative of one court requested six months to implement this proposal in order to make changes to the court's case management system, but two others indicated that three months would be adequate. Based on these comments, the committee is recommending that these rule amendments take effect on January 1, 2018, three and one-half months after the Judicial Council's September 15 meeting.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

These proposed amendments support objective III.B.5 of the Judicial Council operational plan related to Goal III, Modernization of Management and Administration, to develop and implement effective trial and appellate case management practices.

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.866 and 8.919, at page 4-5
2. Chart of comments, at pages 6–8

Rules 8.866 and 8.919 of the California Rules of Court are amended, effective January 1, 2018, to read:

## **Title 8. Appellate Rules**

### **Division 2. Rules Relating to the Superior Court Appellate Division**

#### **Chapter 3. Appeals and Records in Misdemeanor Cases**

##### **Article 2. Record in Misdemeanor Appeals**

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

**(a)–(c) \* \* \***

###### **(d) When preparation must be completed**

**(1)–(2) \* \* \***

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

**(e)–(f) \* \* \***

#### **Chapter 5. Appeals in Infraction Cases**

##### **Article 2. Record in Infraction Appeals**

###### **Rule 8.919 Preparation of reporter's transcript**

**(a)–(c) \* \* \***

###### **(d) When preparation must be completed**

**(1)–(2) \* \* \***

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

**(e)-(f) \* \* \***

## ITC SPR17-06

### Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts)

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla IMPACT Team – Criminal Operations Orange County Superior Court	NI	<p>The current procedures for accepting payments on transcripts is missing from the Infraction/Misdemeanor Appeals procedure. A working group consisting of representatives from Criminal, Fiscal and CRIS was formed in 2015 to address this however the project was never completed. Sherry Clifford and Sheila Le are looking into forming this working group again to start looking into the process. If implemented, the procedures would have to be modified, potential new docket codes created, and a new fee distribution created by accounting to use specifically when accepting payment for a transcript.</p> <p><i>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?</i></p> <p>Development of procedures, potential new docket codes and training of courtroom clerk staff.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>No, the court would request 6 months to implement the process on Felony / Misdemeanor appeals.</p>	The committee appreciates the commentator's input on these implementation questions. Based on the input from other courts, however, the committee is recommending that the proposed amendments become effective January 1, 2018.

## ITC SPR17-06

### Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts)

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	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association by Michael L. Baroni, President	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
3.	Superior Court of Los Angeles County	AM	<p><b>Suggested modification:</b> These rules should include language to require the reporter to provide the appellant with any portion of the transcript prepared and to declare the same when providing the invoice to the clerk for payment.</p> <p><b>Request for Specific Comments:</b> <i>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.</i> Minimal staff training would be required.</p>	<p>Rule 8.130, which also addresses the handling of deposits for reporter's transcripts when an appeal is abandoned or dismissed, does not currently include a requirement that the court reporter provide the appellant with the partially completed transcript. The committee's view it would be best to consider whether to add such a requirement to all of the relevant rules at the same time. The proposal that was circulated did not contain any proposed amendments to rule 8.130, so this would be a substantive change to the proposal. This new requirement would also be a substantive change to the two rules addressed in the proposal. Under rule 10.22, substantive changes to the rules must be circulated for public comment before they are recommended for adoption by the Judicial Council. The committee will therefore consider this suggestion when it develops its annual agenda for the next committee year.</p> <p>The committee appreciates the commentator's input on these implementation questions; no response required.</p>

## ITC SPR17-06

### Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts)

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	Commentator	Position	Comment	Committee Response
			<i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes. The three month effective date is sufficient for implementation	
4.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator's support for the proposal; no response required.
5.	Superior Court of Riverside County	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
6.	Superior Court of San Diego County by Michael Roddy, Court Executive Officer	A	<b>Request for Specific Comments</b>  <i>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?</i>  Minimal training and changes – this is currently our procedure for unlimited civil and the majority of the clerks are already trained on this process.  <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.