



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 15, 2017

Title

Appellate Procedure: Settled Statements in
Unlimited Civil Cases

Agenda Item Type

Action Required

Effective Date

January 1, 2018

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.137;
approve form APP-014; revise form APP-003

Date of Report

July 14, 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 rule regarding settled statements in Court of Appeal proceedings to remove the requirement for obtaining a court order to use this procedure in certain circumstances, approving a new optional form for appellants to use in preparing proposed statements, and revising the form for designating the record on appeal to conform to these changes. The rule amendments and new form are intended to make the settled statements procedure in unlimited civil cases less burdensome for appellants and the courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Amend California Rules of Court, rule 8.137, to:

- Permit an appellant to use the settled statement procedure without filing a motion either if the trial court proceedings were not recorded by a court reporter or if the appellant received a fee waiver;
 - Allow the respondent to pay for a reporter's transcript in cases in which a court reporter recorded the proceedings but an appellant elects or moves to use a settled statement;
 - Eliminate the option of using a settled statement to provide the record of the documents from the trial court proceeding;
 - Encourage self-represented appellants to use the new optional statement-on-appeal form, recommended below, in preparing their proposed statements;
 - Add provisions specifying the required contents of proposed statements;
 - Add provisions detailing the procedure for the trial court's review of proposed statements; and
 - Add a provision clarifying that when the statement is finalized, it must immediately be transmitted to the clerk for filing of the record;
2. Approve new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help appellants prepare their initial proposed statement; and
 3. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to reflect the amendments to rule 8.137 and the availability of new form APP-014.

The amended rule and the forms are attached at pages 10–28.

Previous Council Action

The Judicial Council adopted the predecessor to rule 8.137 relating to settled statements effective July 1, 1943, as part of the original Rules on Appeal. As originally adopted, this rule permitted the appellant to elect to proceed by way of settled statement if he or she wished to do so in any civil appeal. Effective July 1, 1988, the council amended this rule to limit the circumstances in which a settled statement could be used to when (1) the appellant is without adequate funds to pay for a transcript and funds are not available from the transcript reimbursement fund; (2) a transcript is unavailable because of the absence of a reporter or the loss or illegibility of the reporter's notes; or (3) the trial court grants a motion on the ground that a substantial saving of cost would be achieved and a statement can be settled without significant burden on the opposing party or on the court.

Effective January 1, 2002, as part of overall revision to the appellate rules, this rule was amended to read as it currently does, including requiring the appellant to file a motion to proceed by way of settled statement regardless of the circumstances. The Judicial Council report that addressed these amendments indicated that this change was intended to fill a perceived gap in the prior

rule, which did not specify a procedure for determining an appellant's right to use a settled statement on the grounds of indigency or unavailability of a transcript.

Rationale for Recommendation

Background

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is a summary of the trial court proceedings prepared by the appellant and reviewed and approved by the trial court judge who presided over the proceedings. Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule currently reflects a basic presumption that court reporters' transcripts generally will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, if an appellant wishes to use a settled statement, the appellant must file a motion asking to do so.

Because court reporters are no longer present to record the proceedings in many civil cases, reporter's transcripts are unavailable in many civil appeals, and more appellants are now trying to use the settled statements procedure in these cases. Some appellants, particularly those who are self-represented, have difficulty navigating the motion procedure and preparing proposed statements. Proposed statements that are not appropriately prepared create additional burdens for the trial court judges who must attempt to review and certify them. These problems also affect the Courts of Appeal by delaying or resulting in defaults in these cases.

Statements on appeal, which are essentially the same as settled statements, are also used in appeals to the superior court appellate division. The rules for these appeals do not require the appellant to file a motion to get permission to use a statement on appeal. Furthermore, a form is available to assist appellants, particularly self-represented appellants, in preparing proposed statements that contain the necessary information in appeals to the appellate division.

Recommended changes

The committee is recommending amendments to rule 8.137, changes to the form for designating the record on appeal, and a new form for preparing a proposed settled statement that, together, are designed to make it easier for appellants to use the settled statement procedure and for trial courts to review these statements.

Amendments to rule 8.137. The recommended amendments to rule 8.137 are modeled in large part on the rules for statements on appeal in the superior court appellate division, rules 8.837, 8.869, and 8.916. The main substantive changes include the following:

- Permitting an appellant to use the settled statement procedure without having to file a motion if (1) the trial court proceedings were not recorded by a court reporter, or (2) the appellant has received a fee waiver (subdivision (b)(1)). This change is intended to reduce burdens for both appellants and courts in making and reviewing motions in these cases. Instead, in these circumstances, the rule would permit the appellant to elect to use a settled statement in his or

her notice designating the record on appeal. The fact that the designated proceedings were not recorded by a court reporter or that the appellant has received a fee waiver will be in the trial court record.

- Allowing the respondent to pay for a reporter's transcript in cases in which an appellant moves to use a settled statement even though a court reporter recorded the proceedings (subdivisions (b)(2)(B) and (e)(2)(B)). This provision is not currently in the appellate division rules; it is modeled on a provision in rule 8.702(d)(2)(B) relating to expedited appeals in certain California Environmental Quality Act cases. This provision is designed to give respondents the opportunity to avoid the delay and to reduce the burdens on parties and the trial courts associated with preparation of a settled statement by providing a reporter's transcript when one is available.
- Encouraging self-represented appellants to use a proposed statement-on-appeal form, discussed below (subdivision (c)). This provision is intended to help appellants prepare proposed statements and help produce statements that are easier for the trial court judge to review.
- Adding provisions from rule 8.837(c) regarding the contents of proposed statements (subdivision (d)). These provisions should also help appellants prepare proposed statements and help produce statements that are easier for the trial court judge to review.
- Adding provisions from rule 8.837(d) regarding the trial court judge's review of proposed statements (subdivision (f)). These provisions should clarify and simplify the procedure for the trial court judge and bring consistency to the procedures for statements in limited and unlimited civil cases.
- Adding a provision designed to clarify what should happen when the statement is finalized (subdivision (h)(3)). This provision is designed to reduce delays in the transmission of the record to the Court of Appeal.

Revisions to the record designation form. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) is the form that appellants use to tell the trial court what form of the record they want to use in their appeal. This form is revised to reflect the elimination of the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver. Check boxes are added for the appellant to use to indicate the basis for electing to use a settled statement. In addition, a new section is added where the appellant can designate the trial court proceedings that will be included in a settled statement and whether they were recorded by a court reporter. This information will help the trial court judge in reviewing the statement and the respondents in determining whether to opt to purchase a reporter's transcript, where one is available, in lieu of using the settled statement procedure.

New proposed statement form. *New Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is modeled on *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). It is designed to help appellants prepare their initial proposed statement. It includes spaces and prompts to help appellants identify and include all necessary information in their statements. By providing a standardized format and prompting the inclusion of required information, the form is also designed to make these proposed statements easier for the trial judge to review.

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 2017 invitation-to-comment cycle. Twelve individuals or organizations submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, six indicated that they agreed with the proposal if modified, and two did not indicate a position on the proposal overall. Many of the comments were extensive, with responses to the questions asked by the committee in the invitation to comment and suggestions for modifying the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 29–54. This chart is divided up by topic area so that all the comments addressing a particular question or issue can be seen together.

Rule 8.137. The majority of the commenters who specifically addressed the proposed amendments to rule 8.137 expressed support for the concept of eliminating the requirement for filing a motion to use a settled statement when the proceedings were not reported by a court reporter or when the appellant has a fee waiver. Three main substantive issues were raised by the commenters.

Option for using settled statement as record of documents. Currently, rule 8.137 permits settled statements to be used not only as the record of the oral proceedings in the trial court, replacing a reporter's transcript, but also, at the appellant's option, as the record of the documents from the trial court proceedings, replacing a clerk's transcript or appendix. The invitation to comment asked for input on the following question:

Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

Five commenters directly responded to this question. Four of them expressed support for eliminating this option, and one did not support the elimination. Three other commenters separately raised concerns about the complexities caused by the option of using a settled statement as the record of the documents from the trial court proceedings. Based on these comments, the committee recommends amending rule 8.137 to eliminate this option and revising form APP-003 to reflect this change.

Complexity of rule language. Two commenters expressed concern about the complexity of the language used in rule 8.137. Both of these commenters focused, in part, on the complexity caused by the option of having the settled statement serve not only as a record of the oral proceedings, but also, through attachments, as the record of the documents filed in the case. However, these commenters also suggested more broadly that the rule is unnecessarily complicated and should be rewritten in simpler language geared toward self-represented litigants.

As always, the committee's goal in developing proposed rule language is for the rules to be both accurate and easy to understand. In response to the public comments, the committee has revised the proposed rule amendments to eliminate the following:

- The option of using a settled statement as the record of the documents filed in the case;
- The requirement to describe the proceedings to be included in the settled statement; and
- The requirement to summarize the trial court judgment.

These changes reduce the complexity of the rule somewhat. The committee also discussed whether to work on further revisions to make this rule less complex and easier to understand. In thinking about this, the committee considered the following:

- Overall, the California Rules of Court are not currently written with self-represented litigants as the intended target audience. Legal terminology and complex language are commonly used throughout the rules. If just this rule were revised with the goal of gearing the language toward self-represented litigants, it would be inconsistent with the rest of the California Rules of Court. Rather than modifying the rules, the way that the council and its advisory committees have tried to help self-represented litigants navigate procedural requirements is through information sheets, other forms (like *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014)), and resources on the self-help website.
- The proposed amendments to rule 8.137 are based in large part on the existing language of rule 8.837 and the other appellate division rules relating to statements on appeal. This raises the question about whether considering changes to similar provisions in all these rules at the same time would be preferable.

Ultimately, the committee decided not to work on further simplification of rule 8.137 at this time. *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is designed to be used by self-represented litigants and provides detailed guidance to appellants on preparing proposed statements. The committee will consider development of a proposal for further changes to rules 8.137 and the appellate division rules at a later date. In addition, the committee will consider developing an information sheet regarding settled statements in the future as well.

Requirement that self-represented litigants use form APP-014. As circulated for public comment, the proposed amendments to rule 8.137 would have required that a self-represented litigant use

the new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to file their proposed statement unless the court, for good cause, exempted them from this requirement. Two commenters objected to this requirement. One generally objected to treating self-represented litigants differently from attorneys in this respect and expressed concern about imposing a new burden on self-represented litigants in the form of making a request to the court to be exempted from the requirement to use the form. The other commenter suggested that the form is too complex for self-represented litigants to use and so its use should be optional.

The proposal that self-represented litigants be required to use the form was based on a similar requirement in existing rule 8.837 relating to statements on appeal in limited civil cases.¹ Ultimately, noting that the length and complexity of limited and unlimited civil cases differ, the committee decided to recommend that self-represented appellants in unlimited civil cases be urged, but not required, to use form APP-014. The committee also recommends that courts be authorized to order the use of the form in individual cases.

Proposed Statement on Appeal (Unlimited Civil Case) (form APP-014)

Helpfulness of the form. The invitation to comment specifically asked for input on whether new form APP-014 would be helpful to litigants and the courts. Five commenters responded directly to this inquiry and all indicated that the form would be helpful. In addition, two other commenters, while not directly responding to this inquiry, expressed agreement with the proposal as a whole, including this form. Based on this response, the committee recommends approval of this form, with the changes discussed below and in the comment chart.

Summarizing vs. attaching judgment. The invitation to comment asked for input on the following question:

Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?

Five commenters directly responded to this question. Four of them expressed support for replacing the section asking the appellant to summarize the judgment with a requirement to attach the judgement or order being appealed. Based on these comments, the committee revised the proposed form to require the appellant to attach a copy of the judgment or order being appealed, rather than requiring that this judgment or order be summarized.

Single form vs. separate form for family and probate cases. Several commenters suggested that the proposed form needed to be modified before it could be used in family and probate appeals. Some of the suggested changes, such as changing the reference to “plaintiff” to “plaintiff/petitioner” and “defendant” to “defendant/respondent,” have been incorporated into the

¹ Rule 8.380 has a similar requirement that self-represented petitioners use the Judicial Council form when filing a petition for a writ of habeas corpus. The requirement in rule 8.837 was modeled on rule 8.830.

recommended version of the form attached to this report. Other changes, such as eliminating the reference to a trial, seemed like they could produce confusion in general civil cases.

The committee consulted with the Family and Juvenile Law Advisory Committee about these suggestions and whether to develop a separate form for family law proceedings or try to modify proposed form APP-014 to make it more workable in all unlimited civil appeals. That committee supported the idea of developing a separate form for family law proceedings but preferred that the Appellate Advisory Committee delay recommending adoption of APP-014 so that both forms could be considered for adoption at the same time.

The Appellate Advisory Committee agrees with the idea of working with the Family and Juvenile Law Advisory Committee to develop a separate form geared to family law appeals and also working with the Probate and Mental Health Advisory Committee to determine if a separate form should be developed for probate appeals. However, the committee thought it was important to move forward with form APP-014 at this time, rather than waiting to recommend all of the forms at the same time. The committee believes that form APP-014 will be helpful to litigants who are currently struggling to prepare proposed statements and to trial courts that are having to review proposed statements that do not contain the necessary information. If during the development of separate family law or probate forms, potential improvements in the form language are identified that could be incorporated into form APP-014, the committee can recommend those improvements at the same time as it recommends approval of the new family law or probate forms.

Plain language review. One commenter recommended that proposed form APP-014 be reviewed by a professional plain-language translator. With the committee's approval, this input is being obtained. The committee plans to use this input both in considering possible improvements to form APP-014 and in working with the Family and Juvenile Law Advisory Committee on developing the separate form for family law appeals.

Internal comments

The recommended amendments to rule 8.137 require that the appellant designate the oral proceedings to be included in the settled statement. However, as circulated for public comment, the revisions to form APP-003 did not include adding a place for the appellant to make this designation. To reflect this proposed rule provision, the committee revised its proposal to add to form APP-003 new item 6 that provides a table for designating proceedings to be included in a settled statement. The committee viewed this as a technical change to the form, bringing it into conformity with the proposed language of the rule, and thus not a change that would need to be circulated for public comment.

Alternatives

In addition to the alternatives considered in response to the public comments, the committee considered recommending only the clarification to the rule about what happens once a statement

has been finalized. The committee concluded, however, that additional changes to the procedure would be helpful in reducing barriers for litigants and burdens on the courts.

Implementation Requirements, Costs, and Operational Impacts

The committee's intent in making this proposal is to reduce burdens on litigants and trial courts associated with preparing settled statements in unlimited civil cases. No appreciable implementation requirements, costs, or operational impacts are anticipated. Three courts and the Joint Rules Subcommittee of the Trial Court Presiding Judges and the Court Executives Advisory Committees provided input on the potential implementation requirements in their comments. Two courts indicated that implementation requirements would be minimal and the third identified some training requirements, as did the subcommittee.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed form revisions support Judicial Council strategic Goal III, Modernization of Management and Administration (Goal III.B.2), and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Cal. Rules of Court, rule 8.137, at pages 10–16
2. Forms APP-03 and APP-014, at pages 17–28
3. Chart of comments, at pages 29–54

Rule 8.137 of the California Rules of Court is amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.137. Settled statement

(a) Description

A settled statement is a summary of the superior court proceedings approved by the superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a settled statement as the record of the oral proceedings in the superior court, instead of a reporter's transcript.

(a)(b) Motion to use When a settled statement may be used

(1) An appellant may elect in his or her notice designating the record on appeal under rule 8.121 to use a settled statement as the record of the oral proceedings in the superior court without filing a motion under (2) if:

(A) The designated oral proceedings in the superior court were not reported by a court reporter; or

(B) The appellant has an order waiving his or her court fees and costs.

~~(1)(2)~~ An appellant intending to proceed under this rule for reasons other than those listed in (1) must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both a reporter's and clerk's transcripts.

~~(2)~~(A) The motion must be supported by a showing that:

~~(A)(i)~~ A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

~~(B)(ii)~~ The designated oral proceedings were not reported or cannot be transcribed; or

~~(C)(iii)~~ Although the appellant does not have a fee waiver, he or she is unable to pay for a reporter's transcript and funds are not available from the

1 Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding~~
2 ~~in forma pauperis is deemed unable to pay for a transcript.~~

3
4 ~~(3)(B)~~ If the court denies the motion, the appellant must file a new notice designating
5 the record on appeal under rule 8.121 within 10 days after the superior court
6 clerk sends, or a party serves, the order of denial.

7
8 (3) An appellant's notice under (1) or motion under (2) must:

9
10 (A) Specify the date of each oral proceeding to be included in the settled statement;

11
12 (B) Identify whether each proceeding designated under (A) was reported by a court
13 reporter and if so, for each such proceeding:

14
15 (i) Provide the name of the court reporter, if known; and

16
17 (ii) Identify whether a certified transcript has previously been prepared by
18 checking the appropriate box on *Appellant's Notice Designating Record*
19 *on Appeal (Unlimited Civil Case)* (form APP-003) or if that form is not
20 used, placing an asterisk before that proceeding in the notice.

21
22 (4) If the designated oral proceedings in the superior court were reported by a court
23 reporter:

24
25 (A) Within 10 days after the appellant serves either a notice under (1) or a motion
26 under (2), the respondent may serve and file a notice indicating that he or she
27 is electing to provide a reporter's transcript in lieu of proceeding with a settled
28 statement. The respondent must also either:

29
30 (i) Deposit a certified transcript of all of the proceedings designated by the
31 appellant under (3) and any additional proceedings designated by the
32 respondent under rule 8.130(b)(3)(C); or

33
34 (ii) Serve and file a notice that the respondent is requesting preparation, at
35 the respondent's expense, of a reporter's transcript of all proceedings
36 designated by the appellant under (3) and any additional proceedings
37 designated by the respondent. This notice must be accompanied by either
38 the required deposit for the reporter's transcript under rule 8.130(b)(1) or
39 the reporter's written waiver of the deposit in lieu of all or a portion of
40 the deposit under rule 8.130(b)(3)(A).

41
42 (B) If the respondent timely deposits the certified transcript as required under (i),
43 the appellant's motion to use a settled statement will be dismissed. If the

respondent timely files the notice and makes the deposit or files the waiver as provided under (ii), the appellant's motion to use a settled statement will be dismissed and the clerk must promptly send the reporter notice of the designation and of the deposit, waiver, or both—and notice to prepare the transcript—as provided under rule 8.130(d).

(b)(c) Time to file; contents of proposed statement

- (1) ~~Within 30 days after the superior court clerk sends, or a party serves, an order granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A) electing to provide a reporter's transcript in lieu of proceeding with a settled statement, the appellant must serve and file a proposed statement in superior court within 30 days after filing its notice under (b)(1) or within 30 days after the superior court clerk sends, or a party serves, an order granting a motion under (b)(2) a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.
- (2) Appellants who are not represented by an attorney are encouraged to file their proposed statement on *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014). The court may order an appellant to use form APP-014.

(d) Contents of proposed statement

The proposed statement must:

- ~~(2)(1)~~ Contain a statement of the points the appellant is raising on appeal. If the condensed narrative under (2) covers only a portion of the oral proceedings, describes less than all the testimony, the appellant must state the points to be raised on appeal; the appeal is then limited to those the points identified in the statement unless the reviewing court determines that the record permits the full consideration of another point or, on motion, the reviewing court permits otherwise.
- (2) Contain a condensed narrative of the oral proceedings that the appellant specified under (b)(3).
- (A) The condensed narrative must include a concise factual summary of the evidence and the testimony of each witness relevant to the points that the appellant states under (1) are being raised on appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

1 (B) If one of the points that the appellant states will be raised on appeal is a
2 challenge to the giving, refusal, or modification of a jury instruction, the
3 condensed narrative must include any instructions submitted orally and not in
4 writing and must identify the party that requested the instruction and any
5 modification.

6
7 (3) ~~An appellant intending to use a settled statement instead of both reporter's and~~
8 ~~clerk's transcripts must accompany the condensed narrative with copies of all items~~
9 ~~required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2). Have~~
10 ~~attached to it a copy of the judgment or order being appealed.~~

11
12 **(e) Respondent's response to proposed statement**

13
14 ~~(4) Within 20 days after the appellant serves the condensed narrative proposed statement,~~
15 ~~the respondent may serve and file either:~~

16
17 (1) Proposed amendments to the proposed statement; or

18
19 (2) A notice indicating that he or she is electing to provide a reporter's transcript in lieu
20 of proceeding with a settled statement. The respondent must also either:

21
22 (A) Deposit a certified transcript of all the proceedings specified by the appellant
23 under (b)(3) and any additional proceedings designated by the respondent
24 under rule 8.130(b)(3)(C); or

25
26 (B) Serve and file a notice that the respondent is requesting preparation, at the
27 respondent's expense, of a reporter's transcript of all proceedings specified
28 by the appellant under (b)(3) and any additional proceedings designated by
29 the respondent. This notice must be accompanied by either the required
30 deposit for the reporter's transcript under rule 8.130(b)(1) or the reporter's
31 written waiver of the deposit in lieu of all or a portion of the deposit under
32 rule 8.130(b)(3)(A).

33
34 ~~(5) The proposed statement and proposed amendments may be accompanied by copies~~
35 ~~of any document includable in the clerk's transcript under rule 8.122(b)(3) and (4).~~

36
37 **(e)(f) Settlement, preparation, and certification Review of appellant's proposed statement**

38
39 (1) ~~The clerk must set a date for a settlement hearing by the trial judge that is No later~~
40 ~~than 10 days after the respondent files proposed amendments or the time to do so~~
41 ~~expires, whichever is earlier, and must give the parties at least five days' notice of~~
42 ~~the hearing date a party may request a hearing to review and correct the proposed~~
43 ~~statement. No hearing will be held unless ordered by the trial court judge, and the~~

1 judge will not ordinarily order a hearing unless there is a factual dispute about a
2 material aspect of the trial court proceedings.

3
4 (2) At the hearing, the judge must settle the statement and fix the times within which the
5 appellant must prepare, serve, and file it.

6
7 (2) The trial court judge may order that a transcript be prepared as the record of the oral
8 proceedings instead of correcting a proposed statement on appeal if the trial court
9 proceedings were reported by a court reporter, the trial court judge determines that
10 doing so would save court time and resources, and the court has a local rule
11 permitting such an order. The court will pay for any transcript ordered under this
12 subdivision.

13
14 (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the
15 time for requesting a hearing expires, the trial court judge must review the proposed
16 statement and any proposed amendments filed by the respondent and take one of the
17 following actions:

18
19 (A) If the proposed statement does not contain material required under (d), the trial
20 court judge may order the appellant to prepare a new proposed statement. The
21 order must identify the additional material that must be included in the
22 statement to comply with (d) and the date by which the new proposed
23 statement must be served and filed. If the appellant does not serve and file a
24 new proposed statement as directed, the appellant will be deemed to be in
25 default, and rule 8.140 will apply.

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

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

33
34 (ii) Identify the necessary corrections and modifications, and order the
35 appellant to prepare a statement incorporating these corrections and
36 modifications.

37
38 (4) If a hearing is ordered, the court must promptly set the hearing date and provide the
39 parties with at least 5 days' written notice of the hearing date. No later than 10 days
40 after the hearing, the trial court judge must either:

41
42 (A) Make any corrections or modifications to the statement necessary to ensure
43 that it is an accurate summary of the evidence and the testimony of each

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

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

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

(g) Review of the corrected statement

(1) If the trial court judge makes any corrections or modifications to the proposed statement under (f), the clerk must serve copies of the corrected or modified statement on the parties. If under (f) the trial court judge orders the appellant to prepare a statement incorporating corrections and modifications, the appellant must serve and file the corrected or modified statement within the time ordered by the court. If the appellant does not serve and file a corrected or modified statement as directed, the appellant will be deemed to be in default, and rule 8.140 will apply.

(2) Within 10 days after the corrected or modified statement is served on the parties, any party may serve and file proposed modifications or objections to the statement.

(3) If the respondent does not object to the prepared statement within five days after it is filed, it will be deemed properly prepared and the clerk must present it to the judge for certification. Within 10 days after the time for filing proposed modifications or objections under (2) has expired, the trial court judge must review the corrected or modified statement and any proposed modifications or objections to the statement filed by the parties. The procedures in (2) or in (f)(3) apply if the trial court judge determines that further corrections or modifications are necessary to ensure that the statement is an accurate summary of the evidence and the testimony of each witness relevant to the points that the appellant states under (d)(1) are being raised on appeal.

(h) Certification of the statement on appeal

(1) If the trial court judge does not order the preparation of a transcript under (f)(2) in lieu of correcting the proposed statement or order any corrections or modifications to the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify the statement.

~~(4)(2)~~ The parties² may serve and file a stipulation that the statement as originally served under (c) or as prepared corrected or modified under (f)(3), (f)(4), or (g)(3) is correct. Such a stipulation is equivalent to the judge's certification of the statement.

1 (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the
2 certified statement must immediately be transmitted to the clerk for filing of the
3 record under rule 8.150.
4

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):		COURT OF APPEAL CASE NUMBER (if known):
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☐ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed (you must check a. or b. below):

- a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. b. ☐ WITH the following record of the oral proceedings in the superior court *(you must check (1), (2), or (3) below):*
- (1) ☐ A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply):*
- (a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
- (i) ☐ all of the designated proceedings.
- (ii) ☐ part of the designated proceedings.
- (d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).
- (2) ☐ An agreed statement. *(Check and complete either (a) or (b) below.)*
- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) ☐ A settled statement under rule 8.137. *(You must check (a), (b), or (c) below.)*
- (a) ☐ The oral proceedings in the superior court were not reported by a court reporter.
- (b) ☐ The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
- (c) ☐ I am requesting to use a settled statement for reasons other than those listed in (a) or (b). *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

- ☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding):*

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

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

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket *(if any)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

☐ Additional documents are listed on Attachment 4b beginning with number (13).

c. Exhibits to be included in clerk's transcript

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

☐ Additional exhibits are listed on Attachment 4c beginning with number (6).

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

- a. I request that the reporters provide (check one):

- (1) ☐ My copy of the reporter's transcript in paper format.
- (2) ☐ My copy of the reporter's transcript in computer-readable format.
- (3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 5b beginning with number (5).

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you elect to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions— and, if applicable, the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 6 beginning with number (5).

7. a. The proceedings designated in 5b or 6 ☐ include ☐ do not include all of the testimony in the superior court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (*rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise*).

Points are set forth: ☐ Below ☐ On Attachment 7.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Instructions

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case**.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If your proposed statement is not attached to that notice, it must be filed **no later than 30 days after you file that notice, or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. If you have chosen to prepare a settled statement and do not file your proposed statement on time, the court may dismiss your appeal.**
- Fill out this form and attach a copy of the judgment or order you are appealing. Make a copy of the completed form and attachment for your records and for each of the other parties.
- Serve a copy of the completed form and attachment on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the original completed form, attachment, and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

You fill in the Court of Appeal case number (if you know it):

Court of Appeal Case Number:

1 Your Information

- a. Name of Appellant (*the party who is filing this appeal*)

Name: _____

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

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street or P.O. Box City State Zip

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

Firm Name: _____

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street or P.O. Box City State Zip

Phone: _____ E-mail: _____

Fax: _____



2 Information About Your Appeal

a. On *(fill in the date)*: _____, I filed a notice of appeal in the trial court case identified in the box on page 1 of this form. A copy of the judgment or order I am appealing is attached.

b. On *(fill in the date)*: _____

☐ I filed a notice designating the record on appeal, electing to use a settled statement.

☐ The Court sent me ☐ The other party served me with an order granting my motion to use a settled statement.

Proposed Statement**3 Reasons for Your Appeal**

Please note that, in an appeal, the Court of Appeal can review a case only for whether certain kinds of legal errors were made, as follows:

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

The Court of Appeal

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

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

a. ☐ There was not substantial evidence that supported the attached judgment or order that I am appealing in this case. *(Explain why you think the judgment or order was not supported by substantial evidence):*

☐ *Check here if you need more space and attach a separate page or pages describing the lack of substantial evidence. You can use form MC-025 for this attachment. At the top of each page, write “APP-014, item 3.a.”*

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me. *(Describe each error and how you were harmed by that error.)*

(1) *Describe the error:* _____

Describe how you were harmed by the error: _____



Trial Court Case Name: _____

Trial Court Case Number: _____

3 b. (2) Describe the error: _____

Describe how you were harmed by the error: _____

(3) Describe the error: _____

Describe how you were harmed by the error: _____

- ☐ Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 3.b."

4 The Dispute

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

- ☐ Plaintiff/Petitioner (the party who filed the complaint/petition in the case).
☐ Defendant/Respondent (the party against whom the complaint/petition was filed).

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

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

- ☐ Check here if you need more space to describe the dispute and attach a separate page or pages describing it. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 4."



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

- a. Are you appealing an order by the trial court on a motion (request for the trial court to issue an order) made by you or another party in this case?

☐ Yes (fill out (1)-(5) below) ☐ No (skip to b.)

(1) Describe the motion that resulted in the order you are appealing: _____

(2) The motion was filed by the ☐ plaintiff/petitioner ☐ defendant/respondent on (date): _____.

(3) There ☐ was ☐ was not a hearing on this motion.

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

(4) The trial court ☐ granted this motion ☐ denied this motion.

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

☐ Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5a."

- b. Were any motions (requests for the trial court to issue an order) made in this case, other than a motion described in a., that are relevant to the reasons you gave in (3) for this appeal?

☐ Yes (fill out c.) ☐ No (skip to (6))

- c. In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in (3) for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.

(1) First motion

(a) Describe the motion: _____

(b) The motion was filed by the ☐ plaintiff/petitioner ☐ defendant/respondent on (date): _____.



Trial Court Case Name: _____

Trial Court Case Number: _____

- 5 c. (1) (c) There ☐ was ☐ was not a hearing on this motion.

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

- (d) The trial court ☐ granted ☐ denied this motion.

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

☐ Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 5c(1)."

(2) Second motion

- (a) Describe the motion: _____

- (b) The motion was filed by the ☐ plaintiff/petitioner ☐ defendant/respondent on (date): _____.

- (c) There ☐ was ☐ was not a hearing on this motion.

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

- (d) The trial court ☐ granted ☐ denied this motion.

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

☐ Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5c(2)."



- ⑤ c. (3) ☐ Check here if any other motions were filed that are relevant to the reasons you gave in ③ for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. You can use form MC-025 for this attachment. At the top of each page, write “APP-014, item 5c(3).”

⑥ **Summary of Testimony and Other Evidence**

- a. Was there a trial in your case?

- ☐ No (skip to item ⑦)
- ☐ Yes (check (1) or (2) and complete items b., c., d., and e.)
- (1) ☐ Jury trial
- (2) ☐ Trial by judge only

- b. Did you testify at the trial?

- ☐ No
- ☐ Yes (Write a complete and accurate summary of the testimony you gave that is relevant to the reasons you gave in ③ for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your testimony or any exhibits you asked to present and whether these objections were sustained.):

- ☐ Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. You can use form MC-025 for this attachment. At the top of each page, write “APP-014, item 6b.”

- c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in ③ for this appeal?

- ☐ No
- ☐ Yes (complete items (1), (2), and (3)):

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

(2) The witness testified on behalf of the (check one): ☐ plaintiff/petitioner ☐ defendant/respondent



- ⑥ c. (3) This witness testified that *(Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in ③ for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness's testimony or any exhibits this witness asked to present and whether these objections were sustained.)*: _____

☐ Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 6c."

- d. ☐ Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in ③ for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in ③ for this appeal, and indicating whether any objections were made concerning this witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "APP-014, item 6d."

- e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in ③ for this appeal. Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence:

☐ Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 6e."



Trial Court Case Number:

Did the trial court make findings in the case?

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Remember to attach a copy of the judgment or order you are appealing.

Date: _____

▶

Signature of appellant or attorney

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	AM	<p>The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. An important aspect of PAF’s work is making court processes more fair, understandable, and accessible to those without attorneys. SPR17-01 attempts to make the settled statements procedure less burdensome for litigants in unlimited civil cases. PAF will support SPR17-01 if it is modified to better address the needs of self-represented litigants. PAF would like to work closely with the Appellate Advisory Committee to address the concerns and recommendations outlined below.</p> <p><i>See additional comments below.</i></p> <p>Thank you for considering these recommendations. PAF looks forward to the opportunity to work with the Appellate Advisory Committee on these recommendations</p>	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	A	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes. By including settled statement as part of the designation, eliminating the need to motion the trial court to proceed by way of settled statement, and revising/creating forms for litigants, the whole process is being simplified to reduce delays.</p> <p><i>See additional comments below.</i></p>	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
3.	Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	NI	<i>See additional comments below.</i>	
4.	Family Violence Appellate Project by Erin Smith San Francisco	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes <i>See additional comments below.</i>	
5.	Orange County Bar Association by Michael L. Baroni	A	<i>No specific comment</i>	The committee notes the commentator's support for the proposal; no response required.
6.	San Diego County Bar Association By Michael Pulos	NI	The Appellate Practice Section of the San Diego County Bar Association lauds the efforts of the Appellate Advisory Committee in amending rule 8.137 to simplify the process for obtaining a Settled Statement on Appeal. The Section offers the following observations: <i>See additional comments below.</i>	
7.	State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	A	Q: Does the proposal appropriately address the stated purpose? A: Yes <i>See additional comments below.</i>	
8.	State Bar of California Standing Committee on the Delivery	AM	<i>Does the proposal appropriately address the stated purpose?</i>	

ITC SPR17-01**Title of proposal** (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
	of Legal Services by Sharon Djemal		Yes. <i>See additional comments below.</i>	
9.	Superior Court of Los Angeles County	AM	<i>Does the proposal appropriately address the stated purpose?</i> Yes. The proposal appropriately addresses the stated purpose. <i>See additional comments below.</i>	
10.	Superior Court of San Diego By Mike Roddy	A	<i>No specific comment</i>	The committee notes the commentator's support for the proposal; no response required.
11.	Superior Court of Orange County by Civil and Probate Operations Managers	AM	<i>See additional comments below.</i>	
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	<i>See additional comments below.</i>	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 – General		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	California Rule of Court 8.137 should be written in Plain Language (also known as “Plain English”). As currently written, the rule of court contains complicated legal terminology that would be difficult for the average non-attorney to understand. Self-represented litigants are expected to understand and be bound by this rule of court. The rule, therefore, should be written in a way that the average person could easily understand.	<p>The committee’s revised proposal would reduce the complexity of rule 8.137 by eliminating the following:</p> <ul style="list-style-type: none">• The option of using a settled statement as the record of the documents filed in the case;• The requirement to describe the proceedings to be included in the settled statement, and• The requirement to summarize the trial court judgment. <p>While the committee supports the goal of making the rules as clear and simple as possible, the committee declined to attempt to re-write this rule in “Plain Language.” Overall, the California Rules of Court are not written in that way. Legal terminology is commonly used throughout the rules. Re-writing this rule to be in “Plain Language” would result in this rule being inconsistent with the remainder of the Rules of Court.</p> <p>Rather than modifying the rule text as suggested by the commentator, the committee will consider whether to develop an information sheet to assist self-represented litigants in preparing proposed settled statements.</p>
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	The Clerks Association agrees with amending rule 8.137. It will make the procedure of obtaining a settled statement easier for self-represented litigants, will reduce delay and provide the court with a more adequate record to review.	The committee notes the commentator’s support for the proposal; no response required.
Family Violence Appellate Project by Erin Smith San Francisco	Recommendation: FVAP supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator’s support for the proposal; no response required.

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 – General		
Commentator	Comment	Committee Response
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is also a concern that proposed rule 8.137 is unnecessarily complicated. As an illustration, consider subdivision (b)(3)(B) [“Describe the proceedings specified under (A)”]. Once the date of the proceeding has been identified, and it has been ascertained that it was reported, there is no need to “describe” what happened. A self-represented litigant is bound to be baffled by this requirement which any two lawyers are likely to interpret differently.	Based on this comment, the committee has revised the proposal to eliminate proposed subdivision (b)(3)(B) from the amendments to rule 8.137. Please note, however, that this same information is currently requested on form APP-003 when designating a reporter’s transcript and, under the committee’s revised proposal, this information would be requested on the new portion of form APP-003 to be used for designating the proceedings to be included in a settled statement. The form includes examples of what type of description is being requested.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Our Recommendation: The Committee on Appellate Courts supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator’s support for the proposal; no response required.

Rule 8.137 – Requirement that self-represented litigants use APP-014		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	Requiring That Self-Represented Litigants Use Form APP-014. Under SPR17-01, self-represented litigants would be required to use proposed form APP-014. Use of the form would be optional, however, for litigants with attorneys. This appears to unfairly discriminate against self-represented litigants. PAF understands that self-represented litigants are more likely to have a difficult time drafting legally sufficient proposed statements on appeal. PAF also understands that APP-014 is designed to make it easier for litigants to draft these important	Based on this and the comments of the Court of Appeal, Second Appellate District, the committee revised the proposal to eliminate the requirement that self-represented litigants use form APP-014. Instead, the rule would encourage these appellants to use this form and authorize courts to order its use in specific cases.

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 – Requirement that self-represented litigants use APP-014		
Commentator	Comment	Committee Response
	<p>statements. PAF does not, however, see sufficient reason for denying self-represented litigants the same flexibility afforded to litigants with attorneys.</p> <p>Finally, the proposal suggests that for good cause, the court may permit a self-represented litigant to file a proposed statement of appeal that is not on form APP-014. It is unclear, however, what this process would look like. Would the self-represented litigant make a specific motion to the court? Would the court determine good cause on its own motion? What factors would the court use in determining good cause? Neither Rule 8.137 nor APP-014 explain how this process would operate. This may unintentionally create a new and burdensome process for self-represented litigants. Litigants who have attorneys would not face the same burden.</p> <p>For all of the reasons stated above, PAF would prefer that APP-014 be either a required form for all litigants or an optional form for all litigants.</p>	
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is a concern that Form APP-104 is far too complicated for a self-represented litigant. For that reason, use of this form by a self-represented litigant should be only at the option of such a litigant. This would require an amendment of subdivision (c)(2).	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	Combining Complicated Processes Under SPR17-01, the clerk’s transcript and the appellant’s appendix processes are combined into the settled statement process. Combining these processes makes California Rule of Court 8.137 long, complex, and intimidating to read. Proposed form APP-014 has also become a very long form as a result of combining these processes. Lengthy, complex, or intimidating rules or forms are particularly problematic for self-represented litigants. PAF asks that the Appellate Advisory Committee explore whether there is an alternative to combining the above-mentioned processes. If the Committee determines that the processes must be combined, then PAF asks that the Committee explore how to revise Rule 8.137 and form APP-014 so that they are shorter and simpler to understand.	Based on this and other comments, the committee has revised its proposal to include amendments to rule 8.137 and revisions to form APP-003 and proposed form APP-014 eliminating the option to use the settled statement as a record of the documents filed in the case.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	Yes. The option to attach documents to the settled statement should be eliminated as these documents should be included in an appendix under CRC, Rule 8.124.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	Unfortunately, proposed rule 8.137 also departs more than occasionally from plain English. As an illustration, it takes a trained appellate specialist and several readings to parse out all that is required by subdivision (b)(4). It would be more comprehensible if the rule would simply list the documents that are otherwise required in the clerk’s transcript by subdivision (b)(1) of rule 8.122. Subdivision (b)(4) states that these documents must “accompany” the condensed narrative, leaving it open just what “accompany” means, rather than stating in	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

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Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	Comment	Committee Response
	simple English that these documents must be submitted.	
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Superior Court of Orange County by Civil and Probate Operations Managers	Furthermore, we support eliminating the option that allows an appellant to use a settled statement as the record of the documents filed in the trial court by attaching copies of the required documents to the statement given that appellants can use an appendix for the same purpose and because this option is rarely used by appellants.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	No.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
San Diego County Bar Association By Michael Pulos	Proposed Settled Statements; rule 8.137(a), (b)(2), and (d)(4) - When a settled statement may be used. Amended rule 8.137(b)(2) provides that an appellant who intends to proceed under this rule for reasons other than those listed in (1) must serve and file in the superior court with its notice designating the record on appeal under rule 8.121 a	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

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Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	Comment	Committee Response
	<p>motion to use a settled statement instead of a reporter's transcript or both a reporter's and clerk's transcripts. We have two comments:</p> <p>(a) The proposed rules would permit the use of a settled statement of superior court proceedings in place of not just the oral proceedings in a reporter's transcript but also of the written documents that normally would appear in a clerk's transcript. We suggest permitting the use of settled statements as a substitute for the clerk's transcript or appendix only in cases of lost or otherwise unavailable documents. This is because the use of a settled statement in place of clerk's transcripts would be, in many cases, inadequate—especially where the actual written document is otherwise available. For example, in an appeal that challenges a judgment on the pleadings or a dismissal without leave to amend following the sustaining of a demurrer, a mere summary of the complaint—in lieu of the complaint itself—would be a poor substitute. Simply put, the rules should not permit for the use of a settled statement in the absence of some showing that the document is unavailable. Accordingly, we recommend adding to the rule a provision that would narrow the use of settled statements as substitutes for the clerk's transcripts and appendices. It is particularly important that the rule include any limitation on such use of settled statements in order to assist courts in ruling on motions to use settled statements as records on appeal. . .</p>	

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Rule 8.137 – Other suggested changes		
Commentator	Comment	Committee Response
Family Violence Appellate Project by Erin Smith San Francisco	[M]any family law and probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: “A summary of the trial court’s order and/or judgment.” Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.”	Based on other comments received, the committee has revised the proposal to eliminate the requirement that the appellant summarize the judgment or order being appealed and replaced it with a requirement that a copy of the judgment or order be attached to the appellant’s proposed statement.
San Diego County Bar Association By Michael Pulos	Proposed Settled Statements; rule 8.137(f) – Review of appellant’s proposed statement. In rule 8.137(f)(3)(A), litigants who appeal are informed that if the proposed statement omits required material, the trial judge may order appellant to prepare a new proposed statement, identifying the additional material to be included and the date by which the new proposed statement must be served and filed. It goes on to state that if appellant does not serve and file a new proposed statement as directed, rule 8.140 applies. The APS recommends inserting a phrase in the last sentence of that subparagraph, explaining that “appellant will be deemed to be in default and,” after the word “directed,” and before “rule 8.140 applies.” The amended last sentence would read, “If the appellant does not serve and file a new proposed statement as directed, appellant will be deemed to be in default and rule 8.140 applies.” This suggestion is offered because many self-represented litigants may have difficulty navigating the rules of	The committee has revised the proposal to include the language suggested by the commentator in both subdivisions (f)(3)(A) and (g)(1) of rule 8.137.

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Rule 8.137 – Other suggested changes		
Commentator	Comment	Committee Response
	court and may not immediately appreciate the dire consequences of failing to submit an amended settled statement.	
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	[M]any family law and Probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: “A summary of the trial court’s order and/or judgment.”	Please see the response to the comments of the Family Violence Project above.

Form APP-003		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	<ul style="list-style-type: none">PAF’s understanding is that litigants, including those who are self-represented, will file proposed form APP-014 along with revised form APP-003. Presently, form APP-003 and its revisions include complicated legal terminology and appears to be written at a high-grade level. PAF recommends that form APP-003 be put onto the Judicial Council’s Plain Language template and receive professional Plain Language translation. Again, these steps will improve the likelihood that the average person can understand the form.PAF understands that revised form APP-003 and proposed form APP-014 would be used by self-represented litigants	The commentator is correct that form APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.

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Form APP-003		
Commentator	Comment	Committee Response
	as well as lawyers. PAF agrees that it is important that the forms be understandable and user-friendly for both self-represented litigants as well as lawyers. PAF would recommend, however, that the Judicial Council prioritize the self-represented litigant's ability to understand and successfully use these forms. This ensures that everyone, from the inexperienced layperson to the sophisticated attorney, has adequate opportunity to understand and successfully complete the forms.	
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	Revisions to form APP-003 should include the following: <ul style="list-style-type: none">• In section 1 c delete the Fifth Appellate District as it has repealed its local rule permitting the use of the superior court file. (see enclosed)• In section 2b (3)(a) correct the spelling of "proceedings" (see enclosed).• In section 5b add the words "or settled statement" to the first sentence. (see enclosed)	<p>The committee has revised the proposal to incorporate this suggested change.</p> <p>The committee has revised the proposal to incorporate this suggested change.</p> <p>Based on other comments, the committee has revised its proposal to include amendments to rule 8.137 to eliminate the option of using a settled statements in lieu of a clerk's transcript or appendix. The committee therefore declines to recommend this suggested change.</p>
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Suggestions to Improve form APP-003 <ul style="list-style-type: none">• Page 1, item 2. (Record of Oral Proceedings in Superior Court)" - add "(You must check a. or b. below)" after "I elect to proceed:"• Page 2, item 2.b. - after the prompt add: "(You must check (1), (2), or (3) below.)"• Make proposed form APP-003 (Appellant's Notice	<p>The committee has revised the proposal to incorporate this suggested change.</p> <p>The committee has revised the proposal to incorporate this suggested change.</p> <p>Please see the response to the comments of the Advisory</p>

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Form APP-003		
Commentator	Comment	Committee Response
	Designating Record on Appeal (Unlimited Civil Case)) look more akin to proposed form APP-103 (Appellant's Notice Designating Record on Appeal (Limited Civil Case). Proposed form APP-103, from SPR-17-04, is much easier to read and formatting is more clear.	Committee on Providing Access and Fairness above. APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.

Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	Yes. A standardized Judicial Council form would be helpful to both litigants and the trial courts. A standardized form will be easier for the trial courts to review and hopefully help to keep pro se litigants on point.	The committee appreciates this input.
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the process through the trial court. We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	The committee appreciates this input.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the	The committee appreciates this input.

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Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?		
Commentator	Comment	Committee Response
	process through the trial court. We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Yes, the Proposed Statement on Appeal would be helpful to both litigants and the courts. Rather than creating an entirely separate form for family law cases, there are suggestions below to adjust the form to meet the needs of a family law case.	The committee appreciates this input.
Superior Court of Los Angeles County	Form APP-014 would be extremely helpful to litigants and the trial courts.	The committee appreciates this input.

Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	It is not helpful for the appellant to summarize the final judgment as they will do so from their viewpoint. Attach a copy of the judgment.	Based on the weight of the comments received, the committee has revised proposed form APP-014 and its proposed amendments to rule 8.137 to replace the requirement that the appellant summarize the final judgment with a requirement that the judgment or order being appealed be attached to the form.
Family Violence Appellate Project by Erin Smith San Francisco	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of California Appellate Court Clerks Association above. The committee believes that item 4 on the form provides the appellant with the opportunity to identify the issue(s) on appeal.

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Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?		
Commentator	Comment	Committee Response
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of Family Violence Appellate Project above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	It may be more efficient and easier for the court to read the actual judgment instead of a self-represented litigant's recitation of what he or she thinks the judgment says.	Please see the response to the comments of California Appellate Court Clerks Association above.
Superior Court of Los Angeles County	Require a copy of the judgment in lieu of the summary on the last page.	Please see the response to the comments of California Appellate Court Clerks Association above.

Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	<i>What additional items, if any, need to be included on the form?</i> None. <i>Should the form include additional space for the summary of any of the items?</i> No. <i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i>	The committee appreciates this input.

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
	No.	
Family Violence Appellate Project by Erin Smith San Francisco	<i>What additional items, if any, need to be included on the form?</i> No additional items recommended <i>Should the form include additional space for the summary of any of the items?</i> No additional items recommended <i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.	The committee appreciates this input. The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	<i>What additional items, if any, need to be included on the form?</i> No additional items recommended <i>Should the form include additional space for the summary of any of the items?</i> No additional items recommended <i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.	The committee appreciates this input. The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.
State Bar of California Standing Committee on the Delivery of Legal Services	<i>What additional items, if any, need to be included on the form?</i> The following items are suggestions to adapt form APP-014 to family law cases instead of using a one-size-fits-all form:	

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
by Sharon Djemal	<ul style="list-style-type: none">• Page 3, item 5.a. – Plaintiff/Petitioner; Defendant/Respondent• Item 5 – add a new subpart c (current c would become subpart d). New subpart c would read: “The petitioner requested in the petition the following (briefly describe the orders requested in the petition filed with the trial court):”• Page 3, item 5. – add a new subpart e. New subpart e would read: “The respondent requested in the response the following (briefly describe the orders requested in the response filed with the trial court):”• Page 4, item 6.b.(1) – The motion was filed by the . . . plaintiff/petitioner; defendant/respondent• Item 6.b.(2) – same changes as 6.b.(1).• Page 5, item 7.c.(2) – The witness testified on behalf of the . . . plaintiff/petitioner; defendant/respondent <p><i>Should the form include additional space for the summary of any of the items?</i> It may be helpful to make the spacing 1.5 lines between the lines. It would also be helpful if the form is available in a fillable pdf format.</p> <p><i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> The length of a summary is very case-specific. It is better to keep the prompts and have litigants fill out the form to the best of their ability and include attachments if necessary.</p>	<p>The committee has revised the form to incorporate this suggested change.</p> <p>The committee concluded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with the Family and Juvenile Law Advisory Committee to develop a proposed form specifically for family law appeals. The committee will propose this project for its next annual agenda.</p> <p>The committee has revised the form to incorporate this suggested change.</p> <p>The committee has revised the form to incorporate this suggested change.</p> <p>All Judicial Council plain language forms use 14 point spacing for lines and are available in fillable PDF on the California Courts website, once adopted.</p> <p>The committee appreciates this input.</p>

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Form APP-014 – Additional items or additional space		
Commentator	Comment	Committee Response
Superior Court of Los Angeles County	<i>Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?</i> We suggest using form MC-020, Additional Page, if additional space is needed.	The committee has modified its proposal in response to this comment. Because the form refers to attaching a page in lieu of writing the summary on the form, rather than using an additional page, the committee has revised the proposal to refer to Attachment (form MC-025).

Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	PAF appreciates the Appellate Advisory Committee’s use of the Plain Language template for proposed form APP-014. PAF recommends that form APP-014 also be professionally translated into Plain Language and written at a lower-grade level. These steps will improve the likelihood that the average person, who is likely to read at or below a 7th grade reading level, can understand the form.	With the committee’s approval, this input is being obtained. The committee plans to use this input both in considering possible improvements to form APP-014 and in working with the FJLAC on developing the separate form for family law appeals.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	New form APP-014 should be adopted with the following changes: <ul style="list-style-type: none">• Add date fields in the following sections: 6b (1), 6b(2), 7a(1), 7a(2), 7b and 7c(2). (see enclosed)	The committee has revised the proposal to add spaces for the appellant to indicate the date that a motion was filed because this is likely to be helpful in identifying the relevant motion. The committee decided against adding spaces to indicate the date that the motion was granted or denied or the date of the trial, because it concluded that these dates are less likely to be necessary for the judge reviewing the proposed statement and increase the difficulty for the appellant in completing the

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none">In section 9, change the heading to read "The Trial Court's Final Judgment or Order Being Appealed" and in the first sentence under the aforementioned heading to include "...or order". (see enclosed)	form. Based on the comments received, the committee has revised proposed form APP-014 to delete this section and replace it with a requirement that the judgment or order being appealed be attached to the form.
Family Violence Appellate Project by Erin Smith San Francisco	<ul style="list-style-type: none">We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, "Was there a trial in your case?" Many family law and probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional "trial," but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code § 825 [no right to jury trial in most probate proceedings]; § 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: "Did the court consider evidence and/or testimony?" We believe this would provide greater clarity for self-represented individuals.	The committee concluded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with the Family and Juvenile Law Advisory Committee to develop a proposed form specifically for family law appeals and similarly work with the Probate and Mental Health Advisory Committee. The committee will propose this project for its next annual agenda.

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
	<ul style="list-style-type: none">• In addition, for the same reason, many family law and probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . . Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court issued the following final judgment or order in this case.”• We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, “electing to use a statement on appeal,” we believe it is intended to state, “electing to use a settled statement.”• In APP-014, because family law, probate, and likely other types of cases do not have “plaintiffs” or “defendants,” but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly.• Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have “complaints,” but rather “petitions” or “requests for order,” we recommend that “complaint” be changed to “initial document.”	<p>Based on the comments received, the committee has revised proposed form APP-014 to delete section 9 and replace it with a requirement that the judgment or order being appealed be attached to the form.</p> <p>The committee has revised proposed form APP-014 to incorporate this suggested change.</p> <p>The committee has revised proposed form APP-014 to incorporate this suggested change.</p> <p>The committee has revised proposed form APP-014 to refer to a complaint/petition.</p>
State Bar of California, Litigation Section Committee on Appellate Courts	<ul style="list-style-type: none">• We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, “Was there a trial in your case?” Many family law and	Please see the response to the comments of the Family Violence Appellate Project above.

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Form APP-014 –Other suggested changes		
Commentator	Comment	Committee Response
by Paula Mitchell	<p>Probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional “trial,” but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code section 825 [no right to jury trial in most probate proceedings]; and section 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: Did the court consider evidence and/or testimony? We believe this would provide greater clarity for self-represented individuals.</p> <ul style="list-style-type: none">• In addition, for the same reason, many family law and Probate matters that result in appealable orders do not have “judgments” issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)’s use of the phrase “judgment or order appealed from,” and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . .Similarly, we would suggest amending APP-014, question 9 to be titled, “The Trial Court’s Final Judgment or Order; The trial court	

ITC SPR17-01

Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Form APP-014 –Other suggested changes		
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	<p>issued the following final judgment or order in this case.”</p> <ul style="list-style-type: none">• We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, “electing to use a statement on appeal,” we believe it is intended to state, “electing to use a settled statement.”• In APP-014, because family law, probate, and likely other types of cases do not have “plaintiffs” or “defendants,” but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly.• Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have “complaints,” but rather “petitions” or “requests for order,” we recommend that “complaint” be changed to “initial document.”	

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Other comments/suggestions		
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The Advisory Committee on Providing Access and Fairness (PAF) By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon	Discretion in Timely Filed Settled Statements The invitation to comment includes a misstatement that, although minor, is worth correcting as it could lead to a misinterpretation of current law regarding timely filed settled statements. The ITC states that a revised Rule 8.137 would “[permit] an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter....” (ITC SPR17-01, Page 2, bullet 1. Emphasis added). This language incorrectly assumes that granting the motion is discretionary. The current rules, however, require that a trial court judge grant a timely filed motion for a settled statement when there is no reporter's transcript.	The committee will use different language to address this issue in its report to the Judicial Council.
San Diego County Bar Association By Michael Pulos	We believe the Appellate Advisory Committee should seek to develop a form motion, similar to the proposed form for the Proposed Settled Statement, APP-014. Because the motion procedure is more complicated than the procedure to be utilized under 8.137(b)(1), some additional guidance should be provided to avoid unnecessary procedural defaults.	The committee will consider this suggestion when it develops its annual agenda for next year.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Develop an information sheet for APP-103, similar to proposed form APP-101-INFO that is attached to SPR-17-04 (Information on Appeal Procedures for Limited Civil Cases). Overall, it would be helpful for self-represented litigants if the appellate procedure forms and information sheets for both limited and unlimited civil cases are standardized	Current Judicial Council form <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (APP-001) does provide basic information about the appellate process, but it does not currently address options other than a reporter’s transcript for preparing a record of the oral proceedings in the superior court. The committee will consider this suggestion when it develops its annual agenda for next year.

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Implementation requirements for courts		
Commentator	Comment	Committee Response
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary and Hon. Laurie D. Zelon, Co-chairs	Implementation Requirements In the request for comments section of the proposal, courts are asked what their implementation requirements would be if this proposal were to go into effect. The question seems to presume that the proposed revisions to Rule 8.137 would require more involvement by trial court judges. We think that this presumption is incorrect. We would note that revised Rule 8.137 does not change the current mandate to the trial court to grant a properly filed request for settled statement when there is no reporter’s transcript and agree that that duty should not be changed. We also note that the involvement of the trial court will continue to be significant in ensuring the accuracy and completeness of the statement before it is settled.	The inclusion of this question on the invitation to comment was not intended to create any implications about the impact of this proposal on the trial courts. This is a standard question included on all invitations to comment for rule changes.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose, CA	<i>What would be implementation requirements be for courts?</i> Minimal. We would need to update the section of the Self-Help Manual and add the new form. Possible creation of a "filed settled statement" docket code, if anyone was interested in tracking these for statistical purposes. More significant change for the Appellate Division and trial court judges since their process will change. <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.	The committee appreciates this input.
Superior Court of Los Angeles County	<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</i>	The committee appreciates this input.

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	<p><i>systems, or modifying case management systems?</i></p> <p>This proposal would require minimal staff training and minimal CMS changes (addition of the same docket code used in limited civil).</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>Yes. The three month effective date is sufficient for implementation.</p>	
Superior Court of Orange County by Civil and Probate Operations Managers	<p>Implementation would require training staff (two legal processing specialists; 15 minutes), revising process and procedures to update appeal worksheet and procedure and possibly update or create a new local form, and no case management system changes.</p> <p>Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.</p>	The committee appreciates this input.
TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none">• Results in additional training, which requires the commitment of staff time and court resources – The proposal will create the need for new and/or revised procedures and possible alterations to case management systems. Staff training, and possibly judicial training, will be required.• Increases court staff workload – In each instance where a Judicial Officer is required to review a filing, court staff	The committee appreciates this input.

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Implementation requirements for courts		
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	<p>will be required to perform ministerial tasks associated with the processing of filings and orders related to the settlement of the record.</p> <ul style="list-style-type: none">• Cost savings – The proposed changes will result in cost savings for self-represented litigants because they will no longer be required to file in person a motion to use a settled statement instead of a reporter’s transcript or both a reporter’s and a clerk’s transcripts.	