



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Appellate Procedure: Notice of Appeal and the Record in Civil Commitment Cases

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 8.483; amend rule 8.320; approve form APP-060

Date of Report

August 21, 2019

Recommended by

Appellate Advisory Committee
Hon. Louis Mauro, Chair

Contact

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Executive Summary

The Appellate Advisory Committee recommends adopting a new rule of court, describing the required contents of the normal record on appeal for civil commitment cases, and highlighting the existence of the new rule in a comment to an existing rule. The committee also proposes a new form notice of appeal for civil commitment and mental health cases. This proposal is intended to provide needed guidance to litigants and the courts and ensure that appellate records in civil commitment cases are complete.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020, adopt California Rules of Court, rule 8.483, describing the required contents of the normal record on appeal for civil commitment cases. Rule 8.483 would be included in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals), as amended to expand the scope of chapter 6 to also apply to civil commitment appeals by renaming it “Conservatorship and Civil Commitment Appeals.” To address any potential confusion caused by the placement of the new rule, the committee also recommends adding an Advisory Committee comment to existing rule 8.320 alerting litigants to

the new rule. The committee also recommends that the council approve *Notice of Appeal—Civil Commitment/Mental Health Proceedings* (form APP-060).

The text of new rule 8.483 and amended rule 8.320, and the proposed new form are attached at pages 11–15.

Relevant Previous Council Action

There is no relevant previous Judicial Council action that might impact the council’s consideration of this proposal.

Analysis/Rationale

Rule 8.483

The California Rules of Court¹ provide specific direction as to what should be included in the normal record on appeal in many types of cases.² However, no rule clearly states what constitutes the normal record on appeal in civil commitment cases. Perhaps because of the absence of a directly applicable rule, appellate records in civil commitment cases may be inadequate but there is no clear ground for asking the clerk of the superior court to correct the record. To eliminate confusion on behalf of litigants and the courts, the committee proposes a new rule of court governing the normal record on appeal in civil commitment cases.

Proposed new rule 8.483 is based on existing rule 8.320, governing the contents of the normal record on appeal in criminal cases, as modified to make the rule appropriate for civil commitment appeals. Although civil commitment cases are not criminal, per se, many of these matters stem from criminal proceedings, and thus the contents of the record on appeal will be similar. The new rule is intended to generate a complete and useful record for civil commitment appeals.

The proposed rule is limited in scope and would apply to appeals of civil commitment orders stemming from criminal proceedings, but not to other types of commitment orders such as those made under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5300 et seq.), which may be subject to other rules. To provide clear guidance to litigants and courts, the proposed rule explicitly states in subdivision (a) the types of proceedings to which it applies. An Advisory Committee comment to the new rule would state that: “The record on appeal of orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480.” Other modifications to the language of rule 8.320 have been incorporated into the new rule, including, among others, adding

¹ All further references to “rule” or “rules” are to the California Rules of Court.

² See, for example, rules 8.120 (unlimited civil appeals); 8.320 (criminal appeals); 8.407 (juvenile appeals and writs); 8.610 (death penalty appeals); 8.830 (limited civil appeals); and 8.860 (misdemeanor appeals). Additionally, rule 8.480 governs the record on appeal from orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq. (the Lanterman-Petris-Short [LPS] Act), and rule 8.388 governs the contents of the record in appeals from orders granting relief by writ of habeas corpus.

a requirement that diagnostic or psychological reports submitted to the court be included in the record, replacing the term “defendant” with “person subject to the civil commitment order,” and omitting in its entirety subdivision (d) regarding a “limited normal record in certain appeals.”

With respect to placement of the new rule, the appellate rules are generally organized into divisions (Supreme Court and Courts of Appeal, appellate division, and small claims) and then divided into chapters by subject matter. Given the varying contexts in which the issue of civil commitment may arise, such appeals may not fall neatly into any one of the existing divisions or chapters of the appellate rules. Thus, the proposal is to amend title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 6 (Conservatorship Appeals) to expand the scope of the chapter to also apply to civil commitment appeals by renaming it “Conservatorship and Civil Commitment Appeals.”

New rule 8.483 would immediately follow the existing rules in that chapter governing LPS conservatorship appeals. To address any potential confusion caused by the placement of the new rule, it is further proposed that an Advisory Committee comment be added to rule 8.320 (governing the record for criminal appeals) to ensure that litigants and courts are aware of the separate rule governing civil commitment appeals that may be applicable.

Form APP-060

The Judicial Council publishes several form notices of appeal.³ However, no form notice of appeal specifically applies to civil commitment cases, and it has been suggested that such a form would help simplify the appeal process for litigants and courts. The proposed new form notice of appeal (form APP-060) is based on *Notice of Appeal—Felony (Defendant)* (form CR-120), but has been modified for use in civil commitment and LPS Act mental health conservatorship and commitment appeals. In particular, given that the person subject to the civil commitment order may have been either a defendant or a respondent in the underlying proceeding, the form uses the term “Defendant/Respondent” throughout and defines the term to mean the “person subject to the civil commitment.” The form is broader in scope than the proposed new rule governing the normal record on appeal in civil commitment cases, and may also be used in LPS Act conservatorship and commitment appeals. The form includes an item listing the types of proceedings with which it may be used. The form would be included in the “APP” (Appellate) category.

Policy implications

The committee did not identify any significant policy implications relating to the proposal, and none were raised in the public comments.

³ See, for example, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002); *Notice of Appeal—Felony (Defendant)* (form CR-120); *Notice of Appeal (Juvenile)* (form JV-800); *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102); and *Notice of Appeal (Misdemeanor)* (form CR-132).

Comments

The proposal was circulated for public comment between April 11 and June 10, 2019, as part of the regular spring comment cycle, and the committee received nine comments. Four commenters, including three courts and a professional organization, agreed with the proposal. One court agreed with the proposal if modified. Four commenters, including an individual attorney, a court, and two professional organizations, did not indicate a position on the proposal but provided substantive comments. A chart with the full text of the comments received and the committee's responses is attached at pages 16–37. The main comments and the committee's responses to these comments are discussed below.

Rule 8.483

None of the commenters expressed overall opposition to the adoption of a new rule governing the record on appeal in civil commitment cases, the proposed placement of the rule within an expanded chapter 6 of title 8, division 1 of the appellate rules, or the proposed Advisory Committee comment to existing rule 8.320, cross-referencing the new rule. The committee therefore recommends that the Judicial Council adopt proposed new rule 8.483 as it was circulated for public comment, subject to the modifications discussed below.

Comments regarding the scope of the rule

The invitation to comment asked whether the scope of the rule—limited to civil commitment appeals stemming from criminal proceedings—is appropriate, or whether it should be extended to any other types of proceedings such as civil commitments under the LPS Act. Four commenters responded that the scope is appropriate as drafted. But one individual commenter responded that the new rule should also cover Murphy conservatorships because they arise out of criminal proceedings. Likewise, another commenter stated that: “these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the Court must make LPS findings in addition to Murphy findings.” The committee understands this comment to reflect the opinion that Murphy conservatorships, and perhaps other types of LPS Act commitments, should be included within the scope of the new rule.

The Appellate Advisory Committee considered these suggestions to expand the scope of proposed rule 8.483 to also include Murphy conservatorships under the LPS Act, but decided not to modify the rule in this way. Though Murphy conservatorships do follow from criminal proceedings and thus could reasonably be included within the scope of the new rule, Murphy conservatorship appeals appear to be covered by existing rule 8.480, governing the record on appeal from orders establishing conservatorships under Welfare and Institutions Code section 5350, et seq.⁴ The committee concluded that it could create confusion if rule 8.483 were expanded to also include Murphy conservatorships under the LPS Act. However, to address this issue, the committee included an Advisory Committee comment to rule 8.483 stating, “The record on appeal of orders establishing conservatorships under Welfare and Institutions Code

⁴ See Welf. & Inst. Code, § 5350(b)(2), referencing conservatorships under section 5008(h)(1)(B), commonly referred to as Murphy conservatorships.

section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480.”

Comments regarding other provisions of the rule

The invitation to comment also asked whether any other types of documentary exhibits should be included in the clerk’s transcript. Two courts responded in the negative, while a third court noted that allowed exhibits should be “based on existing rule 8.320.” Because proposed rule 8.483 was drafted based on rule 8.320, the committee understood these comments to reflect agreement with the treatment of documentary exhibits under the proposed new rule as circulated.

However, an individual attorney commented that probable cause transcripts should be explicitly listed in the rule as part of the standard record on appeal, although they may be implicitly encompassed by the inclusion of the “dispositional hearing” transcript in subdivision (c)(8). The committee concluded that it would be helpful and nonburdensome to include a probable cause transcript in the relatively few cases where one is available, and modified subdivision (c)(8) to include probable cause hearing transcripts as part of the reporter’s transcript.

This commenter also suggested that it is unclear whether subdivision (b)(13), which requires the clerk’s transcript to include “[a]ny diagnostic or psychological reports submitted to the court,” includes similar exhibits submitted to the court at trial or a probable cause hearing. To clarify that diagnostic or psychological reports submitted to the court—including at trial or a probable cause hearing—should be included in the clerk’s transcript, the committee modified subdivision (b)(13).

The individual attorney’s comments also reflected a concern that proposed rule 8.483(d), addressing exhibits,⁵ could make it more difficult for appellate counsel to obtain a complete record on appeal. The commenter explained that exhibits in civil commitment cases are often redacted, and an unredacted version is often needed for the appeal. Additionally, according to the commenter, in civil commitment appeals, appellate counsel is often not appointed until after the record is prepared, so it is not unusual for appellate counsel to petition the Court of Appeal to augment the clerk’s transcript to include additional exhibits after the record is prepared. The commenter contended that subdivision (d), as circulated for comment, could be interpreted to eliminate the Court of Appeal’s authority to grant such requests. It was suggested that proposed rule 8.483 be modified to either (1) provide appellate counsel with a window of time to designate additional records under rule 8.122, or (2) make clear that the clerk’s transcript can be augmented to include exhibits. However, the committee determined that no such modification was necessary because the rule, as circulated, does not create a bar to augmenting the record when otherwise appropriate.

⁵ Proposed rule 8.483(d) provides: “Exhibits admitted into evidence, refused or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 8.224.” This phrasing is identical to existing rule 8.320(e), governing exhibits in connection with criminal appeals.

The invitation to comment further asked whether the proposed rule should limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order. All four commenters who responded to this question agreed that the rule should limit these items to appeals in which the appellant is the person subject to the civil commitment.

Finally, one commenter proposed several additional modifications to proposed rule 8.483. First, the commenter suggested modifying subdivision (a)(1) to specify that the rule governs “appeals from civil commitment orders (including involuntary medication orders) under Penal Code . . .” because subdivision (c)(1), as circulated for public comment, required that the reporter’s transcript contain the oral proceedings on a motion for involuntary medication and most commitment schemes to which the rule applies may lead to involuntary medication orders. The committee discussed this comment, and decided that involuntary medication orders, and appeals therefrom, may be separate from the civil commitment appeals intended to be encompassed by the new rule. Additionally, the records needed for the record on appeal of a civil commitment case may be different from the record in an appeal of an involuntary medication order. Thus, the committee declined to add the suggested language to subdivision (a)(1), and instead omitted the phrase “or motion for involuntary medication” from subdivision (c)(1) to clarify that the rule does not apply to the appeal of involuntary medication orders.

Second, the commenter recommended altering the parenthetical description of Penal Code section 1600 et seq., in both subdivision (a)(1) of the rule and item 3 of the form from “(continue outpatient treatment or return to confinement)” to “(outpatient placement and revocation),” to more accurately describe the scope of that statutory scheme. The committee agreed with this modification to the rule and form.

Third, the commenter recommended modifying subdivision (b)(1) to require the clerk’s transcript to contain, not only the petition, but also “any supporting documents filed along with the petition.” The committee agreed that this is a useful suggestion, but also considered that the proposed modification would make subdivision (b)(1) different from existing rule 8.480(b)(1) governing the record in LPS conservatorship appeals. However, because some other appellate rules require not only the petition but also supporting documents filed therewith, the committee concluded that this modification would not make rule 8.483(b)(1) an outlier and modified the proposal accordingly.

Fourth, the commenter recommended modifying subdivision (b)(10) to remove the requirement that the certificate of probable cause be included in the clerk’s transcript, because the certificate of probable cause requirement does not apply to civil commitment proceedings, even those stemming from criminal proceedings. The committee agreed and modified the proposal accordingly.

Form APP-060

None of the commenters expressed any general opposition to the adoption of a new form notice of appeal for civil commitment cases, or the proposed “APP” designation assigned to it. The

committee therefore recommends that the Judicial Council approve proposed form APP-060 as it was circulated for public comment, subject to the modifications addressed below.

Comments regarding the scope of the form

The invitation to comment asked whether the scope of proposed form APP-060—circulated for public comment to be limited for use in civil commitments stemming from criminal proceedings—was appropriate, or whether it should also be available for use in other civil commitment appeals, such as those under the LPS Act. Two courts and one professional organization responded that the scope of the form was appropriate as circulated. Another professional organization similarly agreed, but noted that the proposed form was not, on its face, limited for use only in civil commitment appeals stemming from criminal proceedings and might be mistakenly used for civil commitment orders stemming from noncriminal proceedings. However, given that item 3 contains a checklist of code sections under which the defendant/respondent is being held, the committee found it unlikely that the form would be used for an unauthorized purpose and made no change to the form based on this comment.

Other commenters recommended altering the scope of form APP-060. One court recommended that the form also be made available for use in appeals from Mentally Disordered Sex Offender (MDSO) commitments under former Welfare and Institutions Code section 6300 because, although that statute has been repealed, appeals of extension orders are still being filed. The committee agreed with this suggestion, and added a checkbox to item 3 for selection where the person subject to the civil commitment is being held subject to “Former Welfare & Institutions Code, § 6300 (MDSO).” Also, though this comment was directed to the form as opposed to the rule, the committee decided that it was similarly appropriate to modify proposed new rule 8.483 subdivision (a)(1) to extend to MDSO appeals.

Another court recommended that the form *not* be available for use in appeals of civil commitment orders made under Welfare and Institutions Code section 6500 (developmentally disabled persons), and instead that a separate form be created for appeals where the petitioner may be someone other than the person subject to the commitment order. However, as discussed further below, rather than omit this category of civil commitments from the scope of the form and creating a second new form, the committee concluded that it would be preferable to expand the scope of the form to encompass these and other types of commitment appeals that do not necessarily stem from criminal proceedings.

Finally, one commenter recommended that the scope of proposed new form APP-060 be expanded so that it is available for use both in civil commitment appeals stemming from criminal proceedings as well as in LPS Act appeals. The commenter contended that there is no reason a single form notice of appeal cannot be used for appeals under both existing rule 8.480 and proposed new rule 8.483, and noted that a single “unofficial” form notice of appeal is already being used successfully for both types of commitment appeals in at least one county. Having further considered the issue, the committee was persuaded that a single form notice of appeal available for LPS Act proceedings (including commitments under Welfare and Institutions Code section 5300 et seq. and conservatorships under section 5350 et seq.) would be useful to litigants

and courts, and the scope of the form should be expanded beyond civil commitments stemming from criminal matters to include LPS Act conservatorship and commitment appeals.

In light of the foregoing, the committee modified item 3 of the proposed new form to include a checkbox for: (1) “Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments);” (2) “Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships);” and (3) “Former Welfare & Institutions Code, § 6300 et seq. (MDSO).” To more accurately indicate the expanded scope of the form, the committee altered the form name to “Notice of Appeal—Civil Commitment/Mental Health Proceedings” and added a reference to rule 8.480 in the bottom right corner.

Other comments on the form

Several commenters addressed other aspects of the form. With respect to the form caption, one commenter recommended that the caption, currently prefilled with “People of the State of California v.,” be left fillable because some cases may be initiated by a public guardian or hospital. Another recommended that the caption be modified to “People of the State of California v. / In re:” to account for civil commitment proceedings similarly captioned in the trial court. And a court recommended that the form refer only to “respondent” rather than “defendant/respondent” throughout, to make it consistent with trial court style and the Legislature’s form of petition for judicial commitment set forth in Welfare and Institutions Code section 6251, reflect the treatment and public safety purposes of civil commitment, and because not all civil commitments for which the form may be used arise out of criminal proceedings.

As it did prior to circulation of the proposal for public comment, the committee gave significant consideration to these issues. With respect to the form caption, in light of the recommended expanded scope of the proposed new form and to account for appeals that do not have a criminal caption in the trial court, the committee modified the caption to remove reference to “People of the State of California v.” and instead provided space for the case name in the trial court and the name of the defendant/respondent. With respect to how to reference the person subject to the civil commitment order being appealed most clearly and succinctly throughout the form, the committee concluded that using the term “Defendant/Respondent,” defined as “the person subject to the civil commitment order,” most clearly signifies that the form may be used for civil commitment proceedings that arise out of underlying criminal proceedings but not necessarily designate that person as a criminal defendant for purposes of the civil commitment appeal. The committee disagreed with removing all reference to “defendant” on the form.

One commenter also recommended that item 2 be modified to include a check box for when the matter has been resolved “after an admission, stipulation, or submission” and that the “other” choice be renumbered as subdivision (d) and made lower case. In item 3, this commenter recommended modifying the parenthetical descriptor of Welfare and Institutions Code section 1600 et seq. consistent with its suggestion relating to the rule discussed above. The committee agreed with both suggestions and modified the form accordingly.

Alternatives considered

The committee considered many different alternatives, most of which have been addressed above in the Comments section. Additional alternatives are discussed below.

Rule 8.483

The committee considered making no changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judicial officers. The committee also considered basing the new civil commitment rule on the language of rule 8.480 (governing LPS conservatorship appeals) and modifying that language as appropriate for civil commitment appeals. However, because the new rule is directed to appeals of civil commitment orders stemming from criminal proceedings, the committee decided that basing the new rule on the existing rule governing criminal appeals, rule 8.320, would be preferable.

The committee further considered the appropriate scope of the new rule and whether it should include an explicit definition of “civil commitment” proceeding, either in the rule itself or in an advisory committee comment. In subdivision (a), the committee included a paragraph addressing application of the rule to prevent confusion as to what type of proceedings the rule governs. Other potential modifications to the scope of the proposed new rule were considered in connection with the comments and are addressed above.

With respect to placement of the rule, the committee considered three alternative placements and decided that expanding the scope of chapter 6 to include both conservatorship and civil commitment appeals, and placing the new rule therein, would be clearest. The committee alternatively considered whether the rule should be located in title 8 (Appellate Rules), division 1 (Rules Relating to the Supreme Court and Courts of Appeal), chapter 3 (Criminal Appeals), article 2 (Record on Appeal), directly after the rule governing the normal record in criminal appeals. Although this placement could make clear that the rule is intended to cover only appeals of civil commitment orders stemming from criminal proceedings, it could also cause confusion or raise questions as to whether the new rule constitutes a change in substantive law because civil commitments are not criminal proceedings.

Consideration was also given to whether to add a new chapter 13 to division 1 of the appellate rules, directed specifically to appeals in civil commitment proceedings, and to add a new rule under this new chapter. Doing so would be consistent with the overall structure of division 1, which contains separate chapters for various types of appeals, but would require the creation of a new chapter containing only a single rule, which is discouraged. The committee specifically asked for public comment on the appropriate placement of the rule, and all commenters who responded agreed with the proposed placement in an expanded chapter 6.

Notice of Appeal—Civil Commitment/Mental Health Proceedings (form APP-060)

The committee considered not developing a new form notice of appeal for civil commitment orders, and instead expanding the scope of or adding an instruction to an existing form so that the form might also be used in civil commitment appeals. Following a review of existing forms, the

committee concluded that creating a new form would be clearer and more useful than using any of the preexisting forms.

With respect to how to categorize the form, the committee considered whether the form should be included within the criminal forms and given a “CR” (Criminal) form designation. Because civil commitment appeals are not technically criminal in nature, and the scope of the proposed new form was expanded to include appeals of commitments and conservatorships that do not necessarily stem from criminal proceedings, the “CR” designation was not used. Likewise, the committee considered changing the name of the “GC” (Guardianships and Conservatorships) category to also include civil commitments and using the “GC” moniker for the new form. However, because there are no other appellate forms in this category, inclusion of a notice of appeal specific to civil commitments/mental health proceedings could cause confusion for self-represented litigants in guardianship and conservatorship proceedings. Finally, the committee considered using the “MC” (Miscellaneous) category designation, given the unique subject matter of civil commitment proceedings, but concluded that such a designation could also make it difficult for litigants to locate the new form.

Finally, the committee considered alternative names for the new form but determined that *Notice of Appeal—Civil Commitment/Mental Health Proceedings* is the most appropriate name.

Fiscal and Operational Impacts

Some minimal fiscal and operational impacts are expected. In their comments, the Superior Courts of San Bernardino, San Diego, and Los Angeles Counties addressed the potential implementation requirements for courts. The Superior Court of San Bernardino County noted that some training on the new rule and form would be required, and it would take approximately six hours to revise the court’s internal manuals and forms. The Superior Courts of San Diego and Los Angeles Counties similarly stated that some minimal staff training would be required, and internal procedures would need to be revised. It appears from these comments that any potential implementation requirements would be relatively minimal and do not present a barrier to adoption of the proposal.

Attachments and Links

1. Cal. Rules of Court, rules 8.320 and 8.483, at pages 11–14
2. Form APP-060, at page 15
3. Chart of comments, at pages 16–37

Rule 8.483 of the California Rules of Court is adopted and rule 8.320 is amended, effective January 1, 2020, to read:

Rule 8.320. Normal record; exhibits

(a)–(f) * * *

Advisory Committee Comment

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

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

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

Chapter 6. Conservatorship and Civil Commitment Appeals

Rule 8.483. Appeal from order of civil commitment

(a) Application and contents

(1) Application

Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (outpatient placement and revocation), and 2962 et seq. (mentally disordered offenders); Welfare and Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (developmentally disabled persons), and 6600 et seq. (sexually violent predators); and former Welfare and Institutions Code section 6300 et seq. (mentally disordered sex offenders).

1 (2) Contents

2
3 In an appeal from a civil commitment order, the record must contain a clerk's
4 transcript and a reporter's transcript, which together constitute the normal
5 record.

6
7 **(b) Clerk's transcript**

8
9 The clerk's transcript must contain:

10
11 (1) The petition and any supporting documents filed along with the petition;

12
13 (2) Any demurrer or other plea, admission, or denial;

14
15 (3) All court minutes;

16
17 (4) All jury instructions that any party submitted in writing and the cover page
18 required by rule 2.1055(b)(2) indicating the party requesting each instruction,
19 and any written jury instructions given by the court;

20
21 (5) Any written communication between the court and the jury or any individual
22 juror;

23
24 (6) Any verdict;

25
26 (7) Any written opinion of the court;

27
28 (8) The commitment order and any judgment or other order appealed from;

29
30 (9) Any motion for new trial, with supporting and opposing memoranda and
31 attachments;

32
33 (10) The notice of appeal;

34
35 (11) Any transcript of a sound or sound-and-video recording furnished to the jury
36 or tendered to the court under rule 2.1040;

37
38 (12) Any application for additional record and any order on the application;

39
40 (13) Any diagnostic or psychological reports submitted to the court, including at
41 the trial or probable cause hearing;

42
43 (14) Any written waiver of the right to a jury trial or the right to be present; and

1
2 (15) If the appellant is the person subject to the civil commitment order:

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

6
7 (B) Any document admitted in evidence to prove a juvenile adjudication,
8 criminal conviction, or prison term.

9
10 **(c) Reporter's transcript**

11
12 The reporter's transcript must contain:

13
14 (1) The oral proceedings on the entry of any admission or submission to the
15 commitment petition;

16
17 (2) The oral proceedings on any motion in limine;

18
19 (3) The oral proceedings at trial, excluding the voir dire examination of jurors
20 and any opening statement;

21
22 (4) All instructions given orally;

23
24 (5) Any oral communication between the court and the jury or any individual
25 juror;

26
27 (6) Any oral opinion of the court;

28
29 (7) The oral proceedings on any motion for new trial;

30
31 (8) The oral proceedings of the commitment hearing or other dispositional
32 hearing, including any probable cause hearing;

33
34 (9) Any oral waiver of the right to a jury trial or the right to be present; and

35
36 (10) If the appellant is the person subject to the civil commitment order:

37
38 (A) The oral proceedings on any defense motion denied in whole or in part
39 except motions for disqualification of a judge;

40
41 (B) The closing arguments; and

42
43 (C) Any comment on the evidence by the court to the jury.

1
2 **(d) Exhibits**

3
4 Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but
5 may be transmitted to the reviewing court only as provided in rule 8.224.
6

7 **(e) Stipulation for partial transcript**

8
9 If counsel for the person subject to the civil commitment order and the People
10 stipulate in writing before the record is certified that any part of the record is not
11 required for proper determination of the appeal, that part must not be prepared or
12 sent to the reviewing court.
13

14 **Advisory Committee Comment**

15
16 The record on appeal of orders establishing conservatorships under Welfare and Institutions Code
17 section 5350 et seq., including Murphy conservatorships for persons who are gravely disabled as
18 defined in Welfare and Institutions Code section 5008(h)(1)(B), is governed by rule 8.480.

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 7-29-2019 Not approved by the Judicial Council	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
CASE NAME:		
DEFENDANT/RESPONDENT:		
NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS		CASE NUMBER:

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

- Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment or conservatorship made by the superior court.
 NAME of Defendant/Respondent:
 DATE of the order or judgment:
- This appeal is (*check one*):
 - ☐ after a jury or court trial.
 - ☐ after a contested hearing.
 - ☐ after an admission, stipulation, or submission.
 - ☐ other (*specify*):
- Defendant/Respondent is currently being held under:
 - ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
 - ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
 - ☐ Penal Code, § 1600 et seq. (return to confinement)
 - ☐ Penal Code, § 2962 et seq. (mentally disordered offenders)
 - ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
 - ☐ Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)
 - ☐ Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)
 - ☐ Former Welfare & Institutions Code, § 6300 et seq. (MDSO)
 - ☐ Welfare & Institutions Code, § 6500 et seq. (developmentally disabled persons)
 - ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
 - ☐ Other (*specify*): _____
- ☐ Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent:
☐ was ☐ was not represented by an appointed attorney in the superior court.
- Defendant/Respondent's mailing address is ☐ same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.
☐ as follows:

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT/RESPONDENT OR ATTORNEY)

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Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association Committee on Appellate Courts, Litigation Section Sacramento, CA	NI	The Committee on Appellate Courts supports this proposal. The Committee has some concerns that the proposed form, APP-060, does not facially limit its use for appeals of civil commitment orders stemming from criminal proceedings, but not other types of commitment orders. As such, there is some concern that litigants subject to other civil commitment orders may mistakenly use APP-060 to appeal civil commitment orders stemming from non-criminal proceedings.	The committee notes the commenter's support for the proposal, and has considered the concern that the form might be used for an unauthorized purpose. However, given that item 3 contains a checklist of code sections under which the person subject to the civil commitment is being held, the committee concluded that the form as drafted makes clear that it is for use in those specified proceedings.
2.	First District Appellate Project By Jonathan Soglin, Executive Director Oakland, CA	AM	<p>A. Proposed New Rule 8.483</p> <p>FDAP agrees with the Committee's proposed addition of new rule 8.483 governing the contents of the normal record on appeal in civil commitment cases. The contents of appellate records in the types of civil commitment cases to which the new rule would apply are sufficiently different from the contents of records in LPS Act appeals such that the creation of a separate rule (in addition to rule 8.480) seems appropriate. The location of the new rule appears appropriate as well. Therefore, FDAP's comments are limited to the provisions of the proposed new rule itself.</p> <p>Subdivision (a)(1), which specifies the types of proceedings to which the proposed new rule would apply, does not include any reference to involuntary medication proceedings, though subdivision (c)(1) indicates the rule is intended to apply to such proceedings. Therefore, FDAP recommends that the opening clause of</p>	<p>The committee notes the commenter's support for this portion of the proposal; no response is required.</p> <p>The committee appreciates this suggestion. However, involuntary medication proceedings, and appeals therefrom, may be separate from the civil commitment appeals encompassed by the new rule, and this proposed modification would thus expand the scope of the rule beyond what is intended. To minimize confusion and provide</p>

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			<p>proposed subdivision (a)(1) be amended to add the following bolded language: “Except as otherwise provided in this rule, rules 8.300-8.368 and 8.508 govern appeals from civil commitment orders (including involuntary medication orders) under Penal Code....”</p> <p>Nearly all of the civil commitment schemes to which the proposed new rule applies may lead to involuntary medication orders. (See, e.g., Pen. Code, § 1370, subd. (a)(2)(b) [incompetent to stand trial]; <i>In re Qawi</i> (2004) 32 Cal.4th 1 [mentally disordered offenders]; <i>In re Calhoun</i> (2004) 121 Cal.App.4th 1315 [sexually violent predators]; <i>In re Greenshields</i> (2014) 227 Cal.App.4th 1284 [not guilty by reason of insanity].)</p> <p>Subdivision (a)(1) includes orders issued under Penal Code section “1600 et seq. (continue outpatient treatment or return to confinement)” as one of the types of orders to which the new rule would apply. FDAP recommends altering the parenthetical description of this statutory framework to read: “(outpatient placement and revocation).” As currently proposed, the description does not account for appeals taken from the denial of conditional release into a supervised outpatient program (see, e.g., <i>People v. Sword</i> (1994) 29 Cal.App.4th 614); instead, it only describes continued placement and termination of outpatient status. The shorter language FDAP provides would be more comprehensive.</p>	<p>clarity, the proposal has instead been modified to omit the phrase “or motion for involuntary medication” from subdivision (c)(1).</p> <p>The committee appreciates this suggestion to revise the parenthetical description of Penal Code section 1600 et seq., and has modified the proposal accordingly.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Subdivision (b)(1) requires inclusion of the “The petition” in the clerk’s transcript as a normal record item. FDAP recommends changing this language to “The petition and any supporting documents filed along with the petition,” as, in our experience, appellate records in civil commitment appeals sometimes include only the petition but not the supporting affidavits, declarations, reports, or other documents attached to the petition. (See, e.g., Pen. Code, § 2970, subd. (b) [“The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of State Hospitals either in a state hospital or in an outpatient program”]; Pen. Code, 1026.5, subd. (b)(2) [“The petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in paragraph (1)”].)¹</p> <p>1 Although not contemplated by the invitation to comment, FDAP also recommends a similar amendment to rule 8.480(b)(1), which identifies normal record items in LPS Act appeals, such that the language, which currently reads “The petition” as well, be amended to read “The petition and any supporting documents filed along with the petition.” (See, e.g., Welf. & Inst. Code, § 5361 [“The petition must include the opinion</p>	<p>The committee appreciates this suggestion to expand subdivision (b)(1) of the proposed new rule to include “[t]he petition <u>and any supporting documents filed along with the petition,</u>” and has modified the proposal accordingly.</p> <p>The committee appreciates this suggestion, but notes that it is outside the scope of this proposal and may be considered in the future by an appropriate committee.</p>

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	Commenter	Position	Comment	Committee Response
			<p>of two physicians or licensed psychologists”].)</p> <p>Subdivision (b)(10) mandates that the clerk’s transcript include “The notice of appeal and any certificate of probable cause filed under rule 8.304(b).” Because the certificate of probable cause requirement set forth in Penal Code section 1237.5 applies only to appeals taken from a judgment of conviction and does not apply to civil commitment appeals – even where the commitment follows criminal proceedings that previously involved a guilty or no contest plea – FDAP recommends omitting any reference to certificates of probable cause, such that the subdivision would simply read: “The notice of appeal.” (See, e.g., <i>People v. Sanders</i> (2012) 203 Cal.App.4th 839, 847 [where the Court of Appeal recognized that the certificate of probable cause requirement “is not technically applicable in SVPA proceedings”]; <i>People v. Wagoner</i> (1979) 89 Cal.App.3d 605, 610 [“the Legislature could not have intended that [Penal Code] section 1237.5 would apply to appeals from convictions following an insanity plea”]; <i>People v. Kraus</i> (1975) 47 Cal.App.3d 568, 573 [no certificate of probable cause required on appeal from the denial of a post-judgment motion because “[t]he only statutory requirement for a certificate of probable cause is in Penal Code section 1237.5 which refers only to appeals ‘from a judgment of conviction’”]; <i>People v. Arriaga</i> (2014) 58 Cal.4th 950, 959 [same].)</p>	<p>The committee agrees with this suggestion to omit reference to a certificate of probable cause and has modified subdivision (b)(10) of the proposed new rule accordingly.</p>

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	Commenter	Position	Comment	Committee Response
			<p>B. Proposed Notice of Appeal – Civil Commitment (form APP-060)</p> <p>1. Comments on the Omission of LPS Act Conservatorships</p> <p>The Committee’s proposed notice of appeal form would not apply to LPS Act appeals because such an approach, according to the Committee, would “expand the scope of the new form well beyond the scope of the associated proposed new rule of court and could create confusion for litigants and courts.” (Invitation to Comment at page 4.) While it is true, as the Committee points out, that the proposed new rule of court for normal records in civil commitment appeals (8.483) solely applies to non-LPS Act civil commitments, that is only the case because there already is a rule of court for LPS Act appeals (8.480). And there is no reason why a single notice of appeal cannot be used for appeals falling under different rules of court.</p> <p>Significantly, the LPS Act serves as the state’s “general civil commitment statute.” (<i>In re Smith</i> (2008) 42 Cal.4th 1251, 1267.) The proposed new “Civil Commitment” notice of appeal should thus apply to LPS Act appeals as well.²</p> <p>² In deciding not to extend proposed rule 8.483 to LPS Act appeals, the committee pointed out, as one justification, that</p>	<p>The committee appreciates this comment, which it understands as a suggestion to expand the scope of the form for use in all types of civil commitment and Lanterman-Petris-Short (LPS) Act appeals. Having considered this issue, the committee agrees that it would be useful to expand the scope of the form and make it available for use in a broader range of civil commitment and LPS Act appeals and has modified the proposal accordingly.</p>

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	Commenter	Position	Comment	Committee Response
			<p>“civil commitments under the LPS Act do not necessarily stem from criminal proceedings[.]” (Invitation to Comment at page 3.) FDAP notes that civil commitment proceedings conducted under Welfare and Institutions Code section 6500 et seq. do not necessarily stem from criminal proceedings either, but such proceedings have been included in the proposed rule 8.483 and the proposed civil commitment notice of appeal form. Accordingly, LPS Act appeals would not be out of place alongside appeals from proceedings conducted under Welfare and Institutions Code section 6500 et seq.</p> <p>Omitting LPS Act appeals from the proposed form would create confusion for litigants and courts. Excluding LPS Act conservatorships from the proposed civil commitment notice of appeal form will leave such cases in limbo, as litigants are often confused as to whether they should be using the general civil form (APP-002) or the felony criminal appeal form (CR-120) for filing LPS Act appeals, especially because neither already existing form on its face appears to be appropriate for LPS Act appeals. Public defenders in the First Appellate District often contact FDAP asking which form to use to appeal from LPS Act conservatorships. Since August 2017, the Sonoma County Public Defender has been successfully using an unofficial notice of appeal form developed by</p>	

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			<p>that office and FDAP for appeals not just from civil commitments more closely related to criminal proceedings but also from LPS Act conservatorships. FDAP is aware of no confusion among litigants and courts attributable to the use of this form. In fact, FDAP has helped trial attorneys and conservatees file LPS Act appeals using the unofficial form and, anecdotally, is aware of litigants and courts who have used the form being pleased (and relieved) to know how to file an appeal from LPS Act conservatorships.</p> <p>2. Comments on Contents of the Proposed Form Itself</p> <p>Sample Caption: In the third box down from the top left, the proposed form provides a sample caption that begins with “PEOPLE OF THE STATE OF CALIFORNIA vs.” Although it is generally the district attorney that initiates the commitment proceedings covered by the proposed notice of appeal form, not all the listed civil commitment proceedings are commonly captioned in this manner. For examples, appellate cases involving juvenile extended detention petitions (Welf. & Inst. Code, § 1800 et seq.) are usually captioned “In re” and not “People v.” (See, e.g., <i>In re Lemanuel C.</i> (2007) 41 Cal.4th 33; <i>In re Howard N.</i> (2005) 35 Cal.4th 117.) Moreover, should the Judicial Council adopt FDAP’s above proposal for the civil commitment notice of appeal form to include LPS Act conservatorships, a caption</p>	<p>The committee appreciates this suggestion and has modified the proposal to expand the caption of the form to reflect its use in a broader range of proceedings.</p>

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			<p>beginning with “People v.” would be particularly inappropriate. Thus, FDAP recommends that the case caption language be amended to read: “PEOPLE OF THE STATE OF CALIFORNIA vs./IN RE.”</p> <p>Section 2: The proposed form includes three checkboxes for indicating the manner in which the case was resolved in the trial court: “after a jury or court trial,” “after a contested hearing,” and “Other.” First, FDAP notes that only one of the three options begins with a capital letter. For consistency, either “Other” should begin with a lower case “o” or the word “after” alongside the other two checkboxes should begin with a capital “A.” More substantively, FDAP recommends adding a fourth checkbox for when the matter has been resolved by admission, stipulation, or submission, which commonly occurs in civil commitment cases, particularly in cases involving competency commitments and LPS Act conservatorships. (See, e.g., Proposed Rule 8.483(b)(1) [identifying as a normal record item to be included in the reporter’s transcript “The oral proceedings on the entry of any admission or submission to the commitment petition or motion for involuntary medication”].) FDAP recommends the addition of a checkbox – 2.c. – that reads “after an admission, stipulation, or submission.” The “Other” checkbox would then be renumbered as 2.d.</p>	<p>The committee appreciates these suggestions and has modified the proposal accordingly.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Section 3: The proposed notice of appeal form includes orders issued under Penal Code section “1600 et seq. (return to confinement).” FDAP recommends altering the parenthetical description of this statutory framework to read: “(outpatient placement and revocation).” As currently proposed, the description does not account for appeals taken from the denial of conditional release into a supervised outpatient program (see, e.g., <i>People v. Sword, supra</i>, 29 Cal.App.4th 614); instead, it only describes termination of outpatient status.</p> <p>Lastly, should the Judicial Council adopt FDAP’s above proposal for the civil commitment notice of appeal form to include LPS Act conservatorships, section 3 should be amended to add a checkbox for “Welfare and Institutions Code, § 5350 et seq. (LPS Act conservatorships).”</p>	<p>The committee appreciates this suggestion and has modified the proposal accordingly.</p> <p>The committee has considered this suggestion agrees that the scope of the form should be expanded to also include LPS Act conservatorship appeals and has modified the proposal accordingly.</p>
3.	Rudy Kraft Attorney San Luis Obispo, CA	NI	<p>This is a comment on Rule 8.483, the proposed rule relating to appellate records in civil commitment cases.</p> <p>I am a full time appellate attorney. Currently, my practice is 99% civil commitment and mental health appeals. I handle appeals in all of the various courts of appeal in the state.</p> <p>As proposed, the rule does not cover Murphy Conservatorships as found in Welfare and Institutions Code section 5008(h)(1)(B). I recognize that this is the Lanterman-Petris-Short section of the law which was deliberately</p>	<p>The committee has considered this suggestion, but concluded that it could cause confusion to expand the scope of the proposed new civil commitment rule to govern the normal record in Murphy conservatorship appeals in light of existing rule</p>

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	Commenter	Position	Comment	Committee Response
			<p>excluded because those types of commitments do not arise out of the criminal justice system, but Murphy Conservatorships do, in fact, arise out of the criminal justice system. In fact, they follow upon Penal Code section 1370 competency procedures which are specifically included in the new rules. All of the specific reasons that the proposed rule has for including the type of proceedings that are included also apply to Murphy Conservatorships. The rule should be changed to include coverage of Murphy Conservatorships.</p>	<p>8.480. However, the committee has modified the proposal to add an Advisory Committee comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals.</p>
			<p>Sexually violent predators proceedings have probable cause hearings. Those hearings can be an important part of the appellate record and should be part of the standard record on appeal. There are appellate issues which directly arise out of those part of the proceedings. Depending on the case, the appeal might arise directly from the ruling at the probable cause hearing. Admittedly, in those cases that hearing might be viewed as the “dispositional hearing” but it would be clearer to just state that probable cause transcripts are part of the standard record. Under current law where criminal rules are used, they are a standard part of the record on appeal. There is no reason to change this.</p>	<p>The committee appreciates this suggestion and has modified the language of subdivision (c)(8) to reference transcripts from probable cause hearings.</p>
			<p>The proposed rule also includes “Any diagnostic or psychological reports submitted to the court” as being a standard part of the record on appeal which is good. However, it is not</p>	<p>The committee appreciates this suggestion and has modified subdivision (b)(13) of the proposal accordingly. The portion of the comment relating to exhibits more generally is addressed below.</p>

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			<p>entirely clear if a diagnostic or psychological report which is submitted to the court as an exhibit at trial or at the probable cause hearing is included. Those exhibits should not lose their status as a part of the standard record on appeal if they are introduced into evidence. In fact, the provisions of the proposed rule governing exhibits is problematic because it will make it more difficult for appellate counsel to obtain a complete record on appeal.</p> <p>Under current law—especially following the Supreme Court’s ruling in <i>People v. Sanchez</i> (2006) 63 Cal.4th 665—it is not uncommon for a significant number of exhibits to be introduced into evidence in civil commitment cases. These exhibits are often critical to the appellate process and the evaluation of potential issues. Often these exhibits are redacted based upon disputed rulings by the trial court. Both the redacted and unredacted versions of these exhibits are necessary for the appellate attorney to evaluate the correctness of the trial court’s rulings. Some exhibits which have not been redacted are also critical to the appellate process. Currently, some courts of appeals will grant motions to augment the records to included these exhibits (both redacted and unredacted) in the clerk’s transcript while others will not. Proposed Rule 8.483(d), may well eliminate the courts of appeal’s authority to grant such requests. This means that before filing the briefs, the only way for appellate counsel to view the exhibits is by traveling to</p>	<p>The committee appreciates the concerns relating to exhibits and has considered these alternative suggestions. However, the committee does not view the proposed rule as a bar to augmenting the record in appropriate cases, and believes appellate counsel will be able to obtain a complete record on appeal in civil commitment cases under the rule as drafted. Additionally, subdivision (d) mirrors rule 8.320(e), and the committee concluded it could cause confusion to have a different procedure for exhibits in civil commitment cases than in criminal cases.</p>

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	Commenter	Position	Comment	Committee Response
			<p>the trial court. This problematic because appointed counsel in civil commitment cases does not necessarily live anywhere near the trial court. As already noted, I represent civil commitment defendants from all over the state. Depending on the county it can cost the state well in excess of \$1000 for me to travel to a courthouse to look at documents. On the other hand, if the documents are included in the record, the cost is just the photocopying time and expense for the superior court clerk's office.</p> <p>This might be a necessary problem if such exhibits are not an appropriate part of the record for some actual reason but they are a part of the record. Rule 8.483(d) makes that clear, but states that exhibits must be transmitted to the court of appeal pursuant to rule 8.224. However, that rule is not any real help both because it only kicks in after the respondent's brief has been filed and because appellate attorneys are often not located anywhere near the appellate court house. Rule 8.224(a)(1) does recognize the availability of the procedures in Rules 8.122 and 8.124 but those procedures are drafted with normal civil cases in mind where the trial attorney is likely to be the appellate attorney or at least have some involvement in the appeal. That is not now things work in the civil commitment arena. I am normally not appointed to represent my clients until after the record is prepared. Even in those cases where I am appointed before the</p>	

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	Commenter	Position	Comment	Committee Response
			<p>record is complete, I know nothing about the case until I get the record on appeal.</p> <p>Under Rule 8.122(a)(3) all exhibits can be included in the clerk's transcript if they are specifically identified by a party in its notice of designation of the record. This procedure may be adequate in the normal civil case but it is of no use in a civil commitment case where by the time appellate counsel is appointed the Rule 8.122 record designation process is no available. (Rule 8.124 doesn't help because appointed appellate counsel will not have copies of the exhibits and even if he or she obtains them from trial counsel, he or she would not be in position to affirmatively assert that the copies are correct and complete.)</p> <p>Therefore, I suggest that the proposed rule should address this problem. It could provide appellate counsel with a window of time to designate additional record under Rule 8.122. In the alternative, Rule 8.493(d) could be rewritten to make it clear that the clerk's transcript can be augmented to include exhibits rather than prohibiting such an augmentation.</p>	
4.	Orange County Bar Association By Deirdre Kelly, President Newport Beach, CA	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Is the scope of the rule appropriate, and in particular should the rule be applicable to any other type of civil commitment order, such as</p>	The committee notes the commenter's support for the proposal and appreciates the responses to questions presented in the invitation to comment.

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	Commenter	Position	Comment	Committee Response
			<p>commitments under the LPS Act?</p> <p>Scope is appropriate, but rule should not be applicable to other types of civil commitment orders.</p> <p>Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript?</p> <p>No.</p> <p>Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order?</p> <p>Yes.</p> <p>Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules?</p> <p>Yes, it should be placed in an expanded chapter 6 of title 8, division 1.</p> <p>Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal?</p> <p>Yes.</p>	<p>The committee appreciates the commenter's responses to questions presented in the invitation to comment regarding the proposed rule. No further response is required.</p> <p>The committee appreciates the commenter's input into the appropriate scope of the proposed new form, but has concluded that it would be helpful to litigants and courts to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Is the scope of the form appropriate, and in particular, should it be available for the appeal of any other type of civil commitment order, such as commitments under the LPS Act?</p> <p>The scope of the form is appropriate. It should not be available for other types of civil commitment order.</p> <p>Should the form be given an “APP” (Appellate) form designation, or should it be in another category of forms? Yes, give it “APP”.</p>	
5.	Superior Court of Los Angeles County	AM	<p>Proposed Modifications</p> <p>First, the style of the appellate case in the notice of appeal form should not refer to the committed person as "defendant/respondent" but only as "respondent." This would make it consistent with the styles used in the trial courts on these civil petitions as well as the Legislature's petition forms set forth in Welfare and Institutions Code sections 6251 et seq., and prevent the treatment and public safety purposes of these civil commitments from being tainted with any penal purpose. Additionally, not all Welfare and Institutions Code section 6500 petitions for commitment of dangerous developmentally disabled persons arise out of criminal proceedings – see, Welfare and Institutions Code section 6502.</p>	<p>The committee appreciates this comment and has given significant consideration to this issue. The committee has decided that using the term “Defendant/Respondent,” defined in the first instance as “the person subject to the civil commitment order” most clearly signifies that the form may be used in a broad range of appeals, including civil commitment proceedings that arise out of underlying criminal proceedings, while not designating that person as a criminal defendant for purposes of the civil commitment appeal.</p>

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			<p>Second, the new Notice of Appeal form should include appeals from Mentally Disordered Sex Offenders committed under Welfare and Institutions Code section 6300. Although there are no new filings under the statute, there are still extension petitions for commitments under the statute being filed.</p> <p>Third, appeals from Welfare and Institutions Code section 6500 commitments should be covered by a separate notice of appeal form, since by statute the "petitioner" may be a number of different persons or entities, such as a parent, guardian, conservator, etc. This way, the style in the notice of appeal could be left blank to be filled in. Also, that notice should cover appeals from In re Hops petitions which also involve different persons.</p> <p>Request for Specific Comments</p> <p>Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the purpose.</p> <p>Is the scope of the rule appropriate, and in particular should the rule be applicable to any other type of civil commitment order, such as commitments under the LPS Act? No comment regarding applicability, however, from a clerical standpoint, it would be easier if there was standardization in processing civil commitment appeals.</p>	<p>The committee appreciates this suggestion and has modified both the proposed new rule and form accordingly.</p> <p>The committee appreciates this suggestion but concluded that a second form is not necessary at this time, and has instead altered the caption and scope of the proposed new form.</p> <p>The committee notes the commenter's support for the proposal. The committee appreciates the responses to the questions presented in the invitation to comment and the perspective on the impact on courts. No further response is required.</p>

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			<p>Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order?</p> <p>Yes, it would be easier for the clerical staff to prepare the record if we limit the number and types of items that are required for consideration to only those that are relevant to the civil commitment.</p> <p>Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules?</p> <p>Yes, there is a close relationship between civil commitments and conservatorships.</p> <p>Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms?</p> <p>Yes, categorizing this as an appeal form allows for consistency in the designation of appeals.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>There would be a requirement to instruct and train staff on the use of this form in conjunction</p>	<p>The committee appreciates the commenter's input into the potential implementation requirements; no further response is required.</p>

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			<p>with current appeal processing guidelines. There would also be a need to develop event and/or docket codes to identify this appeal type in the case management system.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient.</p> <p>How well would this proposal work in courts of different sizes? This proposal will work well in all courts.</p>	
6.	Superior Court of Orange County Civil, Small Claims, and Probate division By Sean E. Lillywhite, Administrative Analyst/Officer	A	We agree that these changes should also apply to LPS commitments. In Murphy cases, if the case is granted and the commitment ordered, the Court must make LPS findings in addition to Murphy findings. The proposed form is pre-filled with "People of the State of California" in the title. We recommend that this be left fillable as cases may be initiated by the Public Guardian or a hospital.	<p>The committee appreciates this suggestion, but believes it could cause confusion to expand the scope of the rule to govern the normal record in Murphy conservatorship appeals in light of existing rule 8.480. However, the committee has modified the proposal to add an Advisory Committee Comment to proposed new rule 8.483 to clarify that rule 8.480 governs Murphy conservatorship appeals.</p> <p>The committee agrees that the caption of the form should be modified to reflect potential use of the form where an underlying case contains a caption other than "People v." and the form has been modified accordingly.</p>
7.	Superior Court of San Bernardino County	A	<ul style="list-style-type: none">• Does the proposal appropriately address the stated purpose? Yes• Is the scope of the rule appropriate, and in particular should the rule be applicable to any	The committee notes the commenter's support for the proposal and input into the potential implementation requirements; no further response is required.

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Appellate Procedure: Notice of appeal and the record in civil commitment cases (adopt rule 8.483, amend rule 8.320, approve form APP-060)

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

	Commenter	Position	Comment	Committee Response
			<p>other type of civil commitment order, such as commitments under the LPS Act? Yes</p> <ul style="list-style-type: none">• Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? No• Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order? Yes• Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules? Place in chapter 6 of title 8, division 1• Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes• Is the scope of the form appropriate, and in particular, should it be available for the appeal of any other type of civil commitment order, such as commitments under the LPS Act? Yes• Should the form be given an "APP" (Appellate) form designation, or should it be in another category of forms? Yes, App form designation. <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p>	

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none">• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Legal Processing Assistant training- Expected hours: 4 hours minimum. Revising processes and procedures- Expected hours: 6 hours to revise manuals, internal forms and update rules of court on current internal forms.• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes• How well would this proposal work in courts of different sizes? It should not significantly impact business processes in courts of varying sizes.	
8.	Superior Court of San Bernardino County By Hon. Carlos M. Cabrera Appellate Division Presiding Judge	A	No specific comment.	The committee notes the commenter's support for the proposal; no further response is required.
9.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	<ul style="list-style-type: none">• Does the proposal appropriately address the stated purpose? Yes.• Is the scope of the rule appropriate, and in particular should the rule be applicable to any other type of civil commitment order, such as commitments under the LPS Act? Yes, it is	The committee notes the commenter's support for the proposal and appreciates the responses to questions presented in the invitation to comment.

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	Commenter	Position	Comment	Committee Response
			<p>appropriate. It should be applicable to matters that stem from criminal proceedings.</p> <ul style="list-style-type: none">• Should the rule specify any other types of documentary exhibits to be included in the clerk's transcript? Exhibits should be included based on existing CRC 8.320.• Should the rule limit the record items in subdivisions (b)(15) and (c)(10) to appeals in which the appellant is the person subject to the civil commitment order? Yes.• Should the new rule be placed in an expanded chapter 6 of title 8, division 1, or should it be placed elsewhere in the appellate rules? Yes, in an expanded chapter 6 of title 8, division 1.• Are civil commitment appeals sufficiently different from other case types to warrant a separate form notice of appeal? Yes.• Is the scope of the form appropriate, and in particular, should it be available for the appeal of any other type of civil commitment order, such as commitments under the LPS Act? Yes, it is appropriate if the DOB/CDC & Rehabilitation # is not needed as it is on the Felony NOA. The form should be available for matters that stem from criminal proceedings.• Should the form be given an "APP" (Appellate) form designation, or should it be in	<p>The committee appreciates this comment as to the scope of the form but has concluded that it would be useful to expand the scope of the form for use in a broader range of civil commitment and LPS Act conservatorship appeals.</p>

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

	Commenter	Position	Comment	Committee Response
			<p>another category of forms? Yes, it should be given an “APP” (Appellate) form designation.</p> <ul style="list-style-type: none">• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC, I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with processing felony appeals. Procedures would need to be revised to add the normal record requirements for this appeal type.• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.• How well would this proposal work in courts of different sizes? It would work well. Would not create issues.	<p>The committee appreciates the commenter’s input into the potential implementation requirements.</p>