



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-121

For business meeting on: September 25, 2020

Title

Appellate Procedure: Method of Notice to Court Reporter

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454

Date of Report

August 28, 2020

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary

The Appellate Advisory Committee recommends amending three appellate court-related California Rules of Court governing juvenile appeals and writs to replace the requirement that the clerk notify the court reporter to prepare the reporter's transcript "by telephone and in writing" with a requirement that the reporter be notified "in a manner providing immediate notice" to the reporter. The existing "by telephone and in writing" requirement is not found in other appellate rules governing notice to court reporters, and the change would provide clerks more flexibility in how they provide notice while retaining the requirement that the notice be immediate.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2021, amend rules 8.405, 8.450, and 8.454 of the California Rules of Court to:

1. Omit the requirement that the court clerk notify the court reporter "by telephone and in writing" to prepare the reporter's transcript, to more closely align these rules with other

appellate rules, and provide clerks with more flexibility in how they provide notice to court reporters; and

2. Add a requirement that the clerk notify the reporter “in a manner providing immediate notice.”

The text of the amended rules is attached at pages 6–8.

Relevant Previous Council Action

Rule 8.405 of the California Rules of Court, governing juvenile appeals, was adopted in 2010. Effective January 1, 2016, the Judicial Council amended rule 8.405, but the amendments are not relevant to this proposal. Rules 8.450 and 8.454—governing notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28—were adopted in 2005, renumbered in 2007, and amended in 2007, 2008, 2009, 2010, 2013, and 2017, but the amendments are not relevant to this proposal.

Analysis/Rationale

Rules 8.400 through 8.474 of the appellate rules govern juvenile appeals and writs. Rule 8.405(b)(1) currently requires that when a notice of appeal is filed in a juvenile case, the superior court clerk “must immediately . . . [n]otify the reporter *by telephone and in writing* to prepare a reporter’s transcript . . .” (Italics added.) Rules 8.450 and 8.454 address the filing of a notice of intent to file a writ petition to review orders under Welfare and Institutions Code sections 366.26 and 366.28, respectively.¹ Subdivision (h)(1) of each of these rules requires that: “When the notice of intent is filed, the superior court clerk must: [¶] (1) Immediately notify each court reporter *by telephone and in writing* to prepare a reporter’s transcript of the oral proceedings at each session of the hearing that resulted in the order under review. . .” (Italics added.)

No other appellate rule requires a court clerk to immediately notify a court reporter “by telephone and in writing” to prepare a transcript. Some appellate rules require that the reviewing court clerk “make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail” of an urgent situation such as an appellate decision to grant a writ or issue an order staying or prohibiting a proceeding to occur in the lower court within a short time frame.² Other appellate rules require the clerk to notify the parties “by telephone or another expeditious method” of events that would seem to require immediate attention, such as shortening the time

¹ Welfare and Institutions Code section 366.26 governs hearings terminating parental rights or establishing guardianship of children adjudged dependent children of court, and section 366.28 governs the appeal of decisions involving placement or removal orders following the termination of parental rights.

² See, e.g., rules 8.452(h)(3), requiring the appellate court clerk to make “reasonable effort to notify the clerk of the respondent court by telephone or e-mail” if a writ under Welfare and Institutions Code section 366.26 staying or prohibiting a proceeding to occur within seven days or requiring action within seven days is granted; 8.456(h)(3) (same for writ or order under juvenile writ under Welf. & Inst. Code, § 366.28); 8.489(b)(1) (same for writ or order in Supreme Court and Court of Appeal); 8.975(b)(1) (same for small claims writ in appellate division).

for oral argument.³ However, none of these rules requires immediate telephonic and written notification for court reporters. Instead, the rules addressing notice to court reporters in other types of appeals generally require court clerks to “promptly” send notice of an appeal to court reporters without specifying the method of notification.⁴ Notably, however, by statute juvenile appeals have priority over most other appeals.⁵

This proposal would replace the requirement in rules 8.405, 8.450, and 8.454 that court clerks notify court reporters “by telephone and in writing” with a requirement that the superior court clerk notify reporters “in a manner providing immediate notice.” The committee believes that the amendments will more closely align these rules with other appellate rules and provide clerks with additional flexibility in how they provide notice, while retaining the requirement that notice of the need to prepare a transcript in juvenile writs and appeals be immediate.

Policy implications

The committee did not identify any significant policy implications relating to the proposed amendments.

Comments

The proposed amended rules were circulated for public comment between April 10 and June 9, 2020, as part of the regular spring comment cycle. As circulated, the proposal was to omit—rather than replace—the phrase “by telephone and in writing.” The committee received six comments on this proposal. Two commenters, the Superior Court of San Diego County and the Litigation Section of the Committee on Appellate Courts of the California Lawyers Association (CLA), agreed with the proposal. Four commenters—the Court of Appeal for the Third Appellate District, the California Court Reporters Association (CCRA), the Orange County Bar Association (OCB), and the Service Employees International Union (SEIU)—disagreed with the

³ See, e.g., rules 8.256(b), requiring the appellate clerk to “immediately notify the parties by telephone or other expeditious method” if the notice period for oral argument in Court of Appeal is shortened; 8.392(b)(5) (same if Court of Appeal requires an answer to a request for certificate of appealability to review superior court decision denying relief on successive habeas corpus petition in death penalty–related proceeding); 8.524(c) (same if notice period for oral argument in Supreme Court is shortened); 8.702(g) (same if notice period for oral argument in CEQA appeals is shortened); 8.716 (same if notice period for oral argument in appeal of decision to compel arbitration is shortened); 8.885(c)(1) (same if notice period for oral argument in misdemeanor appeal is shortened); 8.889(b)(2) (same if court decides to require answer to request for rehearing in misdemeanor appeal); 8.929(c)(1) (same if notice period for oral argument in infraction appeal is shortened).

⁴ See, e.g., rules 8.130(d)(2) (in civil appeals, “clerk must promptly send the reporter notice of the designation [of the reporter’s transcript] and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent to the reporter” when the clerk receives specified items); 8.304(c)(1) (in criminal appeals, “[w]hen a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing . . . to each court reporter, and to any primary reporter or reporting supervisor”); 8.834(b)(4) (in limited civil appeals to the appellate division of the superior court, “clerk must promptly notify the reporter to prepare the transcript when the court receives” the deposit or substitute for the cost); 8.864(a)(1) (in misdemeanor appeals, “[i]f the appellant elects to use a reporter’s transcript, the clerk must promptly send a copy of appellant’s notice making this election and the notice of appeal to each court reporter”); 8.915(a)(1) (same for infraction appeals).

⁵ See Welf. & Inst. Code, §§ 800(a) [delinquency], 395(a)(1) [dependency]; Code Civ. Proc., § 45 [appeals from orders freeing a minor from parent’s custody/control].

proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9 through 14.

Of the two commenters who agreed with the proposal, the Superior Court of San Diego County provided no substantive comment, while CLA agreed that removal of the phrase "by telephone and in writing" would bring the rules more in line with other appellate rules and provide clerks with greater flexibility.

In contrast, the four commenters that disagreed with the proposal expressed concern that, if the phrase "by telephone and in writing" were removed from the rules, court reporters and appellate courts would be negatively impacted due to the unique time constraints of juvenile writs and appeals. In particular, the Court of Appeal for the Third Appellate District emphasized that juvenile writs and appeals are "priority" cases with very short deadlines. The appellate court opined that if the rules were amended as proposed, a trial court clerk might provide notice to the reporter by paper mail only, which—even if mailed "immediately"—could delay the reporter's actual notice of the need to prepare a transcript, which in turn could delay the Court of Appeal's receipt of the transcript and hinder its ability to conduct a timely review. The appellate court suggested that, if the rules are amended to remove the telephonic notice requirement, they also be amended to require notice "by the most expedient method available."

CCRA similarly disagreed with the proposal, opining that the existing notice requirements are "imperative" because (1) juvenile writs and appeals are time-sensitive and take precedence over all other court reporter work, and (2) changing the rules would hinder appellate courts' timely receipt of transcripts in juvenile cases. CCRA commented that immediate notice by telephone is needed to inform reporters that a notice of writ or appeal has been filed while written notice gives the reporter other necessary information to complete the transcript.

OCB expressed a similar opinion that immediate notice both by telephone and in writing is useful in juvenile writs and appeals. SEIU, a union representing court reporters in 37 counties, also disagreed with eliminating required telephonic notice to court reporters in juvenile writs and appeals, noting that notice often goes to an office of court reporter services before the relevant individual reporter receives the notice, which results in a loss of time for the individual reporter. SEIU suggested that if the proposal is not rejected, then email notice be provided directly to the individual reporter.

In response to the comments received, and to address timing concerns while still providing court clerks with greater flexibility in how they accomplish the required immediate notice to court reporters, the committee modified the proposal. Rather than merely omitting the "by telephone and in writing" requirement, the committee decided to also replace it with a requirement that the clerk be notified of the need to prepare a transcript "in a manner providing immediate notice." This modification is intended to reiterate the need for immediate notice and foreclose the possibility of notice only by paper mail or of notice being directed to an office as opposed to court reporters themselves, without dictating the manner in which such immediate notice must be given.

The only other substantive comment made by the Court of Appeal, Third Appellate District, addressed the potential implementation requirements for courts. The appellate court commented that, while there would be no cost savings as a result of the proposal, there would also be no implementation requirements and no different impact based on the size of the court, and three months would be sufficient time for implementation.

Alternatives considered

Because the requirement that court clerks notify court reporters “by telephone and in writing” does not directly conflict with another rule, the committee considered not recommending any amendment to these rules. Following public comment, the committee further considered this alternative, but determined that withdrawing the proposal would not address one of the reasons that initially prompted it: to allow greater flexibility in how court clerks provide notice to court reporters in these cases.

The committee also considered simply omitting the phrase “by telephone and in writing” from each rule without replacement. However, based on public comments received, the committee modified the proposal as discussed above.

Following public comment, the committee also considered the Court of Appeal’s suggestion to insert the phrase “by the most expedient method available,” as well as other phrasing variations, but ultimately decided that inserting the phrase “in a manner providing immediate notice” would best accomplish the goals of the proposal. To avoid repeated use of the terms “immediate” and “immediately” as well as “notify” and “notice” in a single phrase, the committee considered substituting the word “inform” for “notify” and “immediately notify” at the beginning of the relevant rule provisions, but concluded that this change might be misinterpreted and would make the phrasing of these rules inconsistent with other rules relating to notice to court reporters.

Fiscal and Operational Impacts

The proposal replaces the requirement that the court clerk immediately notify court reporters “by telephone and in writing” to prepare a reporter’s transcript in juvenile appeals and writs with a requirement that court reporters be notified “in a manner providing immediate notice.” This will likely result in minimal or no implementation costs.

Attachments and Links

1. Cal. Rules of Court, rules 8.405, 8.450, and 8.454, at pages 6–8
2. Chart of comments, at pages 9–14

Rules 8.405, 8.450, and 8.454 of the California Rules of Court would be amended, effective January 1, 2021, to read:

Title 8. Appellate Rules

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

Chapter 5. Juvenile Appeals and Writs

Article 2. Appeals

Rule 8.405. Filing the appeal

(a) * * *

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) Send a notification of the filing to:

- (i) Each party other than the appellant, including the child if the child is 10 years of age or older;
- (ii) The attorney of record for each party;
- (iii) Any person currently awarded by the juvenile court the status of the child's de facto parent;
- (iv) Any Court Appointed Special Advocate (CASA) volunteer;
- (v) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs, as required under Welfare and Institutions Code section 224.2; and

(vi) The reviewing court clerk; and

(B) ~~Notify the reporter by telephone and in writing, in a manner providing~~
immediate notice, to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

~~(2)–(6)~~ * * *

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(a)–(g) * * *

When the notice of intent is filed, the superior court clerk must:

- (i)-(j) * * ***

(a)–(g) * * *

When the notice of intent is filed, the superior court clerk must:

- (1) Immediately notify each court reporter ~~by telephone and in writing, in a manner providing immediate notice,~~ to prepare a reporter's transcript of the oral proceedings at each session of the hearing that resulted in the order under review and to deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed; and
- (2) Within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 8.407(a).

1 **(i)-(j) * * ***

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
1.	California Court Reporters Association by Joshua Thubei Sacramento, CA	N	The California Court Reporters Association (CCRA) a statewide organization whose membership includes freelance court reporters, CART/captioning, official and student communities, opposes deleting or changing the duties of the clerk to notify court reporters. The specific duty of the clerk to notify the reporter by telephone and in writing is imperative. Juvenile appeals take precedence over all other work. They are also time sensitive. Reporters must be notified timely with both a telephonic and written notification, their time runs before receiving a written notice of appeal and the phone call is to give the reporter a heads up that an appeal has been filed. Written notice gives the reporter all the pertinent information they need to complete the transcript, such as dates, appealing parties, and what is to be contained within the reporter's transcript. Changing this rule would be detrimental to appellate courts receiving timely reporters' transcripts on juvenile appeals.	<p>The committee appreciates the commenter's perspective on the benefit of both telephonic and written notice to court reporters and the appellate courts.</p> <p>The committee has considered this comment and modified the proposal to reiterate the need for immediate notice to the court reporter, while providing some flexibility for clerks in how they provide immediate notice.</p>
2.	California Lawyers Association by Committee on Appellate Courts, Litigation Section Sacramento, CA	A	The Committee on Appellate Courts supports this proposal, which omits anomalous wording from the rules governing notices from court clerks to court reporters (regarding transcript preparation)	The committee notes the commenter's support for the proposal; no further response is required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05

Appellate Procedure: Method of Notice to Court Reporter (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			in juvenile appeals and writs. Rules 8.405, 8.450, and 8.454 currently require court clerks to notify court reporters “by telephone and in writing” to direct transcript preparation. This language is unique: No other appellate rules require telephonic and written notice. The proposal merely removes this phrase and instead provides clerks with greater flexibility in how to provide notice. The proposal originated with a superior court clerk in charge of juvenile appeals. This proposal appropriately resolves the problem and should be adopted.	
3.	Court of Appeal, Third Appellate District by Colette M. Bruggmann, Assistant Clerk/Executive Officer Sacramento, CA	N	<p>The proposed rule change is likely to cause delay in providing notice to the court reporter of the need to prepare reporter’s transcripts for these expedited writs and appeals. The proposed rule change would permit notice to the reporter to be provided “immediately” by mail only, potentially resulting in several days of delay.</p> <p>The requirement of immediate telephonic and written notice in these cases is not an “anomaly” but, rather, a necessity for these unusual cases with priority and short timelines. In notice of intent cases, the reporter has only 12 calendar days within which to lodge their transcripts with the</p>	<p>The committee appreciates the commenter’s perspective on the impact that elimination of the telephonic notice requirement could have, and the delay that could result, if only “paper mail” is used. The committee has considered this comment and modified the proposal to reiterate the need for immediate notice to the court reporter, while providing some flexibility for clerks in how they provide immediate notice.</p> <p>The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05

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	Commenter	Position	Comment	Committee Response
			<p>superior court clerk. Any extension of time requires an “exceptional showing of good cause.” (Cal. Rules of Court, rule 8.450(d).) Accordingly, any delay (even a day or two) in getting notice to the reporter of the need to prepare transcripts is significant and puts a strain on both the reporter and the appellate court.</p> <p>Compliance with the time limits, including those for preparation and submission of the record, is especially crucial to implementing the Legislature's stated intent that reasonable efforts be made to complete appellate review of extraordinary writ petitions within the applicable time periods for conducting the selection and implementation hearing (Welf. & Inst. Code, § 366.26, subd. (1)(3)(B) and (4)(A)); In re Albert A. (2016) 243 Cal.App.4th 1220, 1241–1242.) Any delay in transmitting the record to the appellate court makes it difficult, if not impossible, for the appellate court to do so.</p> <p>Even with the current rule requiring immediate telephonic notice to the court reporters, this court has had ongoing and substantial difficulty getting reporters’ transcripts in time to process extraordinary</p>	<p>The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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

	Commenter	Position	Comment	Committee Response
			<p>writ petitions prior to the selection and implementation hearings.</p> <p>Juvenile appeals are also priority proceedings. In appeals, the reporter must lodge the transcripts within 20 calendar days. While time constraints are not as restrictive in appeals, delays in obtaining records due to requests for extension of time to prepare transcripts in appeals from a termination of parental rights, especially adversely affect the appellate court's ability to timely process the appeal. In order to minimize delays in providing permanency to minors, the appellate court is charged with making reasonable efforts to complete such appeals within 250 days of the filing of the notice of appeal.</p> <p>Does the proposal appropriately address the stated purpose?</p> <p>The only stated purpose provided for the rule change is to more closely align these rules with other appellate rules and to provide flexibility to the superior court clerks in how they might choose to provide notice to reporters. While the proposal may address these goals, it does so at the expense of implementing the purpose of the</p>	<p>The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.</p> <p>The committee appreciates the commenter's responses to the specific questions presented in the invitation to comment; no further response is required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05**Appellate Procedure: Method of Notice to Court Reporter** (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			<p>rules and the ability of the appellate court to timely obtain the record in these priority cases. If it is determined that the requirement of telephonic notice is burdensome to the superior court clerks, perhaps a modification to delete “by telephone and in writing” and replace with “by the most expedient method available” would be more advisable. This would eliminate the option of providing notification only by mail, but permit immediate, instant electronic notification, which would be equally expedient as telephone notification.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>There is no cost savings.</p> <p>What would the implementation requirements be for courts?</p> <p>None. Although the proposal affects the courts, it would not require implementation by the appellate court.</p> <p>Would three months from Judicial Council approval of this proposal until its effective</p>	<p>The committee appreciates the commenter’s suggestion to revise the proposal to reiterate that immediate notice is required and has modified the proposal accordingly.</p> <p>The committee has considered the stated implementation requirements; no further response is required.</p> <p>The committee has considered the stated implementation requirements; no further response is required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-05**Appellate Procedure: Method of Notice to Court Reporter** (Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454)

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

	Commenter	Position	Comment	Committee Response
			<p>date provide sufficient time for implementation?</p> <p>Yes.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>It does not appear to have any different impact to court based on the size of the court.</p>	<p>The committee has considered the stated implementation requirements; no further response is required.</p> <p>The committee has considered the stated implementation requirements; no further response is required.</p>
4.	Orange County Bar Association by Scott B. Garner, President Newport Beach, CA	N	The proposal notes that juvenile appeals have priority over most other appeals. What is the impetus to remove the belt and suspenders approach with respect to juvi cases? Is it that burdensome to place a call to the reporter? Sounds like the recommendation was made by a director of juvenile operations at one court but not otherwise considered.	The committee appreciates the commenter's perspective on the utility of the proposed amendments. No further response is required.
5.	Service Employees International Union by Michelle Castro, Director of Government Relations Sacramento, CA	N	The proposed rule would eliminate telephone notice to court reporters. With only 10 days to submit a juvenile writ and 20 days for an appeal, time is of the essence with regard to notice. The reporter must prepare and submit the transcript within that time frame and not from when the notice is provided. The original telephone notice was instituted because of these tight timelines. Oftentimes, notice goes to the office of court reporter services THEN to the reporter and precious time is lost. If the proposed	The committee appreciates that juvenile appeals and writs are subject to unique priority and timing, and has modified the proposal to further account for this.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			rule is not rejected then we request email notice be provided directly to the affected court reporter. If not, the telephone notice remains essential to ensure court reporters have adequate time to file transcripts. Thank you for your consideration.	
6.	Superior Court of San Diego By Michael M. Roddy, Court Executive Officer	A	The Appellate Advisory Committee proposes amending three appellate rules of court for juvenile appeals and writs to update the language regarding the notice the clerk must give to the court reporter to prepare the reporter's transcript. The requirement that the notice must be "by telephone and in writing" is not found in other appellate rules governing notice to court reporters and the change would provide clerks with more flexibility in how they provide notice.	The committee notes the commenter's support for the proposal; no further response is required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated