

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR20-08

Title	Action Requested
Appellate Procedure: Method of Notice to Court Reporter	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.405, 8.450, and 8.454	January 1, 2021
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Sarah Abbott, 415-865-7687 Sarah.abbott@jud.ca.gov

Executive Summary and Origin

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. This proposal is based on a suggestion received from the director of juvenile operations at a superior court.

Background

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 and deliver it to the clerk within 20 days after the notice of appeal is filed.” (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 the following:

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.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

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 and deliver the transcript to the clerk within 12 calendar days after the notice of intent is filed.

(Italics added.) No other appellate rule requires a court clerk to notify a court reporter “by telephone and in writing” to prepare a transcript. Some appellate rules do 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 for oral argument.³ However, none of these rules requires immediate telephonic and written notification for court reporters.

Instead, the rules addressing the notice that the court clerk must give to court reporters in other types of appeals use more general language, and generally require court clerks to “promptly” send notice of an appeal to court reporters, without specifying the method of notification.⁴

² See, e.g., rules 8.452(h)(3) (requiring 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 Welfare and Institutions Code section 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).

³ See, e.g., rules 8.256(b) (requiring appellate clerk to “immediately notify the parties by telephone or other expeditious method” if 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).

The Proposal

The committee proposes removing the requirement that court clerks notify court reporters “by telephone and in writing” from rules 8.405, 8.450, and 8.454 governing juvenile appeals and writs. The committee believes that, because the requirement for immediate telephonic and written notice is an anomaly among the appellate rules, it is advisable to amend these rules to more closely align them with other appellate rules by removing the phrase “by telephone and in writing” from each of them. This change would also provide clerks with more flexibility in how they provide notice, while retaining the requirement that the notice be immediate.

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, but decided that the proposed amendments would be beneficial.

The committee also considered whether the existing requirement in each of these rules that notification to the court reporter be “immediate” should be modified to instead require “prompt” (or some other temporal descriptor) notification. However, the committee does not recommend this additional modification because, by statute, juvenile appeals have priority over most other appeals.⁵ The committee determined that this priority justifies the requirement for “immediate” rather than “prompt” notice to the reporter in the rules under consideration.

Fiscal and Operational Impacts

The proposal removes the requirement that the court clerk immediately notify court reporters “by telephone and in writing” to prepare a reporters transcript in juvenile appeals and writs. This will likely result in minimal or no implementation costs, and should result in a slight decrease in workload for the clerk providing the notice.

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).

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.405, 8.450, and 8.454, at pages 5–7

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~~ to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

(2)–(6) * * *

1 **Article 3. Writs**

2
3 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**
4 **under Welfare and Institutions Code section 366.26**

5
6 **(a)–(g) * * ***

7
8 **(h) Preparing the record**

9
10 When the notice of intent is filed, the superior court clerk must:

- 11
12 (1) Immediately notify each court reporter ~~by telephone and in writing~~ to prepare
13 a reporter’s transcript of the oral proceedings at each session of the hearing
14 that resulted in the order under review and deliver the transcript to the clerk
15 within 12 calendar days after the notice of intent is filed; and
16
17 (2) Within 20 days after the notice of intent is filed, prepare a clerk’s transcript
18 that includes the notice of intent, proof of service, and all items listed in rule
19 8.407(a).
20

21 **(i)–(j) * * ***

22
23
24 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**
25 **section 366.28 to review order designating specific placement of a dependent**
26 **child after termination of parental rights**

27
28 **(a)–(g) * * ***

29
30 **(h) Preparing the record**

31
32 When the notice of intent is filed, the superior court clerk must:

- 33
34 (1) Immediately notify each court reporter ~~by telephone and in writing~~ to prepare
35 a reporter’s transcript of the oral proceedings at each session of the hearing
36 that resulted in the order under review and to deliver the transcript to the
37 clerk within 12 calendar days after the notice of intent is filed; and
38
39 (2) Within 20 days after the notice of intent is filed, prepare a clerk’s transcript
40 that includes the notice of intent, proof of service, and all items listed in rule
41 8.407(a).
42

43 **(i)–(j) * * ***