

May 18, 2026

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Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Comments on SPR26-01

Dear Judicial Council of California:

The California Academy of Appellate Lawyers (calappellate.org), referred to herein as the Academy, one of the nation's first bar organizations devoted to appellate practice, provides comments to the Judicial Council's proposed revisions to California Rules of Court, rules 8.40, 8.124, 8.702, 8.713, and 8.845. As set forth below, the Academy supports parts of the proposal and opposes other parts.

Automatically exempting litigants with fee waivers

The Academy supports the proposal to exempt appellants (see below for an explanation regarding why we are just referencing appellants) with fee waivers from using an appendix. However, the Academy suggests expanding the exemption to appellants with pro bono or legal aid representation.

Preventing use of Appendix when respondent has a fee waiver

The Academy opposes the proposal's new rule that would forbid a party from using an Appendix if the opposing party has a fee waiver. In many appeals, the respondent does not participate at all, so their fee waiver status should not control

the appellant's election choices. Sometimes Clerk's Transcripts contain errors, such as missing pages or documents or mistakenly included documents. There also can be delays in the preparation of the Clerk's Transcript, as well as delays and difficulties in including exhibits in the Clerk's Transcript. Some courts, particularly in family law, do not keep exhibits and instead order them released to the parties.

There is also not sufficient reason to preclude appellants from using an Appendix when the respondent has a fee waiver. The appellant is already required to include within the appendix everything that is necessary for the Court of Appeal to decide the case. (CRC 8.124(b)(1)(B).) And if the respondent believes anything is missing, they can file their own appendix. This may require some work for the respondent, but it is decidedly less work than would be required to file a Motion to Augment when a Clerk's Transcript is used and is deficient.

Furthermore, to the extent this proposed rule change is meant to provide low-income respondents an advance review of what the record on appeal will exclude, so that they may cross-designate additional documents, the very limited timeline for cross-designating a Clerk's Transcript (10 days per CRC 8.122(a)(2)) would make this a well-intended, but unlikely benefit.

Judicial Counsel of California

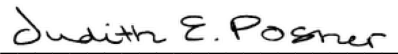
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Not requiring joint appendices

The Academy supports the proposal to eliminate the ability to use a joint appendix. In our experience a joint appendix is rarely used. Instead, it is common for the respondent to prepare and file a respondent's appendix if necessary.

Respectfully Submitted,



Judith E. Posner

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