

## INSTRUCTIONS FOR SETTLEMENT OF THE RECORD

The Rules of Court pertaining to settlement of the appellate record apply to the dependency appeal. (Cal. Rules of Ct., rule 8.407 (d).) Some adaptation of the applicable rules may be necessary, on a case-by-case basis, to the dependency appeal for which a portion of the record cannot be prepared pursuant to the usual method prescribed by statewide and local rules. (*Id.*, rules 8.407 (a), (b); Local Rules Court of Appeal Second District, Rule 1 (b).) Set forth here are excerpts from the Rules of Court for application to the dependency appeal. The Rules of Court include time frames for completion of each phase of the settlement process.

The Rules of Court refer to the lower court as the superior court. However, when conducting proceedings under the Juvenile Court Law, the superior court shall be known and referred to as the juvenile court. (Welf. & Inst. Code, § 245.)

The Rules of Court indicate that an **application** and a **request** will be filed in the juvenile court in the course of the process to settle the record. First, appellant files an **application for permission to prepare a settled statement**. (Rules of Ct., rule 8.346 (a).) Second, after appellant's proposed settled statement and respondent's amendments, if any, are filed, appellant may file a **request for a hearing to review and correct the proposed settled statement**. (*Id.*, rules 8.137 (f) (1), (4); (g).) Therein, appellant should alternatively request the juvenile court to comply with the applicable rules, in a case in which a hearing is not ordered. (*Id.*, rule 8.137 (f) (3).)

If the parent's participation in any settlement hearing is necessary, and he or she is incarcerated, appellate counsel should request the juvenile court to order the jail or prison to transport the parent to the juvenile court.

Immediately upon the filing of the application for permission to prepare a settled statement in the juvenile court, appellate counsel should serve the Court of Appeal with a copy of the application and file a written request to vacate the existing date for filing the opening brief, and, set a new briefing date 30 days after the supplemental settled record of the dependency proceedings is filed in the Court of Appeal. (*Id.*, rule 8.150.)

### **Rule 8.346. Settled statement**

#### **(a) Application**

As soon as a party learns that any portion of the oral proceedings cannot be transcribed, the party may serve and file in superior court an application for permission to prepare a settled statement. The application must explain why the oral proceedings cannot be transcribed.

## **(b) Order and proposed statement**

The judge must rule on the application within five days after it is filed. If the judge grants the application, the parties must comply with the relevant provisions of Rule 8.137, but the applicant must deliver a proposed statement to the judge for settlement within 30 days after it is ordered, unless the reviewing court extends the time.

## **Rule 8.137. Settled statement**

### **(a) Description**

A settled statement is a summary of the superior court proceedings approved by the superior court.

### **(b) When a settled statement may be used**

...

(2) An appellant intending to proceed under this rule must serve and file in superior court.

(A) an application supported by a showing that:

...

(ii) The designated oral proceedings cannot be transcribed.

### **(c) Time to file proposed statement**

(1) Appellant must serve and file a proposed statement in superior court within 30 days after the superior court clerk sends, or a party serves, an order granting a motion under Rule 8.137 (b)(2).

### **(d) Contents of proposed statement**

The proposed statement must:

(1) Contain a statement of points the appellant is raising on appeal.

(2) Contain a condensed narrative of the necessary oral proceedings.

(3) Attach a copy of the judgment or order being appealed.

### **(e) Respondent's response to proposed statement**

Within 20 days after the appellant serves the proposed statement, the respondent may serve and file:

(1) Proposed amendments to the proposed statement.

**(f) Review of appellant's proposed statement and respondent's proposed amendments.**

(1) No later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, appellant or respondent may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is an actual dispute about a material aspect of the trial court proceedings.

...

(3) If no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments filed by the respondent and take one of the following actions:

(A) If the proposed statement does not contain material required under Rule 8.137 (d), the trial court judge may order the appellant to prepare a new proposed statement. The order must identify the additional material that must be included in the statement to comply with (d) and the date by which the new proposed statement must be served and filed. If the appellant does not serve and file a new proposed statement as directed, the appellant will be deemed to be in default.

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

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

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

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

(A) Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and the testimony of each witness relevant to the points that the appellant

states under (d)(1) are being raised on appeal;

or

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

**(g) Review of the corrected statement**

- (1) If the trial court judge makes any corrections or modifications to the proposed statement under (f), the clerk must serve copies of the corrected or modified statement on the parties. If under (f) the trial court judge orders the appellant to prepare a statement incorporating corrections and modifications, the appellant must serve and file the corrected or modified statement within the time ordered by the court. If the appellant does not serve and file a corrected or modified statement as directed, the appellant will be deemed to be in default and Rule 8.140 will apply.
- (2) Within 10 days after the corrected or modified statement is served on the parties, any party may serve and file proposed modifications or objections to the statement.
- (3) Within 10 days after the time for filing proposed modifications or objections under (2) has expired, the trial court judge must review the corrected or modified statement and any proposed modifications or objections to the statement filed by the parties. The procedures in (2) or in (f)(3) apply if the trial court judge determines that further corrections or modifications are necessary to ensure that the statement is an accurate summary of the evidence and the testimony of each witness relevant to the points that the appellant states under (d)(1) are being raised on appeal.

**(h) Certification of the statement on appeal**

- (1) If the trial court judge does not order any corrections or modifications to the proposed statement, the judge must promptly certify the statement.
- (2) The parties may serve and file a stipulation that the statement as originally served under (c) or as corrected or modified under (f)(3), (f)(4) or (g)(3) is correct. Such a stipulation is equivalent to the judge's certification of the statement.
- (3) Upon certification of the statement under (1) or receipt of the stipulation under (2), the certified statement must immediately be transmitted to the clerk for filing of the record under Rule 8.150.