

Invitation to Comment

<p>Title</p>	<p>Appellate Procedure: Certificates of Interested Entities and Persons (adopt new Cal. Rules of Court, rule 8.361; amend rules 8.208 and 8.490¹; and revise <i>Certificate of Interested Entities or Persons</i> (form APP-008))</p>
<p>Summary</p>	<p>This proposal would make various changes to the rules requiring parties in civil appeals and writ proceedings in the Court of Appeal to file a certificate identifying entities or persons who have a financial or other interest in a party or in the proceeding, and to the optional certificate form. These changes include: (1) modifying rule 8.208 and form APP-008 to clarify that only entities or individuals other than the parties themselves need to be identified; (2) requiring that a certificate be filed in criminal cases in which an entity is a defendant; (3) clarifying that an insurer of a party does not have a financial interest requiring disclosure based simply on its status as insurer for that party; and (4) allowing a party to request permission to file the certificate under seal if the identity of any person or entity subject to disclosure on the certificate has not been revealed in the proceeding.</p>
<p>Source</p>	<p>Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair</p>
<p>Staff</p>	<p>Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov</p>
<p>Discussion</p>	<p>Rule 8.208 of the California Rules of Court requires parties in civil appeals to file a certificate of interested entities or persons. This requirement was adopted effective January 1, 2006, to help justices of the Courts of Appeal determine whether to disqualify themselves from a proceeding by providing them with additional information about any financial or other relationships that may not be apparent on the face of the record. Rule 8.490, relating to writ proceedings, contains a similar requirement.</p> <p>Last year, the committee circulated for public comment, and the Judicial Council adopted, several proposed changes to the rules relating to certificates of interested entities or persons and a new, optional <i>Certificate of Interested Entities or Persons</i> form (form APP-008). The public comments received when that earlier proposal was circulated included several new suggestions for modifying or clarifying these provisions. In response to those new suggestions, this</p>

¹ Other proposed amendments to rule 8.490 are also being circulated for public comment at this time. Please see SPR08-2.

proposal would make several changes to these rules and the certificate form.

First, it would amend rule 8.208 and revise *Certificate of Interested Entities or Persons* (form APP-008) to clarify that a party need only identify interested entities and persons *other than the parties themselves*. The purpose of the certificate requirement is to help Court of Appeal justices identify entities or persons whose interests in the case are not clear from the documents filed in the case. The identity of the parties is clear from the face of these documents. No purpose is therefore served by identifying the parties on the certificate.

Second, this proposal would add new rule 8.361 to the rules relating to felony appeals and amend rule 8.490 relating to writ proceedings to provide that in criminal cases in which an entity is a defendant, that entity is required to file a certificate. This will provide Court of Appeal justices with helpful information about any hidden interests in these cases.

Third, this proposal would clarify that a party's insurer does not have a financial interest in the proceeding that must be disclosed in a certificate solely on the basis of its status as insurer for that party. Canon 3E(4)(d) of the Code of Judicial Ethics, which addresses disqualification of appellate justices, provides that a proprietary interest of a policyholder in a mutual insurance company or similar interest is not a financial interest within the meaning of this Canon unless the outcome of the proceeding could substantially affect the value of the interest. Insurers are required to maintain reserves sufficient to ensure that payment of the policy limits on any particular claim will not substantially affect the value of the insurance company. Thus, even if a justice had an ownership interest in a party's insurer, the justice would not have a financial interest in the case necessitating disqualification based solely on that insurer's provision of coverage to a party, since the outcome of the proceeding would not substantially affect the value of the justice's interest in the insurer.

Finally, this proposal would allow a party to request permission to file the certificate under seal if the identity of any person or entity subject to disclosure on the certificate has not been revealed in the proceeding. This would address concerns that serving and filing a certificate might result in disclosure of confidential information, including information that a party was not allowed to access through the discovery process.

Attachments

Cal. Rules of Court, rule 8.361 would be adopted, rules 8.208 and 8.490 would be amended, and *Certificate of Interested Entities or Persons* (form APP-008) would be revised, effective January 1, 2009, to read:

1 **Rule 8.208. Certificate of interested entities or persons**

2
3 (a)–(c) * * *

4
5 **(d) Serving and filing a certificate**

6
7 (1) Except as otherwise provided in this rule, if a party files a motion, an
8 application, or an opposition to such motion or application in the Court of
9 Appeal before filing its principal brief, the party must serve and file its
10 certificate at the time it files the first such motion, application, or opposition
11 and must include a copy of this certificate in the party’s principal brief. If no
12 motion, application, or opposition to such motion or application is filed before
13 the parties file their principal briefs, each party must include its certificate in its
14 principal brief. The certificate must appear after the cover and before the
15 tables.

16
17 (2) If the identity of any party or any entity or person subject to disclosure under
18 this rule has not been publicly disclosed in the proceedings, the party may
19 serve and file an application for permission to file its certificate under seal
20 separately from its principal brief, motion, application, or opposition. If the
21 application is granted, the party must file the certificate under seal and without
22 service within 10 days of the court’s order granting the application.

23
24 ~~(2)~~(3) * * *

25
26 ~~(3)~~(4) * * *

27
28 **(e) Contents of certificate**

29
30 (1) If an entity is a party, that party’s certificate must list any other entity or person
31 that the party knows has an ownership interest of 10 percent or more in the
32 party.

33
34 (2) If a party knows of any ~~other~~ person or entity, other than the parties
35 themselves, that has a financial or other interest in the outcome of the
36 proceeding that the party reasonably believes the justices should consider in
37 determining whether to disqualify themselves under canon 3E of the Code of
38 Judicial Ethics, the party’s certificate must list that entity or person and
39 identify the nature of the interest of the person or entity. For purposes of this
40 subdivision:

- 1
2 (A) A mutual or common investment fund’s ownership of securities or bonds
3 issued by an entity does not constitute a financial interest in that entity.
4
5 (B) An interest in the outcome of the proceeding does not arise solely because
6 the entity or person is in the same industry, field of business, or
7 regulatory category as a party and the case might establish a precedent
8 that would affect that industry, field of business, or regulatory category.
9
10 (C) A party’s insurer does not have a financial interest in a party solely on the
11 basis of its status as insurer for that party.
12

- 13 (3) If the party knows of no entity or person that must be listed under (1) or (2),
14 the party must so state in the certificate.
15

16 (f) * * *

17
18
19 **Rule 8.361. Certificate of Interested Entities and Persons**
20

21 In criminal cases in which an entity is a defendant, that defendant must comply with the
22 requirements of rule 8.208 concerning serving and filing a certificate of interested entities
23 or persons.
24

25 **Advisory Committee Comment**
26

27 Under rule 8.208(c), for purposes of certificates of interested entities or persons, an “entity” means a
28 corporation, a partnership, a firm, or any other association, but does not include a governmental entity or
29 its agencies or a natural person.
30

31
32 **Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition**
33

34 (a)–(h) * * *

35
36 (i) **Certificate of Interested Entities or Persons**
37

- 38 (1) This subdivision applies in writ proceedings in criminal cases in which an
39 entity is a defendant and in civil cases other than family, juvenile,
40 guardianship, and conservatorship cases.
41

1 (2) Each party in a civil case and any entity that is a defendant in a criminal case
2 must comply with the requirements of rule 8.208 concerning serving and filing
3 a certificate of interested entities or persons.
4

5 (3) * * *

6
7 (4) * * *

8
9 (5) * * *

10
11 **(j)–(n)** * * *

12
13 **Advisory Committee Comment**

14
15 * * *

16
17 **Subdivision (i).** Under rule 8.208(c), for purposes of certificates of interested entities or persons, an
18 “entity” means a corporation, a partnership, a firm, or any other association, but does not include a
19 governmental entity or its agencies or a natural person. The Judicial Council has adopted an optional
20 form, *Certificate of Interested Entities or Persons* (form APP-008), that can be used to file the certificate
21 required by this provision.
22

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): _____	Superior Court Case Number:
TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	<i>FOR COURT USE ONLY</i>
APPELLANT/PETITIONER:	
RESPONDENT/REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(<i>Check one</i>): <input type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.490(i) before completing this form. You may use this form for the initial certificate in a civil appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ in a civil case. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (*name*): _____

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (<i>Explain</i>):
--	--

(1)

(2)

(3)

(4)

(5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PARTY OR ATTORNEY)

Item SPR08-04 Response Form

Title: **Appellate Procedure: Certificate of Interested Entities and Persons** (adopt Cal. Rules of Court, rule 8.361; amend rules 8.208 and 8.490; revise form APP-008)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*