

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
Heather Anderson, Senior Attorney, 415-865-7691
heather.anderson@jud.ca.gov

DATE: August 9, 2006

SUBJECT: Appellate Procedure: Briefs and Petitions for Review (amend Cal.
Rules of Court, rules 8.204, 8.216, 8.360, 8.500, 8.504, and 8.520)
(Action Required)¹

Issue Statement

This proposal addresses several issues in the rules relating to briefs and petitions in the appellate courts.

Rule 8.216 requires that appellants confine their reply briefs to points raised in their own appeal. It is not clear how this requirement applies when a cross-appellant combines its reply brief with its opening brief or respondent's brief.

Rule 8.360, which addresses briefs in noncapital felony appeals, currently provides that the potential sanction when an appellant fails to timely file an appellant's opening brief is dismissal of the appeal. In practice, however, when the appellant is the defendant and defendant's appointed appellate counsel fails to timely file a brief, the court does not dismiss the appeal, but instead notifies the appellant that appointed counsel will be relieved and new counsel appointed if the brief is not filed within 30 days.

Rules 8.204, 8.504, and 8.520 allow limited items to be attached to briefs and petitions for review. Allowing parties to attach additional citable materials that otherwise would not be readily accessible to the courts could make the review of briefs and petitions easier

¹ At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, the appellate rules that were numbered 1 et seq. have been renumbered as rules 8.1 et seq., and new format conventions have been adopted. Hence, the rule amendments are shown throughout this proposal using the new rule numbers that will become effective January 1, 2007. The rules in this proposal were renumbered as follows: rule 8.204 is former rule 14; rule 8.216 is former rule 16; rule 8.360 is former rule 33; rule 8.500 is former rule 28; rule 8.504 is former rule 28.1; and rule 8.520 is former rule 29.1.

for the appellate courts. In addition, it is not clear whether a copy of an opinion required to be attached by rule 977(c)² is subject to the 10-page limit applicable to other attachments.

Finally, most of the rules that specify the length of particular documents in terms of a maximum number of words provide that this word count includes footnotes. Rules 8.504 and 8.520, however, do not currently specify whether the word count limits on the length of petitions and briefs include footnotes.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council effective January 1, 2007:

1. Amend rule 8.216 to clarify that when a cross-appellant files a combined brief, the reply portion of the combined brief, not the whole combined brief, must focus on the issues raised in the applicable appeal;
2. Amend rule 8.360 to provide that if defendant's appointed appellate counsel fails to timely file an appellant's opening brief, the court must notify the appellant that appointed counsel may be relieved and new counsel appointed if the brief is not filed within 30 days;
3. Amend rule 8.500 to delete the provision requiring that the proof of service name each party represented by each attorney served and to amend the Advisory Committee comment to include a cross-reference to rule 8.25 which addresses service requirements;
4. Amend rules 8.204, 8.504, and 8.520 to:
 - a. Permit parties to attach to their briefs and petitions for review copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible; and
 - b. Clarify that a copy of an opinion required to be attached by rule 8.1115(c) does not count toward the 10-page limit applicable to other attachments; and
5. Further amend rules 8.504 and 8.520 to clarify that the word count limits on the length of briefs include footnotes.

The text of the amended rules is attached at pages 7–11.

² Effective January 1, 2007, this rule will be renumbered 8.1115.

Rationale for Recommendation

Reply portion of combined briefs

Rule 8.216 provides that when there is a cross-appeal, a party that is both an appellant and a respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any. Rule 8.216 also provides, however, that a party must confine a reply brief to points raised in its own appeal. This proposal clarifies the relationship between these two requirements by explaining that the reply portion of the combined brief, not the whole combined brief, must focus on the issues raised in the applicable appeal.

Sanctions if appointed counsel fails to file opening brief

Rule 8.360 establishes the requirements for appellate briefs in felony cases. This rule currently provides that if an appellant's opening brief or respondent's brief is not timely filed, rule 8.220 applies, except that the period for filing the missing brief is 30, rather than 15, days. Rule 8.220, in turn, requires that if an appellant's opening brief is not timely filed, the reviewing court clerk must notify the party that the brief must be filed within the required period or the appeal will be dismissed.

Dismissal is not the typical sanction employed by the court when a defendant is the appellant and is represented by appointed counsel, however. Instead, because the court is ultimately responsible for providing indigent appellants with effective counsel, the court typically relieves the appointed counsel who has failed to timely file the brief and appoints new counsel to represent the defendant on appeal. This proposal recognizes this practice by specifically providing that the clerk must notify the appellant that appointed counsel will be replaced in such circumstances if the brief is not filed within 30 days of the clerk's notice.

In addition, to make rule 8.360 easier to understand, the amendments also replace the current cross-reference to rule 8.220 with the text from the relevant portion of rule 8.220 and makes other clarifying changes in the rule language. In particular, the proposed language provides that the clerk's notice when a brief is late must state that the failure to comply with the notice *may* result in the court imposing one of the sanctions listed in the rule. This is different from the current language in rule 8.220(a), which provides that the notice must state that failure to comply with the notice *will* result in the court imposing one of the listed sanctions. This change is intended to reflect the fact that the court has discretion to decide whether to impose the listed sanctions. The court's discretion in this regard is already reflected in the language of 8.220(c), which provides that if a party fails to comply with the clerk's notice, the court *may* impose the sanction specified in the notice.

Service of petitions for review

Rule 8.500 addresses service and filing of petitions for review, among other things. This proposal deletes from rule 8.500 the provision stating that the proof of service must name each party represented by each attorney because rule 8.25, which sets out service and

filing requirements applicable in all appellate proceedings, already establishes this requirement. It also amends the advisory committee comment to rule 8.500 to add a cross-reference to rule 8.25.

Attachments to briefs and petitions for review

Rule 8.204 specifies the form and content of briefs in the Court of Appeal. Subdivision (d) of this rule currently permits parties to attach to their briefs copies of exhibits or other materials in the appellate record. As the advisory committee comment to this rule indicates, this provision is intended to improve the appellate process by allowing the brief writer, in appropriate cases, to focus the reviewing court's attention on especially significant or explanatory exhibits or other documents, and by relieving the court of the burden of finding those items in a lengthy record.

Rule 8.504 specifies the form and content of petitions for review in the Supreme Court. Subdivision (e) of this rule also currently permits limited attachments to these petitions; parties may attach the opinion or order from which they are seeking relief and exhibits or orders of a trial court or Court of Appeal. Rule 8.520, which addresses briefs on the merits in the Supreme Court, however, does not specifically address attachments to briefs.

This proposal makes the requirements regarding attachments in these rules uniform and expands the items that can be attached both to appellate briefs and to petitions for review. Under this proposal, in addition to the attachments currently permitted, parties could attach copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible. Like the current provision in rule 8.204, this new provision is intended to improve the appellate process by allowing the brief writer to focus the court's attention on especially significant statutes, rules, or regulations, and by relieving the court of the burden of locating these items. This provision is similar to rule 28(f) of the Federal Rules of Appellate Procedure and rule 28-2.7 of the United States Court of Appeals for the Ninth Circuit, both of which permit parties to attach copies of relevant statutes, rules, and regulations to their briefs.

In addition, this proposal clarifies that the 10-page limit on attachments permitted under these rules does not apply to copies of opinions that must be attached under rule 977.³ Rule 977(c) requires that if a party cites an unpublished opinion or an opinion available only in computerized form in a brief or other paper filed with the court, the party must attach a copy of that opinion to the brief or paper. The advisory committee comment to rule 8.204 provides that if the brief writer attaches a copy of an opinion under rule 8.1115(c), that opinion does not count toward the 10-page limit on attachments. To prevent confusion, this proposal incorporates that provision from the comment into the rule text. This proposal also amends rule 8.504(e) to clarify that the permissible attachments to petitions for review include opinions required to be attached under rule

³ Effective January 1, 2007, this rule will be renumbered 8.1115

8.1115(c). Finally, the amendments to both rules 8.504 and 8.520 make clear that an opinion attached under rule 8.1115(c) does not count toward the 10-page limit on attachments.

Word count in petitions and briefs

Rule 8.204, which was formerly rule 14(c), sets the maximum length of a brief filed in a civil case in the Court of Appeal. Since 2002, this rule has provided that a brief produced on a computer must not exceed 14,000 words, including footnotes.⁴ Rule 8.504, relating to petitions for review, and rule 8.520, relating to briefs on the merits in the Supreme Court, similarly set the permissible length of these documents in terms of the number of words. Unlike rule 8.204, however, these rules do not specify whether the total permissible words include footnotes. The advisory committee comment to rule 8.520 states that the length limit in this rule “tracks an identical provision in revised rule 8.204(c).” Similarly, the Judicial Council report that recommended adoption of rule 8.504 stated that the length-limit provision in rule 8.504 “tracks an identical provision in rule 14(c),” as rule 8.204 was previously numbered. Thus the intent was that the length limits established in rules 8.504 and 8.520 be identical to that in rule 8.204(c). This proposal conforms rules 8.504 and 8.520 to this original intent by specifically providing that the maximum number of words permitted under these rules includes footnotes.

Alternative Actions Considered

The committee considered not addressing these suggestions at this time, and waiting to do so until the general rules reorganization and renumbering was completed. The committee concluded, however, that it would be preferable if these clarifying changes were incorporated into the newly reorganized rules when they take effect. The committee also considered proposing amendments to rules 8.100, 8.140, and 8.220 similar to those it is recommending to rule 8.360 regarding the notice that the clerk must send when a party fails to timely file a required document. Because amendments to these rules were not circulated for public comment, however, the committee concluded that it would not be appropriate to recommend amendments to these rules at this time. Instead, the committee will consider developing a proposal for circulation in the next rules cycle. Finally, as indicated below in the discussion of the public comments, the committee considered alternate language in rules 8.204, 8.504, 8.520 to clarify that the combined total of all the permissible attachments cannot exceed 10 pages.

Comments From Interested Parties

These proposed amendments were circulated for public comment as part of the spring 2006 comment cycle. Twelve individuals or organizations submitted comments on this proposal. Nine of these commentators agreed with the proposal and three agreed with the proposal only if modified. The committee incorporated most of the changes suggested by these latter three commentators, including proposing an amendment to rule

⁴ Rule 33 (new rule 8.360), relating to briefs in criminal cases in the Court of Appeal, and rule 36 (new rule 8.360), relating to briefs in capital cases in the Supreme Court, also contain similar provisions setting the length of briefs at a specified number of words, including footnotes.

8.520(c)(3) to clarify that attachments do not count toward the length limit for petitions on the merits in the Supreme Court, as suggested by Mr. Dennis Fischer. The committee also modified the proposed amendment to rule 8.360, as suggested by the California Appellate Court Clerks Association to list first the potential consequences when the People fail to timely file an appellant's opening brief. In addition, the committee agreed in concept with several of the comments from the Appellate Court Committee of the San Diego County Bar Association, including the suggestion to clarify the proposed language in rules 8.204, 8.504, and 8.520 indicating that the combined total of all the permissible attachments cannot exceed 10 pages. The committee, however, is proposing slightly different language to address these issues than was suggested by the San Diego committee.

The full text of the comments received and the committee's responses is attached on pages 12–18.

Implementation Requirements and Costs

Allowing parties to attach to their briefs and petitions citable materials that would not otherwise be readily available should reduce research time for the appellate courts. In addition, clarifying rules 8.216, 8.504, and 8.520 should eliminate uncertainty and thereby reduce costs.

Attachments

Rules 8.204, 8.216, 8.360, 8.500, 8.504, and 8.520 of the California Rules of Court are amended, effective January 1, 2007, to read:⁵

1 **Rule 8.204. Contents and form of briefs**

2

3 (a)–(c) ***

4

5 (d) **Attachments to briefs**

6

7 A party filing a brief may attach copies of exhibits or other materials in the
8 appellate record or copies of relevant local, state, or federal regulations or
9 rules, out-of-state statutes, or other similar citable materials that are not
10 readily accessible. ~~The~~ These attachments must not exceed a combined total
11 of 10 pages, but on application the presiding justice may permit ~~a longer~~
12 attachment additional pages of attachments for good cause. A copy of an
13 opinion required to be attached to the brief under rule 8.1115(c) does not
14 count toward this 10-page limit.

15

16 (e) ***

17

18

19 **Rule 8.216. Appeals in which a party is both appellant and respondent**

20

21 (a) ***

22

23 (b) **Contents of briefs**

24

25 (1) A party that is both an appellant and a respondent must combine its
26 respondent's brief with its appellant's opening brief or its reply brief, if
27 any, whichever is appropriate under the briefing sequence that the
28 reviewing court orders.

29

30 ~~(3)~~ (2) A combined brief must address each appeal separately.

31

32 ~~(2)~~ (3) A party must confine a reply brief, or the reply portion of a combined
33 brief, to points raised in its ~~own~~ appeal.

⁵ These recommended amendments have been made to the version of this rule adopted by the Judicial Council at its June 30, 2006, business meeting and reflect the text that will be in effect on January 1, 2007. Any amendments adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007.

1 **Rule 8.360. Briefs**

2
3 **(a)–(b) *****

4
5 **(c) Time to file**

6
7 (1)–(4) ***

8
9 (5) ~~Rule 8.220 applies~~ If a party fails to timely file an appellant’s opening
10 brief or a respondent’s brief, but the period specified in the notice
11 required by that rule must be 30 days. the reviewing court clerk must
12 promptly notify the party by mail that the brief must be filed within 30
13 days after the notice is mailed, and that failure to comply may result in
14 one of the following sanctions:

15
16 (A) If the brief is an appellant’s opening brief:

17
18 (i) If the appellant is the People, the court will dismiss the
19 appeal;

20
21 (ii) If the appellant is the defendant and is represented by
22 appointed counsel on appeal, the court will relieve that
23 appointed counsel and appoint new counsel;

24
25 (iii) If the appellant is the defendant and is not represented by
26 appointed counsel, the court will dismiss the appeal; or

27
28 (B) If the brief is a respondent’s brief, the court will decide the appeal
29 on the record, the opening brief, and any oral argument by the
30 appellant.

31
32 (6) If a party fails to comply with a notice under (5), the court may impose
33 the sanction specified in the notice.

34
35 **(d)–(f) *****

36
37
38 **Rule 8.500. Petition for review**

39
40 **(a)–(e) *****

41
42 **(f) Additional requirements**

- 1 (1) ~~The proof of service must name each party represented by each~~
2 ~~attorney served.~~
3
4 (2) The petition must also be served on the superior court clerk and the
5 Court of Appeal clerk.
6
7 (3) (2) A copy of each brief must be served on a public officer or agency
8 when required by statute or by rule 8.29.
9
10 (4) (3) The Supreme Court clerk must file the petition even if its proof of
11 service is defective, but if the petitioner fails to file a corrected proof of
12 service within 5 days after the clerk gives notice of the defect the court
13 may strike the petition or impose a lesser sanction.

14
15 (g) ***

16
17 **Advisory Committee Comment**

18
19 **Subdivision (f).** The general requirements relating to service of documents in the appellate courts
20 are established by rule 8.25. Subdivision (f)(2)(1) requires that the petition (but not an answer or
21 reply) be served on the Court of Appeal clerk. To assist litigants, (f)(2)(1) also states explicitly
22 what is impliedly required by rule 8.212(c), i.e., that the petition must also be served on the
23 superior court clerk (for delivery to the trial judge).
24
25

26 **Rule 8.504. Form and contents of petition, answer, and reply**

27
28 (a)–(c) ***

29
30 (d) **Length**

- 31
32 (1) If produced on a computer, a petition or answer must not exceed 8,400
33 words, including footnotes, and a reply must not exceed 4,200 words,
34 including footnotes. ~~Such a~~ Each petition, answer, or reply must
35 include a certificate by appellate counsel or an unrepresented party
36 stating the number of words in the document. The person certifying
37 may rely on the word count of the computer program used to prepare
38 the document.
39
40 (2) ***
41
42 (3) The tables, the Court of Appeal opinion, a certificate under (1), and any
43 attachment under (f)(e)(1) are excluded from the limits stated in (1) and
44 (2).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(4) ***

(e) Attachments and incorporation by reference

(1) No attachments are permitted except:

(A) An opinion or order from which the party seeks relief and;

(B) Exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant and;

(C) Copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible; and

(D) An opinion required to be attached under rule 8.1115(c).

(2) The attachments under (1)(A)–(C) do not must not exceed a combined total of 10 pages.

~~(2)~~ (3) No incorporation by reference is permitted except a reference to a petition, an answer, or a reply filed by another party in the same case or filed in a case that raises the same or similar issues and in which a petition for review is pending or has been granted.

Rule 8.520. Briefs by parties and amici curiae; judicial notice

(a)–(b) ***

(c) Length

(1) If produced on a computer, a brief on the merits must not exceed 14,000 words, including footnotes, and a reply brief on the merits must not exceed 4,200 words, including footnotes. ~~Such a~~ Each brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) ***

1 (3) The tables, a certificate under (1), any attachment under (h), and any
2 quotation of issues required by (b)(2) are excluded from the limits
3 stated in (1) and (2).
4

5 (4) ***
6

7 **(d) Supplemental briefs**
8

9 (1) ***
10

11 (2) A supplemental brief must not exceed 2,800 words, including
12 footnotes, if produced on a computer or 10 pages if typewritten, and
13 must be served and filed no later than 10 days before oral argument.
14

15 **(e)–(g) *****
16

17 **(h) Attachments**
18

19 A party filing a brief may attach copies of relevant local, state, or federal
20 regulations or rules, out-of-state statutes, or other similar citable materials
21 that are not readily accessible. These attachments must not exceed a
22 combined total of 10 pages. A copy of an opinion required to be attached to
23 the brief under rule 8.1115(c) does not count toward this 10-page limit.

SPR06-03**Appellate Procedure: Briefs and Petitions for Review**

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Saul Bercovitch State Bar of California Committee on Appellate Courts 180 Howard Street San Francisco, CA 94105-1639	A	Y	Permitting the parties to attach pertinent statutes and regulations can only help the reviewing court, and would bring the state appellate courts into line with the federal Courts of Appeals. See Fed. R. App. P. 28(f); Ninth Cir. Rule 28-2.7. The clarifying amendments regarding word count and consolidated respondent/reply briefs simply make express the implicit intent in drafting the rules, and the proposed amendments to rule 8.500 (formerly rule 28) would serve to strike surplus language. The proposed amendments to rule 8.360 (formerly rule 33), which would recognize the courts' existing practice of appointing new counsel when appointed counsel for a criminal defendant fails to file an opening brief, seem wholly appropriate. Indeed, the potential sanction imposed under the plain text of the existing rule—outright dismissal of the appeal—seems rather draconian.	No response needed.
2.	Justice Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District 300 South Spring Street Los Angeles, CA 90013	A	N	No specific comment.	No response needed.

SPR06-03

Appellate Procedure: Briefs and Petitions for Review

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
3.	Ms. Deena Fawcett President California Appellate Court Clerks Association Court of Appeal, Third Appellate Dist. 900 N Street, Room 400 Sacramento, CA 95814-4869	AM	Y	As a matter of consistency, we suggest that the language in rule 8.416(g)(3) (formerly rule 37.4) (Item SPRO06-33 , page 9) be added to this rule as 8.360(c)(7) (formerly rule 33). This same practice is followed in the criminal cases.	The same language regarding the clerk’s notice when a party fails to file a brief is incorporated into the committee’s proposed amendments to rule 8.360(c)(5) (formerly rule 33). However, potential sanctions if the appellant is the People are listed third, rather than first, as in proposed rule 8.416(g)(3) (formerly rule 37.4). In order to make these amendments consistent, the committee has moved this provision so that it is now listed first.
4.	Mr. Dennis A. Fischer Certified Appellate Specialist 1448 15 th Street, #206 Santa Monica, CA 90404	AM	N	On page 8 of Invitation To Comment, Rule 8.520(c) (formerly rule 29) omits subparagraphs (2)–(4) of present provision. I’d recommend in 8.520(c)(3) (formerly rule 29) use of language parallel to amended rule 8.504(d)(3) (formerly rule 28.1) referencing 8.520(e)(3) (formerly rule 29) attachments. I question only one change: 8.360(c)(5)(ii) (formerly rule 33). The Court of Appeal does not notify civil case parties who are represented by counsel privately when rule 17 (new rule 8.220) notice is given. Why should criminal appeals with retained appellate counsel be any	Agree. The omission of sections (c)(2)-(4) was an inadvertent error in the invitation to comment. Clarifying that attachments under proposed new subdivision (h) do not count toward the total page limits under 8.520 (formerly rule 29.1) would be helpful. The committee has eliminated this notice provision from its proposal.

SPR06-03**Appellate Procedure: Briefs and Petitions for Review**

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				different? Must I tell the Court of Appeal the client's address?	
5.	Ms. Janet Garcia Manager, Planning & Research Unit Los Angeles County Superior Court 111 North Hill Street Los Angeles, CA 90012	A	Y	No specific comment.	No response needed.
6.	Mr. Peter O. Glaessner, President Association of Defense Council of Northern California and Nevada 2520 Venture Oaks Way Suite 150 Sacramento, CA 95833	A	Y	No specific comment.	No response needed.
7.	Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defender's Office Stockton	A	N	No specific comment.	No response needed.
8.	Mr. Wayne Maire, President California Defense Counsel 925 L Street, Suite 1250 Sacramento, CA 95814	A	Y	No specific comment.	No response needed.
9.	Ms. Julie M. McCoy President, Orange County Bar	A	Y	No specific comment.	No response needed.

SPR06-03

Appellate Procedure: Briefs and Petitions for Review

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Association P.O. Box 17777 Irvine, CA 92623-7777				
10.	Ms. Pam Moraida Civil/Small Claims Program Manager Solano County Superior Court 600 Union Avenue Fairfield, CA 94533-5000	A	N	No specific comment.	No response needed.
11.	Mr. Mike Roddy Executive Officer San Diego County Superior Court 220 West Broadway San Diego, CA 92101	A	Y	No specific comment.	No response needed.
12.	Ms. Carmela F. Simoncini Chair, Appellate Court Committee of the San Diego County Bar Association Appellate Defenders, Inc. 555 West Beech Street, Suite 300 San Diego, CA 92101	AM	Y	ATTACHMENTS As a general matter, this committee supports the proposed revisions regarding attachments to briefs and petitions for review. However, we suggest a slight modification of the proposed language to clarify that the total number of pages for attachments to briefs and petitions to review may not exceed 10 pages. We suggest using the phrase, “in the aggregate” in place of collectively” in rules 8.204(d) (formerly rule 14), 8.504(e)(2) (formerly rule 28.1), and 8.552(h) (formerly rule 29.1).	The committee agrees in concept that the term “collectively” may not be sufficiently clear. Rather than replacing this term with “in the aggregate,” however, the committee is proposing that the rule provide that the attachments cannot exceed a “combined total of” 10 pages. The committee does not agree that attachments under subdivision (A)—a copy of the opinion or order

SPR06-03

Appellate Procedure: Briefs and Petitions for Review

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>(2) The attachments under (1)(A)(C)(B)& (C) collectively <u>in the aggregate</u>, must not exceed 10 pages.</p> <p>WORD COUNT CLARIFICATION. This committee agrees with the proposed revisions to rules 8.504(d) and 8.520(c) (formerly rules 28.1 and 29.1, respectively) to clarify that footnotes must be included in the certificate of word count for petitions and briefs in the Supreme Court as they are in briefs filed in the lower courts.</p> <p>REPLY PORTION OF COMBINED BRIEFS We generally agree with the proposal to clarify that the reply portion of a combined brief, as opposed to the whole brief, must focus on the issues raised in the applicable appeal. However, the proposed language appears inconsistent with rule 8.216(b)(1) (formerly rule 16), which requires a party that is both an appellant and a respondent to submit a combined brief, as appropriate under the briefing sequence. The proposed revision to rule 8.216(b)(3) (formerly rule 16) suggests that a reply brief may be filed separately. To avoid any confusion and to</p>	<p>from which the party seeks relief—should be excluded from the 10 page limit, as these attachments are currently encompassed within that 10-page limit.</p> <p>No response needed.</p> <p>Agree; the suggested change has been incorporated into the proposal.</p>

SPR06-03

Appellate Procedure: Briefs and Petitions for Review

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>achieve the same intended purpose, we suggest the following revision to rule 8.216(b)(3) (formerly rule 16):</p> <p>(3) A party must confine a reply brief, <u>or the reply portion of a combined brief</u>, to points raised in its appeal.</p> <p>SERVICE OF PETITIONS FOR REVIEW. We agree with expressed purpose of the proposed amendment to rule 8.500 (formerly rule 28), addressing filing and service requirements for petitions and briefs filed in the Supreme Court, to avoid duplicating the provisions of rule 8.25 (formerly rule 40.1). However, we believe it would be helpful to direct the reader to the applicable service rule. Therefore, rather than deleting subdivision (f)(1), we suggest the following modification:</p> <p>(f) The proof of service <u>must comply with rule 8.25 (formerly rule 40.1)</u>.</p> <p>SANCTIONS IF APPOINTED COUNSEL FAILS TO FILE OPENING BRIEF. We support the proposed revision to rule 8.360 (formerly rule 33).</p>	<p>The committee is not recommending making this suggested change. Rule 8.25 (formerly rule 40.1) is part of a section of the rules that apply to all proceedings. Including the suggested provision in this rule would create the implication in other rules that 8.25 (formerly rule 40.1) does not apply absent such a cross-reference. Instead, the committee is recommending that a cross-reference to rule 8.25 (formerly rule 40.1) be included in the advisory committee comment.</p> <p>No response needed.</p>

SPR06-03

Appellate Procedure: Briefs and Petitions for Review

(amend Cal. Rules of Court, rules 8.204 [formerly rule 14], 8.216 [formerly rule 16], 8.500 [formerly rule 28], 8.504 [formerly rule 28.1], 8.520 [formerly rule 29.1], and 8.360 [formerly rule 33])