JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
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DATE: September 3, 2008

SUBJECT: Appellate Procedure: Briefs (amend Cal. Rules of Court, rules 8.200, 8.216, 8.520, 8.882, and 8.884[1]) (Action Required)

Issue Statement

This proposal addresses several issues relating to briefs in the Supreme Court, Courts of Appeal, and superior court appellate division.

Applications to File Amicus Briefs
Rules 8.200(c), 8.520(f), and 8.882(c) address amicus briefs in the Court of Appeal, Supreme Court, and superior court appellate division, respectively. Currently, all of these rules require that an application to file an amicus brief must state the applicant's interest. These rules do not, however, require potential amicus to inform the court if the proposed amicus brief was actually authored by a party or if someone other than the amicus actually funded the preparation of the brief.

Combined Briefs Where There Is a Cross-Appeal
Rules 8.216 and 8.884 address briefing in cases in which a cross-appeal has been filed. Subdivision (b) in each of these rules requires a party that is both an appellant and a respondent to combine its respondent's brief with its appellant's opening brief or its reply brief, depending on the briefing sequence the court has ordered. These provisions also require that a combined brief address each appeal—the first appeal and the cross-appeal—separately. Under the current rule language, it is not clear whether a party filing such a combined brief must prepare a separate statement of facts for each appeal or only needs to separately address the points raised in each appeal. When a cross-appeal

[1] Rules 8.882 and 8.884 concerning briefs in appeals in misdemeanor and limited civil cases were adopted by the Judicial Council on February 22, 2008, and will take effect on January 1, 2009. A copy of these rules can be accessed at *www.courtinfo.ca.gov/rules/amendments/jan2009.pdf*.

concerns many of the same points as the appeal, separate statements of fact may be unnecessarily duplicative.

Stipulated Extensions of Briefing Time
Rule 8.200, which addresses briefs in unlimited civil cases, provides that parties can stipulate to extend the time for filing briefs by up to 60 days. The rules regarding appeals in limited civil cases do not currently authorize parties to stipulate to such extensions.

Recommendation
The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Amend 8.200(c), 8.520(f), and 8.882(c) to require that a person or entity, other than the California Attorney General, seeking to file an amicus brief must indicate whether the brief was authored in whole or in part by a party or counsel for a party and must identify any party or other person or entity, other than the amicus, who made a monetary contribution intended to fund the preparation or submission of the brief;

2. Amend rules 8.216 and 8.884 to clarify that in a case in which a cross-appeal has been filed, a combined brief from a party that is both an appellant and a respondent must address the points in each appeal separately but may include a single statement of facts; and

3. Amend rule 8.882 to add a provision to allow parties in appeals in limited civil cases to stipulate to extensions of briefing time of up to 30 days.

The text of the proposed amendments to the rules is attached at pages 7–12.

Rationale for Recommendation

Applications to File Amicus Briefs
Like rules 8.200(c), 8.520(f), and 8.882(c) of the California Rules of Court, rule 37 of the rules for the United States Supreme Court provides for amicus briefs. To help that court ensure that the amicus process is not being used to circumvent limits on briefing by the parties and also to help the court better identify the source of amicus briefs, United States Supreme Court Rules, rule 37.6[2] provides that:

[2] This rule applies only to amicus briefs in the United States Supreme Court. However, a proposal to amend the Federal Rules of Appellate Procedure to incorporate a similar requirement for appeals in the Circuit Courts of Appeal is currently being circulated for public comment.

> Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4,[3] a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such a monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

Amending rules 8.200, 8.520, and 8.882 to require that applications to file an amicus brief in a California appellate court to provide this same information will similarly ensure that amicus process in the California courts is not being used to circumvent limits on briefing by the parties and will help the courts better identify the source of amicus briefs. This proposal incorporates a provision similar to rule 37.6 into the amicus rules applicable in all three levels of California appellate courts—the Supreme Court, Courts of Appeal, and superior court appellate division. To aid in the interpretation of this provision, the language in the proposal closely mirrors the language in rule 37.6. However, rather than requiring that the disclosure be put in a footnote in the amicus brief, as in rule 37.6, the proposal would require the disclosure to be included in the application to file the amicus brief. In addition, the proposal would broaden the language of rule 37.6 somewhat by requiring the amicus to identify not just any counsel for a party who authored the brief, but also any party who did so, and not just any person who made a monetary contribution intended to fund preparation of the amicus brief, but also any entity that did so.

Combined Briefs Where There Is a Cross-Appeal

Amending rules 8.216 and 8.884 to clarify that a combined brief need only separately address the points raised in each appeal but may include a combined statement of facts will eliminate confusion about how combined briefs should be structured and streamline such briefs by eliminating duplicative statements of fact.

Stipulated Extensions of Briefing Time

Amending rule 8.882 to allow parties in limited civil cases to stipulate to extend the time for filing briefs will reduce the need for parties in these civil cases to seek, and the courts to consider, applications to extend briefing time. It will also make the rules in the appellate division more consistent with the Court of Appeal rules, making it easier for parties or attorneys who must practice in both courts. In recognition of the interest in expediting resolution in limited civil matters, however, the committee recommends that stipulated extensions in these matters be limited to 30 days, rather than the 60 days permitted in the Court of Appeal.

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[3] Rule 37.4 addresses amicus briefs from the Solicitor General and certain other government entities: "No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer."

Alternative Actions Considered

The committee considered recommending that parties in limited civil cases be permitted to stipulate to extensions of briefing time of up to 60 days, as is permitted in unlimited civil cases. Ultimately, however, the committee decided that the interest in expediting resolution of these limited civil cases outweighed the interest in making the appellate division rules consistent with the Court of Appeal rules.

The committee also considered and circulated for public comment a proposal to revise *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) to add spaces where a party can indicate whether the appeal is from an interlocutory order and whether the trial court proceedings have been stayed pending the appeal. Because of concerns raised about whether self-represented litigants would understand how to complete this provision and the administrative issues that might be caused by mistakes in completing this provision, the committee decided to reconsider this proposal.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2008 comment cycle. Twelve individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal, seven agreed with the proposal if modified, and one did not agree with the proposal. The major substantive comments are discussed below. The full text of all the comments received and the committee's responses is attached pages 13-18.

Applications to File Amicus Briefs

Several of the commentators who indicated that they agreed with the proposal if modified and the commentator who disagreed with the proposal were focused on the new requirements relating to applications to file amicus briefs.

The commentator who disagreed with the proposal expressed the view that the new disclosure requirement would simply encumber the right to file amicus briefs and suggested that the focus should be on the content of the brief, not who paid for it. The committee's view is that the proposed disclosures will encourage the appropriate use of amicus briefs and assist the reviewing courts in exercising their existing authority to determine whether to grant an application to file an amicus brief. Amicus, or friend of the court, briefs are authorized for the purpose of assisting the reviewing court by supplementing the parties' views with the views of other individuals or entities whose interests might be affected by the court's decision. Amicus briefs are not intended to be a means by which parties give themselves an additional opportunity to further express their own views. This new disclosure requirement will discourage any such misuse of amicus briefs and provide the court with helpful information about the true source of proposed amicus briefs.

Two of the commentators who agreed with the proposal if modified expressed concern about the provision requiring disclosure if a party or party's counsel authored the amicus

brief “in part.” These commentators suggested that this term is ambiguous. They noted that potential amici often coordinate with each other, including sharing and reviewing draft briefs, and asked that the committee provide additional guidance about the meaning of authoring a brief “in part.” One of these commentators specifically suggested that the committee amend the proposal to provide that disclosure must be made only if the brief was authored in “substantial” part by a party or a party’s attorney.

The committee discussed the concerns raised by these commentators at some length but ultimately decided not to recommend the suggested modification of the rule. Both the United States Supreme Court rule and the proposed rule in the Federal Rules of Appellate Procedure use the language recommended by the committee. The committee believes that it will be helpful in interpreting this provision if it tracks the language of these other rules. In addition, the term “substantial” is itself fairly ambiguous. The committee does not believe that adding this term to the rule is likely to appreciably decrease the situations in which counsel will need to examine and discuss the individual facts of the case to determine whether to make disclosures under the rule.

The committee considered revising its proposal to include an advisory committee comment clarifying that mere coordination between an amicus and a party, such sharing drafts of briefs, need not be disclosed under this rule. Ultimately, however, the committee decided not to add this comment. Members believed that any language limiting the required disclosures should be included in the rule itself, not in an advisory committee comment. However, adding such limiting language to the rule would make it different than the United States Supreme Court rule and the proposed rule in the Federal Rules of Appellate Procedure. For the reasons discussed above, the committee believed it was preferable to keep the language of the rules consistent.

One of these same commentators also noted that the proposal, as circulated for public comment, used inconsistent language concerning disclosures about funding for preparing an amicus brief: one provision required disclosure if a party “made a monetary contribution *intended to fund* the preparation” of the brief while the other required disclosure if any person or entity “made a monetary contribution to the preparation” of the brief. To make these provisions consistent, the committee has revised its proposal so that both provisions require disclosure in the monetary contribution was “intended to fund” preparation of the brief.

Combined Briefs Where There Is a Cross-Appeal

Two commentators who agreed with the proposal if modified suggested that the phrase “the points raised” in the proposed rules concerning combined briefs should be changed to either “the legal issues raised” or “the arguments raised.” The committee considered but ultimately decided not to pursue this suggestion. The term “points” is used both in other parts of rules 8.216 and 8.884 and throughout the rules in title 8 to refer to issues that a party has or plans to raise in an appellate proceeding (see, for example, 8.216(b)(3), rule 8.130(a)(2) [reporter’s transcript], 8.134(a)(1) [agreed statement], and 8.137(b)(2) [settled statement]). The committee believes that it is important to use consistent

language for the same concept throughout the rules.

Stipulated Extensions of Briefing Time
One commentator expressed concern that allowing counsel to continue briefing dates will have negative impact on caseflow management. The committee believes that this proposal provides a balance between the court's authority to manage its cases and civil litigants' interest in managing their schedules. The proposed amendment gives counsel in limited civil cases authority, similar to that already provided to counsel in unlimited civil cases, to stipulate to a limited extension of briefing time. Under the proposed rules, the court will receive notice of any stipulated extension, and any extensions beyond this limited stipulated period would have to be sought and approved by the appellate division.

Implementation Requirements and Costs
The committee does not believe that there will be appreciable costs to the courts associated with implementing these amendments. The proposal to permit parties in limited civil cases to stipulate to extensions of briefing time should reduce burdens on both parties and the courts associated with preparing and considering applications to extend briefing time. The proposal to clarify the rules concerning combined briefs should make it easier for parties to prepare such briefs. The proposal to require additional disclosures in amicus applications will create some new obligations on potential amici and parties seeking extension. The committee believes, however, that these new obligations are relatively minor.

Attachments

Rules 8.200, 8.216, 8.520, 8.882, and 8.884 of California Rules of Court are amended, effective January 1, 2009, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 2. Briefs in the Court of Appeal

Rule 8.200. Briefs by parties and amici curiae

(a)–(b) * * *

(c) Amicus curiae briefs

(1) Within 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief. For good cause, the presiding justice may allow later filing.

(2) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(3) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

~~(3)~~(4) The proposed brief must be served and must accompany the application, and may be combined with it.

~~(4)~~(5) The covers of the application and proposed brief must identify the party the applicant supports, if any.

~~(5)~~(6) If the court grants the application, any party may file an answer within the time the court specifies. The answer must be served on all parties and the amicus curiae.

~~(6)~~(7) The Attorney General may file an amicus curiae brief without the presiding justice's permission, unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, and must provide the information required by (2) and comply with ~~(4)~~(5). Any party may serve and file an answer within 14 days after the brief is filed.

Advisory Committee Comment

Subdivision (b). * * *

Subdivision (c)(1). The time within which a reply brief "could have been filed under rule 8.212" includes any authorized extension of the deadline specified in rule 8.212.

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

(a) * * *

(b) Contents of briefs

(1) 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, whichever is appropriate under the briefing sequence that the reviewing court orders.

(2) A combined brief must address the points raised in each appeal separately but may include a single summary of the significant facts.

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

Chapter 8. Proceedings in the Supreme Court

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

(a)–(e) * * *

(f) Amicus curiae briefs

(1) After the court orders review, any person or entity may serve and file an application for permission of the Chief Justice to file an amicus curiae brief.

(2) The application must be filed no later than 30 days after all briefs that the parties may file under this rule—other than supplemental briefs—have been filed or were required to be filed. For good cause, the Chief Justice may allow later filing.

(3) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(4) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

~~(4)~~(5) The proposed brief must be served. It must accompany the application and may be combined with it.

~~(5)~~(6) The covers of the application and proposed brief must identify the party the applicant supports, if any.

~~(6)~~(7) If the court grants the application, any party may file an answer within 20 days after the amicus curiae brief is filed. It must be served on all parties and the amicus curiae.

~~(7)~~(8) The Attorney General may file an amicus curiae brief without the Chief Justice's permission unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within the time specified in (2) and must provide the information required by (3) and comply with ~~(5)~~(6). Any answer must comply with ~~(6)~~(7).

(g)–(h) * * *

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

Rule 8.882. Briefs by parties and amici curiae

(a) Briefs by parties

(1) The appellant must serve and file an appellant's opening brief within 30 days after the record is filed in the appellate division.

(2) Any respondent's brief must be served and filed within 30 days after the appellant files its opening brief.

(3) Any appellant's reply brief must be served and filed within 20 days after the respondent files its brief.

(4) No other brief may be filed except with the permission of the presiding judge.

(5) Instead of filing a brief, or as part of its brief, a party may join in a brief or adopt by reference all or part of a brief in the same or a related appeal.

(b) Extensions of time

(1) In a civil case, the parties may extend each period under (a) by up to 30 days by filing one or more stipulations in the appellate division before the brief is due. Stipulations must be signed by and served on all parties. The original signature of at least one party must appear on the stipulation filed in the appellate division; the signatures of the other parties may be in the form of fax copies of the signed signature page of the stipulation.

(2) A stipulation under (1) is effective on filing. The appellate division may not shorten such a stipulated extension.

~~(b)~~(c) *** * ***

~~(c)~~(d) Amicus curiae briefs

(1) Within 14 days after the appellant's reply brief is filed or was required to be filed, whichever is earlier, any person or entity may serve and file an application for permission of the presiding judge to file an amicus curiae brief. For good cause, the presiding judge may allow later filing.

(2) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(3) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

~~(3)~~(4) The proposed brief must be served and must accompany the application and may be combined with it.

~~(4)~~(5) The Attorney General may file an amicus curiae brief without the presiding judge's permission, unless the brief is submitted on behalf of another state officer or agency; but the presiding judge may prescribe reasonable conditions for filing and answering the brief.

~~(d)~~(e) *** * ***

Rule 8.884. Appeals in which a party is both appellant and respondent

(a) *** * ***

(b) Contents of briefs

(1) 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, whichever is appropriate under the briefing sequence that the appellate division orders under (a).

(2) A party must confine a reply brief to points raised in its own appeal.

(3) A combined brief must address the points raised in each appeal separately but may include a single summary of the significant facts.

SPR08-05

Appellate Procedure: Briefs (amend Cal. Rules of Court, rules 8.200, 8.216, 8.520, 8.882 and 8.884; revise form APP-006)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District, Division Two Katherine Lynn Managing Attorney	AM	**Rules 8.216 and 8.884 (Briefs in cross-appeals)** These rules, for cross-appeals in which a party is both appellant and respondent, will be modified by adding "the points raised in," as follows: A combined brief must address the points raised in each appeal separately. The purpose is to clarify that a party filing a combined brief need not prepare a separate statement of facts for each appeal. It is recommended that in place of the word "points," the words "legal issues" be substituted, and the rule reworded, so that the rule will read: A combined brief must separately address the legal issues raised in each appeal ~~separately~~.	The committee considered but ultimately decided not to pursue this suggestion. The term "points" is used both in other parts of rules 8.216 and 8.884 and throughout the rules in title 8 to refer to issues that a party has or plans to raise in an appellate proceeding (see, for example, 8.216(b)(3); rule 8.130(a)(2) [reporter's transcript]; 8.134(a)(1) [agreed statement]; and 8.137(b)(2) [settled statement]). The committee believes that it is important to use consistent language for the same concept throughout the rules.
2.	First District Appellate Project Matthew Zwerling Executive Director San Francisco	AM	Proposed Rules 8.200(c)(3) and 8.520(f)(4) provide: The application must also identify: (A) Any party or any counsel for a party in the pending appeal who authored the proposed amicus brief in whole or in part; The discussion introducing these proposals explains that they are intended to track the language of United States Supreme Court rule 37.6. The analysis of rule 37.6 in Gressman, et al., Supreme Court Practice, 9th Edition, BNA Books, p. 739, notes the ambiguity inherent in the phrase "in part." Frequent interaction between party counsel and amicus counsel regarding specific	The committee considered but ultimately decided not to adopt this suggestion. The committee believes that it will be helpful in interpreting this provision if it tracks the language of the United States Supreme Court rule. In addition, the term "substantial" is itself fairly ambiguous. The committee does not believe that adding this term is likely to appreciably decrease the situations in which counsel will need to examine and discuss the individual facts of the case to determine whether to make disclosures under the rule.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commentator	Position	Comment	Committee Response
			language in the amicus brief is commonplace and salutary. The authors conclude that "such a review [of the amicus brief] may result in advice by party counsel that the amicus counsel rewrite, delete, or add certain matter would not appear to constitute authoring the amicus brief 'in whole or in part.' Rule 37.6 certainly requires that disclosure must be made whenever party counsel actually writes or rewrites all or a substantial portion of the amicus brief. Although the rule does not define 'in part' authoring, the phrase would seem to include any instance in which party counsel takes an active role in writing or rewriting a substantial or important 'part' of the amicus brief, with the word 'part' interpreted to mean something more substantial than editing a few sentences. Just how much more constitutes 'in part' authoring must depend on the individual situation as well as the common sense and good faith of counsel, with borderline situations being referred to the Clerk's Office for advice." (Ibid.) To avoid the confusion inherent in "in part," and the lengthy discussions that inevitably will ensue from that confusion, we urge the Committee to remedy the problem at the outset by incorporating the apparent meaning and intent of the rule directly into its language by revising "in part" to read "in substantial part": (A) Any party or any counsel for a party in the pending appeal who authored the proposed amicus brief in whole or in substantial part;	

	Commentator	Position	Comment	Committee Response
			While that clarification will not entirely eliminate the problem of when identification is required, it will at least eliminate some of the ambiguity.	
3.	Dennis A. Fischer Law Offices of Dennis A. Fischer Santa Monica	A		No response required.
4.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County	AM	I agree with the proposed change but would ask that an additional form be provided similar to APP-006, which would be beneficial to pro pers in limited civil actions. Or, as an alternative to creating yet another form, combining both limited and unlimited options on the one form could be considered.	The committee appreciates this suggestion and will consider development of such a form during the next committee year.
5.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal Fourth District, Division One	A		No response required.
6.	Orange County Bar Association Cathrine Castaldi, President Newport Beach	AM	1. The proposed rule should provide guidance concerning what is meant by the phrase "authored in part," in proposed subdivision (c)(3)(A). Does it include reviewing, revising, and commenting on a draft brief written by someone other than a party or counsel for a party? Does it include providing guidance as to the issues the party hopes will be included in an amicus brief? Would every person working on an amicus brief who is a party or counsel for a party need to be individually identified (e.g., an associate whose work is	The committee considered revising its proposal to include an advisory committee comment clarifying that mere coordination between an amicus and a party, such sharing drafts of briefs, need not be disclosed under this rule. Ultimately, however, the committee decided not to add this comment. Members believed that any language limiting the required disclosures should be included in the rule itself, not in an advisory committee comment. However, adding such limiting language to the rule would make it

	Commentator	Position	Comment	Committee Response
			substantially rewritten by a partner, or would it be sufficient to state the law firm(s) representing the party authored or authored in part [once that term is defined] the amicus brief?) While transparency is a laudable goal, there should be sufficient specificity in defining terms so that parties and their counsel can clearly understand when this rule imposes an obligation to disclose, and the circumstances under which the obligation arises should not be unduly burdensome.	different than the United States Supreme Court rule and the proposed rule in the Federal Rules of Appellate Procedure. The committee believes that it will be helpful in interpreting this provision if it tracks the language of these other rules.
			2. Is there a difference in meaning in proposed subdivision (c)(3)(B) ('"who made a monetary contribution *intended to fund* the preparation or submission of the brief" and (c)(3)(C) ("who made a monetary contribution to the preparation or submission of the brief"—"intended to fund" omitted)? Further, since "any party or counsel for a party" (subd. (c)(3)(B)) necessarily comes within the meaning of("[e]very person or entity") (subd. (c)(3)(C)), couldn't those two subdivisions be combined into one as follows: "Every person or entity, including any party or counsel for a party in the pending appeal, who made a monetary contribution. . . ."	The committee agrees that both provisions should use consistent language concerning monetary contributions. However, rather than combining these two provisions, the committee has revised its proposal to add the phrase *intended to fund* to the second provision. The committee has also combined what were subdivisions (c)(3)(A) and (c)(3)(B) in the proposal that was circulated for public comment to increase the consistency between this provision and rule 37.6 of the United States Supreme Court Rules.
7.	Leonard Sacks Attorney Granada Hills	N	Proposed rules regarding AC briefs just encumber the right to file. The issue is the content of the brief, not who paid for it. I have no comment on the other proposed changes.	The committee believes that these new provisions will help the courts ensure that the amicus process is not being used to circumvent limits on briefing by the parties and also to help the court better identify the source of amicus briefs. This requirement will not create any appreciable burden on a potential amicus whose

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	Commentator	Position	Comment	Committee Response
				briefs were not authored by a party or funded by any person or entity other than the amicus.
8.	San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair	A	We agree with the changes proposed by SPR08-05. Of particular note, the substantially enhanced requirements in applications to participate as amicus curiae are desirable and timely.	No response required.
9.	State Bar of California Committee on Appellate Courts Saul Bercovitch San Francisco	AM	The Committee supports this proposal with the following suggested modifications. With respect to combined briefs filed in cross-appeals, the Committee suggests modifying the proposed language such that rules 8.216(b)(2) and 8.884(b)(3) would read as follows: "A combined brief must address separately the arguments raised in each appeal. A combined brief may, however, include a single procedural or factual background section or sections."	Consistent with the committee's response to the comments of the Court of Appeal, Second Appellate District, Division Two, the committee is not recommending changing the phrase "the points raised" to "the arguments raised" as this would make this provision inconsistent with other provisions within this rule and other rules in title 8. The committee agrees that it would be helpful to clarify, as suggested by the commentator, that a single statement of facts is permissible. However, the committee believes that it would be preferable to mirror language from rule 8.204 in describing the statement of facts. The committee has therefore amended its proposal to add language indicating that a combined brief may include a single "summary of the significant facts."
10.	Scott Summer Reed Smith LLP San Francisco	AM	[For the] new disclosure rule[, it is] suggest[ed] that instead of "made a monetary contribution," the rule state "provided any consideration for" to ensure that gifts in kind (free tickets, case of wine, lending an associate to draft the brief, etc.) also be disclosed.	The committee considered but ultimately decided not to adopt this suggestion. The committee believes that it will be helpful in interpreting this provision if it tracks the language of the United States Supreme Court rule.
11.	Superior Court of Los Angeles County	AM	Allowing counsel to continue briefing dates will	This proposal would give counsel in limited

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

	Commentator	Position	Comment	Committee Response
			have negative impact on case-flow management.	civil cases authority, similar to that already provided to counsel in unlimited civil cases, to stipulate to a limited extension of briefing time. Under the proposed rules, the court will receive notice of any stipulated extension and any extensions beyond this limited stipulated period would have to be sought and approved by the appellate division. The committee believes that, as in unlimited civil cases, this combination provides a balance between the court's authority to manage its cases and civil litigants' interest in managing their schedules. It should also reduce the need for parties to prepare and the court to approve requests to extend briefing time.
12.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A		No response required.