

**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: Court Technology Advisory Committee
Hon. Ming W. Chin, Chair
Christopher Smith, Committee Staff, 415-865-4942,
christopher.smith@jud.ca.gov

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

DATE: September 18, 2007

SUBJECT: Appellate Procedure: Copies of Briefs in Civil Appeals (amend Cal. Rules of Court, rule 8.212) (Action Required)

Issue Statement

Rule 8.212 of the California Rules of Court currently requires parties in civil appeals to serve four copies of their briefs on the California Supreme Court. These copies have traditionally been provided to repository libraries for their collections. Because of limitations on storage space and other issues, the repository libraries have been moving away from retaining paper copies of these briefs and toward digitization of them.

Recommendation

The Court Technology and Appellate Advisory Committees recommend that the Judicial Council, effective January 1, 2008, amend rule 8.212 to give parties in civil appeals the option of serving one electronic copy, rather than four paper copies of their briefs, on the Supreme Court. The text of the proposed amendment to rule 8.212 is attached at pages 4–5.

Rationale for Recommendation

As indicated above, because of limitations on storage space and other issues, the repository libraries have been moving away from retaining paper copies of the civil appellate briefs that have historically been provided to them by the Supreme Court. One library has a contract with a vendor to convert the paper copies into an electronic format

and enter them into an electronic database that the public can access, free-of charge, at the repository libraries. Another library is exploring digitization of its entire archive of these briefs.

To facilitate these efforts by the repository libraries and to reduce the burden on litigants of preparing and serving four paper copies of their briefs on the Supreme Court, this proposal would give parties in these civil cases the option of serving a single electronic copy, rather than four paper copies of their briefs, on the Supreme Court. The Supreme Court would continue to make these briefs available to the repository libraries in whatever form they were served on the court—whether electronic or paper. Obtaining the briefs in electronic format should be helpful to the repository libraries, as they would not have to convert the briefs from paper to electronic format. It should also reduce the copying and shipping costs for litigants.

To ensure consistency of format, this amendment would require that electronic copies of briefs be in Portable Document Format (PDF) and that they exactly duplicate the appearance of the paper copy, including the order and pagination of all of the brief's components.

Alternative Actions Considered

The committees considered recommending that parties be required to provide the Supreme Court with a copy of these briefs in electronic format but ultimately concluded that it was preferable to permit parties to choose whether to provide these copies in electronic or paper format. While the committee believes that most appellate litigants will have access to the computer hardware and software necessary to produce a brief in the required PDF format, some litigants may not. The recommended amendment will accommodate both litigants who do and do not have access to this technology.

Comments From Interested Parties

These proposed amendments were circulated for public comment in a special comment cycle from mid-May to mid-July of 2007. Ten individuals or organizations submitted comments on this proposal. Eight commentators agreed with the proposal one agreed with the proposal if modified, and one did not indicate a position on the proposal but asked several questions about its implementation. The full text of the comments received and the committees' responses are attached at pages 6–12.

The Appellate Court Committee of the San Diego County Bar Association generally supported this proposal but made what it characterized as one “minor observation.” It noted that in the amendments to rule 8.212 that were circulated for public comment, the committee proposed deleting the phrase identifying the briefs that must be served on the Supreme Court as those filed “in a civil appeal.” The San Diego Bar committee suggested that this phrase should be retained. It expressed concern that, without this phrase, careless readers of the rules might think that the requirement applied in proceedings other than civil appeals. It also expressed concern that those familiar with rule 8.212 might think

that the deletion of this phrase implied that the service requirement extends beyond civil appeals.

The committees are not recommending that this phrase be retained. The deletion of this phrase is not intended to be a substantive change; the committee is simply recommending the “clean-up” of what it believes is surplus language. As the San Diego Bar committee notes, rule 8.212 is located in the chapter of the appellate rules that addresses civil appeals. References to briefs in this chapter thus necessarily refer to briefs in civil appeals, and it is not necessary to specifically restate that this particular requirement applies in civil appeals. The other rules in this chapter do not specifically state that they apply in civil appeals; as in all of the other chapters of title 8, the rules in this chapter are drafted with the intention that the chapter heading informs the reader about the general application of the rules in the chapter. The committees do not believe that this rule should be drafted differently.

Ms. Fran Jones, writing on behalf of the depository libraries, noted the libraries’ long-standing commitment to providing public access to the appellate briefs and asked several questions relating to the implementation of this proposal. These questions concerned mainly whether the libraries would continue to receive copies of briefs from the court and what form of public database of these briefs is anticipated. The committees appreciate the law libraries’ commitment to providing public access to these appellate briefs and hope that this amendment will facilitate that role. As indicated above, the intent is to continue providing the libraries with copies of the briefs served on the Supreme Court, whether these are provided to the court in paper or electronic format, so that the libraries can continue their important role in archiving and providing public access to these briefs.

Implementation Requirements and Costs

There will be some implementation requirements and costs to the judicial branch associated with establishing and administering the system for accepting electronic copies of these briefs. The committees believe, however, that the cost of administering this system will be offset by savings associated with not having to sort, package, and ship paper copies of these briefs.

Attachments

Rule 8.212 of the California Rules of Court is amended effective January 1, 2008, to read:

1 **Rule 8.212. Service and filing of briefs**

2
3 **(a)–(b) * * ***

4
5 **(c) Service**

6
7 (1) ~~A~~ One copy of each brief must be served on the superior court clerk for
8 delivery to the trial judge.

9
10 (2) One electronic copy or four paper copies of each brief must be served on the
11 Supreme Court as provided in either (A) or (B).

12
13 (A) One copy of each brief may be served on the Supreme Court
14 electronically by sending the copy to the Supreme Court’s electronic
15 notification address.

16
17 (i) The copy must be a single computer file in text-searchable Portable
18 Document Format (PDF), and it must exactly duplicate the
19 appearance of the paper copy, including the order and pagination of
20 all of the brief’s components. By electronically serving the copy, the
21 filer certifies that the copy complies with these requirements and that
22 all reasonable steps have been taken to ensure that the copy does not
23 contain computer code, including viruses, that might be harmful to
24 the court’s electronic filing system and to other users of that system.

25
26 (ii) If the Court of Appeal has ordered the brief sealed, the party serving
27 the brief must include as the first page in the PDF document a cover
28 sheet that contains the information required by rule 8.204(b)(10) and
29 labels the contents as “CONDITIONALLY UNDER SEAL.” The
30 Court of Appeal clerk must promptly notify the Supreme Court of
31 any court order unsealing the brief. In the absence of such notice, the
32 Supreme Court clerk must keep all copies of the brief under seal.

33
34 (B) Instead of serving an electronic copy, four paper copies of each brief filed
35 in a civil appeal must may be served on the Supreme Court. If the Court
36 of Appeal has ordered the brief sealed, ~~(A) the party serving the brief~~
37 must place all four copies of the brief in a sealed envelope and attach a
38 cover sheet that contains the information required by rule 8.204(b)(10)
39 and labels the contents as “CONDITIONALLY UNDER SEAL.”; and
40 (B) The Court of Appeal clerk must promptly notify the Supreme Court

1 of any court order unsealing the brief. In the absence of such notice the
2 Supreme Court clerk must keep all copies of the brief under seal.

- 3
4 (3) ~~A~~ One copy of each brief must be served on a public officer or agency when
5 required by rule 8.29.

6
7 **Advisory Committee Comment**

8
9 **Subdivision (c).** “Electronic notification address” is defined in rule 2.250. The Supreme Court’s
10 electronic filing address can be found on the California Courts Web site at [www.courtinfo.](http://www.courtinfo.ca.gov/courts/supreme)
11 [ca.gov/courts/supreme.](http://www.courtinfo.ca.gov/courts/supreme)¹

¹ This definition will be added to rule 2.250 under a separate proposal which is also being recommended for adoption effective January 1, 2008.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
1.	Appellate Court Committee of the San Diego County Bar Association Lisa Cooney, Chair	AM	Y	<p>The Appellate Court Committee of the San Diego County Bar Association appreciates the opportunity to comment on proposed revisions to the California Rules of Court as they affect appellate practice.</p> <p>We agree with the proposed revision to rule 8.212 to allow parties in civil appeals the option of serving the Supreme Court with an electronic copy of their briefs rather than multiple paper copies. This proposal makes sense economically and environmentally. This should assist the Supreme Court and the repository libraries with storage issues and will certainly reduce the costs for litigants.</p> <p>We do, however, make one minor observation about the proposed change to the rule. The proposal deletes the words “in a civil appeal” from rule 8.212(c)(2). We are concerned that the deletion of these words potentially could raise an unintended ambiguity about whether or not the rule requiring service on the Supreme Court is intended to extend to non-civil appeals. Rule 8.212 is within Chapter 2 discussing rules for civil appeals. However, other rules refer the reader to the civil rule section for certain briefing requirements (e.g., see rule 8.360 referring to rules 8.200 and 8.204). If a careless reader continues reading that section he or she could believe that the requirement applies to other cases. Additionally, court staff or</p>	<p>No response required.</p> <p>The committees appreciate this concern but believe that this phrase should be deleted as surplusage. As the commentator points out, rule 8.212 is in the chapter of the appellate rules that addresses civil appeals. The other rules in this chapter do not state that they apply to civil appeals; as in all of the other chapters of title 8, the rules in this chapter are drafted with the intention that the chapter heading provides the reader with important information about the application of the individual rules within the chapter. The committees do not</p>

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				<p>practitioners familiar with the rule could imply that by deleting the words “in a civil appeal” the Appellate Advisory Committee intended the requirement to apply more broadly. Therefore, we suggest that the committee consider retaining the words “in a civil appeal” to avoid any potential confusion.</p> <p>* * *</p> <p>The San Diego County Bar Association Appellate Court Committee commends the Judicial Council and the Appellate Advisory Committee for their continued work to improve and refine the California Rules of Court.</p>	<p>believe that this rule should be drafted differently. There is no specific cross-reference to this rule in the rules on felony or juvenile appeals that would make this rule particularly susceptible to misinterpretation. This provision is also much less critical to the overall appellate process than many of the other rules in this chapter that do not specifically state that they are applicable to civil appeals. As is the case with this rule, in the course of making other substantive changes, the Appellate Advisory Committee routinely recommends “cleaning up” surplus language that it finds in individual rules. The report to the Judicial Council recommending this change, which will constitute the history equivalent to the legislative history of a statute, explains why this change was made so that those familiar with the rules will have access to an explanation of this deletion.</p>
2.	Catherine E. Bennett Attorney	A	N	I encourage the Judicial Council to introduce and adopt similar rules that take advantage of technology for all courts. California is clearly behind in its use of technology in the courts. We should already be doing electronic filing.	The committees are currently considering other steps toward e-filing in the appellate courts.

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3.	California Appellate Court Clerks Association Deena C. Fawcett, President	A	Y	The California Appellate Court Clerks Association agrees with the proposed changes to rule 8.212 of the California Rules of Court.	No response required.
4.	Frances M. Jones Director, Library Services California Judicial Center Library	unknown	Y	<p>The undersigned State Librarian and Directors of public law libraries for Alameda, Los Angeles and San Diego counties (collectively, the depository libraries) appreciate the opportunity to forward to you their collective comments and questions regarding upon the proposed amendment to Rule 8.212.</p> <p>For more than a century the depository libraries have received paper copies of briefs filed in civil cases in the Courts of Appeal, in accordance with the terms of current Rule 8.212 and its predecessors (i.e., Rule 44 and Rule 16). The libraries have maintained archival copies of briefs in paper and in microform.</p> <p>Although only the Los Angeles County Law Library continues to receive paper copies today, all of the libraries continue to provide extensive public access to briefs in paper, microform and digital format. Public access to these important documents is a commitment of long-standing. The depository libraries are hesitant to abandon this commitment without adequate notice or the provision of a substitute of equivalent ease, comprehensiveness and timeliness for the public.</p>	<p>The committees appreciate the law libraries’ long-standing commitment to providing public access to these briefs. Adoption of this amendment is not intended to change the libraries’ role. The intent is to continue to support that role by providing the libraries with copies of these briefs as they are filed with the Supreme Court, in either paper or electronic format.</p>

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				<p>The depository libraries also recognize the value of electronic access to appellate briefs, and welcome technological changes that maintain or improve the public’s access to this valuable material. The proposed amendment contemplates a role for the depository libraries in continuing to provide public access to briefs. With this potential role in mind, the depository libraries raise the following issues and questions for consideration:</p> <ol style="list-style-type: none"> 1. If the proposed amendment is adopted, will briefs filed in paper format continue to be supplied to the depository libraries, especially the Los Angeles County Law Library? 2. How will briefs filed in electronic format be stored and retrieved? The only electronic databases known to the depository libraries at present are commercially supplied. In the absence of a publicly-supplied electronic database, there may be cost and access constraints for public users. 3. The proposed amendment contemplates that briefs may be filed in paper and electronically in 	<p>As indicated above, the intent is to continue to provide the libraries with copies of these briefs as they are filed with the Supreme Court, in either paper or electronic format.</p> <p>The Supreme Court does not currently store these copies of Court of Appeal briefs, and this rule does not contemplate any change in the court’s practice in this regard. As the commentator notes, the libraries have historically performed the role of maintaining the archive of these briefs. The libraries may continue to store briefs as they believe is appropriate.</p> <p>As the commentator notes, only the Los Angeles County Law Library</p>

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				<p>Portable Document Format (PDF). One result is that two types of searches may be required to obtain all of the briefs in a single case. Providing comprehensive results with one search is optimal for public users. Is this single search approach being considered and, if so, how would it be implemented?</p> <p>4. The depository libraries fulfill an archival role in ensuring access to briefs for future users. (Two of the depository libraries' collections date from the 1860's, for California Supreme Court briefs.) How will continuing access be assured for future users if the proposed amendment is adopted?</p>	<p>currently accepts paper copies of briefs at this time and it is the committees' understanding that that library is moving toward digitizing these paper copies. Allowing parties to file briefs electronically and providing these briefs to the libraries in electronic format should make it easier for the Los Angeles library to make this transition and should facilitate the other libraries' current arrangements with commercial vendors to digitize the paper copies that were being sent. The libraries would be free to handle the paper copies of briefs in the manner that they are currently handling them.</p> <p>As indicated above, the committees appreciate the law libraries' long-standing commitment to archiving and providing public access to these briefs. Adoption of this amendment is not intended to change the libraries' role. The intent is to continue to support that role by providing the libraries with copies of these briefs as they are filed with the Supreme Court, in either paper or electronic format.</p>

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5.	Orange County Bar Association Joseph L. Chairez, President	A	Y	No narrative comments submitted.	No response required.
6.	Leonard Sacks Attorney	A	N	No narrative comments submitted.	No response required.
7.	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney			The Committee supports SP07-19.	No response required.
8.	Superior Court of Los Angeles County (no name provided)	A	A	The proposed changes to rule 8.212 do not appear to have any impact on the operation of Appellate Division, or the Los Angeles Superior Court. The proposed changes are limited to appeals before the California Supreme Court and the Court of Appeals. Under the proposed changes, a judge who presided over a cause that is on appeal will continue to receive a “hard” copy of each brief. The proposed changes permit the parties to electronically serve, in a specified format, their briefs on the Supreme Court.	No response required.
9.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	A	Y	No narrative comments submitted.	No response required.
10.	Andrew H. Trott Senior Judicial Staff Attorney Court of Appeal, Sixth Appellate District	A	N	This is a long-overdue idea, provided the intention is to make the briefs readily available for download by the public as soon as they are filed.	There are not currently plans for the judicial branch to make these briefs available for download. The electronic copy of these briefs will be made available to the depository libraries, as the paper copies are

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					currently made available to these libraries, so that the libraries can continue to perform their historic role of archiving and providing public access to the briefs.