

**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: September 18, 2007

SUBJECT: Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008) (Action Required)

Issue Statement

Address of Record

Rule 8.32 concerns the address and telephone number that the court will use to contact an attorney or self-represented litigant in a case. Among other things, this rule provides that if an attorney has more than one office, only one address can be used in a particular case. Currently, there may be some confusion about whether, under rule 8.32, if there is more than one attorney from a single firm representing a party, there should be a single address of record per firm or per attorney.

Augmenting the Record

Rule 8.155 addresses augmenting and correcting the record in civil appeals. This rule currently provides that when a party makes a motion to augment the record, the party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. In practice, some appellate districts require parties to consecutively number the pages of these attachments, but rule 8.155 does not currently address this.

Petition to Transfer an Appellate Division Case to the Court of Appeal

Rule 8.1008(b) allows a party in an appellate division case, under certain circumstances, to petition the Court of Appeal to transfer the case from the appellate division to the Court of Appeal. However, the current rule does not give parties sufficient time to file such petitions.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council effective January 1, 2008:

1. Amend rule 8.32 to clarify that if an attorney representing a party has more than one address, only one address can be used as the address of record for that attorney;
2. Amend rule 8.155 to require that a party who files a motion to augment the record in a civil appeal must consecutively number the pages of the documents attached to the augmentation motion that are to be added to the record; and
3. Amend rule 8.1008 to:
 - a. Extend the time to file a petition to transfer a case from the superior court appellate division to the Court of Appeal from 8 days to 15 days after the decision of the appellate division is final;
 - b. Provide that a party may not file an answer to a petition for transfer unless the court requests an answer; and
 - c. Give the respondent 10 days from the date the court requests an answer to file the answer.

The text of the proposed amendments to the rules is attached at beginning at page 5.

Rationale for Recommendation

Address of Record

Many law firms have more than one office location. Sometimes, attorneys from different offices of the same firm may serve as co-counsel in a case. Currently, there appears to be some confusion about whether, under rule 8.32, only a single address will be used as the address of record for all attorneys from the same firm who are representing a party or if each attorney representing a party must have only a single address. This amendment is intended to clarify that a single address must be used for a particular attorney.

Augmenting the Record

As noted above, rule 8.155 requires that when a party makes a motion to augment the record, the party attach to its motion, if available, a copy of any document or transcript that it wants added to the record. If a court grants a party's motion to augment the record, the court typically uses the copy of the documents attached to the augmentation motion to augment the court's copy of the record. In practice, some appellate districts require parties to consecutively number the pages of these attachments. This amendment would incorporate that practice into the rules, so that all court users would have notice of this

requirement. It would also modify a cross-reference to current rule 8.120, which would be renumbered as rule 8.122 under another proposal that the committee is recommending for adoption.

Petition to Transfer an Appellate Division Case to the Court of Appeal

Currently, rule 8.1008(b) requires that a petition to transfer a case from the appellate division to the Court of Appeal must be filed within eight days after the appellate division judgment is final in that court. Rule 8.708, in turn, establishes when an appellate division judgment is final. This rule provides that if a party timely files a petition for rehearing or application for certification for transfer in the appellate division, the appellate division judgment is final 30 days after judgment is pronounced or when all such petitions or applications are denied, whichever is earlier. Thus an appellate division judgment may become final, and a party's eight days to file a petition for transfer may begin to run, as soon as the appellate division denies a petition for rehearing or an application for certification. Because parties are not typically present when the court rules on a such petitions or applications, they do not know immediately when such a petition or application has been denied. The parties generally receive notice of the appellate division's decision by mail. This often takes several days, which may use up some or all of the eight days that a party has to file a petition for transfer.

This proposal would amend rule 8.1008 to extend the time to file a petition to transfer from 8 days to 15 days after finality. Fifteen days should be enough time for the parties to receive notice of the denial of a petition for rehearing or application for certification and to file a petition for transfer.

In addition, similar to the current rule regarding answers to petitions for rehearing, the proposal would provide that a party may not file an answer to a petition for transfer unless the court requests an answer. This is intended to remove pressure from parties to file answers in all cases and reduce costs for parties. Parties would have 10 days from the date the court requests an answer to file the answer.

Alternative Actions Considered

The committee considered setting the time for filing an answer to a petition for transfer at 8 days after the court requests an answer, in order to parallel the procedures for petitions for rehearing. The committee ultimately decided to give respondents 10 days to file such an answer. The committee noted that the deadlines for petitions for rehearing are set very short because the court must act on these petitions before the decision becomes final in that court. There are no similar time constraints that necessitate setting very short deadlines in the case of petitions to transfer.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2007 comment cycle. Ten individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal and five agreed with the proposal if amended.

The full text of the comments received and the committee's responses are attached beginning on page 7.

Two commentators pointed out that as circulated for public comment, the amendment to rule 8.155, relating to the pagination of documents attached to motions to augment the record, did not indicate at what number the pagination should begin. Absent such a specification, parties might be unsure of whether to begin the pagination with the number one or to continue the numbering in the existing record on appeal, so that the documents to be added would be paginated beginning with the number after the last page in the existing record on appeal. In response to these comments, the committee revised its proposal to specify that the pagination must begin with the number one.

Implementation Requirements and Costs

There may be some additional cost to the Court of Appeal associated with implementing the amendments to rule 8.32, as additional copies of some notices may be required. There also may be some implementation costs to the Court of Appeal if the amendments to rule 8.1008 result in additional requests for transfer being filed. There may be some additional cost to litigants associated with consecutively numbering the attachments to augmentation motions under the amendments to rule 8.155, but consecutively numbering these documents should make them easier for courts to handle.

Attachments

Rules 8.32, 8.155, and 8.1008 California Rules of Court are amended, effective January 1, 2008, to read:

1 **Rule 8.32. Address and telephone number of record; notice of change**

2
3 (a)–(c) * * *

4
5 (d) **Multiple offices**

6
7 If an attorney has more than one office, only one office address for that attorney
8 may be used in a given case.
9

10
11 **Rule 8.155. Augmenting and correcting the record**

12
13 (a) **Augmentation**

14
15 (1) * * *

16
17 (2) A party must attach to its motion a copy, if available, of any document or
18 transcript that it wants added to the record. The pages of the attachments must
19 be consecutively numbered, beginning with the number one. If the reviewing
20 court grants the motion it may augment the record with the copy.
21

22 (3) If the party cannot attach a copy of the matter to be added, the party must
23 identify it as required under rules ~~8.120~~ 8.122 and 8.130.
24

25 (b)–(d) * * *

26
27
28 **Rule 8.1008. Transfer**

29
30 (a) * * *

31
32 (b) **Petition to transfer**

33
34 (1) * * *

35
36 (2) The petition must be served and filed within ~~eight~~ 15 days after the appellate
37 division judgment is final in that court and must show delivery of a copy to the
38 appellate division.
39

40 (3) * * *

1 (4) ~~Within seven days after the petition is filed, any other party may serve and file~~
2 ~~an answer. A party must not file an answer to a petition for transfer unless the~~
3 ~~court requests an answer. The clerk must promptly send to the parties copies of~~
4 ~~any order requesting an answer and immediately notify the parties by~~
5 ~~telephone or another expeditious method. Any answer must be served and filed~~
6 ~~within 10 days after the order is filed unless the court orders otherwise. A~~
7 ~~petition for transfer normally will not be granted unless the court has requested~~
8 ~~an answer.~~

9
10 (5) * * *

11
12 (c)-(f) * * *

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment on behalf of group?	Comment	Committee response
1.	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	AM	Y	See comments on specific provisions below.	
2.	California Appellate Court Clerks' Association Deena C. Fawcett, President	AM	Y	See comments on specific provisions below.	
3.	California Court Reporters Association Sandy Bunch VanderPol, President Tom Pringle, Chair Judicial Procedures	AM	Y	See comments on specific provisions below.	
4.	Mary Carnahan Criminal Division Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.
5.	Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	AM	Y	See comments on specific provisions below.	
6.	Pam Moraida Program Manager Superior Court of Solano County	A	N	No narrative comments submitted..	No response required.
7.	Orange County Bar Association Joseph Chairez, President	A	Y	No narrative comments submitted.	No response required.
8.	The State Bar of California	AM	Y	See comments on specific provisions below.	

SPR07-05

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

	Commentator	Position	Comment on behalf of group?	Comment	Committee response
	Committee on Appellate Courts Saul Bercovitch, Staff Attorney				
9.	Superior Court of Los Angeles County (no name provided)	A	Y	No narrative comments submitted.	No response required.
10.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	A	Y	No narrative comments submitted.	No response required.

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule 8.32 – Address of Record

Rule/Issue	Commentator	Comment	Committee response
Rule 8.32 – Address of Record	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	<p>Of particular interest to members of our Committee, rule 8.32 addresses a litigant’s right to designate more than one attorney as counsel of record. Appellate specialization has led to the appearance for the first time on appeal of new counsel in many cases. Yet, this does not necessarily mean that trial counsel exits the picture.</p> <p>There are at least two scenarios where this arises. First, a party on appeal may want to designate two lawyers from different offices of the same law firm. One lawyer may have handled the representation in the trial court, while the other, based in another office of the firm, is joining the case for the first time on appeal, often to take the lead in handling the appeal. In the second scenario, a party on appeal may want to designate two attorneys from entirely different firms. One lawyer tried the case below, while the other is appellate counsel from a different firm.</p> <p>Taking heed of these permutations, the discussion accompanying SPR07-05 states: “Currently, there may be some confusion about whether, under rule 8.32, there should be a single address per firm or attorney. The amendment is intended to clarify that a single address must be used for a particular attorney.” The proposed amendment to rule 8.32(d) states: “If an attorney has more than one office, only one office address for that attorney may be used in a given case.” Although this is an improvement (and is the language this Committee previously suggested), upon further reflection we believe the rule should be even more explicit.</p> <p>In the experience of members of our Committee, some</p>	Because expressly allowing parties to designate multiple attorneys of record would be an important substantive change to the rule, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule/Issue	Commentator	Comment	Committee response
		<p>appellate court clerks are reluctant to enter multiple counsel of record on the docket, particularly when there are multiple attorneys from the same firm with different addresses. It appears some courts or clerks interpret the term “attorney” to include an entire firm, not individual attorneys. Thus, some courts refuse to send notices to more than one address for a firm, even though different attorneys from different offices are handling the matter for the party. Because the rules do not expressly allow the practice of a party designating multiple attorneys of record, clerks may advise that notice of court rulings will be given to only one attorney.</p> <p>To foreclose any conceivable misunderstanding, we suggest adding a new subdivision to rule 8.32:</p> <p>Rule 8.32. Address and telephone number of record; notice of change</p> <p>(a)-(d) * * *</p> <p>(e) Multiple attorneys Subject to the limitation in subdivision (d), a party on appeal may designate multiple attorneys of record, including from different offices of the same law firm or from different firms. When multiple attorneys of record are designated, the clerk of the reviewing court must give notice, and send copies of all orders, opinions and other documents, to all counsel so designated.</p>	
Rule 8.32	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Rule 8.32. Why not leave this rule alone? There is no indication where the “confusion” stems from. On the face of this rule it appears to allow law firms with multiple office locations to have all of their offices listed in any	The Appellate Advisory Committee received the suggestion for amending this rule from the Appellate Court Committee of the San Diego County Bar Association, whose members had

SPR07-05

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule/Issue	Commentator	Comment	Committee response
		<p>particular case because the rule applies only to “an attorney,” not a law firm. In a civil matter or any other case where a firm is retained the firm may request that “an attorney” from each office be shown as representing one client; they could list one attorney with each address on the notice of appeal for example. The result is that each office address must be listed. The only time this rule will effectively limit an attorney to one address is in the case of the solo practitioner or the attorney who works out of two of her firm’s offices, e.g., San Diego and Sacramento. Please clarify this rule.</p>	<p>encountered problems with the application of this rule. The advisory committee believes it is appropriate for attorneys who are representing a party in a case and who are located in different offices of the same firm to receive notices concerning that case at their individual office addresses. The committee also believes that it is unlikely that a firm would seek to have notices concerning a case sent to more than one of its offices unless attorneys in those multiple offices were actually representing a party in the case.</p>

SPR07-05

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule 8.155 – Augmenting the Record on Appeal

Rule/Issue	Commentator	Comment	Committee response
Rule 8.155 Augmenting the Record on Appeal	California Appellate Court Clerk’s Association Deena C. Fawcett, President	Rule 8.155. This is an excellent proposal. We agree.	No response required.
Rule 8.155 Augmenting the Record on Appeal	California Court Reporters Association Sandy Bunch VanderPol, President Tom Pringle, Chair Judicial Procedures	<p>Rule 8.155, augmenting and correction the record, would state in pertinent part, (2) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record. <u>The pages of the attachments must be consecutively numbered.</u> If the reviewing court grants the motion it may augment the record with the copy.</p> <p>Proposed amendment: The underscored language does not specify what the pages would be numbered consecutive to. The language needs to be specific as to whether it is to be numbered chronologically or appended to the end of the transcript.</p> <p>Rationale: In view of the fact that there are 58 counties that have 58 different appellate clerks who have 58 different ways of doing their jobs and interpreting these laws as they come down, it is the opinion of CCRA that very little can be left to the imagination. The devil is in the details and in this instance the details have the potential of causing court reporters nightmares.</p>	The committee agrees and, as suggested by the State Bar Committee on Appellate Courts, has revised its proposal to provide that the pages must be numbered <u>beginning with the number one.</u>
Rule 8.155 Augmenting the Record on Appeal	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports SPR07-05 except it suggests that, for clarity, the proposed modification to rule 8.155(a)(2) be changed by adding the words, “beginning with the number one,” to the end of the new sentence, so that the sentence reads: “The pages of the attachments must be	The committee agrees with this suggestion and has incorporated it into the amendments it is recommending for adoption.

SPR07-05

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule/Issue	Commentator	Comment	Committee response
		<p>consecutively numbered beginning with the number one.” That way, the reader will know for certain to number the pages from the beginning rather than after the last page number in the clerk’s or reporter’s transcript. Similar language is currently used in rule 8.144(e)(2).</p>	

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule 8.1008 – Petitions for Transfer

Rule/Issue	Commentator	Comment	Committee response
	Rule 8.1008		
Rule 8.1008 Petitions for Transfer	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Rule 8.1008. We have no comment. This proposal should be addressed by the court attorneys.	No response required.
Rule 8.1008 Petitions for Transfer	Court of Appeal Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	<p>Rule 8.1008, on transfer of cases from the Appellate Division to this court, has a proposed revision of subdivision (b)(4) stating that a party may not file an answer to a petition for transfer unless the court requests an answer, and that, if the court requests an answer, any answer must be served and filed within 10 days after the order is filed unless the court orders otherwise.</p> <p>The committee states that this is similar to the current rule regarding answers to petitions for rehearing. However, the analogous provision in the rule governing petitions for rehearing, rule 8.268(b)(2), gives the parties eight (8) days to serve and file an answer. Unless there is a reason for allowing more time for an answer in the case of a transfer from the Appellate Division, the amendment to rule 8.1008 should also provide for eight days. The provision in rule 8.1008(b)(4) should read:</p> <p>. . . Any answer must be served and filed within 10 <u>8</u> days after the order is filed unless the court orders otherwise.</p> <p>. . .</p>	The committee believes that 10 days after the court requests an answer is a reasonable time period within which to require the respondent to file an answer. In the case of a petition for rehearing, the Court of Appeal must act on the petition before its decision becomes final in that court. Because of this time constraint, the deadlines related to petitions for rehearing are very short. There is no such time constraint on the Court of Appeal’s authority to act on a petition to transfer, and, therefore, the deadlines associated with such transfer petitions need not be as short as those for petitions for rehearing.
Rule 8.1008 Petitions for Transfer	The State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	In supporting the proposed change to rule 8.1008(b)(4), the Committee notes that the rule regarding an answer to a petition to transfer an appellate division case to the Court of Appeal should logically be similar to the rule regarding an answer to a petition for rehearing in the Court of	No response required.

SPR07-05

Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

Rule/Issue	Commentator	Comment	Committee response
		Appeal.	