

**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 18, 2007

SUBJECT: Appellate Procedure: Applications to File Amicus Briefs in the Court of Appeal and the Supreme Court (amend Cal. Rules of Court, rules 8.200 and 8.520) (Action Required)

Issue Statement

Rule 8.200(c) of the California Rules of Court addresses applications to file amicus briefs in the Court of Appeal. This rule does not currently set a time frame within which an application must be filed. This may create confusion for those interested in potentially filing amicus briefs in the Court of Appeal. In addition, rule 8.520, which addresses applications to file amicus briefs in the Supreme Court, uses language regarding the court's authority to extend the application deadline that is different from other rules relating to extensions of time.

Recommendation

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

1. Amend rule 8.200 to:
 - a. Require that an application to file an amicus brief in the Court of Appeal be filed no later than 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212;
 - b. Provide that the Court of Appeal may extend this deadline for good cause; and
 - c. Require that the Attorney General file any amicus brief by this same deadline; and

2. Amend rule 8.520 to provide that the California Supreme Court, for good cause, may extend the deadline for filing an amicus application in that court.

The text of the proposed amendments to the rules is attached at pages 4 and 5.

Rationale for Recommendation

To eliminate any potential confusion about when an application to file an amicus brief in the Court of Appeal must be filed, the committee recommends amending rule 8.200 to provide that an application be filed no later than 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212 (including any extensions of this filing deadline). This time limit is set after all the briefs are filed so that potential amici can take these briefs into account in determining whether filing an amicus brief is necessary and which supplemental arguments would be most helpful to the court. To make the time frames consistent, the time frame for the Attorney General to file an amicus brief would also be changed to 14 days after the last appellant's reply brief is filed or could have been filed.

The revised proposal would also amend rule 8.200 to provide that the Court of Appeal can extend this deadline for good cause. Rule 8.520(f), which addresses amicus briefs in the California Supreme Court, currently contains different language concerning the showing that parties must make if they want an extension of the application deadline. This proposal would amend rule 8.520 to similarly provide that the Supreme Court may extend the amicus application deadline for good cause.

Alternative Actions Considered

The committee considered making the time frame for filing an amicus application in the Court of Appeal the same as the time frame in the Supreme Court. Rule 8.520 requires that an application to file an amicus brief in the Supreme Court be filed no later than 30 days after all briefs that the parties may file, other than supplemental briefs, have been filed or were required to be filed. However, the committee ultimately rejected this alternative time frame because they concluded that it would delay many Court of Appeal proceedings. The committee also considered recommending that an amicus application be filed no later than 14 days after the last respondent's brief is filed but concluded that this time frame was too early in the process.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2007 comment cycle. Eight individuals and organizations submitted comments on the proposal. Seven commentators agreed with the proposal, and one did not indicate a position on the proposal but included a question about the rule language. The full text of the comments received and the committee's responses are attached on pages 6 and 7.

Implementation Requirements and Costs

Setting a time frame for filing an application to file an amicus brief in the Court of Appeal should eliminate confusion about when such applications should be filed and should eliminate late applications that either are denied or can delay the processing of appeals. Providing that amicus applications may be filed within 14 days after the last reply brief is filed or could have been filed may also result in some delay in processing appeals in some districts, however.

Attachments

Rules 8.200 and 8.520 of the California Rules of Court are amended, effective January 1, 2008, to read:

1 **Rule 8.200. Briefs by parties and amici curiae**

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3 (a)–(b) * * *

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5 (c) **Amicus curiae briefs**

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

12
13 (2)–(5) * * *

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

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24 **Advisory Committee Comment**

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26 **Subdivision (b).** * * *

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

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

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34 (a)–(e) * * *

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36 (f) **Amicus curiae briefs**

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38 (1) * * *

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40 (2) The application must be filed no later than 30 days after all briefs that the
41 parties may file under this rule—other than supplemental briefs—have

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been filed or were required to be filed. For good cause, the Chief Justice may allow later filing ~~if the applicant shows specific and compelling reasons for the delay.~~

(3)-(7)

(g)-(h) * * *

SPR07-06

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| | Commentator | Position | Comment on behalf of group? | Comment | Committee response |
|----|--|-----------------|------------------------------------|--|---|
| 1. | California Appellate Court Clerks' Association Deena C. Fawcett, President | A | Y | Rule 8.200. We concur that this is a positive change. We have needed the ability to refer parties asking about time frames to something specific. Rule 8.520. No comment. This is a Supreme Court rule. | No response needed. |
| 2. | Mary Carnahan Criminal Division Program Manager Superior Court of Solano County | A | N | No narrative comments submitted. | No response needed. |
| 3. | Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice | | | Q: Rule 8.200(c)(6) states "any party may serve and file an <i>answer</i>" Why is it an "answer" and not a "response" as in other briefs? | The term "answer" appears to be used for a party's response to an amicus brief (both in rule 8.200 and in rule 8.40) to distinguish this document from the regular respondent's or appellant's reply brief. |
| 4. | Pam Moraida Program Manager Superior Court of Solano County | A | N | No narrative comments submitted. | No response needed. |
| 5. | Orange County Bar Association Mr. Joseph Chairez, President | A | Y | No narrative comments submitted. | No response needed. |
| 6. | State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney | A | Y | The Committee supports SPR07-06. | No response needed. |

SPR07-06

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| | Commentator | Position | Comment on behalf of group? | Comment | Committee response |
|----|---|-----------------|------------------------------------|----------------------------------|---------------------------|
| 7. | Superior Court of San Diego County Michael M. Roddy, Executive Officer | A | Y | No narrative comments submitted. | No response needed. |
| 8. | Superior Court of Los Angeles County (no name provided) | A | Y | No narrative comments submitted. | No response needed. |