

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
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Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
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DATE: September 18, 2007

SUBJECT: Rules Applicable to All Courts: Format of Citations (adopt Cal. Rules of Court, rule 1.200, amend rule 3.1113, and amend the advisory committee comment to rule 8.204) (Action Required)

Issue Statement

Rule 3.1113(i) of the California Rules of Court addresses the format of citations in memoranda filed in law and motion matters in superior court civil cases, but there is currently no general rule addressing the format of citations in other papers filed in either the trial or appellate courts.

Recommendation

The Civil and Small Claims and Appellate Advisory Committees recommend that the Judicial Council, effective January 1, 2008:

1. Adopt new rule 1.200 to establish the format of citations in all papers filed in the trial or appellate courts;
2. Amend rule 3.1113 to delete subdivision (i) concerning the format of citations and to add an advisory committee comment referring rule users to new rule 1.200; and
3. Amend the advisory committee comment to rule 8.204 to add a cross-reference to new rule 1.200.

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

Rationale for Recommendation

Rule 3.1113 of the California Rules of Court, which addresses memoranda filed in law and motion matters in civil cases in the superior courts, currently includes a provision addressing the format of citations in these memoranda. Subdivision (i) of this rule requires that citations be in the style prescribed by either the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, at the option of the party filing the memorandum.

The Appellate Advisory Committee received a suggestion that a similar requirement be incorporated into rule 8.204, which addresses briefs in civil cases. The Appellate Advisory Committee supports the concept that such a requirement should apply to citations in briefs, but both the Appellate Advisory Committee and the Civil and Small Claims Advisory Committee believe that it would be more appropriate to adopt a general requirement applicable to citations in all documents filed in both the trial and appellate courts. The committees therefore propose that a new rule establishing this requirement be adopted as part of title one of the California Rules of Court, which contains the rules applicable in all courts. Proposed new rule 1.200, which would be placed in a new chapter entitled *Form and Format of Papers*, would require that all citations in documents filed in the courts, both trial and appellate, be in the style established by either the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, at the option of the party filing the document. The duplicative provision in rule 3.1113 would be deleted and advisory committee comments cross-referencing to proposed new rule 1.200 would be added to both rules 3.1113 and 8.204 to remind litigants preparing memoranda and briefs of this general requirement.

Alternative Actions Considered

As discussed in the next section, the committees considered and specifically asked for comments about whether rule 1.200 should permit citation only in the style established by the *California Style Manual* rather than permitting citation in the style of either *The Bluebook* or the *California Style Manual*, as is currently permitted under rule 3.1113. Based on the public comments received, the committees are recommending that both citation styles continue to be permitted.

As also discussed below, the invitation to comment included a proposal to amend rule 1.5 to address the construction of rules when a statutory provision contains specific procedures for particular cases that differ from the procedures established by a general rule. Based on the public comments received, the committees are not recommending adoption of the proposed amendment to rule 1.5.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2007 comment cycle.

Seventeen individuals or organizations submitted comments on this proposal. Eleven commentators agreed with the proposal, four agreed with the proposal if amended, and two disagreed with the proposal. The full text of the comments received and the committees' responses are attached beginning on page 6.

As noted above, the invitation to comment circulated by the committees included a proposal to amend rule 1.5 to address the construction of rules when a statutory provision contains specific procedures for particular cases that differ from the procedures established by a general rule. The amendment circulated for comment would have provided that, consistent with article VI, section 6 of the California Constitution, the rules apply where their application would not be inconsistent with an applicable statutory provision. Two commentators disagreed with this proposed amendment. One expressed concern that the rule could be read as limiting the Judicial Council's rule-making authority in situations where the council adopts rules under authority other than article VI, section 6. Based on these comments, the committees decided not to recommend adoption of the amendment to rule 1.5.

None of the commentators expressed any concerns about adopting proposed rule 1.200 regarding the format of citations. As noted above, the committee did solicit comment on whether this rule should permit citation only in the style established by the *California Style Manual* rather than permitting citation in the style of either *The Bluebook* or the *California Style Manual*. The responses on this were mixed. Three commentators expressed opposition to limiting citations to the *California Style Manual* format; one suggested that there should be some preference for the *California Style Manual* format, but not a requirement to use this format; and two expressed some support for requiring the *California Style Manual* citation format. Because there was strong opposition to limiting the format style to the *California Style Manual* and no strong support for such a limitation, the committees are recommending that both citation styles be permitted under new rule 1.200.

Implementation Requirements and Costs

The committees do not anticipate that there will be any costs associated with implementing this proposal.

Attachments

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

2

3 **(a)–(e) * * ***

4

Advisory Committee Comment

5

6 **Subdivision (b).** The first sentence of subdivision (b)(1) confirms that any method of reproduction is
7 acceptable provided it results in a clear black image of letter quality. The provision is derived from
8 subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).

9

10 Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *typeface*, *type style*, and *type size* (see
11 also subd. (b)(11)(C)). The first two terms are defined in *The Chicago Manual of Style* (15th ed., 2003) p.
12 839. Note that computer programs often refer to typeface as “font.”

13

14 Subdivision (b)(2) allows the use of any conventional typeface—e.g., Times New Roman, Courier, Arial,
15 Helvetica, etc.—and permits the typeface to be either proportionally spaced or monospaced.

16 Subdivision (b)(3) requires the type style to be roman, but permits the use of italics, boldface, or
17 underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions
18 are derived from FRAP 32(a)(6).

19

20 Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision
21 also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief
22 writer.

23

24 See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the citation
25 form of the *California Style Manual* (4th ed., 2000).

26

27 **Subdivision (c). * * ***

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29 **Subdivision (d). * * ***

30

31 **Subdivision (e). * * ***

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Rules Applicable to All Courts: Construction of Rules When There Are Applicable Statutory Requirements and Format of Citations (adopt Cal. Rules of Court, rule 1.200 and amend rules 1.5 and 3.1113)

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

	Commentator	Position	Comment on behalf of group?	Comment	Committee response
1.	Elaine Alexander Executive Director Appellate Defenders, Inc.	AM	N	See comments on specific provisions below.	
2.	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	AM	Y	See comments on specific provisions below.	
3.	Richard E. Best San Francisco	N	N	See comments on specific provisions below.	
4.	California Appellate Court Clerks' Association Deena C. Fawcett, President	A	Y	See comments on specific provisions below.	
5.	Mary Carnahan Criminal Division Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.
6.	Court of Appeal Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	A	Y	No narrative comments submitted.	No response required.
7.	David S. Ettinger Attorney Horvitz & Levy	N	N	See comments on specific provisions below.	
8.	Hon. Harold W. Hopp	AM	N	See comments on specific provisions below.	

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
	Superior Court of Riverside County				
9.	Hon. Curtis E. A. Karnow Superior Court of San Francisco County	A	N	See comments on specific provisions below.	
10.	Pam Moraida Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.
11.	Andrea Nelson Director of Operations Superior Court of Butte County	A	N	See comments on specific provisions below.	
12.	Orange County Bar Association Joseph Chairez, President	A	Y	No narrative comments submitted.	No response required.
13.	James Owens Assistant County Counsel Dependency Division	AM	N	See comments on specific provisions below.	
14.	State Bar of California Committee on Administration of Justice Saul Bercovitch, Staff Attorney	A	Y	See comments on specific provisions below.	
15.	State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	A	Y	See comments on specific provisions below.	
16.	Superior Court of Los Angeles County (no name provided)	A	N	No narrative comments submitted.	No response required.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
17.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	A	Y	No narrative comments submitted.	No response required.

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Rules Applicable to All Courts: Construction of Rules When There Are Applicable Statutory Requirements and Format of Citations (adopt Cal. Rules of Court, rule 1.200 and amend rules 1.5 and 3.1113)

Rule 1.5 – Construction of Rules

Rule/Issue	Commentator	Comment	Committee response
Rule 1.5	Richard E. Best San Francisco	<p>It appears that [the proposed amendment to rule 1.5] may be contrary to Article VI Section 6 and invalid. The proposal adds the word “application” which suggests a major change.</p> <p>The Invitation to Comment suggests that, if the statute says X and the rule says Y, the rule prevails and the legislative determination has been changed by an unelected committee without the benefit of the legislative process. This change according to the summary to the comment applies when “where there are statutes that establish requirements different from those in the rules”. What “other requirements”?</p> <p>Whenever a rule making committee decides it does not like particular “procedures, deadlines, or other requirements” established by the legislature, it can circumvent the legislative process and pass a rule that establishes different “procedures, deadlines and requirement.” Pity the poor lawyer who reads and relies on the statute only to find some obscure changes amend the statute. How can a rule making body decree that it is superior to the legislature contrary to the Constitution?</p> <p>This appears to be an attempt to change the constitution. If not, why do it? If the rule does nothing why adopt the rule? More important, why rephrase the rule? The comment does not explain the significance of the new word “application”. The change suggests that the wording of a rule can be directly contrary to statute but if it is somehow determined to not be inconsistent in “application” it is a good rule. How does this apply when the statute of limitations on an action is changed by rule? Or when a brief will not be considered</p>	Based on the comments received, the committees decided not to recommend adoption of this amendment to rule 1.5.

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		<p>because a lawyer erroneously relied on the statute?</p> <p>The Invitation to Comment invites comments on whether the committee comment suffices. This suggests that the Constitution, legislation or rules can be changed by committee comment. The Invitation to Comment should refresh our understanding of the importance and binding effect of committee comments. If comments suffice, why bother with rules at all? The Invitation to Comment should allow and request comments on the comments?</p>	
Rule 1.5	California Appellate Court Clerks' Association Deena C. Fawcett, President	Rule 1.5. We agree.	Based on the comments received, the committees decided not to recommend adoption of this amendment to rule 1.5.
Rule 1.5	David S. Ettinger Attorney Horvitz & Levy	<p>Among other things, this proposal would amend rule 1.5(a) to provide that, "Consistent with Article VI, section 6 of the California Constitution, the[] [California Rules of Court] apply unless their application would be inconsistent with statute." The new language appears to state a truism. In reality, however, it could create serious constitutional separation of powers problems.</p> <p>Generally, statutes take precedence over court rules But this isn't always true. The Supreme Court said long ago that "there must come a point beyond which the judicial department must be allowed to operate unhampered by legislative restriction." (<i>Lorraine v. McComb</i> (1934) 220 Cal. 753,756.)</p> <p>In the <i>Lorraine</i> case, to avoid constitutional concerns, the court construed a statute providing that "the court <i>shall</i> postpone a trial" for up to 30 days when the parties so</p>	In response to this comment and others, the committees decided not to recommend adoption of this amendment to rule 1.5.

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		<p>stipulate (see now Code of Civ. Proc., § 595.2, emphasis added) as being directory not mandatory. (See also <i>Pham v. Nguyen</i> (1997) 54 Cal.App.4th 11, 14–16.) Other areas in which: the Legislature might not be able to impose procedures on the courts are appellate calendar preferences (<i>Lorraine v. McComb</i>, supra, 220 Cal. at p. 757) or a court’s power to reconsider interim rulings on its own motion (<i>Le Francois v. Goel</i> (2005) 35 Cal.4th 1094).</p> <p>The proposal provides an unqualified rule that a legislative enactment will always nullify a rule if the two conflict. But that statement is contrary to established separation of powers principles. The Judicial Council, as the policymaking body of California’s courts, should not prevent the judiciary from “operat[ing] unhampered by legislative restriction” in appropriate cases and should thus not adopt the proposed rule change.</p>	
Rule 1.5	Andrea Nelson Director of Operations Superior Court of Butte County	Construction of rules is not necessary and may cause confusion.	In response to this comment and others, the committees decided not to recommend adoption of this amendment to rule 1.5.
Rule 1.5	State Bar of California Committee on Administration of Justice Saul Bercovitch, Staff Attorney	CAJ supports the proposal that would explain that the rules of court apply unless their application would be inconsistent with statute. In response to the specific request for comments, CAJ believes the new Advisory Committee Comment would be sufficient, without also adding proposed (a)(2) to rule 1.5. Proposed (a)(2) is a restatement of existing law, and the last sentence of the proposed Advisory Committee Comment essentially repeats proposed (a)(2) in any event.	In response to this comment and others, the committees decided not to recommend adoption of this amendment to rule 1.5.

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Rule/Issue	Commentator	Comment	Committee response
Rule 1.5	State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports the proposal to add a new provision to rule 1.5 regarding construction of the California Rules of Court. In response to the specific request for comments, the Committee does not have strong views on either approach. Some members of the Committee support adding both the proposed amendment to rule 1.5 and the proposed Advisory Committee Comment. Others believe that proposed Advisory Committee Comment would be sufficient because proposed subdivision (a)(2) is a restatement of existing law, and the last sentence of the proposed Advisory Committee Comment essentially repeats the subdivision in any event.	In response to the comments received, the committees decided not to recommend adoption of this amendment to rule 1.5.

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Rule 1.200 – Format of Citations

Rule/Issue	Commentator	Comment	Committee response
Rule 1.200	Elaine Alexander Executive Director Appellate Defenders, Inc.	Since citation style is especially important in appellate proceedings, I suggest adding a reference to new rule 1.200 in rule 8.204 on contents and form of briefs. Attorneys looking for guidance on the requirements for briefs would very likely go to the section on appeals and might not uncover a rule in a faraway title.	The committees agree and are recommending that the advisory committee comment accompanying rule 8.204 be amended to include a cross-reference to proposed new rule 1.200.
Rule 1.200	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	<p>Consistent with what our Committee has previously suggested, this new rule is codified in Title One and, therefore, provides guidance on the citation format to use in all California courts. We believe this is better than one format governing appellate courts and perhaps a different one governing trial courts.</p> <p>The Appellate Advisory Committee seeks input, in particular, on whether citation should be restricted to the <i>California Style Manual</i>. Because appellate courts are required to use the <i>California Style Manual</i>, in our view, a preference should be stated for the <i>California Style Manual</i>, but with flexibility retained. Although not every parade of horrors comes to pass if a firm rule is adopted, we might see litigants calling for sanctions against the opposing party for departing from the rule. Whether a party complies with a strict rule on citation format would become a potential distraction. Or, if litigants were not to abide by it, without objection from anyone, the rule might become a paper tiger. In light of these considerations, we suggest adding the following sentence to the end of the text currently proposed: “The <i>California Style Manual</i> is the preferred method of citation.”</p>	<p>No response required.</p> <p>The committees are not recommending changing the rule to require use of the <i>California Style Manual</i> at this time. The advisory committee comment to rule 8.204 currently encourages parties to follow the citation format of the <i>California Style Manual</i>.</p>

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Rule/Issue	Commentator	Comment	Committee response
		Finally, whatever preference is stated, it might make sense to cross-reference rule 1.200 somewhere in rule 8.204, governing the content and form of briefs. Attorneys and litigants are assumed to have read all the rules, of course, but rule 8.204 is a logical place to mention any preferred format of citation in appellate briefs.	The committees agree and are recommending that the advisory committee comment accompanying rule 8.204 be amended to include a cross-reference to proposed new rule 1.200.
Rule 1.200	California Appellate Court Clerks' Association Deena C. Fawcett, President	Rule 1.200. This rule addresses a question we occasionally receive. We agree.	No response required.
Rule 1.200	Hon. Harold W. Hopp Superior Court of Riverside County	I agree that the form of citation rule should apply to all documents filed in the courts; so putting the citation form rule in 1.200 makes sense. However, I think the <i>California Style Manual</i> should be the preferred style and the option to use the <i>Bluebook</i> style should not be offered. The <i>California Style Manual</i> citation form is shorter and dates of decisions are more prominent than in <i>Bluebook</i> style. Thus, briefs are easier to read and to work with in preparing opinions or orders. Of course, this comparative advantage increases with the length of the document and the number of citations.	The committees are not recommending changing the rule to require use of the <i>California Style Manual</i> at this time. The advisory committee comment to rule 8.204 currently encourages parties to follow the citation format of the <i>California Style Manual</i> .
Rule 1.200	Hon. Curtis E. A. Karnow Superior Court of San Francisco County	I am strongly opposed to requiring only <i>California Style Manual</i> . Lawyers use <i>Bluebook</i> format in virtually all federal courts—and this is the way they are taught in many law schools—and <i>Bluebook</i> is used throughout much of the rest of the country. I suggest therefore we use only <i>Bluebook</i> style. But it would be highly parochial to insist on only the California style.	The committees are not recommending changing the rule to require use of the <i>California Style Manual</i> at this time.
Rule 1.200	James Owens Assistant County Counsel	There should be one style to follow for consistency purposes. Suggestion: the <i>California Style Manual</i> method	The committees are not recommending changing the rule to require use of the

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	Dependency Division	of citing be used.	<i>California Style Manual</i> at this time. The advisory committee comment to rule 8.204 currently encourages parties to follow the citation format of the <i>California Style Manual</i> .
Rule 1.200	State Bar of California Committee on Administration of Justice Saul Bercovitch, Staff Attorney	The Committee on Administration of Justice (CAJ) supports proposed rule 1.200. In response to the specific request for comments, CAJ opposes any change to the rules that would require use of the <i>California Style Manual</i> and preclude use of <i>The Bluebook</i> . CAJ is not aware of any problems with the existing rule, which permits either citation format, and sees no reason to change the rule. Because most lawyers learn <i>The Bluebook</i> in law school (even in California, not all law schools teach the <i>California Style Manual</i>), it makes sense to allow them to use a skill they have been taught. Attorneys who practice in the federal courts in California are often more familiar with <i>The Bluebook</i> , and it is unnecessarily costly and confusing to require attorneys to go back and forth between the two citation styles.	The committees are not recommending changing the rule to require use of the <i>California Style Manual</i> at this time.
Rule 1.200	State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports the adoption of proposed new rule 1.200. In response to the specific request for Comments, the Committee favors permitting the citation styles of both the <i>California Style Manual</i> and <i>The Bluebook</i> . The <i>Bluebook</i> is a well-established sytel that is broadly used, and permitting two citation styles would not cause any confusion or undue burden. Both citation styles are currently permitted under rule 3.1113(i), and the Committee sees no reason to change the rules to be more limited.	The committees are not recommending changing the rule to require use of the <i>California Style Manual</i> at this time.