



## Judicial Council of California . Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23, 2010

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Title	Agenda Item Type
Appellate Procedure: Timeliness of Filings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.25, 8.308, 8.406, 8.450, 8.817, 8.853, and 8.902 and amend the advisory committee comments to rules 8.104, 8.454, 8.500, and 8.822	July 1, 2010
	Date of Report
	February 16, 2010
Recommended by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Kathryn Doi Todd, Chair	<a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>

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### Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to the timeliness of filings in appellate court proceedings to provide that a document mailed by an inmate or a patient from a custodial institution is deemed timely if the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document. Currently, the California Rules of Court provide that such a “prison-delivery” rule applies to notices of appeal in a criminal, juvenile, and conservatorship cases and to notices of intent to file a writ petition in juvenile dependency cases. Recently, the California Supreme Court held that this prison-delivery rule also applies to notices of appeal in civil cases and recommended that the Judicial Council review the relevant rules of court to determine whether any revisions might be appropriate or helpful in light of the court’s decision. Based on that decision, the committee recommends that the prison-delivery rule be applied to all documents in appellate proceedings filed by inmates or patients by mail from custodial institutions.

## Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective July 1, 2010:<sup>1</sup>

1. Amend rules 8.25 and 8.817, which establish the general rules on the timeliness of documents filed in Supreme Court, Court of Appeal, and superior court appellate division proceedings, to provide that a document mailed by an inmate or a patient from a custodial institution is deemed timely if the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document.
2. Amend the advisory committee comments accompanying rules 8.25 and 8.817 to clarify that this new provision does not change the actual date of filing or any deadline that runs from that date and does not change the date of finality or any other deadline that runs from finality.
3. Amend rules 8.308, 8.406, 8.450, 8.853, and 8.902 to delete the current provisions relating to documents mailed from custodial institutions and add a cross-reference in the advisory committee comments accompanying these rules to the proposed new provision in either rule 8.25 or rule 8.817 on the timeliness of documents mailed by inmates or patients from a custodial institution.
4. Amend the advisory committee comments to rules 8.104, 8.454, 8.500, and 8.822 to add a cross-reference to the proposed new provision in either rule 8.25 or rule 8.817 on the timeliness of documents mailed by inmates or patients from a custodial institution.

The text of the proposed rules is attached at pages 8–17.

## Previous Council Action

The Judicial Council originally adopted a provision applying the prison-delivery rule to notices of appeal in felony appeals, effective January 1, 1994 (former rule 31(e)). This provision was adopted to reflect the California Supreme Court's decision in *In re Jordan* (1992) 4 Cal.4th 116, which held that a prisoner's notice of appeal in a felony case is deemed to have been filed on the date, within the filing period prescribed by rule 31(a), on which it was delivered to the prison authorities. In 1994, the rules for felony appeals also generally governed appeals in juvenile and conservatorship cases, so the prison-delivery provision in rule 31 also applied in juvenile and conservatorship proceedings.

Effective January 1, 2005, the rules relating to juvenile appeals were revised so that the felony appeal rules no longer apply in these proceedings, and a separate provision applying the prison-

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<sup>1</sup> The rules relating to juvenile appeals and writs will be amended effective July 1, 2010 (see [www.courtinfo.ca.gov/jc/documents/reports/102309itema31.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/102309itema31.pdf)). The proposed amendments in this report are to the version of rules 8.406, 8.450, and 8.454 that will be effective July 1, 2010.

delivery rule to notices of appeal in juvenile proceedings was adopted by the Judicial Council effective January 1, 2006. A similar prison-delivery provision was added to rule 8.450, relating to notices of intent to file writ petitions to review orders setting hearing under Welfare and Institutions Code section 366.26, effective January 1, 2007. Effective January 1, 2009, the Judicial Council adopted new rules for the superior court appellate division, including rules 8.853 and 8.902, relating to notices of appeal in misdemeanor and infraction cases, which also include prison-delivery provisions.

Effective January 1, 2009, the Judicial Council also amended rule 8.25 and its accompanying advisory committee comment to recognize the existing prison-delivery provisions and adopted new rule 8.817 to address service and filing in the superior court appellate division. The report to the Judicial Council concerning rules 8.25 and 8.817 noted that “the rules cited in the advisory committee comment that currently recognize the prison-delivery exception in certain situations are given only as examples of such exceptions and are not intended to suggest that these are the exclusive situations in which exceptions might be applied.”

### **Rationale for Recommendation**

The California Rules of Court currently provide that if the court clerk receives a notice of appeal in a criminal, juvenile, or conservatorship case or a notice of intent to file a writ petition in certain juvenile dependency cases by mail from a custodial institution after the deadline for filing the notice has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing before the deadline expired, the notice is deemed timely (see rules 8.308(e), 8.406(c),<sup>2</sup> 8.450(e)(5), 8.480(a), 8.482(a), 8.853(e) and 8.902(e)). The purpose of these provisions is to give self-represented prisoners, who must rely on prison mail systems, an opportunity to file notices of appeal and notices of intent that is equal to that afforded nonprisoners and prisoners whose counsel can file documents for them.

Recently, in *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, the California Supreme Court held that this same prison-delivery rule also applies to notices of appeal in civil cases. In reaching this conclusion, the court reasoned that prisoners who are parties in civil appeals face the same institutional obstacles to preserving their rights as prisoners do in criminal appeals. They cannot mail or hand-deliver copies of a notice of appeal to the superior court clerk. Their only available means for filing the required notice is to deliver it to prison authorities for mailing and, once that is done, they have no control over when the notice is actually mailed or filed with the court. In addition, the court noted that applying the prison-delivery rule in civil appeals achieves administrative benefits similar to those achieved when this rule is applied in criminal appeals. Having a clear rule for the timeliness of these notices mailed from prison minimizes uncertainty for court clerks and avoids individualized assessments and collateral litigation about whether the notices were deposited with prison officials sufficiently in advance of the filing deadline to timely reach the court. (*Silverbrand supra*, 46 Cal.4th at pp. 119–121.) Footnote 19

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<sup>2</sup> This citation is to the rules that will be effective July 1, 2010. In the rules for juvenile appeals effective until July 1, 2010, this provision is found in rule 8.400(f).

in the *Silverbrand* opinion specifically recommends that the Judicial Council review the relevant rules of court to determine whether any revisions might be appropriate or helpful in light of the court's decision.

Based on the reasoning in the *Silverbrand* opinion, the advisory committee is proposing that the prison-delivery rule be applied not only to notices of appeal and notice of intent, but to all documents filed by inmates or patients by mail from custodial institutions in appellate proceedings, including briefs, motions, petitions for review, and writ petitions. The committee acknowledges that such documents differ from notices of appeal in important ways: the filing of these documents is not jurisdictional, and the court can typically relieve a party from default for their late filing. However, prisoners face the same institutional barriers to the timely filing of these other appellate documents as they do to the timely filing of notices of appeal. In addition, applying the bright-line prison-delivery rule to these other appellate filings avoids the administrative burdens, for both prisoners and the courts, associated with requests for relief from default. The rules of court for several other jurisdictions, including the Federal Rules of Appellate Procedure and the state court rules in Florida, Oregon, Tennessee, and Washington, currently apply the prison-delivery rule to all appellate filings.<sup>3</sup>

The committee is also proposing that rules 8.25 and 8.817 specify that this prison-delivery provision applies only to filings *from an inmate or a patient* in a custodial institution. While the case law only discusses filings from such individuals, the current rule language does not spell out this limitation. Clarifying this limitation will eliminate any potential questions about whether a filings from prison officials would fall under the prison-delivery provision

### **Comments, Alternatives Considered, and Policy Implications**

These proposed rules were circulated for public comment between December 11, 2009, and January 22, 2010, as part of the regular winter comment cycle. Eight individuals and organizations submitted comments on this proposal. Four commentators agreed with the proposal, one agreed with the proposal if modified, one disagreed with the proposal, and two did not indicate their position on the proposal as a whole but provided comments on specific aspects of the proposal. The full text of the comments received and the committee's responses are set out in the attached comment chart at pages 18–25 and the significant substantive comments are discussed below.

#### **Application of prison-delivery rule to postopinion filings**

One of the commentators who did not specifically indicate her position on the proposal, Administrative Presiding Justice Judith D. McConnell of the Court of Appeal, Fourth Appellate District, expressed concern about the application of the prison-delivery rule to postopinion

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<sup>3</sup> See Fed. Rules App.Proc., rule 25(a)(2)(C); Fla. Rules App.Proc., rule 9.420(a)(2); Or. Rules App.Proc., rule 1.35(4); Tenn. Rules App.Proc., rule 20(g); and Wash. Court Rules, rule GR 3.1(a).

filings, such as petitions for rehearing or requests for publication or modification. Under current rules 8.264, 8.268, and 8.1120, the time for the court to act on these postopinion filings is bounded by the date the opinion is final in the issuing court. Thus, if the court receives such a filing late, the time the court has to act may be very short or may have expired. Justice McConnell suggested that if the prison-delivery rule is to be applied to postopinion filings, the rules relating to finality may also need to be amended to address this problem.

In response to this comment, the committee has revised its proposal to include new language in the advisory committee comments accompanying rules 8.25 and 8.817 clarifying that the prison-delivery provision in these rules does not change the date of finality or any deadline that is based on finality. The committee considered but ultimately decided not to recommend changes in the rules relating to finality to address Justice McConnell's concerns. With regard to requests for publication, the committee concluded that no action was needed because rule 8.1120, relating to requests for publication, already provides for consideration of requests for publication by the Supreme Court when the Court of Appeal is not able to act on such a request before finality (see rule 8.1120(b)(1)). With respect to requests for modification of an opinion, the committee concluded that since rules 8.264(c) and 8.532(c), relating to modification of Court of Appeal and Supreme Court opinions, respectively, do not set a deadline for filing such requests, but only the time frame within which a court can modify its opinion, by its terms the proposed prison-delivery rule would not apply to these requests. However, to prevent any possible confusion, the committee concluded that it would be helpful to add language in the advisory committee comments accompanying rules 8.25 and 8.817 clarifying that the prison-delivery provision in these rules does not change the date of finality or any deadline that is based on finality, such as the deadline for a court to modify its opinion.

With respect to petitions for rehearing, the committee similarly concluded that adding the proposed clarifying language in the advisory committee comments to rules 8.25 and 8.817 would be the best way to respond to Justice McConnell's concerns. Rule 8.268, which applies to petitions for rehearing in the Court of Appeal, and 8.536, which applies to petitions for rehearing in the Supreme Court, do set a time frame for filing these petitions (generally 15 days after the opinion is filed). If the new prison-delivery rule is applied to these petitions, it would be reasonable for individuals in custodial institutions who mail such a petition or deliver it to custodial authorities for mailing within this time frame to expect that the court will be able to act on the petition. In theory, petitions deemed timely under the prison-delivery rule could be received after the opinion is final (which is generally 30 days after the opinion is filed), which would frustrate the expectations of these individuals.

It is important to note, however, that it is unlikely that the prison-delivery rule would ever be applied to petitions for rehearing in the Supreme Court because virtually all litigants are represented by the time of briefing and oral argument in Supreme Court proceedings, so counsel would be filing any petition for rehearing. Furthermore, the Courts of Appeal already have experience with receiving petitions for rehearing and other documents from individuals in custodial institutions and the associated delays in prison mail systems. In the experience of

committee members, while such petitions are frequently received after the filing deadline set by the rules, it is exceedingly rare for the court to receive such petitions after the opinion has become final and the court has lost its authority to act. Since the 30-day finality period also generally starts running from the date the opinion is filed, there is a 15-day window between when such a petition would need to be mailed or delivered to custodial authorities for mailing under the prison-delivery rule and when the court would lose its authority to act on the petition under rules 8.268 or 8.536. Subdivision (c) of rule 8.536 gives the Supreme Court the authority, anytime before this 30-day period expires, to extend the time it has to act on a petition for rehearing. While the Court of Appeal does not have similar authority under rule 8.268 to extend its deadline to act on a petition for rehearing, it can take other action to retain its jurisdiction, such as granting the petition for rehearing and then reissuing the opinion if it concludes rehearing ultimately is not needed.

Since the courts have procedures for giving themselves sufficient time to consider late petitions for rehearing, any change in finality would only be necessary to address those situations in which the petition was received after the current 30-day finality period. While very rare, these situations might occur. Of particular concern to the committee was how the parties' ability to seek review in the Supreme Court might be impacted if this occurred. Rule 8.500 places certain limits on review by the Supreme Court when issues have not been raised in a petition for rehearing. The committee ultimately concluded, however, that it was unlikely that the parties' ability to seek review would be compromised because the party would have raised the relevant issues in a timely-filed petition for rehearing even if the Court of Appeal was not able to act on that petition. Given how rarely a petition for rehearing is likely to be received after finality, the uncertainty about how much longer the finality period would need to be to cover these situations, and the committee's view that the late receipt of the petition for rehearing in the Court of Appeal would most likely not impact the parties' ability to seek review in the Supreme Court, the committee concluded that a change in the finality period was not warranted. Instead, as indicated above, the committee is recommending that language be added to the advisory committee comment to rules 8.25 and 8.817 to alert litigants that the prison-delivery rule does not extend the finality period or any deadline that runs from finality, such as the time within which a court can order rehearing.

#### **Retention of prison-delivery exceptions in existing rules or replacement with cross-references to amended rule 8.25 or 8.817**

As noted above, the current rules concerning notices of appeal in criminal and juvenile cases and notice of intent to file writ petitions in juvenile cases already contain language regarding the timeliness of such filings mailed from custodial institutions (see rules 8.308(e), 8.406(c), 8.450(e)(5), 8.853(e), and 8.902(e)). The proposal that was circulated for public comment replaced this existing language with cross-references to proposed new rule 8.25(b)(5) or 8.817(b)(5). The invitation to comment specifically requested input on whether the proposal should add these cross-references or retain the existing rule language.

Two commentators—the Committee on Appellate Courts of the State Bar of California and the Orange County Bar Association—provided comments on this issue. The Committee on

Appellate Courts suggested leaving the current rule language in place. The Orange County Bar Association suggested that including cross-references to rule 8.25 (and, by implication, leaving the existing language regarding filings from custodial institutions) in some rules, but not others, would be misleading and could create confusion about whether rule 8.25 is intended to apply to all appellate filings.

The committee concluded that the concerns raised by the Orange County Bar Association were well-founded and revised the proposal to eliminate both the current rule language regarding timeliness of filings mailed from custodial institutions and the new cross-references to rules 8.25(b)(5) or 8.817(b)(5) that were in the proposal circulated for comment. Instead, the committee has included cross-references to rules 8.25(b)(5) or 8.817(b)(5) in the advisory committee comments accompanying each rule that establishes deadlines for filings in appellate proceedings. The committee concluded that this approach balances the goals of alerting rule users about the prison-delivery rule and making clear that this rule applies to all filings in appellate proceedings.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation of these amendments should reduce costs for the appellate courts by eliminating the need to make individualized assessments about whether to accept those filings that fall within the terms of the new prison-delivery rule. Implementation of these amendments should also reduce costs for both litigants and courts by reducing requests for relief from default and eliminating collateral litigation about whether appellate filings were deposited with prison officials sufficiently in advance of the filing deadline to timely reach the court and other issues.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Because this proposal facilitates equal access to the courts by individuals in custodial institutions, it supports the policies of eliminating barriers to access and facilitating access to the courts for all persons underlying Goal I, Access, Fairness, and Diversity (Goal I, Policies 1 and 2).

### **Attachments**

1. Cal. Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902, at pages 8–16
2. Chart of comments, at pages 17–24



Rules 8.25, 8.104, 8.308, 8.406,<sup>4</sup> 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902 of the California Rules of Court would be amended, effective July 1, 2010, to read

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 1. General Provisions

6  
7 Article 2. Service, Filing, Form, and Number of Documents

8  
9  
10 Rule 8.25. Service and filing

11  
12 (a) \* \* \*

13  
14 (b) Filing

15  
16 (1) A document is deemed filed on the date the clerk receives it.

17  
18 (2) Unless otherwise provided by these rules or other law, a filing is not timely  
19 unless the clerk receives the document before the time to file it expires.

20  
21 (3) A brief, a petition for rehearing, an answer to a petition for rehearing, a  
22 petition for review, an answer to a petition for review, or a reply to an answer  
23 to a petition for review is timely if the time to file it has not expired on the  
24 date of:

25  
26 (A) Its mailing by priority or express mail as shown on the postmark or the  
27 postal receipt; or

28  
29 (B) Its delivery to a common carrier promising overnight delivery as shown  
30 on the carrier's receipt.

31  
32 (4) The provisions of (3) do not apply to original proceedings.

33  
34 (5) If the clerk receives a document by mail from an inmate or a patient in a  
35 custodial institution after the period for filing the document has expired but

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<sup>4</sup> The rules relating to juvenile appeals and writs will be amended effective July 1, 2010 (see [www.courtinfo.ca.gov/jc/documents/reports/102309itema31.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/102309itema31.pdf)). The proposed amendments in this report are to the version of rules 8.406, 8.450, and 8.454 that will be effective July 1, 2010.

1 the envelope shows that the document was mailed or delivered to custodial  
2 officials for mailing within the period for filing the document, the document is  
3 deemed timely. The clerk must retain in the case file the envelope in which  
4 the document was received.

5  
6 Advisory Committee Comment

7  
8 **Subdivision (a).** \* \* \*

9  
10 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk before the  
11 time for filing that document expires. There are, however, some limited exceptions to this general rule.  
12 For example, ~~(5) the rules currently provides~~ that if the ~~superior court~~ clerk receives a ~~notice of appeal in~~  
13 ~~a criminal, juvenile, or conservatorship case or notice of intent in a juvenile dependency case~~ document  
14 by mail from a custodial institution after the deadline for filing the ~~notice~~ document has expired but the  
15 envelope shows that the ~~notice~~ document was mailed or delivered to custodial officials for mailing before  
16 the deadline expired, the ~~notice~~ document is deemed timely (see rules 8.308(e), 8.400(f), 8.450(e)(5),  
17 8.480(a)). ~~These~~ This provisions applies to notices of appeal as well as to other documents mailed from a  
18 custodial institution and reflects the “prison-delivery” exception articulated by the California Supreme  
19 Court in *In re Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th  
20 106.

21  
22 Note that if a deadline runs from the date of filing, it runs from the date that the document is actually  
23 received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor do these  
24 provisions extend the date of finality of an appellate opinion or any other deadline that is based on  
25 finality, such as the deadline for the court to modify its opinion or order rehearing. Subdivision (b)(5) is  
26 also not intended to limit a criminal defendant’s appeal rights under the case law of constructive filing.  
27 (See, e.g., In re Benoit (1973) 10 Cal.3d 72.)

28  
29  
30 Chapter 2. Civil Appeals

31  
32 Article 1. Taking the Appeal

33  
34  
35 Rule 8.104. Time to appeal

36  
37 (a) \* \* \*

38  
39 (b) No extension of time; late notice of appeal

40  
41 Except as provided in rule 8.66, no court may extend the time to file a notice of  
42 appeal. If a notice of appeal is filed late, the reviewing court must dismiss the  
43 appeal.

44  
45 (c)–(f) \* \* \*

46  
47 Advisory Committee Comment

1  
2 **Subdivision (a).** \* \* \*

3  
4 **Subdivision (b).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by  
5 inmates and patients from custodial institutions. Subdivision (b) is declarative of the case law, which  
6 holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of appeal. (*Hollister*  
7 *Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666–674; *Estate of Hanley* (1943) 23 Cal.2d 120,  
8 122–124.)

9  
10 In criminal cases, the time for filing a notice of appeal is governed by rule 8.308 and by the case law of  
11 “constructive filing.” (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)

## 12 13 14 Chapter 3. Criminal Appeals

### 15 16 Article 1. Taking the Appeal

#### 17 18 19 Rule 8.308. Time to appeal

20  
21 (a)–(c) \* \* \*

22  
23 (d) Late notice of appeal

24  
25 The superior court clerk must mark a late notice of appeal “Received [date] but not  
26 filed,” notify the party that the notice was not filed because it was late, and send a  
27 copy of the marked notice of appeal to the district appellate project.

28  
29 ~~(e) Receipt by mail from custodial institution~~

30  
31 ~~If the superior court clerk receives a notice of appeal by mail from a custodial~~  
32 ~~institution after the period specified in (a) has expired but the envelope shows that~~  
33 ~~the notice was mailed or delivered to custodial officials for mailing within the~~  
34 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the~~  
35 ~~case file the envelope in which the notice was received.~~

36  
37 Advisory Committee Comment

38  
39 **Subdivision (c).** \* \* \*

40  
41 **Subdivision (d).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by  
42 inmates or patients from custodial institutions. ~~The subdivision is not intended to limit a defendant’s~~  
43 ~~appeal rights under the case law of constructive filing. (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re*~~  
44 ~~*Benoit* (1973) 10 Cal.3d 72.)~~

1  
2 Chapter 5. Juvenile Appeals and Writs

3  
4 Article 1. Appeals

5  
6 **Rule 8.406. Time to appeal**

7  
8 (a)–(b) \* \* \*

9  
10 ~~(c) — Receipt by mail from custodial institution~~

11  
12 ~~If the superior court clerk receives a notice of appeal by mail from a custodial~~  
13 ~~institution after the period specified in (a) has expired but the envelope shows that~~  
14 ~~the notice was mailed or delivered to custodial officials for mailing within the~~  
15 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the~~  
16 ~~case file the envelope in which the notice was received.~~

17  
18 ~~(d)~~(c) No extension of time; late notice of appeal

19  
20 Except as provided in rule 8.66, no court may extend the time to file a notice of  
21 appeal. The superior court clerk must mark a late notice of appeal “Received [date]  
22 but not filed,” notify the party that the notice was not filed because it was late, and  
23 send a copy of the marked notice of appeal to the district appellate project.

24  
25 ~~(e)~~(d) \* \* \*

26  
27 Advisory Committee Comment

28  
29 Subdivision (c). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by  
30 inmates or patients from custodial institutions.

31  
32  
33 Article 3. Writs

34  
35 Rule 8.450. Notice of intent to file writ petition to review order setting hearing under  
36 Welfare and Institutions Code section 366.26

37  
38 (a)–(d) \* \* \*

39  
40 (e) Notice of intent

41  
42 (1)–(3) \* \* \*

1 (4) The date of the order setting the hearing is the date on which the court states  
2 the order on the record orally, or issues an order in writing, whichever occurs  
3 first. The notice of intent must be filed according to the following timeline  
4 requirements:

5  
6 (A) If the party was present at the hearing when the court ordered a hearing  
7 under Welfare and Institutions Code section 366.26, the notice of intent  
8 must be filed within 7 days after the date of the order setting the hearing.  
9

10 (B) If the party was notified of the order setting the hearing only by mail, the  
11 notice of intent must be filed within 12 days after the date the clerk  
12 mailed the notification.  
13

14 (C) If the party was notified of the order setting the hearing by mail, and the  
15 notice was mailed to an address outside California but within the United  
16 States, the notice of intent must be filed within 17 days after the date the  
17 clerk mailed the notification.  
18

19 (D) If the party was notified of the order setting the hearing by mail, and the  
20 notice was mailed to an address outside the United States, the notice of  
21 intent must be filed within 27 days after the date the clerk mailed the  
22 notification.  
23

24 (E) If the order was made by a referee not acting as a temporary judge, the  
25 party has an additional 10 days to file the notice of intent as provided in  
26 rule 5.540(c).  
27

28 ~~(5) If the superior court clerk receives a notice of intent by mail from a party in a~~  
29 ~~eustodial institution after the time specified in (4) has expired but the envelope~~  
30 ~~containing the notice of intent shows that it was mailed or delivered to~~  
31 ~~eustodial officials for mailing within the time specified in (4), the notice is~~  
32 ~~deemed timely. The clerk must retain in the case file the envelope in which the~~  
33 ~~notice was received.~~  
34

35 (f)–(i) \* \* \*

36  
37 Advisory Committee Comment  
38

39 **Subdivision (d).** \* \* \*

40  
41 **Subdivision (e)(4).** See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by  
42 inmates or patients from custodial institutions.  
43  
44

1 Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code  
2 section 366.28 to review order designating specific placement of a dependent  
3 child after termination of parental rights  
4

5 (a)–(e) \* \* \*

6  
7 (f) Premature or late notice of intent to file writ petition

8  
9 (1) \* \* \*

10  
11 (2) The superior court clerk must mark a late notice of intent to file a writ petition  
12 under section 366.28 “Received [date] but not filed,” notify the party that the  
13 notice was not filed because it was late, and send a copy of the marked notice  
14 to the party’s counsel of record, if applicable.  
15

16 (g)–(j) \* \* \*

17  
18 Advisory Committee Comment  
19

20 Subdivision (f)(2). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by  
21 inmates or patients from custodial institutions.  
22  
23  
24

25 Chapter 9. Proceedings in the Supreme Court  
26

27 Rule 8.500. Petition for review

28  
29 \* \* \*

30  
31 Advisory Committee Comment  
32

33 **Subdivision (a).** \* \* \*

34  
35 **Subdivision (e).** Subdivision (e)(1) provides that a petition for review must be served and filed within 10  
36 days after the Court of Appeal decision is *final in that court*. Finality in the Court of Appeal is generally  
37 governed by rules 8.264(b) (civil appeals), 8.366(b) (criminal appeals), 8.387(b) (habeas corpus  
38 proceedings), and ~~8.480~~ 8.490(b) (proceedings for writs of mandate, certiorari, and prohibition). These  
39 rules declare the general rule that a Court of Appeal decision is final in that court 30 days after filing.  
40 They then carve out specific exceptions—decisions that they declare to be final immediately on filing (see  
41 rules 8.264(b)(2), 8.366(b)(2), and 8.490(b)(1)). The plain implication is that all other Court of Appeal  
42 orders—specifically, interlocutory orders that may be the subject of a petition for review—are *not* final on  
43 filing. This implication is confirmed by current practice, in which parties may be allowed to apply for—  
44 and the Courts of Appeal may grant—reconsideration of such interlocutory orders; reconsideration, of  
45 course, would be impermissible if the orders were in fact final on filing.  
46

1 Contrary to paragraph (2) of subdivision (e), paragraphs (4) and (5) do not prohibit extending the time to  
2 file an answer or reply; because the subdivision thus expressly forbids an extension of time only with  
3 respect to the petition for review, by clear negative implication it permits an application to extend the time  
4 to file an answer or reply under rule 8.50.

5  
6 See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients  
7 from custodial institutions.

8  
9 **Subdivision (f). \* \* \***

10  
11  
12 Division 2. Rules Relating to the Superior Court Appellate Division

13  
14 Chapter 1. General Rules Applicable to Appellate Division Proceedings

15  
16  
17 Rule 8.817. Service and filing

18  
19 (a) \* \* \*

20  
21 (b) Filing

22  
23 (1) A document is deemed filed on the date the clerk receives it.

24  
25 (2) Unless otherwise provided by these rules or other law, a filing is not timely  
26 unless the clerk receives the document before the time to file it expires.

27  
28 (3) A brief, a petition for rehearing, or an answer to a petition for rehearing is  
29 timely if the time to file it has not expired on the date of:

30  
31 (A) Its mailing by priority or express mail as shown on the postmark or the  
32 postal receipt; or

33  
34 (B) Its delivery to a common carrier promising overnight delivery as shown  
35 on the carrier's receipt.

36  
37 (4) The provisions of (3) do not apply to original proceedings.

38  
39 (5) If the clerk receives a document by mail from an inmate or a patient in a  
40 custodial institution after the period for filing the document has expired but  
41 the envelope shows that the document was mailed or delivered to custodial  
42 officials for mailing within the period for filing the document, the document is  
43 deemed timely. The clerk must retain in the case file the envelope in which  
44 the document was received.  
45

1 Advisory Committee Comment

2  
3 **Subdivision (a).** \* \* \*

4  
5 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk before the  
6 time for filing that document expires. There are, however, some limited exceptions to this general rule.  
7 For example, ~~rule 8.853(e) (5)~~ provides that ~~in a misdemeanor appeal~~, if the superior court clerk receives  
8 a ~~notice of appeal~~ document by mail from a custodial institution after the deadline for filing the ~~notice~~  
9 document has expired but the envelope shows that the ~~notice~~ document was mailed or delivered to  
10 custodial officials for mailing before the deadline expired, the ~~notice~~ document is deemed timely. This  
11 provision reflects the “prison-delivery” exception articulated by the California Supreme Court in *In re*  
12 *Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (209) 46 Cal.4th 106.

13  
14 Note that if a deadline runs from the date of filing, it runs from the date that the document is actually  
15 received and deemed filed under (b)(1); neither (b)(3) nor (b)(5) changes that date. Nor do these  
16 provisions extend the date of finality of an appellate opinion or any other deadline that is based on  
17 finality, such as the deadline for the court to modify its opinion or order rehearing. Subdivision (b)(5) is  
18 also not intended to limit a criminal defendant’s appeal rights under the case law of constructive filing.  
19 (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)  
20

21  
22  
23 Chapter 2. Appeals and Records in Limited Civil Cases

24  
25 Article 1. Taking Civil Appeals

26  
27 Rule 8.822. Time to appeal

28  
29 (a)–(c) \* \* \*

30  
31 (d) Late notice of appeal

32  
33 If a notice of appeal is filed late, the appellate division must dismiss the appeal.

34  
35 Advisory Committee Comment

36  
37 Under rule 8.804(23), the term “judgment” includes any order that may be appealed.

38  
39 **Subdivision (d).** See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by  
40 inmates or patients from custodial institutions.

41  
42  
43 Chapter 3. Appeals and Records in Misdemeanor Cases

44  
45 Article 1. Taking Appeals in Misdemeanor Cases

1  
2 Rule 8.853. Time to appeal

3  
4 (a)–(c) \* \* \*

5  
6 (d) Late notice of appeal

7  
8 The trial court clerk must mark a late notice of appeal “Received [date] but not  
9 filed” and notify the party that the notice was not filed because it was late.

10  
11 ~~(e) Receipt by mail from custodial institution~~

12  
13 ~~If the trial court clerk receives a notice of appeal by mail from a custodial institution~~  
14 ~~after the period specified in (a) has expired but the envelope shows that the notice~~  
15 ~~was mailed or delivered to custodial officials for mailing within the period specified~~  
16 ~~in (a), the notice is deemed timely. The clerk must retain in the case file the~~  
17 ~~envelope in which the notice was received.~~

18  
19 Advisory Committee Comment

20  
21 Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by  
22 inmates or patients from custodial institutions.

23  
24  
25  
26 Chapter 5. Appeals in Infraction Cases

27  
28 Article 1. Taking Appeals in Infraction Cases

29  
30 Rule 8.902. Time to appeal

31  
32 (a)–(c) \* \* \*

33  
34 (d) Late notice of appeal

35  
36 The trial court clerk must mark a late notice of appeal “Received [date] but not  
37 filed” and notify the party that the notice was not filed because it was late.

38  
39 ~~(e) Receipt by mail from custodial institution~~

40  
41 ~~If the trial court clerk receives a notice of appeal by mail from a custodial institution~~  
42 ~~after the period specified in (a) has expired but the envelope shows that the notice~~  
43 ~~was mailed or delivered to custodial officials for mailing within the period specified~~

1        ~~in (a), the notice is deemed timely. The clerk must retain in the case file the~~  
2        ~~envelope in which the notice was received.~~

3  
4  
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9

Advisory Committee Comment

**Subdivision (d).** See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

## W10-01

**Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Appellate Court Committee San Diego County Bar Association by Kevin K. Green, Chair	N/I	<p><b>I. W10-01: EXPANSION OF THE "PRISON DELIVERY" RULE</b></p> <p>Our committee includes experienced criminal-law practitioners, both government and defense counsel, and also civil practitioners who have defended cases brought by prisoner litigants. Those who weighed in on W10-01 generally support a prison-delivery standard for the timeliness of appellate filings under the California Rules of Court, and our committee therefore supports the proposal.</p> <p>Nonetheless, we wish to identify one aspect that may merit further consideration how a prison-delivery standard for timeliness will impact the deadline for an opposing party to file in opposition, or other response, to a document filed by a prisoner litigant. Under the California Rules of Court, the time to respond in a reviewing court generally runs from the date of filing. We trust that rule 8.25(b)(1) ("A document is deemed filed on the date the clerk receives it") means, as its plain language implies, that in cases involving incarcerated litigants, any response deadline will run from the time the document is <i>received</i> and <i>filed</i> by the clerk, not the date of delivery to a prison official. Perhaps the Advisory Committee Comment to rule 8.25 could be modified to state this expressly, so that the prisoner's delivery in such cases is not mistakenly equated with the filing date.</p>	<p>No response required.</p> <p>The committee agrees with this suggestion and has modified the proposal to include an amendment to the advisory committee comments to rules 8.25 and 8.817 clarifying that that any deadline that runs from filing runs from the date a document is actually filed and the prison-delivery timeliness standard does not alter that date.</p>

**W10-01**

**Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
2.	Thora Birch West Hollywood	A	Now you have to figure out how to ensure there are proper checks in place ensuring custodial authorities’ respect to the courts and individuals attempting to file. This may leave too much discretion in the hands of institutions that may not have a vested interest in aiding criminal or civil appeals, procedures, etc.	There is state law that is intended to protect the rights of prisoners (see Penal Code sections 2600 and 2601). Enforcement of these laws is outside the Judicial Council’s scope of authority.
3.	Committee on Appellate Courts State Bar of California by T. Peter Pierce, Chair	A	<p><b>1. Timeliness of Filings - W10-01</b></p> <p>The Committee supports amending the California Rules of Court to extend the rule most recently set forth in <i>Silverbrand v. County of Los Angeles</i> (2009) 46 Cal.4th 106 to all appellate filings, whether civil or criminal, that a document mailed by an unrepresented inmate or patient in a custodial institution is deemed timely if the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document.</p> <p>The Committee also makes the following comments in response to the specific request for comments on whether the existing language in Rules of Court 8.308(e), 8.406(c), 8.450(e)(5), 8.853(e), and 8.902(e), that already set forth the “prison-delivery rule” regarding notices of appeal and notices of intent to file writ petitions mailed from custodial institutions, should be</p>	<p>No response required.</p> <p>Based on the comments of the Orange County Bar Association, below, the committee is proposing that this existing language in rules 8.308, 8.406, 8.450, 8.853, and 8.902 be deleted and not replaced with any cross-reference to proposed rule 8.25 or 8.817 in the rule text. The committee is proposing that cross-references to rules 8.25 and 8.817 be included in the advisory committee</p>

**W10-01****Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			retained or replaced by references to 8.25(b)(5) or 8.817(b)(5). Since those existing provisions already provide for timely filing of notices in instances in which these notices come from custodial institutions, there is no need to replace them with references to 8.25(b)(5) or 8.817(b)(5). They state existing law and therefore should not be changed. The only areas in which new provisions should be added are those added pursuant to the reasoning in <i>Silverbrand</i> or where the “prison-delivery rule” does not already apply. The Committee believes the new language should be adopted only in the following rules, where it does not already apply: 8.25(b)(5), 8.104(b), 8.454(f)(3), 8.500(e)(6), 8.817(b)(5), and 8.822(d).	comments accompanying rules 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.822, 8.853, and 8.902.
4.	Glenn C. Grimm Modesto	N	<p>Restrictions regarding time for filing of an action is understandably a main concern, but, may I use the term "In the real world" not everything is as those in positions such as yourselves would like it to be.</p> <p>While adherence to time restraints when a party is represented by counsel may be one, or the majority of the filings, But, as in other cases involving unrepresented parties, those who are not educated in law as most common people are not, such avenues available to them are usually not known regardless of what you may think or would prefer to exist. Therefore unless all such parties have been made fully aware of their</p>	These proposed amendments are intended to reduce some of the barriers to timely filing by individuals in custodial institutions, including those who are not represented by counsel. As noted by the commentator, however, prisoners face many other challenges to pursuing cases in the courts that are not addressed by these proposed amendments.

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**Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>options, on a level which they understand, any forfeiture of their right to file should not be in the equation.</p> <p>A party locked up, ripped from their world as they know it and then have more immediate concerns such as not being "shanked" in prison and attempting to find a place to fit into and feel safe, it should go without saying that only after such adjustments can anyone return to, or continue to address legal issues and adhere to time restraints. For are we more focused and wanting of getting as many cases over as possible and at the expense of a parties Constitutional Rights and disregard of possible wrongful application of law and punishment over that of ensuing we don't deprive and punish a party resulting from any rules made by those who have never experienced such restrictions forced upon them.</p> <p>Additionally, I personally have just been denied a Petition for Review by the Supreme Court . no explanation, but the bottom line here my not having counsel, and have been denied Constitutional Rights and Liberties through way of at least 2 superior court judges violating statute law, rules of court, all the while purposely doing same and violating my Constitutional Rights, but the court would rather ignore my being harmed by prior fellow attorneys than to uphold the laws and</p>	

**W10-01****Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Constitution. Now with all that and my not knowing the legal system as those who make these rules, what options do you think I have and will be forced to take to end the continued years my children have been held hostage 3000 miles away, hidden against court orders during this time while the court and a rogue attorney continue to create false evidence, forge documents, commit perjury, to cover their crimes attempting to make me be something I'm not, and I have not other available resource to address this wrongful court, misuse of authority and disregard for our laws, when the Supreme Court doesn't have the time to effect compliance with our laws/codes and the Constitution? What do any of you think I must do now to end this unlawful, orchestrated scenario denying my rights and liberties, and those of my children which I haven't seen in 4 years, Take a wild guess, If you the integrity you want others to believe you have, then read S178844.</p>	
5.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate District San Diego	N/I	<p>I appreciate the opportunity to comment on the proposed revisions to the California Rules of Court relating to the timeliness of filings and specifically the application of the “prison-delivery” rule articulated in <i>In re Jordan</i> (1992) 4 Cal.4th 116 to all documents filed by mail by inmates or patients in custodial institutions. I believe that the proposed rule is generally a good one, but I have a concern about its application.</p>	

**W10-01****Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>My concern relates to the feasibility of applying the “prison-delivery” rule to post-opinion filings, such as petitions for rehearing, request for publication and requests for modification. As the proposed rule changes recognize, the delays in the delivery of the documents sent to the court through the prison mail system may often be significant and, when there is a significant delay in a post-opinion filing, the application of the proposed amended rule will be inconsistent with the finality of appellate court opinions in accordance with the California Rules of Court. If the proposed revisions are to be applied to post-opinion filings, the rules relating to finality may also need to be amended to address this problem.</p>	<p>In response to this comment, the committee has revised its proposal to include new language in the advisory committee comments accompanying rules 8.25 and 8.817 clarifying that the prison-delivery provision in these rules does not change the date of finality or any deadline that is based on finality.</p>
6.	Asha Mussman Deputy Clerk Superior Court of Santa Clara County	A	<p>I agree with the proposed changes and believe they are necessary.</p> <p>What should be done by the trial court clerk if a notice of noncompliance has been sent out in a civil appeal because of not having received the filing within the specified time limit but finding that the filing is in fact timely due to the post-mark or other date written on the envelope? Should the trial court clerk automatically send out some type of clerk’s certificate withdrawing the notice of noncompliance being that the filing was in fact timely in order to preempt dismissal of the appeal by the District Court of</p>	<p>No response required.</p> <p>The committee believes that individual trial courts are in the best position to determine how to modify the procedures within their courts. Some courts may wish to wait longer before sending notices of default in cases in which a party is in a custodial institution. Others may wish to send a follow-up notice to the parties and Court of Appeal (if appropriate) if it turns out a filing was timely.</p>

**W10-01**

**Appellate Procedure: Timeliness of Filings** (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

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	Commentator	Position	Comment	Committee Response
			<p>Appeal? If the appeal has already been dismissed by the District Court of Appeal, does the clerk at the court of appeal automatically reactivate the appeal? I believe this issue should be addressed and the answers included in the changes.</p> <p>Or perhaps, the time limit to cure defaults should be extended by an appropriate amount for appellants in custodial institutions; in order for them to both (1) receive any correspondence from the courts and (2) take any appropriate action.</p>	
7.	Orange County Bar Association By Lei Lei Wang Ekvall, President	AM	<p>We agree with extending the prison-delivery rule to all appellate documents by amending the general rules on service and filing. (Cal. R. Ct., rules 8.25, 8.817.)</p> <p>But no need exists to cross-reference these general rules in the <i>nine</i> specific rules for notices of appeal. The prison-delivery rule does not affect the time to file these notices. It just allows another method of filing — delivery to custodial officials within the specified time. (<i>Silverbrand v. County of Los Angeles</i> (2009) 46 Cal.4th 106, 126 (<i>Silverbrand</i>)).</p> <p>The cross-references are potentially misleading. The general rules are intended to apply to <i>all</i> filed documents. This intent is muddied if the general rules are cross-referenced in the notice</p>	<p>No response required.</p> <p>Based on these comments, the committee is proposing that this existing language in rules 8.308, 8.406, 8.450, 8.853, and 8.902 be deleted and not replaced with any cross-reference to proposed rule 8.25 or 8.817 in the rule text. The committee is proposing that cross-references to rules 8.25 and 8.817 be included in the advisory committee comments accompanying rules 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.822, 8.853, and 8.902.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>rules, but not in the rules for other documents. Readers may wrongly conclude the prison-delivery rule applies only to notices.</p> <p>The lower court in <i>Silverbrand</i> used similar reasoning to wrongly restrict the prison-delivery rule to criminal cases. (<i>Silverbrand, supra</i>, 46 Cal.4th at p. 126). It would be counter-productive to expand <i>Silverbrand</i> in a manner that encourages the same mistake it corrected.</p>	
8.	Superior Court of San Diego County By Michael M. Roddy, Court Executive Officer	A	No specific comment.	No response required.