Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title
Appellate Procedure: Transfer of Appellate Division Cases to the Court of Appeal

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 8.1006; amend rules 8.25, 8.40, 8.887, 8.890, 8.1000, 8.1002, 8.1005, 8.1008, 8.1012, 8.1014, 8.1016, and 8.1018; and amend and renumber rule 8.1010 as rule 8.1007

Recommended by
Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2011

Date of Report
September 10, 2010

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Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to transfer of cases within the appellate jurisdiction of the superior court appellate division to the Court of Appeal to make these rules clearer and easier to follow and to improve the administration of these proceedings by ensuring that the Court of Appeal has information to assist it in determining whether to order transfer. Among other things, these amendments will provide the Court of Appeal with a more complete record in the case and time to review that record before determining whether to order transfer and will allow a party to file a petition for transfer even if the appellate division has certified its opinion for publication.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2011:

1. Amend rule 8.25 of the California Rules of Court to clarify that petitions for transfer and answers to these petitions are among the documents considered timely filed if the time to file has not expired on the date the document is mailed or sent by overnight carrier.

2. Amend rule 8.40 to clarify the format requirements for petitions for transfer and answers to those petitions.

3. Amend rule 8.887 to clarify that when a copy of an appellate division opinion certified for publication is sent to the Court of Appeal, the purpose is to assist the Court of Appeal in determining whether to order the case transferred to the court on its own motion.

4. Amend rules 8.890, 8.1005, 8.1016, and 8.1018 to consolidate and clarify the provisions that relate to remittitur and finality of decisions relating to transfer and decisions in transferred cases.

5. Amend rule 8.1000 to make nonsubstantive, clarifying changes to the rule language and to add an advisory committee comment indicating that rules 8.1000–8.1018 implement the Court of Appeal's authority to transfer appellate division cases under Code of Civil Procedure section 911 and Penal Code section 1471.

6. Amend rule 8.1002 to clarify that the Court of Appeal may order transfer if the appellate division certifies the case for transfer, on petition for transfer by a party, or on the Court of Appeal's own motion.

7. Further amend rule 8.1005 to:
   - Clarify that the appellate division may certify a case for transfer to the Court of Appeal if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law;
   - Clarify that if an appeal in a traffic case is assigned to a single appellate division judge, that judge may certify the case for transfer;
   - Update the language concerning the time for filing an application for certification for transfer in the appellate division to mirror the language in rule 8.889 regarding the time for filing a petition for rehearing in the appellate division; and
   - Clarify that this rule addresses certification for transfer, not certification for publication, by consistently referring to certification or certifying a case "for transfer" and by

requiring that an appellate division order certifying a case for transfer clearly state that the appellate division is certifying the case "for transfer."

8. Adopt new rule 8.1006 addressing petitions for transfer, move the provisions relating to those petitions from current rule 8.1008 to this new rule, and make the following changes to those provisions:
   - Permit parties to file a petition for transfer in the Court of Appeal even if the appellate division certified its opinion for publication;
   - Provide that a petition for transfer may be filed only after the appellate division issues its decision;
   - Clarify the format requirements for petitions for transfer and answers to those petitions by replacing the cross-reference to rule 8.504 with the text of the applicable language from that rule and citing the specific applicable subdivisions of rule 8.204;
   - Reduce the permissible length of petitions for transfer and answers to those petitions so that the length is the same as for briefs to the Court of Appeal in transferred cases—5,600 words or 20 pages; and
   - Eliminate the provision prohibiting a party from filing an answer to a petition for transfer unless the Court of Appeal requests an answer.

9. Renumber current rule 8.1010 as rule 8.1007 and amend it to:
   - Clarify that the record of the case is sent to the Court of Appeal to assist it in determining whether to order transfer and eliminate the term "record on transfer";
   - Require that the record include any application for certification for transfer, any answer to that application, and the order of the appellate division on that application; and
   - Specify that the record must be sent by the appellate division within 5 days after the appellate division certifies the case for transfer or sends the Court of Appeal a copy of an opinion certified for publication or after the appellate division receives a copy of a petition for transfer or a request for the record from the Court of Appeal.

10. Amend rule 8.1008 to:
    - Shorten it and limit its focus to orders for transfer by deleting the provisions relating to:
      - The Court of Appeal's authority to order transfer (which would be addressed in rule 8.1002);
      - Petitions for transfer (which would be moved to new rule 8.1006);
      - Letters supporting or opposing transfer; and
      - Limitations on issues to be briefed or argued (which would be moved to rule 8.1012).
    - Make the time for ordering transfer on a petition for transfer the same as for ordering transfer when the appellate division has certified a case for transfer—20 days after the filing of the record in the Court of Appeal; and

- Make the time for ordering transfer on the Court of Appeal's own motion the same as the time for the Supreme Court to order review on its own motion—30 days after the lower court's decision is final.

11. Amend rule 8.1012 to:
    - Clarify the format requirements for briefs in transferred cases by citing the specific applicable subdivisions of rule 8.204 and by adding a provision regarding items that are not counted toward the applicable limits on the length of these briefs;[1] and
    - Add provisions from rule 8.1008 relating to limitations on issues to be briefed or argued.

12. Further amend these rules and rule 8.1014 to make other nonsubstantive, clarifying changes.

The text of the proposed rules is attached at pages 12–23.

Previous Council Action

Rules regarding transferring cases within the appellate jurisdiction of the superior court appellate division to the Court of Appeal were first adopted by the Judicial Council effective January 2, 1962. These rules permitted the Court of Appeal only to order transfer either on its own motion or when the superior court certified the case for transfer. In October 2002, the council repealed those rules and replaced them with a substantially revised set of transfer rules. Among other things, these revised rules, which took effect January 1, 2003:

- Authorized parties to petition the Court of Appeal to transfer a case, but only when the superior court had denied a request to certify the case for transfer and declined to certify for publication any opinion issued by the appellate division in the case;
- Permitted parties to send letters to the Court of Appeal supporting or opposing transfer either when the appellate division certified a case for transfer or when it certified its opinion for publication;
- Required that copies of all appellate division opinions certified for publication and the record in these cases be sent to the Court of Appeal in order to assist the court in determining whether to order transfer on its own motion; and
- Provided that the Court of Appeal had until 20 days after the record was filed in the court to order transfer on its own motion.

Rationale for Recommendation

Rules 8.1000–8.1018 of the California Rules of Court establish the procedures for transferring cases within the appellate jurisdiction of the superior court appellate division to the Court of Appeal as permitted under Code of Civil Procedure section 911 and Penal Code section 1471.

[1] In a separate report, the committee is recommending amendments to other rules relating to briefs and petitions to similarly specify items that are not counted toward the applicable length limits.

These statutes and rules allow the Court of Appeal to order an appellate division case transferred to it if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law. Transfer can be ordered if the appellate division certifies the case for transfer, on petition for transfer by a party, or on the Court of Appeal's own motion. In many ways, the rules on transfer mirror the rules regarding seeking review in the California Supreme Court. Like those rules, the transfer rules are designed to assist the higher court—the Court of Appeal—in identifying cases where review is needed. However, some provisions in the current transfer rules are unclear, may be confusing to rule users, or may result in the Court of Appeal not receiving information that might be helpful in determining whether to order transfer.

Certification for transfer by the superior court appellate division

Currently, rule 8.1005 provides that a case may be certified for transfer "by a majority of the appellate division judges to whom the case has been assigned or who decided the appeal or, if the case has not yet been assigned, by any two appellate division judges." This language presumes that the case was or will be heard by three appellate division judges. However, Code of Civil Procedure section 77(h) provides that an appeal of a traffic conviction can be heard by a single appellate division judge. This proposal would amend rule 8.1005 to provide that, if an appeal is assigned to a single appellate division judge, that judge may certify the case for transfer.

Petitions for transfer

Currently, the provisions relating to petitions for transfer are part of rule 8.1008. Because rule 8.1008 addresses several topics, it may be difficult for rule users to find the provisions regarding petitions for transfer. To make these provisions easier to find, this proposal would move the provisions relating to petitions for transfer out of rule 8.1008 and into new rule 8.1006. The proposal would also make several substantive changes to these provisions.

Right to file petitions. As noted above, in many ways, the rules on transfer mirror the procedures for seeking review in the California Supreme Court. To assist the Supreme Court, the rules relating to review in the Supreme Court permit parties to file petitions seeking review of almost any Court of Appeal decision. In contrast, the rules relating to transfer of cases from the appellate division to the Court of Appeal currently provide more limited opportunities for parties to seek transfer. Under rule 8.1008(b), if the appellate division decides not to grant an application for certification, a party may file a petition in the Court of Appeal asking the court to order transfer, but only if the appellate division also does not write an opinion and certify that opinion for publication. If the appellate division does certify an opinion for publication, rule 8.1008(d) permits a party only to write a letter to the Court of Appeal supporting or opposing transfer on the court's own motion. These different procedures may cause confusion for rule users, particularly given the small number of appellate division opinions that are certified for publication, and may also result in the Court of Appeal receiving less assistance in determining whether to review a published appellate division decision.

To make the rules simpler and to provide the Court of Appeal with additional assistance in identifying cases that are appropriate for transfer, this proposal would permit parties to file a petition for transfer in the Court of Appeal even if the appellate division certified its opinion for publication. The only prerequisite for filing a petition would be that an application for certification for transfer was filed in and denied by the appellate division. Current rule 8.1008(d), allowing for letters from parties urging transfer, would be deleted in light of the proposed new authority to file a petition for transfer even when an opinion is certified for publication.

Right to file answers to petitions. Under current rule 8.1008(b)(4), a party may not file an answer to a petition for transfer unless the Court of Appeal requests such an answer. If the Court of Appeal wants an answer, it must issue an order and the clerk must send the order to the parties and also immediately notify them by telephone or another expeditious method. This procedure mirrors the procedure under rule 8.268 for answers to petitions for rehearing in the Court of Appeal. In contrast, under rule 8.500, relating to petitions for review in the Supreme Court, parties are free to file answers to a petition for review if they so choose.

The limitation on answers to petitions for rehearing in rule 8.268 was adopted to lessen the burdens and costs for parties. Petitions for rehearing are frequently filed, and the vast majority are denied. Before this limitation was adopted, however, attorneys in these cases felt compelled to file answers to these petitions in almost every case, which escalated costs for the parties. The committee does not believe that the factors supporting such a limitation on answers are present with respect to petitions for transfer and is therefore proposing that parties be permitted to file answers to petitions for transfer without the Court of Appeal having to request such an answer. Petitions for transfer are not frequently filed and are not routinely denied. Answers in these cases may be very helpful to the Court of Appeal in determining whether to order transfer. Allowing parties to file such answers without the court having to request them will save the Court of Appeal the time and effort associated with issuing an order for such an answer, sending it to the parties, and notifying the parties by telephone or other expeditious method.

Format of petitions and answers. Rule 8.1008(b)(5) currently provides for the form and contents of petitions for transfer by requiring that these petitions "comply as nearly as possible with rule 8.504," the rule concerning the form and contents of petitions for review in the Supreme Court. However, many of the requirements in rule 8.504 do not apply in the context of an appellate division case. Furthermore, the basic format requirements in rule 8.504 are established through yet another cross-reference, this one to rule 8.204. Finally, the general rule on the format of appellate documents, rule 8.40, does not specify the color of covers for petitions for transfer or answers to these petitions. Altogether, this makes the form and content requirements for petitions for transfer difficult to find and understand.

To make these requirements easier to find and understand, this proposal would replace the cross-reference to rule 8.504 with the text of the applicable language from that rule. It would also clarify the cross-reference to rule 8.204 by citing the specific applicable subdivisions of that rule.

Finally, it would add provisions to rule 8.40 specifying the cover color for petitions for transfer and answers to those petitions. This proposal also would reduce the permissible length of petitions for transfer. Currently, through the cross-reference to rule 8.504, rule 8.1008 permits petitions for transfer to be the same length as petitions for review—8,400 words or 30 pages. In contrast, under rule 8.1012(d), briefs to the Court of Appeal in transferred cases are permitted to be only 5,600 words or 20 pages long. This proposal would make the length limit for petitions for transfer the same as for briefs in transferred cases.

The proposal would also make similar changes to the provisions relating to answers to petitions for transfer.

Time to file and timeliness of petitions and answers. Rule 8.1008(b)(2) (which would be renumbered as rule 8.1006(b)(1) under this proposal) addresses the time to file a petition for transfer. Currently, this rule provides that such petitions must be filed within 15 days after the appellate division judgment is final in that court. Under this rule, a petition for transfer could be filed before the appellate division issues its decision in the case. To give the appellate division the opportunity to decide the matter and to ensure that the parties and the Court of Appeal have the benefit of that decision in determining whether to petition for or order transfer of a case, this proposal would amend the rules to provide that a petition for transfer may be filed only after the appellate division issues its decision.

Rule 8.25(b) addresses filing documents in the Supreme Court or Court of Appeal. Under this rule, a document is generally considered timely filed if it is received by the clerk by the due date. However, this rule also creates an exception for certain documents, including petitions for review and answers to these petitions, providing that these documents are deemed timely filed if the time for filing them has not expired when they are deposited for mailing or for overnight delivery. Because petitions for transfer are analogous to petitions for review, this proposal would add petitions for transfer and answers to these petitions to the list of documents deemed timely filed if deposited for mailing or overnight delivery before the date for filing has expired.

Sending the record to the Court of Appeal

Currently, rule 8.1010 addresses the record that is transmitted to the Court of Appeal to assist it in determining whether to order transfer. Because rule 8.1010 follows the rule regarding orders for transfer and because of the rule refers to the “record on transfer”, some rule users have thought that the transmission of this record signifies that a case has been transferred to the Court of Appeal. To make it clearer that this record is sent to the Court of Appeal before the decision to transfer is made, not when a case is transferred, this rule would be renumbered as rule 8.1007, so that it precedes the rule on orders for transfer. To further clarify this point, the term “record on transfer” would be eliminated.

To provide the Court of Appeal with additional information to assist it in considering whether to order transfer, the rule would be amended to require that the record sent to the Court of Appeal include any application for certification for transfer, any answer to that application, and the order of the appellate division on that application.

Ordering transfer

Rule 8.1008(c) addresses the time within which the Court of Appeal can order transfer. Currently, this rule provides that the court has 20 days from the filing of the record to order transfer on its own motion or when the appellate division has certified the case for transfer and 20 days from the filing of a petition for transfer.

Having the record in the case may be as important for the Court of Appeal in deciding whether to grant transfer based on a party's petition as it is after the appellate division has certified the case for transfer. Therefore, this proposal would make the time for granting transfer when a petition for transfer is filed the same as it is when a case has been certified by the appellate division for transfer—20 days after the filing of the record in the Court of Appeal.

This proposal would also make the time for granting transfer on the Court of Appeal's own motion the same as the time for the Supreme Court to grant review on its own motion—30 days after the lower court's decision is final. Now, because there is no outer limit on when the Court of Appeal can request the record from the appellate division and the time for granting review on the court's own motion is keyed to when that record is filed, there is essentially no outer limit on when the Court of Appeal can order transfer on its own motion. This could cause difficulty because the time to issue remittitur in an appellate division case is keyed to the time within which the Court of Appeal can order transfer (see rule 8.890). Requiring the Court of Appeal to order transfer on its own motion within 30 days after the appellate division decision is final gives the Court of Appeal a clear window of opportunity to order transfer and gives the appellate division a clear line for when it can issue a remittitur. Note that the current rule allows the Court of Appeal to extend the time within which it can order transfer by up to 20 days; this proposal would not alter that authority.

To shorten rule 8.1008 and make the relevant provisions easier to find, this proposal would also remove the provisions relating to topics other than ordering transfer. As noted above, the provisions relating to petitions for transfer would be placed in new rule 8.1006. The provisions relating to limitations on the issues to be briefed or argued would be moved to rule 8.1012, which already addresses briefing.

Finality and remittitur

Rule 8.888 generally addresses finality and modification of appellate division decisions. Rule 8.890 generally addresses the issuance of remittitur by the appellate division, including the issuance of remittitur following the grant or denial of transfer. Rule 8.1005(c) also addresses the

finality of appellate division judgments, and rules 8.1018 and 8.1016(b)(2) address finality and remittitur in cases in which transfer is sought or ordered. This proposal would consolidate and clarify these provisions. It would delete the provision relating to finality from rule 8.1005 and move the provisions relating to finality and remittitur out of rule 8.1016(b)(2) and place them in rule 8.1018. It would also amend rule 8.1018 to make it more consistent with rule 8.890 and to clarify that, if the Court of Appeal issues a decision in a transferred case, finality of that decision and remittitur are generally governed by the same rules that apply to other Court of Appeal decisions—rules 8.264 and 8.272, respectively.

Other proposed changes

The rules on transfer currently contain outdated language from rules relating to appellate division proceedings that were repealed in 2009. This proposal would update the rule language to reflect the new appellate division rules that went into effect on January 1, 2009. For example, the language in rule 8.1005(b) concerning the time for filing an application for certification for transfer in the appellate division would be updated to mirror the language in new rule 8.889 regarding the time for filing a petition for rehearing in the appellate division.

Because both these transfer rules and the rules relating to publication of appellate division opinions call for an appellate division "certification," it may not always be clear whether "certification" means certification for transfer or certification of an opinion for publication. To clarify this distinction, this proposal would amend the transfer rules to consistently refer to certification or certifying a case "for transfer." It would also require that an appellate division order certifying a case for transfer clearly state that the appellate division is certifying the case for transfer to the Court of Appeal.

Comments, Alternatives Considered, and Policy Implications

The proposal to adopt rule 8.1006; amend rules 8.25, 8.40, 8.887, 8.890, 8.1000, 8.1002, 8.1005, 8.1008, 8.1012, 8.1014, 8.1016, and 8.1018; and amend and renumber rule 8.1010 as rule 8.1007 was circulated for public comment between April 19 and June 18, 2010, as part of the regular spring comment cycle. Twelve individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, one agreed with the proposal if modified, and five did not indicate their position on the proposal. The full text of the comments received and the committee's responses are set out in the attached comment chart at pages 24–31 and the main substantive comments are discussed below.

Sending the Court of Appeal copies of appellate division opinions certified for publication and records in these cases

Currently, rule 8.887 requires that, whenever an appellate division opinion is certified for publication, a copy of the opinion must be sent to the Court of Appeal. In addition, rule 8.1010 (which would be renumbered as rule 8.1007 under this proposal) currently requires that, along with the opinion certified for publication, the appellate division must send the Court of Appeal a

record of the proceedings in the case. The intended purpose of these requirements is to facilitate the Court of Appeal's consideration of whether to order transfer on its own motion.

The proposal that was circulated for public comment would have deleted these requirements, primarily because they no longer seemed necessary in light of the proposal to permit parties to file a petition for transfer in cases in which the appellate division certified its opinion for publication. Two commentators opposed this change. These commentators suggested that, because parties to appellate division proceedings are frequently self-represented, the Court of Appeal cannot reasonably rely on them to bring a published appellate division opinion to its attention on a petition for transfer. They also suggested that sending these opinions and records to the Court of Appeal provides an important and automatic prompt to enable the court to focus on the opinion.

In response to these comments, the committee revised the proposal to retain, but also clarify, the current requirement that any appellate division opinion that is certified for publication and the record in that case be sent to the Court of Appeal to assist the court in deciding whether to transfer the case on the court's own motion.

Supreme Court review of the denial of transfer

Rule 8.500, regarding review in the Supreme Court, currently provides, in relevant part: "A party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, *except the denial of a transfer of a case within the appellate jurisdiction of the superior court*." (Italics added for emphasis.) One commentator suggested that this limitation on seeking review in the Supreme Court of the denial of transfer be eliminated. The committee is not recommending this change. The committee has considered this proposed change twice during the past 10 years—in 2005 and as it was developing this proposal—and both times decided not to recommend it. This limitation on the scope of the Supreme Court's review has been in place since the Judicial Council first adopted rules in 1962 to implement the statutory authority to transfer cases from the superior court to the Court of Appeal. The committee believes that it appropriately reflects a policy of trying to focus limited court and litigant resources on addressing substantive issues in dispute, particularly in these cases, which involve lesser penalties or amounts in controversy. Parties in these cases are still free to challenge the superior court's decision in the underlying case by way of petition for extraordinary writ (see, for example, *Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 517, fn. 5.).

Implementation Requirements, Costs, and Operational Impacts

Clarifying the rules relating to the transfer of appellate division cases to the Court of Appeal should reduce court costs associated with answering questions and addressing mistakes made by litigants concerning the transfer procedures. Amending the rules to permit parties to file petitions for transfer in cases in which an appellate division opinion has been certified for publication may

increase the workload of the Court of Appeal, but, given the extremely small number of appellate division opinions certified for publication (only four per year, on average, 2005–2009), this increase should be negligible.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal recommends amendment of rules of court to improve practices and procedures, it supports the policies of promoting innovative and effective practices for processing cases and ensuring that statewide rules promote the fair, timely, effective, and efficient processing of cases underlying Goal III, Modernization of Management and Administration (Goal III.B., Policies 1 and 2).

Attachments

1. Cal. Rules of Court, rules 8.25, 8.40, 8.887, 8.890, 8.1000, 8.1002, 8.1005, 8.1006, 8.1008, 8.1010, 8.1012, 8.1014, 8.1016, and 8.1018, at pages 12–23
2. Chart of comments, at pages 24–31

Rule 8.1006 of the California Rules of Court is adopted; rules 8.25, 8.40, 8.887, 8.890, 8.1000 8.1002, 8.1005, 8.1008, 8.1012, 8.1014, 8.1016, and 8.1018, are amended; and rule 8.1010 is amended and renumbered, effective January 1, 2011, to read:

Title 8. Appellate Rules

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

Rule 8.25. Service and filing

(a) *** * ***

(b) **Filing**

(1)–(2) * * *

(3) A brief, a petition for rehearing, an answer to a petition for rehearing, <u>a petition for transfer of an appellate division case to the Court of Appeal, an answer to such a petition for transfer,</u> a petition for review, an answer to a petition for review, or a reply to an answer to a petition for review is timely if the time to file it has not expired on the date of:

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

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

(4)–(5) * * *

Rule 8.40. Form of filed documents

(a) *** * ***

(b) **Cover color**

(1) As far as practicable, the covers of briefs and petitions must be in the following colors:

Appellant's opening brief or appendix	green
Respondent's brief or appendix	yellow
Appellant's reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray

Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red
Reply to answer (or opposition) to petition for original writ	red
Petition for transfer of appellate division case to Court of Appeal	white
Answer to petition for transfer of appellate division case to Court of Appeal	blue
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white
Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

(2)–(3) * * *

(c) * * *

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

Rule 8.887. Decisions

(a)–(b) * * *

(c) Opinions certified for publication

(1) * * *

(2) When the decision is final as to the appellate division in a case in which the opinion is certified for publication, the clerk must immediately send:

(A) ~~To the Reporter of Decisions: t~~Two paper copies and one electronic copy to the Reporter of Decisions in a format approved by the Reporter.

(B) One copy ~~T~~to the Court~~s~~ of Appeal for the district. The ~~one~~ copy must bear~~ing~~ the notation "~~To be published~~ This opinion has been certified for publication in the Official Reports. It is being sent to assist the Court of Appeal in deciding whether to order the case transferred to the court on the court's own motion under rules 8.1000–8.1018." The

Court~~s~~ of Appeal clerk must promptly file that copy or make a docket entry showing its receipt.

Rule 8.890. Remittitur

(a) * * *

(b) Clerk's duties

(1) If an appellate division case is not transferred to the Court of Appeal under rule 8.1000 et seq., the appellate division clerk must:

(A) Issue a remittitur immediately after the Court of Appeal denies transfer~~,~~ or the period for granting transfer under rule 8.1008~~(c)~~(a) expires if there will be no further proceedings in the appellate division;

(B)–(C) * * *

(2) If an appellate division case is transferred to a Court of Appeal under rule 8.1000 et seq., on receiving the Court of Appeal remittitur, the appellate division clerk must issue a remittitur and return documents to the trial court as provided in rule 8.1018.

(c)–(d) * * *

Division 4. Transfer of Appellate Division Cases to the Court of Appeal

Rule 8.1000. Application

Rules 8.1000–8.1018 ~~apply to proceedings for transferring~~ govern the transfer of cases within the appellate jurisdiction of the superior court—other than appeals in small claims cases—to the Court of Appeal ~~for review~~. Unless the context requires otherwise, the term "case" as used in these rules means cases within that jurisdiction.

Advisory Committee Comment

The rules in this division implement the authority of the Court of Appeal under Code of Civil Procedure section 911 and Penal Code section 1471 to order any case on appeal to a superior court in its district transferred to the Court of Appeal if it determines that transfer is necessary to secure uniformity of decision or to settle important questions of law.

Rule 8.1002. Transfer authority

A Court of Appeal may order a case transferred to it for hearing and decision if ~~the appellate division certifies under rule 8.1005 or the Court of Appeal~~ it determines ~~under~~

~~rule 8.1008~~ that transfer is necessary to secure uniformity of decision or to settle an important question of law. Transfer may be ordered on:

(1) Certification of the case for transfer by the superior court appellate division under rule 8.1005;

(2) Petition for transfer under rule 8.1006; or

(3) The Court of Appeal's own motion.

Rule 8.1005. Certification for transfer by the appellate division

(a) Authority to certify

(1) The appellate division may certify a case for transfer to the Court of Appeal on its own motion or on a party's application if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law.

(2) Except as provided in (3), a case may be certified for transfer by a majority of the appellate division judges to whom the case has been assigned or who decided the appeal or, if the case has not yet been assigned, by any two appellate division judges.

(3) If an appeal from a conviction of a traffic infraction is assigned to a single appellate division judge under Code of Civil Procedure section 77, the case may be certified for transfer by that judge.

(4) If an assigned or deciding judge is unable to act on the certification for transfer, a judge designated or assigned to the appellate division by the chair of the Judicial Council may act in that judge's place.

(b) Application for certification

(1) A party may serve and file an application ~~for certification~~ asking the appellate division to certify a case for transfer at any time after the record on appeal is filed in the appellate division ~~and within~~ but no later than 15 days after: ~~judgment is pronounced or a modification order changing the appellate judgment is filed.~~

(A) The decision is filed;

(B) A publication order restarting the finality period under rule 8.888(a)(2);

(C) A modification order changing the appellate judgment under rule 8.888(b); or

(D) The filing of a consent under rule 8.888(c).

(2) The party may include the application in a petition for rehearing.

~~(2)~~(3) The application must explain why transfer is necessary to secure uniformity of decision or to settle an important question of law.

~~(3)~~(4) Within five days after the application is filed, any other party may serve and file an ~~opposition~~ answer.

~~(4)~~(5) No hearing will be held on the application. Failure to certify the case within the time specified in (c) is deemed a denial of the application.

~~(c) Finality of appellate division judgments~~

~~An appellate division judgment is final in that court as provided in rule 8.888.~~

~~(d)~~(c) Time to certify

The appellate division may certify a case ~~may be certified~~ for transfer at any time after the record on appeal is filed in the appellate division and before the appellate division ~~judgment~~ decision is final in that court.

~~(e)~~(d) Contents of ~~certification~~ order certifying case for transfer

An ~~certification~~ order certifying a case for transfer must:

(1) Clearly state that the appellate division is certifying the case for transfer to the Court of Appeal;

~~(1)~~(2) Briefly describe ~~any conflict of decision – citing the decisions creating the conflict – or~~ why transfer is necessary to secure uniformity of decision or to settle an important question of law ~~to be settled~~; and

~~(2)~~(3) State whether there was a ~~judgment~~ decision on appeal and, if so, its date and disposition.

~~(f)~~(e) Superior court clerk's duties

(1) If the appellate division orders ~~certification~~ a case certified for transfer, the clerk must promptly send a copy of the certification order to the Court of Appeal clerk, the parties, and, in a criminal case, the Attorney General.

(2) If the appellate division denies ~~an~~ certification application by order, the clerk must promptly send a copy of the order to the parties.

Rule 8.1006. Petition for transfer

(a) Right to file petition

A party may file a petition in the Court of Appeal asking for an appellate division case to be transferred to that court only if an application for certification for transfer was first filed in the appellate division and denied.

(b) Time to file petition

(1) The petition must be served and filed in the Court of Appeal after the appellate division issues its decision in the case but no later than 15 days after the decision is final in that court. A copy of the petition must also be served on the appellate division.

(2) The time to file a petition for transfer may not be extended, but the presiding justice may relieve a party from a failure to file a timely petition for transfer if the time for the Court of Appeal to order transfer on its own motion has not expired.

(c) Form and contents of petition

(1) Except as provided in this rule, a petition must comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

(2) The body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail.

(3) The petition must explain why transfer is necessary to secure uniformity of decision or to settle an important question of law.

(4) The petition must not exceed 5,600 words, including footnotes, if produced on a computer, and 20 pages if typewritten. A petition produced on a computer must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document. A certificate stating the number of words, the tables required by rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), any signature block, and any attachment permitted under rule 8.204(d) are excluded from these length limits.

(d) Answer to petition

(1) Any answer must be served and filed within 10 days after the petition is filed unless the court orders otherwise.

(2) Except as provided in this rule, any answer must comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

(3) An answer must comply with the length requirements of (c)(4).

Advisory Committee Comment

See rule 8.40 for requirements regarding the covers of documents filed in the appellate courts and rule 8.44(b) for the number of copies of documents that must be provided to the Court of Appeal.

Rule ~~8.1010.~~8.1007. Transmitting record ~~on transfer~~ to Court of Appeal

~~(b)~~(a) Clerks' **duties**

(1) To assist the Court of Appeal in determining whether to order transfer, the superior court clerk must ~~promptly~~ send the record ~~on transfer~~ specified in (b) to the Court of Appeal ~~and notify the parties that the record was sent when~~ within five days after:

(A) The appellate division certifies a case for transfer under rule 8.1005;

(B) The superior court clerk sends a copy of an appellate division opinion certified for publication to the Court of Appeal under rule ~~8.707~~ 8.887;

(C) The superior court clerk receives a copy of a petition ~~to~~ for transfer under rule 8.1006; or

(D) The superior court receives a request for the record from the Court of Appeal ~~for the record on transfer~~.

(2) The Court of Appeal clerk must promptly notify the parties when the clerk files the record ~~on transfer is filed~~.

~~(a)~~(b) **Contents**

The record ~~on transfer~~ sent to the Court of Appeal under (a) must contain:

(1) The original record on appeal prepared under rules 8.830–8.843, 8.860–873, or 8.910–8.923;

(2) Any briefs filed in the appellate division; ~~and~~

(3) ~~Any order or opinion~~ The decision of the appellate division~~.~~; and

(4) Any application for certification for transfer, any answer to that application, and the appellate division's order on the application.

Rule 8.1008. Order for transfer

~~**(a) Authority to transfer on Court of Appeal's own motion or a party's petition**~~

~~The Court of Appeal may order transfer of a case on the court's own motion or on a party's petition to transfer.~~

~~**(b) Petition to transfer**~~

~~(1) If the appellate division denies an application for certification and does not certify its opinion for publication, a party may serve and file in the Court of Appeal a petition to transfer the case to that court.~~

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

~~(3) The petition must explain why transfer is necessary to secure uniformity of opinion or to settle an important question of law.~~

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

~~(5) The petition and any answer must comply as nearly as possible with rule 8.504.~~

~~(c)~~(a) Time to transfer

(1) The Court of Appeal may order transfer~~:~~

(A) After ~~certification~~ the appellate division certifies the case for transfer or ~~on its own motion~~ on petition for transfer, within 20 days after the record ~~on transfer~~ sent under rule 8.1007 is filed in the Court of Appeal; or

(B) On ~~petition to transfer~~ its own motion, within ~~20~~ 30 days after the ~~petition is filed~~ appellate division decision is final in that court.

(2) Within either period specified in (1), the Court of Appeal may order an extension not exceeding 20 days.

(3) If the Court of Appeal does not timely order transfer, transfer is deemed denied.

~~**(d) Letter supporting or opposing transfer**~~

~~(1) Except when a party files a petition to transfer under (b), any party may send the Court of Appeal a letter supporting or opposing transfer within 10 days after a record on transfer is filed in that court. The letter must be served on all other parties.~~

~~(2) The letter must be double-spaced and must not exceed 1,400 words if produced on a computer or five pages if typewritten.~~

~~**(e) Limitation of issues**~~

~~(1) On or after ordering transfer, the Court of Appeal may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in those issues.~~

~~(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire case.~~

~~(f)~~(b) Court of Appeal clerk's duties

(1) When a transfer order is filed, the clerk must promptly send a copy of the order to the superior court clerk, the parties, and, in a criminal case, the Attorney General.

(2) With the copy of the transfer order sent to the parties and the Attorney General, the clerk must send notice of the time to serve and file any briefs ordered under rule 8.1012 and, if specified by the Court of Appeal, the issues to be briefed and argued.

(3) If the court denies transfer after ~~certification~~ the appellate division certifies a case for transfer or after a party files a petition for transfer, the clerk must ~~return the record on transfer and any exhibits to the superior court clerk and~~

promptly send notice of the denial to the parties, the appellate division, and, in a criminal case, the Attorney General.

(4) Failure to send any order or notice under this subdivision does not affect the jurisdiction of the Court of Appeal.

Rule 8.1012. Briefs and argument

(a) ~~Who may file~~ When briefs permitted

(1) After the Court of Appeal orders transfer, the parties may file briefs in the Court of Appeal only if ordered by the court. The court may order briefs either on a party's application or the court's own motion. The court must prescribe the briefing sequence in any briefing order.

(2) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief filed in the Court of Appeal in the same or a related case.

(b) Time to file briefs

Unless otherwise provided in the court's order under (a):

(1) The opening brief must be served and filed within 20 days after entry of the briefing order.

(2) The responding brief must be served and filed within 20 days after the opening brief is filed.

(3) Any reply brief must be served and filed within 10 days after the responding brief is filed.

(c) Additional service requirements

(1) Any brief of a defendant in a criminal case must be served on the prosecuting attorney and the Attorney General.

(2) Every brief must ~~show delivery of a copy to~~ be served on the appellate division from which the case was transferred.

(d) Form and contents of briefs

(1) Except as provided in this rule, briefs must comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

(2) No brief may exceed 5,600 words if produced on a computer or 20 pages if typewritten. ~~In all other respects briefs must comply with rule 8.204.~~ The person certifying may rely on the word count of the computer program used to prepare the document. A certificate stating the number of words, the tables required by rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), any signature block, and any attachment permitted under rule 8.204(d) are excluded from these length limits.

(e) Limitation of issues

(1) On or after ordering transfer, the Court of Appeal may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in those issues.

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire case.

Rule 8.1014. Proceedings in the appellate division after certification or transfer

When the appellate division certifies a case for transfer or the Court of Appeal orders transfer, further action by the appellate division is limited to preparing and sending the record under rule 8.1007 until termination of the proceedings in the Court of Appeal.

Rule 8.1016. Disposition of transferred case

(a) Decision on limited issues

The Court of Appeal may decide fewer than all the issues raised and may retransfer the case to the appellate division for decision on any remaining issues.

(b) Retransfer without decision

~~(1)~~ The Court of Appeal may vacate a transfer order without decision and retransfer the case to the appellate division with or without directions to conduct further proceedings.

~~(2) If the appellate division pronounced judgment before transfer and the Court of Appeal directs no further proceedings, the judgment is final when the appellate division receives the order vacating transfer, and its clerk must promptly issue a remittitur.~~

Rule 8.1018. Finality and remittitur

(a) ~~Finality~~ When transfer is denied

If the Court of Appeal denies ~~The denial of a~~ transfer of a case from the appellate division of the superior court after the appellate division certifies the case for transfer or after a party files a petition for transfer, the denial is final immediately. On receiving notice under rule 8.1008(b) that the Court of Appeal has denied transfer or if the period for ordering transfer under rule 8.1008(a) expires, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(b) When transfer order is vacated

If the appellate division issued a decision before transfer and the Court of Appeal vacates its transfer order under rule 8.1016(b) and retransfers the case without directing further proceedings, the appellate division's decision is final when the appellate division receives the order vacating transfer. The appellate division clerk must promptly issue a remittitur.

~~(b)~~(c) When the Court of Appeal ~~remittitur~~ issues a decision

If the Court of Appeal ~~clerk must promptly issue a remittitur when a decision of the court is final.~~ issues a decision on a case it has ordered transferred from the appellate division of the superior court, filing, finality, and modification of that decision are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk must address the remittitur to the appellate division and send that court two copies of the remittitur and two file-stamped copies of the Court of Appeal opinion or order. On receipt of the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

~~(c) Appellate division remittitur~~

~~On receiving the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.~~

(d) Documents to be returned

~~Each reviewing court~~ When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the Court of Appeal clerk must return to the appellate division ~~all original records, documents,~~ the record sent to the Court of Appeal under rule 8.1007 and any exhibits ~~with the remittitur but need not return any certification, transcripts on appeal, briefs, or notice of appeal~~.

SPR10-08

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

	Commentator	Position	Comment	Proposed Committee Response
1.	Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	A	Our committee supports SPR10-08. As we understand them, the new rules here do not change the substance of the transfer mechanism, but clarify the process (akin to the prior proposal governing judicial notice in the Appellate Division). Express codification reduces doubt and uncertainty and is a good thing. We note one typographical error in proposed rule 8.1007 ("Transmitting record to Court of Appeal"). In new subdivision (b)(1) ("Contents"), the rule reference should be to rule 8.860, not rule 8.86. The text there should read "8.860 - 8.873" rather than "8.86 - 8.873."	The committee notes that the proposal contains several substantive changes to the current procedures relating to transfer of appellate division cases to the Court of Appeal. The committee appreciates the commentator idenifying this error and has revised the proposal to correct the cross-reference.
2.	California Appellate Court Clerks Association by Joseph Lane	NI		No response required.
3.	California Judges Association by Jordan O. Posamentier Legislative Counsel San Francisco	NI	We would oppose the part of this proposal that would eliminate the requirements that the Court of Appeal be sent all appellate division opinions certified for publication. The requirement provides an important and automatic prompt to enable the Court of Appeal to focus on the opinion. It preserves the Court of Appeal's ability to effectively supervise the common law. There are not many appellate division opinions, so the current requirement should not be found to be	In response to this and another comment, the committee has revised the proposal to retain, but also clarify, the current requirement that any appellate division opinion that is certified for publication and the record in that case must be sent to the Court of Appeal to assist the court in deciding whether to transfer the case on the court's own motion.

	Commentator	Position	Comment	Proposed Committee Response
			overly burdensome.	
4.	Committee on Appellate Courts State Bar of California by T. Peter Pierce, Chair San Francisco	A	No additional comment.	No response required.
5.	Gerald H. Genard Danville	AM	This rule should be amended to require that the Court of Appeal may not rule upon the petition for transfer until the record from the appellate division has been filed and reviewed in the Court of Appeal. Further, the rule should be amended to allow discretionary review by the Supreme Court of denials of transfer. Reason: In 2009, two judges from Division 4 of the First Appellate District, before any record of the proceedings below was transferred to the court of appeal, signed an order denying a petition for transfer of a case from the Contra Costa Superior Court, Appellate Division, affirming, without any opinion or written reference to the record (a violation of the US	While the committee is recommending that rule 8.1008 be amended so that the time for ruling on a petition for transfer from the date the record is filed in the Court of Appeal, the committee is not recommending that the court be prohibited from ruling on such a petition until it has reviewed the record. The Court of Appeal may rule on such a petition before the record is reviewed for a variety of reasons, including that the petition is untimely or otherwise not permitted under the rules. The committee considered and decided not to recommend this change on two occasions during the last 10 years: once in 2005 and once as it was developing this proposal. This limitation on the scope of the Supreme Court's review has been in place since the Judicial Council first adopted rules in 1962 to implement the statutory authority to transfer cases from the superior court to the Court of Appeal. The committee believes that it appropriately reflects a policy of trying to focus limited court and litigant resources on addressing substantive issues in dispute, particularly in these cases which involve

	Commentator	Position	Comment	Proposed Committee Response
			Constitution) an infraction conviction for speeding. The issues on appeal were extremely important issues yet to be decided in any California published opinion, including application of the Kelly/Frye doctrine to laser guns and application of the Confrontation Clause to traffic surveys. In the same month that the court of appeal judges were declining transfer because of "unimportance" of these issues, the highest courts of Hawaii and Texas addressed laser gun issue and both reversed convictions based upon laser gun evidence. This questionable denial by the California judges might have been avoided had they waited until the record had been transferred and had there not been an apparent predisposition to conclude that issues are unimportant because they arise in infraction cases.	lesser penalties or amounts in controversy. Parties in these cases are still free to challenge the superior court's decision in the case by way of petition for extraordinary writ (see, for example, *Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 517, fn.5.).
			The rule should be amended further as follows: 1. The appellate division should be required to either write a written opinion setting forth the basis for its judgment or, in lieu thereof, a memorandum referencing the record of appeal and stating why the record supports its conclusion. 2. In any case where the appellate division's judgment decided issues of law which have not yet been addressed in published opinions in	These suggestions are beyond the scope of this proposal. The committee plans to form a working group to consider possible changes to the appellate division rules. The committee will submit these suggestions to the working group for its consideration.

	Commentator	Position	Comment	Proposed Committee Response
			California, the appellate division should be required to issue an opinion and certify it for publication, subject to veto by the Supreme Court. Reasons: Important issues of first impression can arise in inferior jurisdiction cases, including traffic infraction cases. Examples include the application of the Kelly/Frye doctrine to laser guns and the application of the Confrontation Clause to traffic engineers doing traffic surveys. Neither of these issues has yet been determined in a published California case, yet these issues are important and recurring and should be definitively decided. Millions of people are affected by infraction citations and litigation yet our system seems to view them as unimportant. The lack of clear authority in the area only serves to generate suspicion and distrust of the court system . Additionally, it is unconstitutional for appellate divisions to rule on infraction appeals without issuing any written comments or opinions justifying the results. Goldberg v. Kelly,397 U.S. 254 (1970) (The decision maker need not file a full opinion or make formal findings of fact or conclusions of law, but should state the reason for his determination and indicate the evidence he relied on. P. 271.)	

	Commentator	Position	Comment	Proposed Committee Response
			Notwithstanding the foregoing, the appellate division of the Contra Costa Superior Court affirmed an infraction conviction involving the above mentioned issues without opinion or reference to the record in 2009. Compare the appellate division of the Los Angeles Superior Court which regularly issues written opinions in infraction appeals.	
6.	Hon. Judith D.McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate District	NI	I ask the Committee not to adopt the proposed revisions to rules 8.887 and 8.1010, which would eliminate the existing requirements that the clerk of the appellate division of the superior court send the appellate court as copy of any opinion the appellate division certifies for publication and forward the record in the case along with the opinion. The proposed rule changes are premised on (a) the fact that the appellate division does not currently certify many opinions for publication and (b) if adopted, the other proposed rule cahnges would now allow the parties to file a petition for transfer when the appellate division certifies an opinion for publication. However, unless a Court of Appeal has designated staff to review all appellate division opinions that are certifed for publications (my court does not have such staff), it is not guaranteed that the court will pick up on every published case that may be of interest. Further, because parties to the appellate division proceedings often represent themselves in *pro per*, the court	In response to this and another comment, the committee has revised the proposal to retain, but also clarify, the current requirement that any appellate division opinion that is certified for publication and the record in that case be sent to the Court of Appeal to assist the court in deciding whether to transfer the case on the court's own motion.

	Commentator	Position	Comment	Proposed Committee Response
			cannot reasonably rely on them to bring a published appellate division opinion to its attention on a petition for transfer. Particularly because appellate divisions do not certify many opinions for publication, it is not unduly onerous to require that court to forward its published opinions and the related records to the court of appeal for review.	
7.	Orange County Bar Association by Lei Lei Wang Ekvall Newport Beach	A	No additional comment.	No response required.
8.	Public Counsel Los Angeles	NI	Public Counsel supports the proposal to eliminate the prohibition on filing a petition for transfer in the Court of Appeal when the appellate division certifies its opinion for publication. While we do not recall seeing any litigants at the Appellate Self-Help Clinic affected by this prohibition, we have encountered numerous appellate division litigants who petitioned to have their cases reviewed the by Court of Appeal. For the reasons stated in the Invitation to Comment, Public Counsel also supports (a) the proposed format changes for transfer petitions and answers to petitions (b) the addition of transfer petitions and answers to petitions to the list of documents deemed timely filed if deposited for mailing or overnight mail before the date for filing has expired.	No response required.

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	Commentator	Position	Comment	Proposed Committee Response
9.	Superior Court of Los Angeles County	A	No additional comment.	No response required.
10.	Superior Court of Sacramento County by Robert Turner ASO II Finance Division	NI	These proposed changes are designed to assist parties who seek certification from the appellate division to the District Court of Appeal. The rule changes seem to deal primarily with filings directed to the court of appeal after the appellate division has denied certification. I agree with adding a provision expressly allowing the single judge to order certification in a traffic infraction appeal, if that single judge resolved that appeal pursuant to CCP section 77. I generally disagree with calculating time with reference to mailing dates. Filing dates are easier to track and allow for more efficient administration of justice. Post marks can smudge and be difficult to read.	No response required. Because petitions for transfer and petitions for review are intended to be analogous procedures, the committee believes it is appropriate that the timeliness of these petitions and answers to these petitions be treated in a similar manner under rule 8.25. Since petitions for transfer are filed in the Court of Appeal, not the superior court, the amendment to rule 8.25 will not impact the practices of the superior court.
11.	Superior Court of San Bernardino County by Debra Meyers Deputy Court Executive Officer/General Counsel	A	No additional comment.	No response required.

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	Commentator	Position	Comment	Proposed Committee Response
12.	Superior Court of San Diego County by Michael M. Roddy Court Executive Officer	A	Our court would like to expressly thank the Appellate Advisory Committee for their hard work and well-considered proposals. There is a rule reference typo that needs to be corrected at page 14, line 39 of the proposal [the reference to Rule 8.86 should be to 8.860].	No response required. The committee appreciates the commentator idenifying this error and has revised the proposal to correct the cross-reference.