



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Agenda Item Type
Appellate Procedure: Briefs and Petitions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928	January 1, 2011
Recommended by	Date of Report
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	September 10, 2010
	Contact
	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to briefs and petitions to (1) clarify the applicable limits on the length of briefs and petitions by providing that the cover information, signature block, and any Certificate of Interested Entities or Persons that must be included in a brief or petition are not counted in determining compliance with these length limits; (2) update the rules to reflect the use of current technology by eliminating the requirement that signatures on stipulations to extend briefing time in civil appeals in the Court of Appeal be in the form of faxed copies of the signature page; and (3) increase efficiency in matters involving amici curiae before the Supreme Court by giving parties the option of filing a consolidated response when multiple amicus briefs are filed in a case.

Recommendation

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

1. Amend rules 8.204, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928 of the California Rules of Court to specify that that the cover information, signature block, and any Certificate of Interested Entities or Persons included in a brief or petition filed in the Supreme Court, Court of Appeal, or superior court appellate division are not counted in determining compliance with the limits on the length of these briefs or petitions;
2. Further amend rule 8.520 to:
 - a. Lengthen the time for filing an answer to an amicus curiae brief in matters before the Supreme Court from 20 days after the amicus curiae brief is filed to 30 days after either the court rules on the last timely filed application to file an amicus curiae brief or the time for filing applications to file an amicus curiae brief expires, whichever is later;
 - b. Permit parties to file a consolidated answer to multiple amicus curiae briefs filed in the case; and
3. Amend rule 8.212 to delete the requirement that signatures on stipulations to extend briefing time in civil appeals in the Court of Appeal be in the form of faxed copies of the signature page.

The text of the proposed rule is attached at pages 7–16.

Previous Council Action

Exclusions from the limits on the length of briefs and petitions

The predecessor to rule 8.204, regarding the format of briefs in civil appeals to the Court of Appeal, was amended by the Judicial Council in October 1982 to establish a limit on the length of these briefs. The rule specifically provided that tables and indices were not counted toward this length limit. Subsequent limits adopted by the council on the length of briefs in capital appeals and other felony appeals similarly provided that tables and indices were not counted toward the length limits; and limits on the length of petitions for review and briefs on the merits in the Supreme Court excluded these tables and indices as well as other material required to be included in these documents, such as the copy of the opinion or order that was the subject of the petition. Between July 2001 and July 2004, the council adopted a completely revised set of rules for the Supreme Court and Courts of Appeal. These revised rules changed all of the length limits for documents not prepared on a typewritten. Whereas the rules previously specified the permissible number of pages of a document, the new rules specified the permissible number of words in the document. However, the new rules continued to exclude tables, indices, and other material from the applicable limits. In addition, these rules provided that the certificates indicating the number of words in the document as well as attachments permitted or required under the rules, were excluded from the applicable word limits. In February 2008, the Judicial

Council adopted new rules and forms for the superior court appellate division. The new appellate division rules concerning briefs, rules 8.883 and 8.928, which were modeled on the Court of Appeal rules, limited the number of words in a brief and excluded from the applicable word limits the required word count certificate and permissible attachments to the brief.

Signatures on stipulations to extend briefing time

The predecessor to rule 8.212, regarding the time to file briefs, was adopted by the Judicial Council as part of the original Rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. Since its adoption, the rule has provided that parties in civil appeals in the Court of Appeal can stipulate to extend the time to file their briefs. In October 2002, in an effort to reduce the time and expense necessary to obtain original signatures of all parties on a stipulation for extension of briefing time, the council amended this rule effective January 1, 2003, to allow all but one of the signatures on such a stipulation to be in the form of facsimile copies of the signature page.

Answers to amicus curiae briefs in the Supreme Court

The predecessor to rule 8.520(f), regarding amicus briefs in the Supreme Court, was adopted by the Judicial Council effective July 1, 1943. As initially adopted, this rule provided that the time within which a party to the appeal was permitted to file an answer to an amicus brief would be specified by the court when it granted the application to file an amicus brief. In March 1995, the council amended this rule to provide that any party could file an answer to an amicus brief within 20 days after the amicus brief was filed.

Rationale for Recommendation

Exclusions from the limits on the length of briefs and petitions

Rules 8.204, 8.360, 8.520, 8.630, 8.883, and 8.928 of the California Rules of Court, relating to briefs in civil and criminal appeals in the Supreme Court, Court of Appeal, and superior court appellate divisions, and rule 8.504, relating to petitions for review in the Supreme Court, establish limits on the length of these briefs and petitions. These rules also specify that certain items, including any certificate regarding the number of words in the brief and any permissible attachments to the brief, do not count toward these length limits. Rule 8.486, relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, similarly lists items that do not count toward the length limits of these petitions and accompanying memoranda.

Currently, it is not clear whether the case captions required on covers of briefs and petitions—which generally must include the title of the document; the title, trial court number, and appellate court number of the case; the names of the trial court and each participating trial judge; and the name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief or petition—should be counted in determining whether the brief or petition complies with the applicable length limits. In addition, it is not clear whether any

signature block—which generally includes both the actual signature and the printed name and firm information of each attorney filing or joining in the brief or petition—should be counted toward the brief length. Finally, it is not clear if any Certificate of Interested Entities or Persons that must be included in a Court of Appeal brief, petition, or opposition to a petition under rules 8.208, 8.361, or 8.488 should be counted.

Because these items are akin to the tables and permissible attachments that are already excluded from the applicable length limits, the committee is recommending that these rules be amended to clarify that the cover information, any Certificate of Interested Entities or Persons, and any signature block are not counted in determining whether a brief or petition complies with the applicable length limit.

Signatures on stipulations to extend briefing time

Under rule 8.212(b), parties in civil appeals in the Court of Appeal can stipulate to limited extensions of the time to file their briefs. This rule requires that such stipulations must be signed by all parties. Currently, the rule permits the majority of these signatures to “be in the form of fax copies of the signed signature page of the stipulation.” With advances in technology, the more common method of transmitting a signature page is by scanning and e-mailing a copy of the page. To reflect these advances, the committee is recommending that rule 8.212 be amended to delete the requirement that signature pages be in the form of fax copies.

Answers to amicus curiae briefs in the Supreme Court

Rule 8.520(f) addresses amicus curiae briefs, and applications to file such briefs, in the Supreme Court. Rule 8.520(f)(7) currently requires that answers to amicus curiae briefs be filed within 20 days after the filing of the brief. In Supreme Court cases, multiple amicus curiae briefs are frequently filed. Rather than individually responding to each amicus brief, parties may sometimes prefer to file a consolidated response to multiple amicus briefs filed in a case. Currently, a party needs to file an application requesting permission to file such a consolidated answer, particularly if the answers to the amicus briefs are due on different dates because the briefs were filed at different times.

This proposal would give parties the option of filing consolidated answers to amicus briefs in the Supreme Court without having to request permission. In addition, this proposal would change the time for filing an answer to an amicus curiae brief in a matter before the Supreme Court from 20 days after the amicus curiae brief is filed to 30 days after either the court rules on the last timely filed application to file an amicus curiae brief or the time for filing applications to file an amicus curiae brief expires, whichever is later. This proposed time frame is designed to allow parties to wait until all amicus applications have been filed and ruled on before preparing an answer. It is also designed to give parties additional time to prepare a consolidated response to multiple amicus briefs.

Comments, Alternatives Considered, and Policy Implications

The proposed amendments to these rules were circulated for public comment between April 19 and June 18, 2010, as part of the regular spring comment cycle. Ten individuals and organizations submitted comments. Six commentators agreed with the proposal, one agreed with the proposal if modified, and three did not indicate their positions 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 17–24, and the substantive comments are discussed below.

Exclusions from the limits on the length of briefs and petitions

Two commentators suggested changes to the rules regarding the limits on the length of briefs and petitions. One commentator pointed out a cross-referencing error in rules 8.883 and 8.928, and the committee revised the proposal to correct this error. The other commentator suggested that a cross-reference be added to the provision listing the items that are not counted toward the length limit and also that the cross-reference to the rule listing the contents of the cover information be eliminated. The committee considered but decided not to make these changes because it believed that the proposed language, as circulated for comment, is clearer.

Answers to amicus curiae briefs in the Supreme Court

One commentator suggested making two changes to the proposed amendments to rule 8.520(f), both of which the committee agreed with and incorporated into the proposal. As circulated, the proposal would have maintained the current requirement that an answer to an individual amicus brief be filed within 20 days after the amicus brief is filed. The commentator suggested that the time for filing an answer to an individual amicus brief should instead run from when the court rules on the last timely filed application to file an amicus curiae brief or when the time for filing applications to file an amicus curiae brief expires, whichever is later, rather than from when the amicus curiae brief is filed. The committee agreed with this suggestion because it is consistent with the proposal's intent to permit a party to wait to determine whether more than one amicus brief is filed before filing an answer. The committee also agreed with this commentator's second suggestion—giving parties 30, rather than 20, days to file a consolidated response to multiple amicus briefs—because, as suggested by the commentator, preparing a consolidated response to multiple briefs is likely to be more difficult and time consuming than preparing a response to a single brief. However, to make it easier for the court clerks, the committee is recommending that the 30-day period apply to all answers to amicus briefs in the Supreme Court, not just consolidated answers.

In addition to these changes, the committee also modified the proposed provision relating to consolidated answers to provide that a party may file such an answer to “multiple,” rather than “all,” amicus briefs. As circulated for public comment, the proposal provided that a consolidated answer could be filed to “all” amicus briefs. Committee members noted that, in some cases, a party may wish to file an answer to some, but not all, the amicus briefs that are filed. Since filing

any answer is discretionary, the committee concluded that the rule should not require that a consolidated answer respond to all amicus briefs that are filed.

Implementation Requirements, Costs, and Operational Impacts

Amending the length limits should reduce court costs associated with answering questions and addressing misunderstandings concerning these limits. Amending the rule relating to amicus briefs in the Supreme Court to permit parties to file a consolidated response to such briefs should reduce both court and litigant costs by eliminating the need for parties to file and the court to rule on requests to file consolidated responses.

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 amended, rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928, at pages 7–16
2. Chart of comments, at pages 17–24

Rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928 of the California Rules of Court are amended, effective January 1, 2011, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and form of briefs

(a) Contents

(1) Each brief must:

(A) Begin with a table of contents and a table of authorities separately listing cases, constitutions, statutes, court rules, and other authorities cited;

(B)–(C) * * *

(2) * * *

(b) Form

(1)–(9) * * *

(10) The cover, preferably of recycled stock, must be in the color prescribed by rule 8.40(b) and must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief, but the cover need not state the bar number of any supervisor of the attorney responsible for the brief; and

(E) The name of the party that each attorney on the brief represents.

(11) * * *

1
2 **(c) Length**
3

- 4 (1) A brief produced on a computer must not exceed 14,000 words, including footnotes.
5 Such a brief must include a certificate by appellate counsel or an unrepresented party
6 stating the number of words in the brief. The person certifying may rely on the word
7 count of the computer program used to prepare the brief.
8
9 (2) A brief produced on a typewriter must not exceed 50 pages.
10
11 (3) The tables required under (a)(1), the cover information required under (b)(10), the
12 Certificate of Interested Entities or Persons required under rule 8.208, a certificate
13 under (1), any signature block, and any attachment under (d) are excluded from the
14 limits stated in (1) or (2).

15
16 (4)–(5) * * *

17
18 **(d) Attachments to briefs**
19

20 A party filing a brief may attach copies of exhibits or other materials in the appellate record
21 or copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or
22 other similar citable materials that are not readily accessible. These attachments must not
23 exceed a combined total of 10 pages, but on application the presiding justice may permit
24 additional pages of attachments for good cause. A copy of an opinion required to be
25 attached to the brief under rule 8.1115(c) does not count toward this 10-page limit.
26

27 **(e)** * * *

28
29 **Advisory Committee Comment**
30

31 **Subdivision (b).** * * *

32
33 **Subdivision (c).** Subdivision (c) governs the maximum permissible length of a brief. It is derived from the
34 federal procedure of measuring the length of a brief produced on a computer by the number of words in the
35 brief. (FRAP 32(a)(7).) Subdivision (c)(1), like FRAP 32(a)(7)(B)(i), imposes a limit of 14,000 words if
36 the brief is produced on a computer. Subdivision (c)(1) implements this provision by requiring the writer
37 of a brief produced on a computer to include a certificate stating the number of words in the brief, but
38 allows the writer to rely on the word count of the computer program used to prepare the brief. This
39 requirement, too, is adapted from the federal rule. (FRAP 32(a)(7)(C).) For purposes of this rule, a “brief
40 produced on a computer” includes a commercially printed brief.
41

42 Subdivision (c)(3) specifies certain items that are not counted toward the maximum brief length. Signature
43 blocks, as referenced in this provision, include not only the signatures, but also the printed names, titles,
44 and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.
45

46 Subdivision (c)(5) clarifies that a party seeking permission to exceed the page or word limits stated in
47 subdivision (c)(1) and (2) must proceed by application under rule 8.50, rather than by motion under rule
48 8.54, and must show good cause.

1
2 **Subdivision (d).** * * *

3
4 **Subdivision (e).** * * *

5
6
7 **Rule 8.212. Service and filing of briefs**

8
9 **(a)** * * *

10
11 **(b) Extensions of time**

12
13 (1) The parties may extend each period under (a) by up to 60 days by filing one or more
14 stipulations in the reviewing court before the brief is due. Stipulations must be signed
15 by and served on all parties. The original signature of at least one party must appear
16 on the stipulation filed in the reviewing court; the signatures of the other parties may
17 be in the form of ~~fax~~ copies of the signed signature page of the stipulation.

18
19 (2)–(4) * * *

20
21 **(c)** * * *

22
23
24 **Chapter 3. Criminal Appeals**

25
26 **Article 3. Briefs, Hearing, and Decision**

27
28 **Rule 8.360. Briefs by parties and amici curiae**

29
30 **(a) Contents and form**

31
32 Except as provided in this rule, briefs in criminal appeals must comply as nearly as possible
33 with rules 8.200 and 8.204.

34
35 **(b) Length**

36
37 (1) A brief produced on a computer must not exceed 25,500 words, including footnotes.
38 Such a brief must include a certificate by appellate counsel or an unrepresented
39 defendant stating the number of words in the brief; the person certifying may rely on
40 the word count of the computer program used to prepare the brief.

41
42 (2) A typewritten brief must not exceed 75 pages.

43
44 (3) The tables required under rule 8.204(a)(1), the cover information required under rule
45 8.204(b)(10), any Certificate of Interested Entities or Persons required under rule
46 8.361, a certificate under (1), any signature block, and any attachment permitted
47 under rule 8.204(d) are excluded from the limits stated in (1) or (2).

1
2 (4) A combined brief in an appeal governed by (e) must not exceed double the limit
3 stated in (1) or (2).

4
5 (5) On application, the presiding justice may permit a longer brief for good cause.
6

7 (c)–(f) * * *

8
9 **Advisory Committee Comment**

10
11 **Subdivision (b).** Subdivision (b)(1) states the maximum permissible length of a brief produced on a
12 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)
13 governing Court of Appeal briefs and is explained in the comment to that provision. The word count
14 assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5). Subdivision
15 (b)(3) specifies certain items that are not counted toward the maximum brief length. Signature blocks as
16 referenced in this provision, include not only the signatures, but also the printed names, titles, and
17 affiliations of any attorneys filing or joining in the brief, which may accompany the signature.
18

19 The maximum permissible length of briefs in death penalty appeals is prescribed in rule 8.630.
20
21

22 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court**
23 **of Appeal**

24
25 **Rule 8.486. Petitions**

26
27 **(a) Contents of petition**

28
29 (1)–(5) * * *

30
31 (6) Rule 8.204(c) governs the length of the petition and memorandum, but, in addition to
32 the exclusions provided in that rule, the tables, the certificate, the verification, and any
33 supporting documents are excluded from the limits stated in rule 8.204(c)(1) and (2).
34

35 (7) * * *

36
37 (b)–(e) * * *

38
39
40 **Chapter 9. Proceedings in the Supreme Court**

41
42 **Rule 8.504. Form and contents of petition, answer, and reply**

43
44 **(a) In general**

45
46 Except as provided in this rule, a petition for review, answer, and reply must comply with
47 the relevant provisions of rule 8.204.

1
2 (b)–(c) * * *

3
4 (d) **Length**

- 5
6 (1) If produced on a computer, a petition or answer must not exceed 8,400 words,
7 including footnotes, and a reply must not exceed 4,200 words, including footnotes.
8 Each petition, answer, or reply must include a certificate by appellate counsel or an
9 unrepresented party stating the number of words in the document. The person
10 certifying may rely on the word count of the computer program used to prepare the
11 document.
12
13 (2) If typewritten, a petition or answer must not exceed 30 pages and a reply must not
14 exceed 15 pages.
15
16 (3) The tables, the cover information required under rule 8.204(b)(10), the Court of
17 Appeal opinion, a certificate under (1), any signature block, and any attachment under
18 (e)(1) are excluded from the limits stated in (1) and (2).
19
20 (4) On application and for good cause, the Chief Justice may permit a longer petition,
21 answer, reply, or attachment.
22

23 (e) * * *

24
25 **Advisory Committee Comment**

26
27 **Subdivision (d).** Subdivision (d) states in terms of word counts rather than page counts the maximum
28 permissible lengths of a petition for review, answer, or reply produced on a computer. This provision
29 tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory
30 committee comment to that provision. Subdivision (d)(3) specifies certain items that are not counted
31 toward the maximum length of a petition, answer, or reply. Signature blocks, as referenced in this
32 provision include not only the signatures, but also the printed names, titles, and affiliations of any
33 attorneys filing or joining in the petition, answer, or reply, which may accompany the signature.
34

35
36 **Rule 8.520. Briefs by parties and amici curiae; judicial notice**

37
38 (a) * * *

39
40 (b) **Form and content**

- 41
42 (1) Briefs filed under this rule must comply with the relevant provisions of rule 8.204.
43
44 (2)–(3) * * *

1 (c) Length

- 2
- 3 (1) If produced on a computer, an opening or answering brief on the merits must not
- 4 exceed 14,000 words, including footnotes, and a reply brief on the merits must not
- 5 exceed 8,400 words, including footnotes. Each brief must include a certificate by
- 6 appellate counsel or an unrepresented party stating the number of words in the brief.
- 7 The person certifying may rely on the word count of the computer program used to
- 8 prepare the brief.
- 9
- 10 (2) If typewritten, an opening or answering brief on the merits must not exceed 50 pages
- 11 and a reply brief on the merits must not exceed 30 pages.
- 12
- 13 (3) The tables required under rule 8.204(a)(1), the cover information required under rule
- 14 8.204(b)(10), a certificate under (1), any signature block, any attachment under (h),
- 15 and any quotation of issues required by (b)(2) are excluded from the limits stated in
- 16 (1) and (2).
- 17
- 18 (4) On application and for good cause, the Chief Justice may permit a longer brief.
- 19

20 (d)–(e) * * *

21

22 (f) Amicus curiae briefs

- 23
- 24 (1) After the court orders review, any person or entity may serve and file an application
- 25 for permission of the Chief Justice to file an amicus curiae brief.
- 26
- 27 (2) The application must be filed no later than 30 days after all briefs that the parties may
- 28 file under this rule—other than supplemental briefs—have been filed or were required
- 29 to be filed. For good cause, the Chief Justice may allow later filing.
- 30
- 31 (3)–(6) * * *
- 32
- 33 (7) If the court grants the application, any party may file either an answer to the
- 34 individual amicus curiae brief or a consolidated answer to multiple amicus curiae
- 35 briefs filed in the case. The answer must be filed within 20 30 days after either the
- 36 court rules on the last timely filed application to file an amicus curiae brief is filed or
- 37 the time for filing applications to file an amicus curiae brief expires, whichever is
- 38 later. † The answer must be served on all parties and the amicus curiae.
- 39

40 (8) * * *

41

42 (g)–(h) * * *

43

44

1 **Advisory Committee Comment**

2
3 **Subdivisions (c) and (d).** Subdivisions (c) and (d) state in terms of word count rather than page count the
4 maximum permissible lengths of Supreme Court briefs produced on a computer. This provision tracks an
5 identical provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory
6 committee comment to that provision. Subdivision (c)(3) specifies certain items that are not counted
7 toward the maximum brief length. The signature block referenced in this provision includes not only the
8 signatures, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief,
9 which may accompany the signature.

10
11
12 **Chapter 10. Appeals From Judgments of Death**

13
14 **Article 3. Briefs, Hearing, and Decision**

15
16 **Rule 8.630. Briefs by parties and amicus curiae**

17
18 **(a) Contents and form**

19
20 Except as provided in this rule, briefs in appeals from judgments of death must comply as
21 nearly as possible with rules 8.200 and 8.204.

22
23 **(b) Length**

24
25 (1) A brief produced on a computer must not exceed the following limits, including
26 footnotes:

27
28 (A) Appellant’s opening brief: 102,000 words.

29
30 (B) Respondent’s brief: 102,000 words. If the Chief Justice permits the appellant to
31 file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s
32 brief may not exceed the length of appellant’s opening brief approved by the
33 Chief Justice.

34
35 (C) Reply brief: 47,600 words.

36
37 (D) Petition for rehearing and answer: 23,800 words each.

38
39 (2) A brief under (1) must include a certificate by appellate counsel stating the number of
40 words in the brief; counsel may rely on the word count of the computer program used
41 to prepare the brief.

42
43 (3) A typewritten brief must not exceed the following limits:

44
45 (A) Appellant’s opening brief: 300 pages.

1 (B) Respondent’s brief: 300 pages. If the Chief Justice permits the appellant to file
2 an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s brief
3 may not exceed the length of appellant’s opening brief approved by the Chief
4 Justice.

5
6 (C) Reply brief: 140 pages.

7
8 (D) Petition for rehearing and answer: 70 pages each.

9
10 (4) The tables required under rule 8.204(a)(1), the cover information required under rule
11 8.204(b)(10), a certificate under (2), any signature block, and any attachment
12 permitted under rule 8.204(d) are excluded from the limits stated in (1) and (3).

13
14 (5) On application, the Chief Justice may permit a longer brief for good cause. An
15 application in any case in which the certified record is filed in the California Supreme
16 Court on or after January 1, 2008, must comply with rule 8.631.

17
18 (c)–(h) * * *

19
20 **Advisory Committee Comment**

21
22 **Subdivision (b).** Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a
23 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)
24 governing Court of Appeal briefs and is explained in the comment to that provision. Each word count
25 assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5).

26
27 Subdivision (b)(4) specifies certain items that are not counted toward the maximum brief length. Signature
28 blocks, as referenced in this provision includes not only the signatures, but also the printed names, titles,
29 and affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

30
31 **Subdivision (g).** * * *

32
33
34 **Division 2. Rules Relating to the Superior Court Appellate Division**

35
36 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

37
38
39 **Rule 8.883. Contents and form of briefs**

40
41 (a) * * *

1 **(b) Length**

- 2
- 3 (1) A brief produced on a computer must not exceed 6,800 words, including footnotes.
- 4 Such a brief must include a certificate by appellate counsel or an unrepresented party
- 5 stating the number of words in the brief. The person certifying may rely on the word
- 6 count of the computer program used to prepare the brief.
- 7
- 8 (2) A brief produced on a typewriter must not exceed 20 pages.
- 9
- 10 (3) The cover information listed in rule 8.204(b)(10), any table of contents or table of
- 11 authorities, the certificate under (1), and any attachment under (d) signature block are
- 12 excluded from the limits stated in (1) or (2).
- 13
- 14 (4) On application, the presiding judge may permit a longer brief for good cause. A
- 15 lengthy record or numerous or complex issues on appeal will ordinarily constitute
- 16 good cause. If the court grants an application to file a longer brief, it may order that
- 17 the brief include a table of contents and a table of authorities.
- 18

19 **(c)–(d) * * ***

20
21 **Advisory Committee Comment**

22

23 Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a

24 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)

25 governing Court of Appeal briefs and is explained in the comment to that provision. Subdivision (b)(3)

26 specifies certain items that are not counted toward the maximum brief length. Signature blocks, as

27 referenced in this provision, include not only the signatures, but also the printed names, titles, and

28 affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

29

30
31 **Chapter 5. Appeals in Infraction Cases**

32
33 **Article 3. Briefs, Hearing and Decision in Infraction Appeals**

34
35 **Rule 8.928. Contents and form of briefs**

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37 **(a) * * ***

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39 **(b) Length**

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- 41 (1) A brief produced on a computer must not exceed 5,100 words, including footnotes.
- 42 Such a brief must include a certificate by appellate counsel or an unrepresented party
- 43 stating the number of words in the brief. The person certifying may rely on the word
- 44 count of the computer program used to prepare the brief.
- 45
- 46 (2) A brief produced on a typewriter must not exceed 15 pages.
- 47

1 (3) The cover information listed in rule 8.204(b)(10), any table of contents or table of
2 authorities, the certificate under (1), and any ~~attachment under (d)~~ signature block are
3 excluded from the limits stated in (1) or (2).

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5 (4) On application, the presiding judge may permit a longer brief for good cause. A
6 lengthy record or numerous or complex issues on appeal will ordinarily constitute
7 good cause.

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9 (c)–(d) * * *

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11 **Advisory Committee Comment**

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13 **Subdivision (b).** Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a
14 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)
15 governing Court of Appeal briefs and is explained in the comment to that provision. Subdivision (b)(3)
16 specifies certain items that are not counted toward the maximum brief length. Signature blocks, as
17 referenced in this provision include not only the signatures, but also the printed names, titles, and
18 affiliations of any attorneys filing or joining in the brief, which may accompany the signature.

SPR10-09

Appellate Procedure: Briefs and Petitions (amend Cal. Rules of Court, rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928)

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

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego County Bar Association by Kevin K. Green Chair	AM	<p>We have a number of comments on the changes proposed by SPRI 0-09.</p> <p>In our view, rule 8.204(c) would be clearer and more straightforward if the first two subdivisions added the introductory clause italicized below and if subdivision (3) deleted the phrase "required under (b)(10)," as follows:</p> <p>(c) Length (1) <i>Except as provided in (3)</i>, a brief produced on a computer must not exceed 14,000 words, including footnotes. * * * (2) <i>Except as provided in (3)</i>, a brief produced on a typewriter must not exceed 50 pages. (3) The tables required under (a)(1), <i>the cover information</i>, the Certificate of Interested Entities or Persons required under rule 8.208, a certificate under (1), any signature block, and any attachment under (d) are excluded from the limits stated in (1) or (2).</p> <p>If these changes are considered, parallel and consistent adjustments might also be considered for rule 8.360 (criminal appeals), rule 8.504 (petition stage in Supreme Court) and rule 8.520 (merits briefs in Supreme Court).</p>	<p>The committee considered but decided not to make these suggested changes. The committee believes it is clearer to describe the items in (c)(3) as items not counted toward the length limit rather than describing them as exceptions to the the length limit. The committee also believes that it is helpful to include a cross-reference to the provision describing the cover information, particularly in length-limit rules other than rule 8.204 that are addressed in this proposal, such as rule 8.360, since the description of the cover information is located in a separate rule.</p>

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			<p>We fully support the conceptual addition proposed for rule 8.520(f)(7), allowing parties to file a single consolidated answer to all amicus curiae briefs in a Supreme Court proceeding (and thus formalizing a common practice in recent years). For reasons elaborated below, however, we urge the Appellate Advisory Committee to amend proposed rule 8.520(f)(7) further to provide, instead, as follows:</p> <p>(7) If the court grants the application, any party may:</p> <p>(A) File an answer to the individual amicus curiae brief within 20 days after the time for filing applications to file an amicus curiae brief expires or 20 days after the court rules on the last timely filed application to file an amicus curiae brief, whichever is later. The answer must be served on all parties and the amicus curiae; or</p> <p>(B) File a consolidated answer to all the amicus curiae briefs filed in the case. A consolidated answer must be filed within 30 days after the time for filing applications to file an amicus curiae brief expires or 30 days after the court rules on the last timely filed application to file an amicus curiae brief, whichever is later. The consolidated answer must be served on all parties and all amici curiae.</p>	<p>The committee agrees with these suggestions and has revised the proposal to incorporate these changes. The committee has further modified proposed subdivision (B) to reflect the fact that a party may file a consolidated response to some, but not all, of the amicus briefs that are filed.</p>

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			<p>If drafted in this way, rule 8.520(t)(7) would address the scenario that occasionally arises when an answering party does not immediately respond to an early-filed amicus brief, but instead waits to see if any additional such briefs are filed - only to find that there are none. Under our amended version of the rule, the answering party will not be caught in a timing trap in which its right to answer is foreclosed by having prudently waited to see whether further amici will come upon the scene before responding.</p> <p>Our amended version also allows 30 days, rather than 20 days, for parties to file a consolidated answer to amici curiae, which is often much more complex than responding to a single amicus curiae brief. This should result in fewer extensions requests for consolidated answers.</p> <p>Finally, the proposed amendment corrects what appears to be a typographical mistake in the proposed rule, which currently reads "The consolidated answer <i>brief</i> must be served on all parties and all amici curiae." (Emphasis added.) A party's response to an amicus curiae, however, is an "answer" rather than a "brief." The label used has consequences for, at a minimum, determination of the due date. (See CaL. Rules of Court, rule 8.25(b)(3) (in calculating filing deadlines, the "mailbox" rule</p>	

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			applies to "briefs" and other specified documents, but not to answers to an amicus curiae brief.)	
2.	California Appellate Court Clerks Association by Joseph Lane	NI		No response required.
3.	Committee on Appellate Courts State Bar of California by T. Peter Pierce, Chair	A	<p>Committee supports the revisions proposed in this proposal.</p> <p>The Committee also notes several additional revisions that should be made to achieve the stated goal of excluding certain elements of an appellate brief from the length limit. Currently, Rule 8.883(b) of the California Rules of Court, which governs the length of briefs in appeals from limited and civil misdemeanor cases, excludes from the length limit "any attachment under (d)." The problem is that subdivision (d) of rule 8.883 does not address attachments. Instead it addresses noncompliant briefs.</p> <p>It appears that the reference to subdivision (d) in rule 8.883(b) is intended to refer to subdivision (d) of rule 8.204 governing unlimited civil appeals. Subdivision (d) of rule 8.204 does in fact provide for attachments to briefs. If rule 8.883(b) is intended to refer to subdivision (d) of rule 8.204, the revisions proposed to subparagraph (3) of rule 8.883(b)</p>	<p>No response required.</p> <p>The committee appreciates these suggestions and has revised the proposal to delete the references to "attachments under (d)" from both rule 8.883 and 8.928.</p>

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			<p>should expressly reference rule 8.204(d).</p> <p>In addition, there is nothing in the chapter of the Rules of Court governing limited civil appeals which indicates that rule 8.204 is intended to apply to those appeals in the first place (in contrast with rules governing criminal appeals or Supreme Court appeals which expressly state that the provisions of rule 8.204 apply). Accordingly, if the intent is to refer to rule 8.204(d) in the revisions to rule 8.883(b), it might be beneficial to adopt a separate rule in the chapter governing limited civil appeals which states that rule 8.204 applies to those appeals.</p> <p>Similarly, rule 8.928(b), which governs the length of briefs in appeals from infraction cases, excludes from the length limit “any attachment under (d)” but subdivision (d) of rule 8.928 does not mention attachments. It appears that the intended reference is to subdivision (d) of rule 8.204. The proposed revisions to subparagraph (3) of rule 8.928(b) should expressly reference rule 8.204(d).</p> <p>The chapter of the Rules of Court governing appeals from infraction cases does not indicate that rule 8.204 is intended to apply to those appeals. If intent is to refer to rule 8.204(d) in the revisions to rule 8.928(b), it might be beneficial to adopt a separate rule clarifying</p>	

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			that rule 8.204 applies to infraction appeals.	
4.	Gerald H. Genard Danville	NI	<p>The rules should be amended further as follows:</p> <p>1. There should be a uniform statewide requirement that only one original brief or petition is required to be filed. Right now, requirements vary in appellate divisions of superior courts. For example, Only one brief need be filed in the appellate division of the Los Angeles Superior Court but 5 copies are required in the Contra Costa County Superior Court appellate division. Requiring multiple copies is time consuming, expensive, wasteful and burdensome.</p> <p>2. The requirements for color of brief covers, weight and composition of paper and certification of word counts should be abolished. These requirements are absurd and burdensome, needlessly expensive and time consuming. Given modern technology, the requirements are no longer needed as documents can easily be scanned into computers. Further, it is ridiculous to allow the filing of briefs without signatures but then to require a signature for a word count certification.</p>	The committee appreciates these suggestions for additional changes to the Rules of Court. As these suggestions are beyond the scope of the current proposal, the committee will consider them during an upcoming committee year.
5.	Hon. Judith D.McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate	A	I support the proposed changes to rules relating to appellate briefs and writ petitions.	No response required.

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	District		In the next cycle of proposed rule changes, I request that the Appellate Advisory Committee consider an additional amendment to rule 8.212(b)(1), relation to stipulated extensions of time for the filings of briefs, to shorten the period the parties may stipulate to extend the time for filing of a reply brief from 60 days to 20, or at the most 40, days. The current time from a of 60 days for reply briefs affects this court's ability to set cases that would otherwise be ready to be calendared, thus slowing the time for processing many civil appeals. Moreover, since the authorized time for filing a reply brief without an extension is 20 days (rather than 40 days, as with an appellant's opening brief, or 30 days, for a respondent's brief) and because the issues are already fully framed by the earlier briefing, a 60-day extension for the reply brief is unnecessarily long.	The committee appreciates this suggestion for additional changes to the Rules of Court and will consider it during an upcoming committee year.
6.	Orange County Bar Association by Lei Lei Wang Ekvall	A	No additional comment.	No response required.
7.	Superior Court of Los Angeles County	A	No additional comment.	No response required.
8.	Superior Court of Sacramento County by Robert Turner ASO II Finance Division	NI	This proposed rule change would expressly exclude signature blocks, captions and signatures from the page limits on briefs. Although, litigants should be encouraged to prepare concise briefs, this proposed change seems harmless.	No response required.

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9.	Superior Court of San Bernardino County by Debra Meyers Deputy Court Executive Officer/General Counsel	A	No additional comment.	No response required.
10.	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.	No response required.