



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: Numbers of Copies of Motions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.44 and 8.931	January 1, 2011
Recommended by	Date of Report
Appellate Advisory Committee	September 10, 2010
Hon. Kathryn Doi Todd, Chair	Contact
	Heather Anderson, 415-865-7691
	heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule relating to the number of copies of documents that must be provided to the Court of Appeal to reduce the required number of copies of motions that must be provided. Not all of the copies currently required are needed in most cases. Reducing the number of required copies will reduce litigation costs.

Recommendation

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

1. Amend rule 8.44 of the California Rules of Court to reduce the required number of copies of motions that must be provided to the Court of Appeal from an original and three copies to an original and one copy unless the court orders otherwise; and

2. Further amend rule 8.44 and amend rule 8.931 of the California Rules of Court to make a nonsubstantive change in the language so that these rules are more consistent with other provisions regarding local rules.

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

Previous Council Action

The predecessor to rule 8.44, regarding the number of copies of documents that must be filed, 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. At that time, the rule required that an original and three copies of any printed paper be filed in the Court of Appeal. In January 1972, the Judicial Council amended this rule to separately identify the number of copies of different types of documents that were required to be filed. As amended, this rule required that an original and three copies of a notice of motion, motion, or opposition or other response to a motion be filed in the Court of Appeal. There has been no subsequent substantive change to this requirement.

Rationale for Recommendation

Rule 8.44(b)(4) of the California Rules of Court currently requires that parties in proceedings before the Court of Appeal file an original and three copies of any motion or any opposition or other response to a motion. In almost all cases, motions are considered either by the presiding justice or by circulating a copy of the motion to the members of the appellate panel. Thus, the Court of Appeal generally does not need three copies of these motions. To save resources, this proposal would reduce the number of copies of motions required from an original and three copies to an original and one copy unless the court orders otherwise.

Comments, Alternatives Considered, and Policy Implications

The proposed amendments to rule 8.44(b)(4) were circulated for public comment between April 19 and June 18, 2010, as part of the regular spring comment cycle. Eleven individuals and organizations submitted comments on this proposal. Seven commentators agreed with the proposal, two agreed with the proposal if modified, and two did not indicate a 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 6–7, and the substantive comments are discussed below.

The proposal that was circulated for comment would simply have reduced the required number of copies of motions from three to one. Two commentators raised concerns about reducing the number of copies provided when a motion is considered by the full appellate panel. In response to these comments, the committee revised the proposal to provide that only the original and one copy must be provided unless the court orders otherwise. This mirrors the language in 8.44(a)(2) and (3) and will permit a court to require additional copies of motions when, by local practice, such copies are needed.

The Appellate Advisory Committee is also recommending a nonsubstantive change to the language of both rule 8.44(b)(5) and rule 8.931(c)(3), relating to the number of copies of supporting documents that must be filed, to make the language more consistent with other provisions regarding local rules.

Implementation Requirements, Costs, and Operational Impacts

There should not be appreciable implementation requirements, costs, or operational impacts for the courts associated with this proposed amendment. This amendment will reduce costs for litigants filing motions in the Court of Appeal.

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 8.44 and 8.931, at pages 4–5
2. Chart of comments, at pages 6–7

Rules 8.44 and 8.931 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 1. General Provisions

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

Rule 8.44. Number of copies of filed documents

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a reviewing court is as follows:

(a) * * *

(b) Documents filed in a Court of Appeal

(1)–(3) * * *

(4) Unless the court orders otherwise, An original and 3 copies 1 copy of a motion or an opposition or other response to a motion;

(5) Unless the court orders provides otherwise by local rule or in the specific case order, 1 set of any separately bound supporting documents accompanying a document filed under (3) or (4);

(6)–(7) * * *

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 6. Writ Proceedings

Rule 8.931. Petitions filed by persons not represented by an attorney

(a)–(b) * * *

(c) Form of supporting documents

(1)–(2) * * *

1 (3) Unless the court ~~orders~~ provides otherwise by local rule or ~~in the specific case order~~,
2 only one set of any separately bound supporting documents needs to be filed in
3 support of a petition, an answer, an opposition, or a reply.
4

5 (d) * * *

6
7

SPR10-10**Appellate Procedure: Numbers of Copies of Motions** (amend Cal. Rules of Court, rule 8.44)

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	NI		No response required.
2.	California Appellate Court Clerk's Association by Joseph Lane	A	No additional comment.	No response required.
3.	California Judges Association by Jordan O. Posamentier Legislative Counsel San Francisco	AM	It makes sense, per this proposal, to reduce the number of copies of motion papers sent to the Court of Appeal where the disposition of the case may be made on a single signature (e.g., by a presiding justice), but it does not make sense where the disposition depends on the appellate panel. As to the panel, the present number of copies should be maintained.	In response to this and another comment, the committee has revised the proposal to provide that only the original and one copy must be provided unless the court orders otherwise.
4.	Committee on Appellate Courts State Bar of California by T. Peter Pierce, Chair	A	No additional comment.	No response required.
5.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth Appellate District	AM	The proposed revision to rule 8.44 that would reduce the number of copies of a motion or a response to a motion that must be filed with an appellate court will create problems as applied to motions that are deferred to the panel deciding the merits of the three copies of such materials. If the rule revised as proposed, it should specify (either in the text or in the comments) that a court may nonetheless require a moving or opposing party to submit two additional copies in the event the motion	In response to this and another comment, the committee has revised the proposal to provide that only the original and one copy must be provided unless the court orders otherwise.

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	Commentator	Position	Comment	Committee Response
			is deferred to the merits panel. Otherwise, the proposed revision will create a hardship on the clerk's office, which will be required to make two additional copies of such papers (which are sometimes voluminous) whenever the motion is derred to the merits panel for ruling.	
6.	Orange County Bar Association by Lei Lei Wang Ekvall	A	No additional comment.	No response required.
7.	Public Counsel Los Angeles	A	Public Counsel supports the proposal to reduce the required number of copies of motions from three to one because (a) the Invitation to Comment states that the Court of Appeal does not need three copies and (b) the proposal would help low-income and self-represented litigants.	No response required.
8.	Superior Court of Los Angeles County	A	No additional comment.	No response required.
9.	Superior Court of Sacramento County	NI	The court has reviewed the proposal but does not have any comments to submit.	No response required.
10.	Superior Court of San Bernardino County by Debra Meyers Deputy Court Executive Officer/General Counsel	A	Agree; however, rule does not affect the Appellate Dept.	No response required.
11.	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 proposal.	No response required.