

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-05

Title	Action Requested
Appellate Procedure: Time to Appeal	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822	January 1, 2012
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Kathryn Doi Todd, Chair	heather.anderson@jud.ca.gov

Summary

The rules for the Court of Appeal and for the superior court appellate divisions include provisions establishing the time for filing a notice of appeal in a civil case and providing for extensions of this time under certain circumstances. This proposal would add a clarifying note to the advisory committee comment accompanying the rules regarding the time to appeal that addresses situations in which the parties have waived notice of the trial court's ruling on a motion. It would also add a new provision establishing an extension of time to appeal the granting of a new trial motion under certain circumstances.

Discussion

Waiver of notice of ruling on motion and time to appeal

Rules 8.104 and 8.822 establish the time for filing a notice of appeal in a civil case in the Court of Appeal and superior court appellate division, respectively. These rules provide that the notice of appeal must be filed before the earliest of specified time periods after the trial court or a party serves notice of entry of the judgment (60 days in the Court of Appeal and 30 days in the appellate division) or after the judgment is entered (180 days in the Court of Appeal and 90 days in the appellate division). The term "judgment" in these rules includes an appealable order, such as an order on a motion, if the appeal is from such an order.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Under Code of Civil Procedure section 1019.5, parties can stipulate to waive notice of a ruling on a motion. When neither the court nor a party serves a notice of entry of the judgment, under rules 8.104 and 8.822 a party has the longer period (180 or 90 days) running from entry of the judgment to file a notice of appeal. However, when a party waived notice of a ruling in the trial court, he or she may not have focused on the potential impact on the time to appeal. If a party who waived of notice in the trial court later concludes that it would be preferable for the shorter appeal period (60 or 30 days) running from service of such a notice to apply, there is nothing that prevents that party from subsequently serving notice of entry of the judgment. To clarify this, the proposal would add a note to the advisory committee comment accompanying both rule 8.104 and rule 8.822 indicating that notice of entry can be given despite waiver of notice of the court's decision in the trial court. It would also make non-substantive formatting changes to the rule itself.

Extension of time to appeal the granting of a motion for a new trial

Rules 8.108 and 8.823 address extensions of the time to appeal in a civil case in the Court of Appeal and superior court appellate division, respectively. Subdivision (b) in each of these rules provides for extension of the time to appeal when a party files a new trial motion. Sometimes when a party files a new trial motion on the grounds that the damages awarded in a judgment were either inadequate or excessive, under Code of Civil Procedure section 662.5, a trial court may grant the new trial motion but provide that if a party agrees either to pay more damages (additur) or accept a reduction in the damages (remittitur) then the new trial motion will be denied. Because of the conditional nature of this type of new trial order, it may not be clear if the time to appeal runs from the date the trial court issued the conditional order or from the date the party accepts or rejects the condition. Rules 8.108(b)(2) and 8.823(b)(2) both provide for an extension of the time to appeal from the judgment when a party accepts an additur or a remittitur, thus resulting in a denial of the new trial order. However, these rules do not currently provide for an extension on the time to appeal the grant of a new trial motion when a party rejects an additur or a remittitur.

The proposed rule changes would fill this gap. They would provide that when a new trial is granted because a party rejects a conditional additur or remittitur or if the additur or remittitur is deemed rejected because the time for accepting it has expired, any party has 30 days from the service of the rejection of the additur or remittitur or the date it is deemed rejected to appeal the grant of the new trial motion.

Rules 8.108 and 8.823 of the California Rules of Court and the advisory committee comments to rules 8.104 and 8.822 would be amended, effective January 1, 2012, to read:

1 **Title 8. Appellate Rules**

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

4
5 **Chapter 2. Civil Appeals**

6
7 **Article 1. Taking the Appeal**

8
9 **Rule 8.104. Time to appeal**

10
11 **(a) Normal time**

12
13 (1) Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be
14 filed on or before the earliest of:

15
16 ~~(1)(A)~~ 60 days after the superior court clerk serves on the party filing the
17 notice of appeal a document entitled “Notice of Entry” of judgment or
18 a file-stamped copy of the judgment, showing the date either was
19 served;

20
21 ~~(2)(B)~~ 60 days after the party filing the notice of appeal serves or is served by
22 a party with a document entitled “Notice of Entry” of judgment or a
23 file-stamped copy of the judgment, accompanied by proof of service;
24 or

25
26 ~~(3)(C)~~ 180 days after entry of judgment.

27
28 ~~(4)(2)~~ Service under ~~(1)(A)~~ and ~~(2)(B)~~ may be by any method permitted by the
29 Code of Civil Procedure, including electronic service when permitted under
30 Code of Civil Procedure section 1010.6 and rules 2.250–2.261.

31
32 **(b)–(e) * * ***

33
34 **Advisory Committee Comment**

35
36 **Subdivision (a).** Under subdivision (a)(1), a notice of entry of judgment (or a copy of the
37 judgment) must show the date on which the clerk served the document. The proof of service
38 establishes the date that the 60-day period under subdivision (a)(1) begins to run.

39
40 Subdivision ~~(a)(2)(1)(B)~~ requires that a notice of entry of judgment (or a copy of the judgment)
41 served by or on a party be accompanied by proof of service. The proof of service establishes the

1 date that the 60-day period under subdivision (a)(2)(1)(B) begins to run. Although the general
2 rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the
3 requirement is reiterated here because of the serious consequence of a failure to file a timely
4 notice of appeal (see subd. (e)).

5
6 Note that even if the parties stipulated in the trial court to waive notice of the court's decision
7 under Code of Civil Procedure section 1019.5, notice of entry of judgment can be served to start
8 the time period under (a)(1)(B).

9
10 **Subdivision (b).** * * *

11
12
13 **Rule 8.108. Extending the time to appeal**

14
15 **(a)** * * *

16
17 **(b) Motion for new trial**

18
19 If any party serves and files a valid notice of intention to move for a new trial, ~~the~~
20 ~~time to appeal from the judgment is extended for all parties as follows~~ the
21 following extensions of time apply:

22
23 (1) If the motion for a new trial is denied, the time to appeal from the judgment is
24 extended for all parties until the earliest of:

25
26 (A) 30 days after the superior court clerk or a party serves an order denying
27 the motion or a notice of entry of that order;

28
29 (B) 30 days after denial of the motion by operation of law; or

30
31 (C) 180 days after entry of judgment.

32
33 (2) If the trial court makes a finding of excessive or inadequate damages and
34 grants the motion for a new trial subject to the condition that the motion is
35 denied if a party consents to the additur or remittitur of damages:

36
37 (A) If any party serves an acceptance of a ~~the conditionally ordered~~ additur
38 ~~or remittitur of damages pursuant to a trial court finding of excessive or~~
39 ~~inadequate damages, the time to appeal from the judgment is extended~~
40 for all parties until 30 days after the date the party serves the
41 acceptance.
42

1 (B) If any party serves a rejection of the additur or remittitur or the time for
2 accepting the additur or remittitur expires, the time to appeal from the
3 new trial order is extended for all parties until 30 days after the date
4 the party serves the rejection or the date on which the time for
5 accepting the additur or remittitur expired.

6
7 (c)–(h) * * *

8 **Division 2. Rules Relating to the Superior Court Appellate Division**

9
10 **Chapter 2. Appeals and Records in Limited Civil Cases**

11
12 **Article 1. Taking Civil Appeals**

13
14 **Rule 8.822. Time to appeal**

15
16 (a) **Normal time**

17
18 (1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be
19 filed on or before the earliest of:

20
21 ~~(1)~~(A) 30 days after the trial court clerk mails the party filing the notice of
22 appeal a document entitled “Notice of Entry” of judgment or a file-
23 stamped copy of the judgment, showing the date either was mailed;

24
25 ~~(2)~~(B) 30 days after the party filing the notice of appeal serves or is served by
26 a party with a document entitled “Notice of Entry” of judgment or a
27 file-stamped copy of the judgment, accompanied by proof of service;
28 or

29
30 ~~(3)~~(C) 90 days after the entry of judgment.

31
32 ~~(4)~~(2) Service under (1)(A) and ~~(2)~~(B) may be by any method permitted by the
33 Code of Civil Procedure, including electronic service when permitted under
34 Code of Civil Procedure section 1010.6 and rules 2.250-2.261.

35
36 (b)–(d) * * *

37
38 **Advisory Committee Comment**

39
40 Under rule 8.804(23), the term “judgment” includes any order that may be appealed.

1 **Subdivision (a).** Note that even if the parties stipulated in the trial court to waive notice of the
2 court's decision under Code of Civil Procedure section 1019.5, notice of entry of judgment can be
3 served to start the time period under (a)(1)(B).

4
5 **Subdivision (d).** See rule 8.817(b)(5) for provisions concerning the timeliness of documents
6 mailed by inmates or patients from custodial institutions.

7
8
9 **Rule 8.823. Extending the time to appeal**

10
11 **(a) * * ***

12
13 **(b) Motion for a new trial**

14
15 If any party serves and files a valid notice of intention to move for a new trial, ~~the~~
16 ~~time to appeal from the judgment is extended for all parties as follows~~ the
17 following extensions of time apply:

18
19 (1) If the motion is denied, the time to appeal from the judgment is extended for
20 all parties until the earliest of:

21
22 (A) 15 days after the trial court clerk mails, or a party serves, an order
23 denying the motion or a notice of entry of that order;

24
25 (B) 15 days after denial of the motion by operation of law; or

26
27 (C) 90 days after entry of judgment; or

28
29 (2) If the trial court makes a finding of excessive or inadequate damages and
30 grants the motion for a new trial subject to the condition that the motion is
31 denied if a party consents to the additur or remittitur of damages:

32
33 (A) If any party serves an acceptance of a conditionally ordered the additur
34 or remittitur of damages under a trial court finding of excessive or
35 inadequate damages, the time to appeal from the judgment is extended
36 for all parties until 15 days after the date the party serves the
37 acceptance.

38
39 (B) If any party serves a rejection of the additur or remittitur or the time for
40 accepting the additur or remittitur expires, the time to appeal from the
41 new trial order is extended for all parties until 30 days after the date the
42 party serves the rejection or the date on which the time for accepting
43 the additur or remittitur expired.

1

2 **(c)-(h) * * ***

3

Item SPR11-05 Response Form

Title: **Appellate Procedure: Time to Appeal** (amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.