

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SPR13-05

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| Title  | Action Requested   |
| Appellate Procedure: Number of Copies of Filed Documents     | Review and Submit Comments by June 19, 2013                                  |
| Proposed Rules, Forms, Standards, or Statutes                | Proposed Effective Date  |
| Amend Cal. Rules of Court, rules 8.44, 8.70, 8.72, and 8.212 | January 1, 2014  |
| Proposed by  | Contact  |
| Appellate Advisory Committee                                 | Heather Anderson, 415-865-7691   |
| Hon. Raymond J. Ikola, Chair                                 | <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a> |

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### Executive Summary and Origin

This proposal for amendments to the rules on appellate procedure is intended to provide costs savings and efficiencies for litigants and for reviewing courts by decreasing the number of copies of some documents that must be filed in the Supreme Court when an electronic copy of a document is filed, specifically providing that reviewing courts may adopt local rules providing for submission of electronic copies in lieu of some or all of the paper copies of filed documents, and making other changes. This proposal originated from suggestions made by the clerk/administrator of one of the Courts of Appeal and the directors of the appellate projects that assist the reviewing courts in the appointment of appellate counsel.

### Background

Rule 8.44 of the California Rules of Court specifies the number of copies of documents that must be filed in the Supreme Court and the Courts of Appeal. Currently, this rule generally requires that an original and 13 copies of a petition for review, an answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or an answer to a petition for rehearing be filed in the Supreme Court. It also requires an original and 10 copies of a petition for a writ within the court's original jurisdiction, an opposition or other response to the petition, or a reply be filed in the Supreme Court. The Clerk of the Supreme Court has indicated that an electronic copy of these documents could be use in lieu of some of the currently required paper copies. In addition, some reviewing courts now accept electronic copies of filed documents, but rule 8.44 does not currently provide for this option.

*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.*

Rule 8.212 addresses briefs in civil appeals to the Court of Appeal. Both rule 8.212 and rule 8.44 currently provide that either one electronic copy of such briefs or four paper copies must be served on the Supreme Court. If the Court of Appeal accepts electronic copies of filed documents, it is easier to have the electronic copy of such briefs submitted to the Court of Appeal rather than the Supreme Court. Several districts of the appellate courts have already adopted this practice.

Rules 8.70–8.79 address electronic filing of documents in the Supreme Court and Courts of Appeal. Electronic filing of a document is different from submission of an electronic copy of a document that was filed in paper format. Electronic filing of a document in compliance with rules 8.70–8.79 fulfills the requirement for filing the document and the date of the electronic filing is the date of filing of that document; the filing party is not required to file a paper copy of the electronically filed document. Currently, however, the rules do not specifically address whether electronic filers must provide the paper copies of filed documents specified in rule 8.44.

### **The Proposal**

This proposal is intended to provide significant cost savings and efficiencies for litigants and for the Supreme Court and Courts of Appeal by making the following changes to the rules regarding the number of copies of filed documents that must be submitted to these courts:

- Amending rule 8.44 to:
  - Allow the submission of one electronic copy and eight paper copies instead of:
    - thirteen paper copies of petitions for review, answers, replies, briefs on the merits, amicus curiae briefs, answers to amicus curiae briefs, petitions for rehearing, and answers to a petitions for rehearing; and
    - ten paper copies of petitions for writs within the court’s original jurisdiction, oppositions or other responses to such petitions, and replies to such petitions filed in the Supreme Court.For those that submit the electronic copy, the reduced number of paper copies required will reduce costs. In criminal and juvenile matters in which parties are represented by appointed counsel, it will also reduce costs for the appointing appellate court; and
  - Specifically provide that the Supreme Court or Courts of Appeal may, by local rule, provide for the submission of an electronic copy of a filed document either in addition to the paper copies required or in place of one or more of these copies. If courts opt to replace a paper copy with an electronic copy of a document, this should reduce costs for both litigants and the appellate courts.
- Amending rules 8.44 and 8.212 to provide that the electronic copy of briefs in civil appeals to the Courts of Appeal that currently must be served on the Supreme Court must instead be submitted to the Courts of Appeal. This change will reflect current, more efficient practice; and

- Amending rules 8.70, 8.72, and 8.212(c)(2) and the advisory committee comment accompanying rule 8.44 to clarify that additional copies of documents are not required to be filed or submitted if the original document is filed electronically under rules 8.70–8.79.

### **Alternatives Considered**

The committee considered recommending no changes to these rules but concluded that amending the rules would reduce costs for the Supreme Court and Courts of Appeal and therefore that it would be preferable to propose these amendments at this time.

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

This proposal should impose no significant implementation burdens on either the superior or appellate courts and should provide significant cost savings for the Supreme Court and Courts of Appeal.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Rules 8.44, 8.70, 8.72, and 8.212 of the California Rules of Court would be amended, effective January 1, 2014, to read:

1 **Rule 8.44. Number of copies of filed documents**

2  
3 Except as these rules provide otherwise, the number of copies of every brief, petition, motion,  
4 application, or other document that must be filed in a reviewing court is as follows:

5  
6 **(a) Documents filed in the Supreme Court**

7  
8 (1) ~~Except as provided in (4),~~ An original and 13 copies of a petition for review, an  
9 answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus  
10 curiae brief, a petition for rehearing, or an answer to a petition for rehearing; and  
11 either

12  
13 (A) 13 paper copies; or

14  
15 (B) 8 paper copies and one electronic copy;

16  
17 (2) Unless the court orders otherwise, an original ~~and 10 copies~~ of a petition for a writ  
18 within the court’s original jurisdiction, an opposition or other response to the  
19 petition, or a reply; and either:

20  
21 (A) 10 paper copies; or

22  
23 (B) 8 paper copies and one electronic copy;

24  
25  
26 (3)–(6) \* \* \*

27  
28 **(b) Documents filed in a Court of Appeal**

29  
30 (1) An original and 4 paper copies of a brief, an amicus curiae brief, or an answer to an  
31 amicus curiae brief, ~~and, In civil appeals, proof of delivery of~~ for briefs other than  
32 petitions for rehearing or answers thereto, 1 electronic copy or, in case of undue  
33 hardship, proof of delivery of 4 paper copies to the Supreme Court, as provided in rule  
34 8.212(c) ~~is also required. For purposes of service on the Supreme Court, the term~~  
35 ~~“brief” does not include a petition for rehearing or answers thereto;~~

36  
37 (2)–(7) \* \* \*

38  
39 **(c) Electronic copies**

40  
41 A court may provide by local rule for the submission of an electronic copy of a document  
42 either in addition to the copies of a document required to be filed under (a) or (b) or as a

1 substitute for one or more of these copies. The local rule must specify the format of the  
2 electronic copy and provide for an exception if it would cause undue hardship for a party to  
3 submit an electronic copy.

4  
5 **Advisory Committee Comment**

6  
7 The initial sentence of this rule acknowledges that there are exceptions to this rule’s requirements  
8 concerning the number of copies. For example, rule 8.70 provides that if a document is filed  
9 electronically under rules 8.70–8.79, only the original document is filed. See also, for example, rule  
10 8.150, which specifies the number of copies of the record that must be filed.

11  
12 Information about electronic submission of copies of documents can be found on the webpage for the  
13 Supreme Court at: [www.courts.ca.gov/appellatebriefs.htm](http://www.courts.ca.gov/appellatebriefs.htm) or for the Court of Appeal District in which the  
14 brief is being filed at [www.courts.ca.gov/courtsofappeal.htm](http://www.courts.ca.gov/courtsofappeal.htm).

15  
16 Note that submitting an electronic copy of a document under this rule or a under local rule adopted  
17 pursuant to subdivision (c) does not constitute filing a document electronically under rules 8.70–8.79 and  
18 thus does not substitute for the filing of the original document with the court in paper format.

19  
20  
21 **Rule 8.70. Purpose, application, construction, and definitions, and effect of document filed**  
22 **electronically**

23  
24 **(a)–(d) \* \* \***

25  
26 **(e) Effect of document filed electronically**

- 27  
28 (1) A document filed electronically under the rules in this article has the same legal  
29 effect as a document in paper form.  
30  
31 (2) Filing a document electronically does not alter any filing deadline.  
32  
33 (3) If a document is filed electronically, the paper copies of the document specified in  
34 rule 8.44 are not required to be filed.

35  
36 **Advisory Committee Comment**

37  
38 **Subdivision (d)(3).** The definition of “electronic service” has been amended to provide that a party may  
39 effectuate service not only by the electronic transmission of a document, but also by providing electronic  
40 notification of where a document served electronically may be located and downloaded. This amendment  
41 is intended to modify the rules on electronic service to expressly authorize electronic notification as a  
42 legally effective alternative means of service to electronic transmission. This rules amendment is  
43 consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to  
44 authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments  
45 change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied*  
46 *Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic  
47 transmission as the only effective means of electronic service.

1  
2 **Subdivision (e).** Note that submitting an electronic copy of a document under rule 8.44 or a local rule  
3 adopted by the court does not constitute filing a document electronically under rules 8.70–8.79 and thus  
4 does not substitute for the filing of the original document with the court in paper format..  
5

6  
7 **Rule 8.72. Documents that may be filed electronically**  
8

9 (a)–(c) \* \* \*

10  
11 ~~(d) — Effect of document filed electronically~~

12  
13 (1) ~~— A document that the court, a party, or a trial court files electronically under the rules~~  
14 ~~in this article has the same legal effect as a document in paper form.~~

15  
16 (2) ~~— Filing a document electronically does not alter any filing deadline.~~  
17

18  
19 **Rule 8.212. Service and filing of briefs**  
20

21 (a)–(b) \* \* \*

22  
23 (c) **Service**

24  
25 (1) \* \* \*

26  
27 (2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy of each  
28 brief must be served on submitted to the Court of Appeal Supreme Court by sending the  
29 copy to the Supreme Court of Appeal’s electronic service address. For purposes of this  
30 requirement, the term “brief” does not include a petition for rehearing or an answer  
31 thereto.

32  
33 (A) The copy must be a single computer file in text-searchable Portable Document  
34 Format (PDF), and it must exactly duplicate the appearance of the paper copy,  
35 including the order and pagination of all of the brief’s components. By  
36 electronically ~~submitting~~ submitting the copy, the filer certifies that the copy  
37 complies with these requirements and that all reasonable steps have been taken  
38 to ensure that the copy does not contain computer code, including viruses, that  
39 might be harmful to the court’s ~~electronic filing~~ electronic filing system for receipt of electronic  
40 copies or and to other users of that system.

41  
42 (B) \* \* \*

43  
44 (C) If it would cause undue hardship for the party filing the brief to serve submit  
45 an electronic copy of the brief to the Supreme Court of Appeal, the party may  
46 instead serve four paper copies of the brief on the Supreme Court. If the Court  
47 of Appeal has ordered the brief sealed, the party serving the brief must place

1 all four copies of the brief in a sealed envelope and attach a cover sheet that  
2 contains the information required by rule 8.204(b)(10) and labels the contents  
3 as “CONDITIONALLY UNDER SEAL.” The Court of Appeal clerk must  
4 promptly notify the Supreme Court of any court order unsealing the brief. In  
5 the absence of such notice, the Supreme Court clerk must keep all copies of  
6 the brief under seal.

7  
8 (3) \* \* \*

9  
10 **Advisory Committee Comment**

11  
12 **Subdivision (a).** \* \* \*

13  
14 **Subdivision (b).** \* \* \*

15  
16 **Subdivision (c).** In subdivision (c)(2) the word “brief” means only (1) an appellant’s opening brief, (2) a  
17 respondent’s brief, (3) an appellant’s reply brief, (4) an amicus curiae brief, or (5) an answer thereto. It  
18 follows that no other documents or papers filed in the Court of Appeal, whatever their nature, should be  
19 served on the Supreme Court. Further, only briefs filed in the Court of Appeal “in a civil appeal” must be  
20 served on the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal appeals or  
21 in original proceedings should be served on the Supreme Court.

22  
23 “Electronic service address” is defined in rule 8.70. ~~The Supreme Court’s electronic filing address and~~  
24 ~~additional~~ Information about ~~sending~~ submission of copies of briefs to the Supreme Court of  
25 Appeal can be found on the webpage for the Court of Appeal district in which the brief is being filed on  
26 the California Courts website at [www.courts.ca.gov/appellatebriefs.htm](http://www.courts.ca.gov/appellatebriefs.htm) ~~courts~~ [courtssofappeal.htm](http://www.courts.ca.gov/courtssofappeal.htm).

27  
28 Examples of “undue hardship” under (2)(C) include but are not limited to when a party does not have  
29 access to a computer or the software necessary to prepare an electronic copy of a brief or does not have e-  
30 mail access to electronically ~~serve~~ submit a brief ~~on the Supreme~~ to the Court of Appeal.