

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR14-02

Title	Action Requested
Appellate Procedure: Extensions of Time to File Briefs	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.212; revise form APP-006; and approve new optional forms CR-126, JV-816, JV-817, APP-012, and APP-031	January 1, 2015
	Contact
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Proposed by	
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	

Executive Summary and Origin

Based on suggestions received from a Court of Appeal clerk and staff attorney, a bar association committee, and an attorney, the Appellate Advisory Committee is proposing that: (1) the rule governing stipulations for extensions of time to file a brief in a civil appeal be amended to clarify that such stipulations are not available if the time to file a brief has already been extended by the court on application of the party; (2) the existing form for applying to the Court of Appeal for extensions of time to file briefs in civil appeals be amended; (3) new optional forms for applying to the Court of Appeal for extensions of time to file briefs in criminal and juvenile cases and for declarations attached to such forms be approved; and (4) a new optional form for stipulations to extend briefing time in civil appeals be approved.

Background

California Rules of Court, rule 8.212 addresses service and filing of briefs in civil appeals. Among other things, this rule provides that except as otherwise provided by statute, the parties may extend the briefing period for each brief by up to 60 days by filing one or more stipulations in the reviewing court before the brief is due. Although such stipulations are among the most common filings in the Court of Appeal, there is currently no Judicial Council form for such stipulations.

Rule 8.212 also provides that if a party is unable to stipulate to an extension, before the brief is due, the party may apply to the presiding justice for an extension of briefing time. Rule 8.220

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 These proposals are circulated for comment purposes only.

provides that when the clerk has notified a party that its brief was not timely filed and must be filed within 15 days, within that 15-day period the party may apply to the presiding justice for an extension of briefing time. The general understanding is that once the court has granted a party's application for an extension of time to file a brief, the parties may not stipulate to further extend that briefing time. A Court of Appeal staff attorney has suggested that rule 8.212 be amended to make this clearer.

Like rule 8.212, rule 8.360, relating to briefs in felony appeals, and rules 8.412 and 8.416, which address briefs in juvenile appeals, permit parties to apply to the Court of Appeal for an extension of time to file a brief. There is currently an optional Judicial Council form, *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006), that a party may use to seek an extension of time from the court in a civil appeal. Although several Court of Appeal districts have local forms for this purpose, currently there are no Judicial Council forms for filing applications for extensions of briefing time in felony and juvenile appeals.

Rule 8.212 also addresses service of briefs, including briefs that are filed conditionally under seal. Effective January 1, 2014, the rules relating to the sealed records, including the rules specifying what information needs to be included on the cover of conditionally sealed filings, were amended. Rule 8.212 does not currently reflect these amendments to the rules on sealed records.

The Proposal

This proposal would amend rule 8.212(b) to clarify that stipulations for extensions of time to file a brief in a civil appeal are not available if the time to file a brief has already been extended by the court on application of the party. In addition, this proposal would update rule 8.212(c) to reflect the recent amendments to the rules on sealed records.

The committee is also proposing revisions to existing optional Judicial Council form, *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006), and the approval of the following five new optional Judicial Council forms:

- *Stipulation for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-012);
- *Application for Extension of Time to File Brief (Criminal Case) (Appellate)* (form CR-126);
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)* (form JV-816);
- *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)* (form JV-817); and
- *Attached Declaration (Court of Appeal)* (form APP-031).

Some features common to all of these proposed forms other than the attached declaration include:

- They use an updated header which:
 - Consistent with rule 8.40(c), specifies that the e-mail address and fax number of the filer must be provided (if available); and

- Contains separate fields for each element of the filer’s contact information to facilitate electronic filing.
- They do not include an integrated proof of service on the back of the form. Instead, they all include a note that *Proof of Service (Appellate)* (form APP-009) may be used for this purpose. While integrated proofs of service may be helpful, timely updating them can be difficult. It is much easier to keep a single, stand-alone proof of service updated.

Some features common to all of the proposed application forms include:

- The notice box at the top of the form includes a statement that parties, when notified that a brief is late, are expected to use the “grace period” provided by the rules to file the brief, if possible. This proposed language is modeled on language in the First Appellate District’s local application forms for criminal and juvenile cases.
- A large space has been provided for the applicant to specify the reasons that an extension of time is needed, and as alternative to listing the reasons in the form, the form allows the applicant to indicate that a declaration specifying these reasons is attached. The proposed new *Attached Declaration (Court of Appeal)* (form APP-031) is designed for this purpose.
- There are check boxes that the court may use to indicate that it is either making its order on the same form as the application or in a separate document. This is intended to facilitate electronic filing and service of these applications and associated orders. Depending on the format of the document filed and the e-filing system, it may be easier to produce and deliver a separate order rather than adding the presiding justice’s signature to the document filed by a party and then sending that signed document to the parties. The suggested language should maintain the convenience of an integrated application and order for those courts that want and can use this format while allowing other courts to still use the application form but issue a separate order.

Alternatives Considered

The committee considered not proposing these rule amendments and form changes. However, the committee concluded that clarifying the rule and creating standardized stipulation and application forms would assist both counsel and the courts. This, in turn, should result in reduced costs for the courts associated with the time for appointed counsel to prepare individualized application forms and the time for the courts to review applications and stipulations that are in a wide variety of formats. Given these potential costs savings, the committee concluded that it should propose these rule amendments and forms at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not result in implementation costs for the courts and, as noted above, should reduce costs for the courts associated with the time for appointed counsel to prepare individualized application forms and the time for the courts to review applications and stipulations that are in a wide variety of formats.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

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

- Would the proposal provide cost savings? If so please quantify.
- 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 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rule 8.212 of the California Rules of Court would be amended, effective January 1, 2015, to read:

1 **Rule 8.212. Service and filing of briefs**

2
3 **(a) Time to file**

4
5 (1) An appellant must serve and file its opening brief within:

6
7 (A) 40 days after the record—or the reporter’s transcript, after a rule 8.124
8 election—is filed in the reviewing court; or

9
10 (B) 70 days after the filing of a rule 8.124 election, if the appeal proceeds without a
11 reporter’s transcript.

12
13 (2) A respondent must serve and file its brief within 30 days after the appellant files its
14 opening brief.

15
16 (3) An appellant must serve and file its reply brief, if any, within 20 days after the
17 respondent files its brief.

18
19 **(b) Extensions of time**

20
21 (1) Except as otherwise provided by statute or when the time to file the brief has
22 previously been extended under (3) or rule 8.220(d), the parties may extend each
23 period under (a) by up to 60 days by filing one or more stipulations in the reviewing
24 court before the brief is due. Stipulations must be signed by and served on all parties.

25
26 (2) A stipulation under (1) is effective on filing. The reviewing court may not shorten a
27 stipulated extension.

28
29 (3) Before the brief is due, a party may apply to the presiding justice for an extension of
30 each period under (a), or under rule 8.200(c)(6) or (7), on a showing that there is
31 good cause and that:

32
33 (A) The applicant was unable to obtain—or it would have been futile to seek—the
34 extension by stipulation; or

35
36 (B) The parties have stipulated to the maximum extension permitted under (1) and
37 the applicant seeks a further extension.

38
39 (4) A party need not apply for an extension or relief from default if it can file its brief
40 within the time prescribed by rule 8.220(a). The clerk must file a brief submitted
41 within that time if it otherwise complies with these rules.
42

1 (c) Service

2
3 (1) * * *

4
5 (2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy of each
6 brief must be submitted to the Court of Appeal. For purposes of this requirement, the
7 term “brief” does not include a petition for rehearing or an answer thereto.

8
9 (A) * * *

10
11 (B) ~~If the Court of Appeal has ordered the brief~~ discloses material contained in a
12 sealed or conditionally sealed record, the party serving the brief must comply
13 with rule 8.46(f) and include as the first page in the PDF document a cover
14 sheet that contains the information required by rule 8.204(b)(10). ~~and labels the~~
15 ~~contents as “CONDITIONALLY UNDER SEAL.”~~ ~~The Court of Appeal clerk~~
16 ~~must promptly notify the Supreme Court of any court order unsealing the brief.~~
17 ~~In the absence of such notice, the Supreme Court clerk must keep all copies of~~
18 ~~the brief under seal.~~

19
20 (C) If it would cause undue hardship for the party filing the brief to submit an
21 electronic copy of the brief to the Court of Appeal, the party may instead serve
22 four paper copies of the brief on the Supreme Court. ~~If the Court of Appeal has~~
23 ~~ordered the brief~~ discloses material contained in a sealed or conditionally
24 sealed record, the party serving the brief must comply with rule 8.46(f) ~~place~~
25 ~~all four copies of the brief in a sealed envelope~~ and attach a cover sheet that
26 contains the information required by rule 8.204(b)(10). ~~and labels the contents~~
27 ~~as “CONDITIONALLY UNDER SEAL.”~~ The Court of Appeal clerk must
28 promptly notify the Supreme Court of any court order unsealing the brief. In
29 the absence of such notice, the Supreme Court clerk must keep all copies of the
30 unredacted brief under seal.

31
32 (3) * * *

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The reasons that I need an extension to file this brief are set forth

below on a separate declaration

You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose).

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

9. For attorneys filing application on behalf of client:

I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____

Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO. (if available):	
E-MAIL ADDRESS (if available):		
ATTORNEY FOR (Name):		
APPELLANT:		
RESPONDENT:		
STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)		

Notice: Please read Judicial Council form APP-001 before completing this form. If the court has not previously granted an application to extend the time to file the brief, before the brief is due, parties may extend the time to file the brief up to a maximum of 60 days by filing one or more stipulations. See California Rules of Court, rule 8.212(b).

1. All parties to this appeal stipulate to extend the time under Cal. Rules of Court, rule 8.212(a) to file the following brief (*check one*):

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

2. This brief is now due on (*date*): _____

3. The parties agree to extend the due date by (*number*) _____ days so that the new due date is (*date*): _____

4. The time to file this brief (*check one*):

- has not been extended by stipulations previously.
- has been extended previously by one or more stipulations totaling _____ days.

The combined extensions to file this brief by this stipulation and any previous stipulation do not exceed 60 days. (See rule 1.10 regarding the computation of time.)

5. For attorneys filing on behalf of a client:

I certify that I have delivered a copy of this stipulation to my client. (See rule 8.60.)

6. A proof of service of this stipulation on all parties is attached (see rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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Date: _____

 (TYPE OR PRINT NAME)

 (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

Date: _____

 (TYPE OR PRINT NAME)

 (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

Date: _____

 (TYPE OR PRINT NAME)

 (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

<p>APPELLANT:</p> <p>RESPONDENT:</p>	<p>COURT OF APPEAL CASE NUMBER:</p> <p>SUPERIOR COURT CASE NUMBER:</p>
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DECLARATION

(This form must be attached to another form or court paper before it can be filed in court.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

 _____

(SIGNATURE OF DECLARANT)

- Attorney for
 Appellant
 Respondent
 Other *(specify):*

APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following punishment:

9. The defendant is is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are set forth:

below on a separate declaration

You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63, for factors used in determining whether to grant extensions):

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____

Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. (if available): E-MAIL ADDRESS (if available): ATTORNEY FOR (Name):		
Case Name: In re _____, person(s), coming under the juvenile court law.		
APPELLANT: RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)		
Notice: Parties are expected to use the time allowed by California Rules of Court, rule 8.412(d), rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule.		

1. I (name): _____ request that the time to file (check one):

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): _____ be extended to (date): _____

2. I have have not received a rule 8.412(d)(1) notice.

3. I have received:

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): _____ extensions from the court totaling (total number of days): _____

Did the court mark any previous extension "no further?" Yes No

4. The last brief filed by any party was: AOB RB RB and AOB ARB and RB
filed on (date): _____

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed:

- A contested hearing
- An admission

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are set forth

below on a separate declaration

You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME)

 _____
(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____
 Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO. (if available):	
E-MAIL ADDRESS (if available):		
ATTORNEY FOR (Name):		
Case Name: In re _____, person(s), coming under the juvenile court law.		
APPELLANT:		
RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)		
Notice: Parties are expected to use the time allowed by California Rules of Court, rules 8.412(d) or 8.416(g), rather than filing an application for an extension of time, if the brief can be filed within the time allowed by those rules.		

1. I (name): _____ request that the time to file (check one):
 - appellant's opening brief (AOB)
 - respondent's brief (RB)
 - combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
 - combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
 - appellant's reply brief (ARB)
 now due on (date): _____ be extended to (date): _____

2. I have have not received a rule 8.412(d)(1) notice.

3. I have received:
 - no previous extensions to file this brief.
 - the following previous extensions:
 - (number of extensions): _____ extensions from the court totaling (total number of days): _____
 - Did the court mark any previous extension "no further?" Yes No

4. The last brief filed by any party was: AOB RB RB and AOB ARB and RB filed on (date): _____

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The order appealed from was made under Welfare and Institutions Code section (check all that apply):
 - a. Section 360 (declaration of dependency) Removal of custody from parent or guardian Other orders with review of section 300 jurisdictional findings
 - b. Section 366.26
 - Termination of parental rights Appointment of guardian Planned permanent living arrangement

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6. c. Section 366.28
 d. Other appealable orders relating to dependency (*specify*):

7. The reasons that I need an extension to file this brief are set forth:
 below on a separate declaration
 You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (*date*): _____
 Denied

Date: _____

 (SIGNATURE OF PRESIDING JUSTICE)