



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title	Agenda Item Type
Appellate Procedure: Time for Filing Applications to File Amicus Curiae Briefs	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.25	July 1, 2012
Recommended by	Date of Report
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	August 1, 2011
	Contact
	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule relating to filing documents in the Supreme Court and Court of Appeal to clarify that applications to file amicus briefs and answers to these briefs are considered timely if the time to file them has not expired on the date they are mailed by priority or express mail or delivered to an overnight carrier. This amendment is intended to improve court administration by making this rule clearer.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council amend rule 8.25 of the California Rules of Court to add applications to file amicus briefs and answers to these briefs to the list of documents that are considered timely if the time to file them has not expired on the date they are mailed by priority or express mail or is delivered to a overnight carrier.

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

Previous Council Action

The predecessor to rule 8.25(b), rule 40(m), was adopted by the Judicial Council effective July 1, 1989. This rule, which originally defined the date of filing of a brief as being the earliest of the brief's delivery to the clerk's office or the date of its mailing by priority or certified mail or its delivery to an overnight carrier, was intended primarily to equalize the positions of counsel in cities where the Courts of Appeal are located (who could hand-deliver their briefs) and counsel in other geographic areas. Effective July 1, 1991, the council amended this rule to instead provide that the date of filing is the date that the brief is delivered to the clerk's office, but that a brief mailed by priority or certified mail or delivered to an overnight carrier on or before the date it was due is deemed timely. This rule has since been renumbered as rule 8.25(b), but the substance of the rule has remained essentially unchanged.

Rationale for Recommendation

Under rule 8.25(b), most appellate documents are considered timely if the clerk receives them before the time to file them expires. However, certain documents, including briefs, are covered by a special rule on timeliness under which they are considered timely if the time to file the document has not expired on the date the document is mailed by priority or express mail, as shown on the postmark or the postal receipt, or is delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt.

Currently, it is unclear whether an application to file an amicus curiae brief and answers to such briefs are covered by this special rule on the timeliness of filings. Rule 8.25 does not list these applications among the types of documents that are subject to this special rule. However, amicus applications might be considered to fall within the category of briefs within the meaning of rule 8.25 because, under rules 8.200(c)(4) and 8.520(f)(5), the proposed amicus curiae brief must accompany the application to file the brief; it is not separately filed. In practice, the Supreme Court treats amicus applications and the accompanying briefs as falling within this special timeliness rule. Similarly, an answer to an amicus brief is not specifically included on the list of documents that are covered by this special rule but is essentially equivalent to a brief that responds to the amicus brief.

To clarify this rule, the committee recommends amending rule 8.25 to specifically provide that applications to file amicus curiae briefs and answers to amicus curiae briefs are subject to the special rule on timeliness of filings.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated between April 21 and June 20, 2011, as part of the regular spring 2011 comment cycle. Nine individuals or organizations submitted comments on this proposal. Eight commentators agreed with the proposal, and one 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.

Alternatives Considered

The committee considered not proposing this change because of concerns that rule users might mistakenly assume that all applications do or should fall under the special timeliness rule. Ultimately, however, the committee concluded that the proposed amendment would provide helpful guidance to potential amicus curiae without imposing appreciable costs on the courts and therefore that it is preferable to amend the rule. However, to address the concerns about other applications, the committee recommends the addition of an advisory committee comment explaining the reason that applications to file amicus briefs are included under this special timeliness rule.

Implementation Requirements, Costs, and Operational Impacts

The proposal should not result in appreciable implementation requirements, costs, or operational impacts.

Attachments

1. Cal. Rules of Court, rule 8.25, at pages 4–5
2. Comment Chart at page 6–7

Rule 8.25 of the California Rules of Court is amended effective July 1, 2012, to read:

1 **Title 8. Appellate Rules**

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

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5 **Chapter 1. General Provisions**

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

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10 **Rule 8.25. Service, filing and filing fees**

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12 **(a) * * ***

13
14 **(b) Filing**

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16 (1) A document is deemed filed on the date the clerk receives it.

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18 (2) Unless otherwise provided by these rules or other law, a filing is not timely
19 unless the clerk receives the document before the time to file it expires.

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21 (3) A brief, an application to file an amicus curiae brief, an answer to an amicus
22 curiae brief, a petition for rehearing, an answer to a petition for rehearing, a
23 petition for transfer of an appellate division case to the Court of Appeal, an
24 answer to such a petition for transfer, a petition for review, an answer to a
25 petition for review, or a reply to an answer to a petition for review is timely if
26 the time to file it has not expired on the date of:

27
28 (A) Its mailing by priority or express mail as shown on the postmark or the
29 postal receipt; or

30
31 (B) Its delivery to a common carrier promising overnight delivery as shown
32 on the carrier's receipt.

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34 (4) The provisions of (3) do not apply to original proceedings.

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36 (5) * * *

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38 **(c) *****

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40 **Advisory Committee Comment**

41
42 **Subdivision (a) *****

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1 **Subdivision (b) *****

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3 **Subdivision (b)(3).** This rule includes applications to file amicus curiae briefs because, under
4 rules 8.200(c)(4) and 8.520(f)(5), a proposed amicus curiae brief must accompany the application
5 to file the brief.

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7 **Subdivision (c) *****

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SPR11-03**Appellate Procedure: Time for filing applications to file amicus curiae briefs** (amend Cal. Rules of Court, rule 8.25)

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

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego County Bar Association By Cecilia O. Miller, Chair	A	Our committee supports the revision to rule 8.25 without comment.	No response required.
2.	Appellate Defenders, Inc., California Appellate Project - San Francisco, and the First District Appellate Project By Mat Zwerling, Executive Director	A	We agree with the proposed change.	No response required.
3.	Committee on Appellate Courts State Bar of California Benjamin Shatz, Chair	A	The committee supports this proposal.	No response required.
4.	Orange County Bar Association By John Hueston, President	A	No specific comment.	No response required.
5.	Orange County Public Defender's Office By Deborah Kwast – Public Defender	A	No specific comment.	No response required.
6.	Rules and Legislation Committee of the State Bar of California's Litigation Section By Reuben A. Ginsburg - Co-chair	A	The Rules and Legislation Committee agrees with the proposal.	No response required.
7.	Superior Court of Monterey County By Rosalinda Chavez – ACEO	A	No specific comment.	No response required.
8.	Superior Court of Sacramento County By Robert Turner - ASO II Research & Evaluation Division	NI	No specific comment.	No response required.

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	Commentator	Position	Comment	Committee Response
9.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comment.	No response required.