



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 27, 2012

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Title	Agenda Item Type
Appellate Procedure: References to Amount of Fee for Filing Notice of Appeal	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.100; revise form APP-001	July 27, 2012
Recommended by	Date of Report
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	July, 10, 2012
	Contact
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### Executive Summary

To reflect increases in filing fees recently enacted by urgency legislation, the Appellate Advisory Committee recommends amending the rule relating to filing a notice of appeal in an unlimited civil case and revising the information sheet concerning these appeals. Because the increased fees went into effect on June 27, 2012 and this proposal would simply update the references to the fee amounts, the advisory committee recommends that these rule and form changes be adopted effective immediately without being circulated for public comment.

### Recommendation

The Appellate Advisory Committees recommends that, effective July 27, 2012, the Judicial Council:

1. Amend rule 8.100 of the California Rules Court and revise *Information on Appeal Procedures for Unlimited Civil Cases (Appellate)* (form APP-001) to update the references to the amount of the fee for filing a notice of appeal in an unlimited civil case;

2. Make other nonsubstantive revisions to form APP-001.

The text of the proposed amended rule and revised form is attached beginning at page 4.

### **Previous Council Action**

Effective January 1, 1976, the Judicial Council amended the rule relating to filing a notice of appeal in a civil case appealed to the Court of Appeal to indicate the amount of the statutorily required fee for filing such a notice and to require that appellants must pay this fee at the time that they file such a notice. The Judicial Council subsequently amended this rule in 1982, 1992, and 2003 to reflect statutory amendments that increased the amount of this filing fee. These prior amendments were adopted as technical amendments to the rule without being circulated for public comment.

### **Rationale for Recommendation**

Rule 8.100 addresses the filing of a notice of appeal in an unlimited civil case. Subdivision (b) of this rule addresses the payment of the fees required by statute for filing such a notice of appeal. Form APP-001 provides information to litigants about appeals in unlimited civil cases. This form also addresses the payment of the fees required by statute for filing such a notice of appeal. Both rule 8.100 and form APP-001 currently state that the amount of this filing fee is \$655. However, on June 27, 2012, the statutes establishing this filing fee were amended to increase this fee to \$775.

Having the incorrect filing fee in this rule and form may cause confusion for litigants and result in appellants not submitting the correct fee. Such errors cost both litigants and courts time and money. Trial courts must notify the appellant about such an error and give the appellant an opportunity to correct it. If the error is not corrected, the appeal will be dismissed, but the appellant can request that the Court of Appeal vacate the dismissal for good cause.

To avoid this potential confusion and the costs associated with trying to correct these errors, the committee is recommending that rule 8.100 be amended and form APP-001 revised to update the references to the amount of the statutory filing fee. This will eliminate the current confusing reference to the old, outdated filing fee.

The sentence in form APP-001 that addresses the required statutory fee and deposit is currently quite long and confusing. To make it easier to read and understand, the committee is recommending that this sentence be broken out into several sentences. No substantive change to this provision is being recommended.

## **Comments, Alternatives Considered, and Policy Implications**

The amendments to rule 8.100 and the revisions to form APP-001 proposed in this report were not circulated for public comment. Under rule 10.22, an amendment to the California Rules of Court may be recommended for adoption by the council without circulating it for comment if the proposal presents a nonsubstantive technical change or correction. As with past amendments to this rule to reflect changes in the amount of the statutory filing fee, the committee is recommending that these proposed amendments to rule 8.100 and the revisions to form APP-001 be adopted as technical amendments, without circulation for public comment.

The committee considered not proposing any change to rule 8.100 or form APP-001 or recommending that these changes not take effect immediately. However, to avoid the potential confusion created by the references to the old, outdated fee amount and the costs associated with correcting errors in the payment of filing fees, the committee concluded that it was preferable to propose that the rule amendment and form changes be adopted immediately.

To avoid the need to update the rule or form in the event of future fee increases, the committee also considered deleting the references to the amount of the filing fee in rule 8.100 or form APP-001, keeping only the references to the statutes that set the fee amounts. However, a majority of the committee members concluded that it would be easier for litigants, particularly self-represented litigants, if the rule and form continued to indicate the amount of the filing fee. These members noted that it would be difficult for self-represented litigants to locate the relevant statutory provisions and, because the total fee consists of amounts in two separate statutes that must be added together, it might be difficult even for attorneys to determine the correct fee amount. In addition, unlike trial court filing fees, the fee for filing a notice of appeal in an unlimited civil case has not been changed frequently (only four times since 1976), so the burden of updating the rule and form in the future will most likely be minimal.

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

This proposal should not create significant implementation requirements, costs, or operational impacts for the courts and should reduce costs associated with errors in the payment of filing fees.

## **Attachments**

1. Cal. Rules of Court, rule 8.100, at page 4
2. Form APP-001, at pages 5–8

Rule 8.100 of the California Rules of Court is amended, effective July 27, 2012, to read:

**Title 8. Appellate Rules**

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

**Chapter 2. Civil Appeals**

**Article 1. Taking the Appeal**

**Rule 8.100. Filing the appeal**

(a) \* \* \*

**(b) Fee and deposit**

- (1) Unless otherwise provided by law, the notice of appeal must be accompanied by a ~~\$655~~ \$775 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee should be paid by check or money order payable to “Clerk, Court of Appeal”; if the fee is paid in cash, the clerk must give a receipt.
- (2) The appellant must also deposit \$100 with the superior court clerk as required under Government Code section 68926.1, unless otherwise provided by law or the superior court waives the deposit.
- (3) The clerk must file the notice of appeal even if the appellant does not present the filing fee, the deposit, or an application for, or order granting, a waiver of fees and costs.

(c)–(g) \* \* \*

## INFORMATION ON APPEAL PROCEDURES FOR UNLIMITED CIVIL CASES

The following is general information about the procedures for appeals of unlimited civil cases (“unlimited civil case” generally means a civil case in which the amount in controversy is more than \$25,000; see Code of Civil Procedure sections 85 and 88). This information is not intended to be comprehensive, but to provide an overview to help guide you through the appeal process. **You should thoroughly read rules 8.100–8.276 of the California Rules of Court. If you have questions about the appellate process, you should consult an attorney of your own choosing.**

### 1. NATURE OF AN APPEAL

An appeal is a review of a court’s decision by another court. A party may appeal an unfavorable judgment and certain orders in an unlimited civil case made in the superior court to the Court of Appeal for the district in which the superior court is located. Generally, the appeal must be based on an argument that a **legal error** was made by the superior court. An appeal is not a retrial. You will not be permitted to introduce new evidence, and the appellate court will not reassess conflicting evidence. You may not appeal on behalf of a friend, a spouse, a child, or other relative (unless you are a legally appointed guardian).

### 2. PARTIES

The party filing the appeal is called the APPELLANT. The party against whom the appeal is brought is called the RESPONDENT.

## STEPS IN THE APPEAL PROCESS AT THE SUPERIOR COURT

### 3. NOTICE OF APPEAL

To appeal from a superior court decision in an unlimited civil case, the appellant must file a notice of appeal **in the superior court** (Cal. Rules of Court, rule 8.100). A notice of appeal tells the other party or parties in the case and the superior court that you are appealing the decision of the superior court. You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file a notice of appeal in an unlimited civil case.

The notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court. Generally, this service and filing must be completed within **60 calendar days** after the clerk or a party serves either a notice of entry of judgment or a file-stamped copy of the judgment. If neither of these documents is served, the notice of appeal must be filed within **180 calendar days** after entry of judgment (generally the date the judgment is file-stamped). **If your notice of appeal is filed late, your appeal will be dismissed** (Cal. Rules of Court, rules 8.104 and 8.108).

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a cross-appeal. To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later (Cal. Rules of Court, rule 8.108). You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, to file this notice in an unlimited civil case.

### 4. FEE ON APPEAL

The notice of appeal must be accompanied by the \$775 filing fee required by Government Code sections 68926 and 68926.1. Checks for this fee must be made payable to “Clerk, Court of Appeal.” In addition, it must be accompanied by the \$100 deposit required by Government Code section 68926.1. Checks for this deposit must be made payable to “Clerk of the Superior Court.” If you do not have the money for the fees, you may submit an application for waiver of court fees and costs on appeal under rules 8.26 and 3.50–3.63 of the California Rules of Court (Cal. Rules of Court, rule 8.100).

### 5. DESIGNATION OF RECORD

See rules 8.130–8.163 of the California Rules of Court, which govern the preparation of the record on appeal.

Since the appellate court was not present at the trial or other proceedings in the superior court, there must be an official record of the proceedings from the superior court for the appellate court to review in assessing the appeal. Within 10 days of filing the notice of appeal, the appellant must tell the superior court in writing (“designate”) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. **You will need to designate all the parts of the record that the Court of Appeal will need to decide the issues you raise in the appeal.** You can use Judicial Council form APP-003, *Notice Designating Record on Appeal (Unlimited Civil Case)* to designate the record in an unlimited civil case.

### **Reporter’s Transcript**

A court reporter’s transcript is a written record (often called the “verbatim” record) of the oral proceedings in the superior court. A reporter’s transcript is not required but is usually necessary.

Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk either a notice designating a reporter’s transcript or a notice of intent to proceed without a reporter’s transcript (Cal. Rules of Court, rule 8.130). You can use Judicial Council form APP-003, *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a reporter’s transcript, the notice designating this transcript must specify the date of each proceeding to be included in the transcript and must be served on each known court reporter (Cal. Rules of Court, rule 8.130). The names of the court reporters who reported the proceedings are found in the superior court clerk’s minute orders, which are prepared for each day of the proceedings and then placed in the superior court file.

With the notice designating the reporter’s transcript, the appellant must deposit the approximate cost of transcribing the proceedings designated (Cal. Rules of Court, rule 8.130). The cost may be obtained from the reporter’s written estimate or calculated at \$650 per day (more than three hours of court time) or \$325 per fraction of a day (less than three hours of court time) (Cal. Rules of Court, rule 8.130).

Within 10 days after service of the appellant’s designation of the reporter’s transcript, the respondent may serve and file a notice designating additional proceedings to be included in the reporter’s transcript (Cal. Rules of Court, rule 8.130). Respondent must pay for the cost of transcribing any additional proceedings designated.

If the appellant chooses to proceed without a reporter’s transcript, the respondent may not designate a reporter’s transcript without first obtaining an order from the reviewing court (Cal. Rules of Court, rule 8.130).

### **Clerk’s Transcript or Appendix**

The clerk’s transcript is a compilation of the documents filed in the superior court. Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk a notice either designating the documents from the court file that the appellant wants the superior court to include in the clerk’s transcript (Cal. Rules of Court, rule 8.122) or a notice of intent to prepare his or her own compilation of these documents, called an appendix (Cal. Rules of Court, rule 8.124). You can use Judicial Council form APP-003, *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a clerk’s transcript, each document designated for inclusion in the clerk’s transcript must be identified by its title and filing date. If the filing date is not known, the date the document was signed may be used instead (Cal. Rules of Court, rule 8.122).

Within 10 days after service of a notice designating the documents to be included in the clerk’s transcript, respondent may serve and file a notice designating additional documents to be included in the clerk’s transcript (Cal. Rules of Court, rule 8.122).

The superior court clerk will send the appellant a bill for the cost of preparing an original and one copy of the transcript (Cal. Rules of Court, rule 8.122). This must be paid within 10 days or the appeal may be dismissed by the Court of Appeal.

If the appellant chooses to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by California Rules of Court, rule 8.124. The parties may prepare separate appendixes but are encouraged to stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the cost will be paid by the appellant(s) (Cal. Rules of Court, rule 8.124).

## 6. FILING OF CLERK'S AND REPORTER'S TRANSCRIPTS (IF ANY)

If the appellant chooses to designate a clerk's transcript, after all the fees have been paid, the superior court clerk will compile the requested documents into a transcript format and forward the original clerk's transcript, together with the original reporter's transcript, if any, to the Court of Appeal for filing. A copy of the transcript(s) will be sent to the appellant. If the respondent has purchased a copy, the clerk's transcript will also be mailed to the respondent (Cal. Rules of Court, rules 8.122, 8.130, and 8.150).

## 7. ABANDONMENT OF APPEAL

If the appellant decides not to proceed with the appeal and the record has not yet been filed in the Court of Appeal, the appellant must file an abandonment of appeal in the superior court (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-005, *Abandonment of Appeal (Unlimited Civil Case)*, for this purpose.

## STEPS IN THE APPEAL PROCESS AT THE COURT OF APPEAL

### 8. CIVIL CASE INFORMATION STATEMENT

When the Court of Appeal is notified that a notice of appeal has been filed in an unlimited civil case, the clerk of the Court of Appeal will mail the appellant a copy of Judicial Council form APP-004, the *Civil Case Information Statement*, along with a notice that this form must be filed within 10 days. Within 10 days after the clerk mails this notice, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement*, attaching a copy of the judgment or appealed order that shows the date it was entered (Cal. Rules of Court, rules 8.100 and 8.104).

### 9. SERVING AND FILING APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

If a party chooses to prepare an appendix of the documents filed in the superior court under rule 8.124 rather than designating a clerk's transcript, the party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief. A respondent's appendix, if any, must be served and filed with the respondent's brief. An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief (Cal. Rules of Court, rule 8.124).

### 10. BRIEFS

A brief is a party's written description of the facts in the case, the relevant law, and the party's argument. The preparation and filing of briefs is governed by rules 8.200–8.224 of the California Rules of Court. Parties are encouraged to read these rules thoroughly and comply accordingly.

#### Contents and Format of Briefs

See rule 8.204 of the California Rules of Court.

The brief must clearly explain, using references to the clerk's and reporter's transcripts (or other form of the record being used), the claimed legal errors in the superior court proceedings. Each brief must be no longer than 14,000 words if produced on a computer (you can rely on the word count provided by your computer in meeting this requirement) or up to 50 pages if produced on a typewriter. The brief must contain a table of contents and a table of authorities.

#### Service and Filing of Briefs

See rule 8.212 of the California Rules of Court.

The appellant's opening brief must be served and filed within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant elects to proceed under rule 8.124 with no reporter's transcript. The cover of the appellant's opening brief must be green (Cal. Rules of Court, rules 8.212 and rule 8.40).

The respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. If this brief is the first document you have filed in the Court of Appeal in this case, you may have to pay a filing fee with the brief. The cover of the respondent's brief must be yellow.

The appellant's reply brief, if any, must be served and filed within 20 days after the respondent's brief is filed. The cover of the appellant's reply brief must be tan.

An original and four copies of each brief, along with proof of service, must be filed with the Court of Appeal. A copy of each brief must be served on all counsel and self-represented parties and on the superior court clerk for delivery to the trial judge. One electronic copy or four paper copies must also be served on the California Supreme Court (Cal. Rules of Court, rule 8.212). The addresses of the California Supreme Court, Courts of Appeal, and superior courts can be found on the Internet at [www.courts.ca.gov/courts.htm](http://www.courts.ca.gov/courts.htm).

In some instances a copy of each brief must be served on the Attorney General or the local district attorney. See rule 8.29 of the California Rules of Court and the *Civil Case Information Statement* (Judicial Council form APP-004).

Cover:	Appellant's opening brief—green Respondent's brief—yellow Appellant's reply brief—tan
File:	Original plus 4 copies along with proof of service in the Court of Appeal
Serve:	California Supreme Court—1 electronic or 4 paper copies Superior court—1 copy All counsel All self-represented parties

### Extension of Time to File Brief

The parties may extend the time to file a brief for up to 60 days by filing a stipulation (agreement) in the Court of Appeal (Cal. Rules of Court, rule 8.212).

An application for extension of time must be filed with the Court of Appeal before the brief is due when:

The parties cannot agree to a stipulation; or

The parties have stipulated to the maximum automatic extension permitted under rule 8.212 of the California Rules of Court, and the applicant seeks a further extension.

Judicial Council form APP-006, *Application for Extension of Time to File Brief (Civil Case)*, can be used to apply to the Court of Appeal for an extension of time to file a brief.

## 11. DISMISSAL OF APPEAL

If the appellant decides not to proceed with the appeal after the record has been filed in the Court of Appeal, the appellant must file a request for dismissal in the Court of Appeal (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-007, *Request for Dismissal of Appeal (Civil Case)* for this purpose (Cal. Rules of Court, rule 8.244).