



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title	Agenda Item Type
Appellate Procedure: Civil Case Information Statement	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.100	January 1, 2014
Recommended by	Date of Report
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	August 2, 2013
	Contact
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Executive Summary

The Appellate Advisory Committee recommends amending the rule relating to filing civil appeals in the Courts of Appeal to relieve the Court of Appeal clerk of responsibility for mailing the appellant notice of requirement to file the *Civil Case Information Statement* (form APP-004) and a copy of that form, and instead to require that the appellant file this form within 15 days after the superior court mails the required notification of the filing of the notice of appeal. This change is intended to provide cost savings and efficiencies for the Courts of Appeal by reducing staff time spent on copying form APP-004 and mailing appellants these copies of the form and notice to file the form.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council amend rule 8.100, effective January 1, 2014, to replace the current requirement that the Court of Appeal clerk mail the appellant notice of the requirement to file the *Civil Case Information Statement* (form APP-004) and a copy of the form with a requirement that the appellant file the form within 15 days after the superior court mails the required notification of the filing of the notice of appeal.

The text of the proposed rule is attached at page 5.

Previous Council Action

The predecessor to rule 8.100(g), regarding the filing of the *Civil Case Information Statement*, was adopted by the Judicial Council effective January 1, 2003. This provision has not been substantively modified since its adoption.

Rationale for Recommendation

Rule 8.100 of the California Rules of Court addresses the filing of a notice of appeal in an unlimited civil case. Subdivision (g) of this rule addresses requirements relating to the appellant completing and filing the *Civil Case Information Statement* (form APP-004) which provides the Court of Appeal with important information to help it in processing appeals. Typically, when a party is required to complete and file a Judicial Council form, the Rules of Court will so indicate and will set a deadline for the filing. The party is then responsible for obtaining a copy of the Judicial Council form from the California Courts website, a law library, a court, or some other source and timely filing the completed form.

In contrast, unlike any other appellate rule of which the committee is aware, rule 8.100(g)(1) currently requires that the clerk of the Court of Appeal mail appellants a copy of form APP-004 and notify them of the deadline for submitting the completed form. This requirement imposes atypical copying, mailing, and staff costs on the Court of Appeal.

This proposal would eliminate the requirement that the clerk mail the appellant a notice of the deadline for submitting form APP-004 and a copy of the form. Instead, rule 8.100(g) would be amended to require that the appellant file this form within 15 days after the superior court mails the required notification of the filing of the notice of appeal. The committee's view is that sending the appellant this notice and a copy of the form is unnecessary. As with other forms that must be completed by a party, the appellant can obtain APP-004 from the California Courts website, a law library, a court, or some other source and file it by the deadline set in the rule. Eliminating this requirement would save the Court of Appeal the copying, postage, and staff costs associated with mailing this form to the appellant.

Comments, Alternatives Considered, and Policy Implications

Comments

The proposal that was circulated for public comment would have eliminated only the requirement that the clerk mail appellants a copy of form APP-004, but would have retained the requirement that the clerk notify appellants of their obligation to file the form. This proposal was circulated for public comment between April 19 and June 19, 2013, as part of the regular spring 2013 comment cycle. Ten individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal and four did not indicate a position on the proposal. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 5–11.

Three of the commentators that did not indicate a position on the proposal, including the California Appellate Court Clerks Association suggested that the requirement that the clerk notify appellants of their obligation to file form APP-004 also be eliminated. These commentators suggested notifying the appellant of the deadline to file form APP-004 is unnecessary and that eliminating the obligation to send this notice would result in greater savings to the court. Based on these comments, the committee revised the proposal to replace the requirement that the clerk mail the appellant notice and a copy of form APP-004 with a requirement that the appellant file form APP-004 within 15 days after the superior court mails the required notification of the filing of the notice of appeal.

Two commentators expressed concerns about potential negative impacts if copies of form APP-004 are not sent to self-represented litigants, including a potential increase in defaults for failure to timely file this form. The committee notes that the proposed amendments to rule 8.100 do not prevent a Court of Appeal from mailing form APP-004 to a self-represented litigant on request. The committee's view, however, is that the rule should not require this to be the standard procedure in all cases for self-represented litigants. Many such litigants have ready access to the internet and can therefore access this form at virtually no cost to themselves or the court. If a self-represented litigant, or any other litigant, does not timely file this form, the court will send the litigant notice of this default and the litigant will have an opportunity to cure the default before any sanctions are imposed. While these proposed amendment may result in a court issuing more such default notices, because the initial notification of the obligation to file form APP-004 will be eliminated, the overall number of notices sent by the court, and thus court costs, should be reduced.

Other alternatives considered

The committee considered not recommending any change to rule 8.100 but concluded that amending this rule would reduce costs for the Courts of Appeal, thereby making it preferable to propose these amendments.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation burdens on the superior courts or Courts of Appeal and should provide significant cost savings for the Courts of Appeal.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal will further the Judicial Council's Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

1. Cal. Rules of Court, rule 8.100 at page 4
2. Comment chart at pages 5–11

Rule 8.100 of the California Rules of Court is amended, effective January 1, 2014, to read:

1 **Rule 8.100. Filing the appeal**
2

3 **(a)–(d)** * * *

4
5 **(e) Superior court clerk’s duties**
6

7 (1) The superior court clerk must promptly mail a notification of the filing of the notice
8 of appeal to the attorney of record for each party, to any unrepresented party, and to
9 the reviewing court clerk.

10
11 (2) – (6) * * *

12
13 **(f)** * * *

14
15 **(g) Civil case information statement**
16

17 ~~(1) On receiving notice of the filing of a notice of appeal under (e)(1), the reviewing~~
18 ~~court clerk must promptly mail the appellant a copy of the *Civil Case Information*~~
19 ~~*Statement* (form APP-004) and a notice that the statement must be filed within 10~~
20 ~~days.~~

21
22 ~~(2)~~(1) Within ~~10~~ 15 days after the superior court clerk mails the ~~notice~~ notification of the
23 filing of the notice of appeal required by (e)(1), the appellant must serve and file in
24 the reviewing court a completed *Civil Case Information Statement* (form APP-004),
25 attaching a copy of the judgment or appealed order that shows the date it was
26 entered.

27
28 ~~(3)~~(2) If the appellant fails to timely file a case information statement under ~~(2)~~(1), the
29 reviewing court clerk must notify the appellant by mail that the appellant must file
30 the statement within 15 days after the clerk’s notice is mailed and that if the
31 appellant fails to comply, the court may either impose monetary sanctions or dismiss
32 the appeal. If the appellant fails to file the statement as specified in the notice, the
33 court may impose the sanctions specified in the notice.
34

SPR13-03**Appellate Procedure: Civil Case Information Statement.** Amend Cal. Rules of Court, rule 8.100

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

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego County Bar Association By: Rupa G. Singh, Chair	NI	While we commend the Judicial Council's efforts to provide cost savings and increase efficiencies in the Court of Appeal, we are concerned that the proposal to eliminate mailing of the Civil Case Information Statement (Form APP-004) to appellants will negatively impact pro se parties with limited resources who may find it difficult to obtain the required form. Accordingly, we suggest that the rule be modified to require that the Civil Case Information Statement be mailed when a pro se party of such limited means is involved.	The committee appreciates the commentators concerns and notes that the proposed amendments to rule 8.100 do not prevent a Court of Appeal from mailing form APP-004 to a self-represented litigant on request. The committee's view, however, is that the rule should not require this to be the standard procedure in all cases for self-represented litigants or litigants with fee waivers. Many such litigants have ready access to the internet and can therefore access this form at virtually no cost to themselves or the court.
2.	California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	NI	This proposal would allow the appellate clerk to omit a copy of the Civil Case Information Statement when mailing the required notice to the appellant, under rule 8.100(g)(1), that the Statement is due and must be filed. The laudable goal is cost savings. But it is not obvious the savings would be significant. The notice itself still must be mailed under rule 8.100(g)(1), even as amended. The Statement that currently accompanies the notice is usually just one page. Particularly for pro se litigants or those of limited financial means, the process is simplified by including a copy of the Statement with the notice as occurs now. In any event, the Courts of Appeal have been asked to weigh in on this proposal. Because its primary objective is cost savings, the courts are best positioned to assess whether the anticipated savings and administrative simplicity are worth making the proposed change. The Academy observes that a greater cost savings would likely be produced	Based on this and other comments, the committee has revised the proposal to eliminate the current requirement that the clerk mail the appellant notice of the requirement to file the Civil Case Information Statement and instead require that the appellant file the statement within 15 days after superior court mails the required notification of the filing of the notice of appeal. The committee notes that the proposed amendments to rule 8.100 do not prevent a Court of Appeal from mailing form APP-004 to a self-represented litigant on request. The committee's view, however, is that the rule should not require this to be the standard procedure in all cases for self-represented litigants or litigants with fee waivers. Many such litigants have ready access to the internet and can therefore access this form at virtually no cost to themselves or the court.

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			<p>by eliminating rule 8.100(g)(1) entirely, thereby relieving the clerk of the burden of mailing any notice. In whatever forum they practice, lawyers (and pro se litigants) are expected to be aware of pertinent court rules. Rule 8.100(g)(2) already advises that the appellant is required to file a Civil Case Information Statement in a civil appeal. Compelling the clerk to mail a notice to the appellant, essentially advising that a court rule exists and must be followed, seems an ineffective, if not wasteful, use of court resources.</p>	
3.	<p>California Association of Appellate Court Clerks By: Charlene Ynson, President Fresno, California</p>	NI	<p>While we do not oppose the proposed amended change to Rule 8.100(g) we believe there is a much better alternative.</p> <p>The proposed rule change eliminates the obligation of the Court of Appeal clerk to mail to appellant a copy of the <i>Case Information Statement</i> (form APP-004) (hereafter, <i>CIS</i>) and extends the period for compliance from 10 to 15 days. Though the intent of the proposed rule change is to provide costs savings and efficiencies for the court of appeal by reducing the number of default notices to be issued, it accomplishes little in this regard. The proposed rule change saves the court of appeal the cost of printing a two page <i>CIS</i>. The number of default notices is not reduced, nor the number of mailings or steps required. Postage and handling costs are unchanged.</p> <ul style="list-style-type: none"> • Under the current rule, on receipt of a notice of appeal, the appellate court clerk issues a 	<p>Based on this and other comments, the committee has revised the proposal to eliminate the current requirement that the clerk mail the appellant notice of the requirement to file the Civil Case Information Statement and instead require that the appellant file the statement within 15 days after superior court mails the required notification of the filing of the notice of appeal.</p>

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			<p>notice directing appellant to serve and file a <i>CIS</i>, attaching to it a copy of the judgment or order appealed from that shows the date it was entered.</p> <ul style="list-style-type: none"> • Should appellant fail to submit a <i>CIS</i>, the clerk issues a default notice. • A second default notice is issued if appellant files a deficient <i>CIS</i> or one without the requisite appealable order or judgment. <p>Our recommendation is to amend California Rules of Court, rule 8.100(g) to:</p> <ul style="list-style-type: none"> • Require appellant to submit a <i>CIS</i> to the Court of Appeal with the requisite attachment within 10 days for the filing of the Notice of Appeal. • If the <i>CIS</i> was not timely filed or the <i>CIS</i> was not accompanied by a copy of the judgment or order showing the date it was entered, the appellate court clerk would issue a default notice. • The default notice would advise appellant that the <i>CIS</i> with attached copy of the judgment or order appealed from that shows the date it was entered was not filed within the time provided by rule or that the <i>CIS</i> had been received without the requisite judgment or order that shows the date it was entered. The default notice would warn appellant that failure to cure the default within 15 days of date of notice could result in monetary sanctions or dismissal of the appeal. 	<p>The committee concluded that the mailing of the notification of the filing of the notice of appeal would be a better trigger for the deadline for filing form APP-004 because it is this notice that alerts the Court of Appeal that an appeal has been filed and should be entered into the court’s case management system. In addition, the committee concluded that it would be preferable to give the appellant 15, rather than 10 days, from the mailing of this notice to account for mailing time and reduce the number of cases in which a default notice is unnecessarily issued when the completed form APP-004 has already been mailed to the court.</p>

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			<ul style="list-style-type: none"><li data-bbox="802 284 1354 316">• No subsequent default notices would issue. <p data-bbox="802 349 1369 917">This alternative proposal sets the notice of appeal filing date as the trigger date for the service and filing of the <i>CIS</i>. Thus, the <i>CIS</i> due date would be established in a manner consistent with the manner in which the due dates for fees and designation of the record are set. The court of appeal would no longer be required to issue an initial notice setting the due date, thereby saving the costs of postage and handling entirely. For those appeals in which appellants failed to properly serve and file the <i>CIS</i>, the appellate court clerk would issue a one-time default notice that specifies in detail the obligation of the appellant with respect to filing the <i>CIS</i>. The elimination of a second default would be a cost saving and efficiency gain.</p> <p data-bbox="802 950 1239 1015">In response to the request for specific comments:</p> <p data-bbox="802 1047 1369 1144">Does the proposal reasonably achieve the stated purpose? <i>No, while we believe our suggested changes do achieve the stated purpose.</i></p> <p data-bbox="802 1177 1369 1412">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? <i>We believe it would simplify matters for the public by arranging all the items to be filed by the appellant into the same time frame, i.e. within 10 days of the</i></p>	

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			<p><i>filing of the appeal.</i></p> <p>Should the references in this rule to the court mailing notices be modified to allow for other methods of notification, such as through electronic service, when it is permitted? <i>Yes, alternative methods of notification are desired.</i></p> <p>The advisory committee also seeks comments from <i>courts</i> on the following cost and implementation matters:</p> <p>Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings? <i>No significant savings as proposed. Significant savings would be realized with our proposed amendment.</i></p> <p>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. <i>Minimal impact.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes</i></p> <p>If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be</p>	

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			implemented more easily or simply in a court of your size? <i>See our proposed change above.</i>	
4.	Committee on Appellate Courts State Bar of California By: Kira Klatchko, Acting Chair 2012-2013 San Francisco, California	A	The Committee supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
5.	Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California	A	We agree with the amendment of rule 8.100(g)(1) and (2) to extend the period for filing a Civil Case Information Statement (CCIS) from 10 to 15 days. We are uncertain whether the proposed change eliminating the requirement that the court of appeal mail a copy of the CCIS form along with the notice provided under rule 8.100(g)(1) will in fact result in cost savings; if the court does not mail this one-page CCIS form with the notice, the result may be more defaults in filing the CCIS, particularly by pro per applicants, which will result in the need to issue more default notices and may result in more calls to the clerk's office.	Based other comments, the committee has revised the proposal to eliminate the current requirement that the clerk mail the appellant notice of the requirement to file the Civil Case Information Statement and instead require that the appellant file the statement within 15 days after superior court mails the required notification of the filing of the notice of appeal. The committee concluded that this approach is more consistent with other rules and is more likely to reduce court costs. The committee acknowledges that the court may be required to issue some default notices, but the overall number of notices sent by the court should be reduced.
6.	Laurie Hepler, Chair Appellate Practice Group Carroll, Burdick & McDonough LLP San Francisco, California	A	These common-sense changes are overdue -- thank you.	The committee notes the commentator's support for the proposal; no response required.
7.	Orange County Bar Association Wayne R. Gross, President Newport Beach, California	A	No comment	The committee notes the commentator's support for the proposal; no response required.

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8.	Mark Schaeffer Certified Specialist, Appellate Law Sherman Oaks, California	NI	Regarding SPR13-03 Appellate Procedure: Civil Case Information Statement. Since the goal of many of the proposed rules is to save government money, requiring the appellate court to notify the appellant to file the civil case information statement should be eliminated, not required. The rule should simply require the appellant to file the civil case information statement within 10 or 15 days of the filing of the notice of appeal. Appellants have similar other deadlines, e.g., designating the record, that do <i>not</i> require a court to tell the appellants what to do. So, there is no point in a rule requiring the appellate court to tell the appellant to file the civil case information statement.	Based on this and other comments, the committee has revised the proposal to eliminate the current requirement that the clerk mail the appellant notice of the requirement to file the Civil Case Information Statement and instead require that the appellant file the statement within 15 days after superior court mails the required notification of the filing of the notice of appeal.
9.	Superior Court of Los Angeles County	A	No comment	The committee notes the commentator's support for the proposal; no response required.
10.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	No additional comments.	The committee notes the commentator's support for the proposal; no response required.