

Title	Appellate Procedure: Time for Filing Notice of Appeal in a Civil Case (amend Cal. Rules of Court, rule 8.104)
Summary	This proposal would amend the rule relating to the time to file a notice of appeal in an unlimited civil case to clarify that electronic service by the court of the judgment or a notice of entry of the judgment will trigger the start of the time for filing the notice of appeal.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 8.104 establishes the time within which a notice of appeal must be filed in an unlimited civil case. Under this rule, the time for filing the notice of appeal begins to run either when the superior court mails or a party serves a file-stamped copy of the judgment or a document entitled “Notice of Entry” of judgment.</p> <p>Under Code of Civil Procedure section 1010.6 and rules 2.250–2.261, a court may order or a party may consent to electronic service of documents under certain circumstances. Rule 2.260(g) specifically provides that a court may electronically serve any order or judgment issued by the court in the same manner that parties may serve documents by electronic service. A recent court decision, <i>Citizens for Civic Accountability v. Town of Danville</i> (2008) 167 Cal.App.4th 1158, held, however, that electronic service of a judgment by the court did not constitute mailing of the judgment within the meaning of rule 8.104 and thus did not start the time period for filing a notice of appeal.</p> <p>This proposal would amend rule 8.104 to provide that the time for filing a notice of appeal runs from when the superior court clerk “serves,” rather than “mails,” the judgment or notice of entry of the judgment. The proposal would also amend the advisory committee comment to rule 8.104 to clarify that service under this rule can be made in any manner permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250–2.261. The committee would particularly appreciate comments about whether language addressing the manner of service should be in the rule text, rather than in an advisory committee comment.</p>

The proposed rule text is attached on page 2.

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Attachment

Rule 8.104 of the California Rules of Court would be amended, effective January 1, 2010, to read:

1 **Rule 8.104. Time to appeal**

2  
3 **(a) Normal time**

4  
5 Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be  
6 filed on or before the earliest of:

7  
8 (1) 60 days after the superior court clerk ~~mails~~ serves the party filing the  
9 notice of appeal with a document entitled “Notice of Entry” of  
10 judgment or a file-stamped copy of the judgment, showing the date  
11 either was ~~mailed~~ served;

12  
13 (2) 60 days after the party filing the notice of appeal serves or is served by  
14 a party with a document entitled “Notice of Entry” of judgment or a  
15 file-stamped copy of the judgment, accompanied by proof of service;  
16 or

17  
18 (3) \* \* \*

19  
20 **(b)–(f) \* \* \***

21 **Advisory Committee Comment**

22  
23  
24 **Subdivision (a).** Service may be by any method permitted by the Code of Civil Procedure, including  
25 electronic service when permitted under Code of Civil Procedure 1010.6 and rules 2.250–2.261.

26  
27 Under subdivision (a)(1), a notice of entry of judgment (or a copy of the judgment) must show the date on  
28 which the clerk ~~mailed~~ served the document. ~~This provision is intended to establish~~ The proof of service  
29 establishes the date that the 60-day period under subdivision (a)(1) begins to run.

30  
31 Subdivision (a)(2) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a  
32 party be accompanied by proof of service. The proof of service establishes the date that the 60-day period  
33 under subdivision (a)(2) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of  
34 service for all documents served by parties, the requirement is reiterated here because of the serious  
35 consequence of a failure to file a timely notice of appeal (see subd. (e)).

36  
37 **Subdivision (b).** \* \* \*

## Item SPR09-03 Response Form

**Title:** **Appellate Procedure: Time for Filing Notice of Appeal in a Civil Case**  
(amend Cal. Rules of Court, rule 8.104)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*