

Invitation to Comment

Title	Appellate Procedure: Briefs and Petitions (amend Cal. Rules of Court, rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928).
Summary	This proposal would make several changes to the rules relating to briefs and petitions filed in the appellate courts, including (1) providing that the cover information, signature block, and any Certificate of Interested Entities or Persons that must be included in a brief or petition are not counted in determining compliance with limits on the length of the brief or petition; (2) eliminating the requirement that signatures on stipulations to extend briefing time in civil appeals in the Court of Appeal be in the form of faxed copies of the signature page; and (3) giving parties in matters before the Supreme Court the option of filing a consolidated response to all amicus briefs filed in the case.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov

Exclusions from the limits on the length of briefs and petitions

Rules 8.204, 8.360, 8.520, 8.630, 8.883, and 8.928 of the California Rules of Court, relating to briefs in civil and criminal appeals in the Supreme Court, Court of Appeal, and Superior Court Appellate Divisions, and rule 8.504, relating to petitions for review in the Supreme Court, establish limits on the length of these briefs and petitions. These rules also specify that certain items, including any certificate regarding the number of words in the brief and any permissible attachments to the brief, do not count toward these length limits. Rule 8.486, relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, similarly lists items that do not count toward the limits on the length of these petitions and accompanying memoranda.

Currently, it is not clear whether the case captions required on covers of briefs and petitions—which generally must include the title of the document; the title, trial court number, and appellate court number of the case; the names of the trial court and each participating trial judge; and the name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief or petition—should be counted in determining whether the brief or petition complies with the applicable length limits. In addition, it is not clear whether any signature block—which generally includes both the actual signature and the printed name and firm information of each attorney filing or

joining in the brief or petition—should be counted toward the brief length. Finally, it is not clear if any Certificate of Interested Entities or Persons that must be included in a Court of Appeal brief under rule 8.208, 8.361, or 8.488 should be counted.

This proposal would amend these rules to clarify that the cover information, any Certificate of Interested Entities or Persons, and any signature block are not counted in determining whether a brief or petition complies with the applicable length limit. The committee's view is that these items are akin to the tables and permissible attachments that are already excluded from these length limits.

Signatures on stipulations to extend briefing time

Under rule 8.212(b), parties in civil appeals in the Court of Appeal can stipulate to limited extensions of the time to file their briefs. This rule requires that such stipulations must be signed by all parties. Currently, the rule permits the majority of these signatures to “be in the form of fax copies of the signed signature page of the stipulation.” With advances in technology, the more common method of transmitting a signature page is by scanning and e-mailing a copy of the page. To reflect these advances, the committee is recommending that rule 8.212 be amended to delete the requirement that copied signature pages be fax copies.

Answers to amicus curiae briefs in the Supreme Court

Rule 8.520(f) addresses amicus curiae briefs, and applications to file such briefs, in the Supreme Court. Rule 8.520(f)(7) currently requires that answers to amicus curiae briefs be filed within 20 days after the filing of the brief. In Supreme Court cases, multiple amicus curiae briefs are frequently filed. Rather than individually responding to each amicus brief, parties may sometimes prefer to file a single, consolidated response to all of the amicus briefs filed in a case. Currently, a party needs to file an application requesting permission to file such a consolidated answer, particularly if the answers to the amicus briefs are due on different dates because the briefs were filed at different times.

This proposal would give parties the option of filing consolidated answers to amicus briefs in the Supreme Court. Under this proposal, such a consolidated answer would be due 20 days after the time for filing applications to file amicus briefs expires or 20 days after the court rules on the last timely filed application, whichever is later. This proposed time frame is designed to allow parties to wait until all amicus applications have been filed and ruled on before preparing a consolidated answer.

Rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928 of the California Rules of Court would be amended, effective January 1, 2011, to read:

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and form of briefs

(a) Contents

(1) Each brief must:

(A) Begin with a table of contents and a table of authorities separately listing cases, constitutions, statutes, court rules, and other authorities cited;

(B)–(C) * * *

(2) * * *

(b) Form

(1)–(9) * * *

(10) The cover, preferably of recycled stock, must be in the color prescribed by rule 8.40(b) and must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief, but the cover need not state the bar number of any supervisor of the attorney responsible for the brief; and

1 (E) The name of the party that each attorney on the brief represents.

2

3 (11) * * *

4

5 **(c) Length**

6

7 (1) A brief produced on a computer must not exceed 14,000 words, including
8 footnotes. Such a brief must include a certificate by appellate counsel or an
9 unrepresented party stating the number of words in the brief. The person
10 certifying may rely on the word count of the computer program used to prepare
11 the brief.

12

13 (2) A brief produced on a typewriter must not exceed 50 pages.

14

15 (3) The tables required under (a)(1), the cover information required under (b)(10),
16 the Certificate of Interested Entities or Persons required under rule 8.208, a
17 certificate under (1), any signature block, and any attachment under (d) are
18 excluded from the limits stated in (1) or (2).

19

20 (4)–(5) * * *

21

22 **(d) Attachments to briefs**

23

24 A party filing a brief may attach copies of exhibits or other materials in the appellate
25 record or copies of relevant local, state, or federal regulations or rules, out-of-state
26 statutes, or other similar citable materials that are not readily accessible. These
27 attachments must not exceed a combined total of 10 pages, but on application the
28 presiding justice may permit additional pages of attachments for good cause. A copy
29 of an opinion required to be attached to the brief under rule 8.1115(c) does not count
30 toward this 10-page limit.

31

32 **(e)** * * *

33

34

Advisory Committee Comment

35

36 **Subdivision (b).** * * *

37

38 **Subdivision (c).** Subdivision (c) governs the maximum permissible length of a brief. It is derived from the
39 federal procedure of measuring the length of a brief produced on a computer by the number of words in
40 the brief. (FRAP 32(a)(7).) Subdivision (c)(1), like FRAP 32(a)(7)(B)(i), imposes a limit of 14,000 words
41 if the brief is produced on a computer. Subdivision (c)(1) implements this provision by requiring the
42 writer of a brief produced on a computer to include a certificate stating the number of words in the brief,
43 but allows the writer to rely on the word count of the computer program used to prepare the brief. This

1 requirement, too, is adapted from the federal rule. (FRAP 32(a)(7)(C).) For purposes of this rule, a “brief
2 produced on a computer” includes a commercially printed brief.

3 Subdivision (c)(3) specifies certain items that are not counted toward the maximum brief length. The
4 signature block referenced in this provision includes not only a signature itself, but also the printed names,
5 titles, and affiliations of any attorneys filing or joining in the brief that may follow the signature.
6

7 Subdivision (c)(5) clarifies that a party seeking permission to exceed the page or word limits stated in
8 subdivision (c)(1) and (2) must proceed by application under rule 8.50 rather than by motion under rule
9 8.54, and must show good cause.

10 **Subdivision (d).** * * *

11 **Subdivision (e).** * * *

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15
16 **Rule 8.212. Service and filing of briefs**

17
18 **(a)** * * *

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

- 21
22 (1) The parties may extend each period under (a) by up to 60 days by filing one or
23 more stipulations in the reviewing court before the brief is due. Stipulations
24 must be signed by and served on all parties. The original signature of at least
25 one party must appear on the stipulation filed in the reviewing court; the
26 signatures of the other parties may be in the form of ~~fax~~ copies of the signed
27 signature page of the stipulation.
28

29 (2)–(4) * * *

30
31 **(c)** * * *

32
33
34 **Chapter 3. Criminal Appeals**

35
36 **Article 3. Briefs, Hearing, and Decision**

37
38 **Rule 8.360. Briefs by parties and amici curiae**

39
40 **(a) Contents and form**

41
42 Except as provided in this rule, briefs in criminal appeals must comply as nearly as
43 possible with rules 8.200 and 8.204.
44

1 **(b) Length**

- 2
- 3 (1) A brief produced on a computer must not exceed 25,500 words, including
- 4 footnotes. Such a brief must include a certificate by appellate counsel or an
- 5 unrepresented defendant stating the number of words in the brief; the person
- 6 certifying may rely on the word count of the computer program used to prepare
- 7 the brief.
- 8
- 9 (2) A typewritten brief must not exceed 75 pages.
- 10
- 11 (3) The tables required under rule 8.204(a)(1), the cover information required
- 12 under rule 8.204(b)(10), any Certificate of Interested Entities or Persons
- 13 required under rule 8.361, a certificate under (1), any signature block, and any
- 14 attachment permitted under rule 8.204(d) are excluded from the limits stated in
- 15 (1) or (2).
- 16
- 17 (4) A combined brief in an appeal governed by (e) must not exceed double the limit
- 18 stated in (1) or (2).
- 19
- 20 (5) On application, the presiding justice may permit a longer brief for good cause.
- 21

22 **(c)–(f) * * ***

23

24 **Advisory Committee Comment**

25

26 **Subdivision (b).** Subdivision (b)(1) states the maximum permissible length of a brief produced on a

27 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)

28 governing Court of Appeal briefs and is explained in the comment to that provision. The word count

29 assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5). Subdivision

30 (b)(3) specifies certain items that are not counted toward the maximum brief length. The signature block

31 referenced in this provision includes not only a signature itself, but also the printed names, titles, and

32 affiliations of any attorneys filing or joining in the brief that may follow the signature.

33

34 The maximum permissible length of briefs in death penalty appeals is prescribed in rule 8.630.

35

36

37

1 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and**
2 **Court of Appeal**

3
4 **Rule 8.486. Petitions**

5
6 **(a) Contents of petition**

7
8 (1)–(5) * * *

9
10 (6) Rule 8.204(c) governs the length of the petition and memorandum, but, in
11 addition to the exclusions provided in that rule, ~~the tables, the certificate, the~~
12 ~~verification,~~ and any supporting documents are excluded from the limits stated
13 in rule 8.204(c)(1) and (2).

14
15 (7) * * *

16
17 **(b)–(e)** * * *

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19
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21 **Chapter 9. Proceedings in the Supreme Court**

22
23 **Rule 8.504. Form and contents of petition, answer, and reply**

24
25 **(a) In general**

26
27 Except as provided in this rule, a petition for review, answer, and reply must comply
28 with the relevant provisions of rule 8.204.

29
30 **(b)–(c)** * * *

31
32 **(d) Length**

33
34 (1) If produced on a computer, a petition or answer must not exceed 8,400 words,
35 including footnotes, and a reply must not exceed 4,200 words, including
36 footnotes. Each petition, answer, or reply must include a certificate by appellate
37 counsel or an unrepresented party stating the number of words in the document.
38 The person certifying may rely on the word count of the computer program
39 used to prepare the document.

40
41 (2) If typewritten, a petition or answer must not exceed 30 pages and a reply must
42 not exceed 15 pages.

1
2 (3) The tables, the cover information required under rule 8.204(b)(10), the Court of
3 Appeal opinion, a certificate under (1), any signature block, and any attachment
4 under (e)(1) are excluded from the limits stated in (1) and (2).
5

6 (4) On application and for good cause, the Chief Justice may permit a longer
7 petition, answer, reply, or attachment.
8

9 (e) * * *

10
11 **Advisory Committee Comment**

12
13 **Subdivision (d).** Subdivision (d) states in terms of word counts rather than page counts the maximum
14 permissible lengths of a petition for review, answer, or reply produced on a computer. This provision
15 tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory
16 committee comment to that provision. Subdivision (d)(3) specifies certain items that are not counted
17 toward the maximum length of a petition, answer, or reply. The signature block referenced in this
18 provision includes not only a signature itself, but also the printed names, titles, and affiliations of any
19 attorneys filing or joining in the petition, answer, or reply that may follow the signature.
20

21
22 **Rule 8.520. Briefs by parties and amici curiae; judicial notice**

23
24 (a) * * *

25
26 (b) **Form and content**

27
28 (1) Briefs filed under this rule must comply with the relevant provisions of rule
29 8.204.

30
31 (2)–(3) * * *

32
33 (c) **Length**

34
35 (1) If produced on a computer, an opening or answering brief on the merits must
36 not exceed 14,000 words, including footnotes, and a reply brief on the merits
37 must not exceed 8,400 words, including footnotes. Each brief must include a
38 certificate by appellate counsel or an unrepresented party stating the number of
39 words in the brief. The person certifying may rely on the word count of the
40 computer program used to prepare the brief.

41
42 (2) If typewritten, an opening or answering brief on the merits must not exceed 50
43 pages and a reply brief on the merits must not exceed 30 pages.

1
2 (3) The tables required under rule 8.204(a)(1), the cover information required
3 under rule 8.204(b)(10), a certificate under (1), any signature block, any
4 attachment under (h), and any quotation of issues required by (b)(2) are
5 excluded from the limits stated in (1) and (2).

6
7 (4) On application and for good cause, the Chief Justice may permit a longer brief.

8
9 **(d)–(e)** * * *

10
11 **(f) Amicus curiae briefs**

12
13 (1) After the court orders review, any person or entity may serve and file an
14 application for permission of the Chief Justice to file an amicus curiae brief.

15
16 (2) The application must be filed no later than 30 days after all briefs that the
17 parties may file under this rule—other than supplemental briefs—have been
18 filed or were required to be filed. For good cause, the Chief Justice may allow
19 later filing.

20
21 (3)–(6) * * *

22
23 (7) If the court grants the application, any party may:

24
25 (A) File an answer to the individual amicus curiae brief within 20 days after
26 the amicus curiae brief is filed. ~~It~~ The answer must be served on all
27 parties and the amicus curiae; or

28
29 (B) File a consolidated answer to all the amicus curiae briefs filed in the case.
30 A consolidated answer must be filed within 20 days after the time for
31 filing applications to file an amicus curiae brief expires or 20 days after
32 the court rules on the last timely filed application to file an amicus curiae
33 brief, whichever is later. The consolidated answer brief must be served on
34 all parties and all amici curiae.

35
36 (8) * * *

37
38 **(g)–(h)** * * *

1
2
3 **Advisory Committee Comment**

4 **Subdivisions (c) and (d).** Subdivisions (c) and (d) state in terms of word count rather than page count the
5 maximum permissible lengths of Supreme Court briefs produced on a computer. This provision tracks an
6 identical provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the advisory
7 committee comment to that provision. Subdivision (c)(3) specifies certain items that are not counted
8 toward the maximum brief length. The signature block referenced in this provision includes not only a
9 signature itself, but also the printed names, titles, and affiliations of any attorneys filing or joining in the
10 brief that may follow the signature.

11
12 **Chapter 10. Appeals From Judgments of Death**

13
14 **Article 3. Briefs, Hearing, and Decision**

15
16 **Rule 8.630. Briefs by parties and amicus curiae**

17
18 **(a) Contents and form**

19
20 Except as provided in this rule, briefs in appeals from judgments of death must
21 comply as nearly as possible with rules 8.200 and 8.204.

22
23 **(b) Length**

24
25 (1) A brief produced on a computer must not exceed the following limits, including
26 footnotes:

27
28 (A) Appellant's opening brief: 102,000 words.

29
30 (B) Respondent's brief: 102,000 words. If the Chief Justice permits the
31 appellant to file an opening brief that exceeds the limit set in (1)(A) or
32 (3)(A), respondent's brief may not exceed the length of appellant's
33 opening brief approved by the Chief Justice.

34
35 (C) Reply brief: 47,600 words.

36
37 (D) Petition for rehearing and answer: 23,800 words each.

38
39 (2) A brief under (1) must include a certificate by appellate counsel stating the
40 number of words in the brief; counsel may rely on the word count of the
41 computer program used to prepare the brief.

42
43 (3) A typewritten brief must not exceed the following limits:

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- (A) Appellant’s opening brief: 300 pages.
- (B) Respondent’s brief: 300 pages. If the Chief Justice permits the appellant to file an opening brief that exceeds the limit set in (1)(A) or (3)(A), respondent’s brief may not exceed the length of appellant’s opening brief approved by the Chief Justice.
- (C) Reply brief: 140 pages.
- (D) Petition for rehearing and answer: 70 pages each.
- (4) The tables required under rule 8.204(a)(1), the cover information required under rule 8.204(b)(10), a certificate under (2), any signature block, and any attachment permitted under rule 8.204(d) are excluded from the limits stated in (1) and (3).
- (5) On application, the Chief Justice may permit a longer brief for good cause. An application in any case in which the certified record is filed in the California Supreme Court on or after January 1, 2008, must comply with rule 8.631.

(c)–(h) * * *

Advisory Committee Comment

Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c) governing Court of Appeal briefs and is explained in the comment to that provision. Each word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 8.204(b)(5).

Subdivision (b)(4) specifies certain items that are not counted toward the maximum brief length. The signature block referenced in this provision includes not only a signature itself, but also the printed names, titles, and affiliations of any attorneys filing or joining in the brief that may follow the signature.

Subdivision (g). * * *

1 **Division 2. Rules Relating to the Superior Court Appellate Division**

2
3 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

4
5
6 **Rule 8.883. Contents and form of briefs**

7
8 **(a) * * ***

9
10 **(b) Length**

11
12 (1) A brief produced on a computer must not exceed 6,800 words, including
13 footnotes. Such a brief must include a certificate by appellate counsel or an
14 unrepresented party stating the number of words in the brief. The person
15 certifying may rely on the word count of the computer program used to prepare
16 the brief.

17
18 (2) A brief produced on a typewriter must not exceed 20 pages.

19
20 (3) The cover information listed in rule 8.204(b)(10), any table of contents or table
21 of authorities, the certificate under (1), any signature block, and any attachment
22 under (d) are excluded from the limits stated in (1) or (2).

23
24 (4) On application, the presiding judge may permit a longer brief for good cause. A
25 lengthy record or numerous or complex issues on appeal will ordinarily
26 constitute good cause. If the court grants an application to file a longer brief, it
27 may order that the brief include a table of contents and a table of authorities.

28
29 **(c)–(d) * * ***

30
31 **Advisory Committee Comment**

32
33 **Subdivision (b).** Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a
34 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)
35 governing Court of Appeal briefs and is explained in the comment to that provision. Subdivision (b)(3)
36 specifies certain items that are not counted toward the maximum brief length. The signature block
37 referenced in this provision includes not only a signature itself, but also the printed names, titles, and
38 affiliations of any attorneys filing or joining in the brief that may follow the signature.

1 Chapter 5. Appeals in Infraction Cases

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3 Article 3. Briefs, Hearing and Decision in Infraction Appeals

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5 Rule 8.928. Contents and form of briefs

6
7 (a) * * *

8
9 (b) Length

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11 (1) A brief produced on a computer must not exceed 5,100 words, including
12 footnotes. Such a brief must include a certificate by appellate counsel or an
13 unrepresented party stating the number of words in the brief. The person
14 certifying may rely on the word count of the computer program used to prepare
15 the brief.

16
17 (2) A brief produced on a typewriter must not exceed 15 pages.

18
19 (3) The cover information listed in rule 8.204(b)(10), any table of contents or table
20 of authorities, the certificate under (1), any signature block, and any attachment
21 under (d) are excluded from the limits stated in (1) or (2).

22
23 (4) On application, the presiding judge may permit a longer brief for good cause. A
24 lengthy record or numerous or complex issues on appeal will ordinarily
25 constitute good cause.

26
27 (c)–(d) * * *

28
29 Advisory Committee Comment

30
31 Subdivision (b). Subdivision (b)(1) states the maximum permissible lengths of briefs produced on a
32 computer in terms of word count rather than page count. This provision tracks a provision in rule 8.204(c)
33 governing Court of Appeal briefs and is explained in the comment to that provision. Subdivision (b)(3)
34 specifies certain items that are not counted toward the maximum brief length. The signature block
35 referenced in this provision includes not only a signature itself, but also the printed names, titles, and
36 affiliations of any attorneys filing or joining in the brief that may follow the signature.

Item SPR10-09 Response Form

Title: **Appellate Procedure: Briefs and Petitions** (amend Cal. Rules of Court, rules 8.204, 8.212, 8.360, 8.486, 8.504, 8.520, 8.630, 8.883, and 8.928)

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

Comments: _____

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

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

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

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

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.