

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SPR12-08**

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Title	Action Requested
Appellate Procedure: Copies of Briefs in Civil Appeals in the Court of Appeal Served on the Supreme Court	Review and submit comments by Friday, June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.44 and 8.212	January 1, 2013
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov
Hon. Kathryn Doi Todd, Chair	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov
Court Technology Advisory Committee	
Hon. Ming W. Chin, Chair	

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### Executive Summary and Origin

This proposal would amend the rules relating to the copies of briefs from civil appeals in the Court of Appeal that must be served on the Supreme Court to provide that: (1) unless it would cause the party filing the brief undue hardship, a single electronic copy of the brief must be served on the Supreme Court, rather than four paper copies; and (2) petitions for rehearing and answers to these petitions are not considered “briefs” for this purpose. This proposal is based on a suggestion from the Appellate E-Filing Working Group of the Appellate, Court Technology, and Administrative Presiding Justices Advisory Committees.

### Background

Rule 8.212(c) addresses the number of copies of briefs that must be served and filed in civil appeals in the Court of Appeal. This rule currently requires that, in civil appeals in the Court of Appeal, either one electronic copy or four paper copies of briefs must be sent to the California Supreme Court. Rule 8.44 of the California Rules of Court specifies the number of copies of documents that must be filed in the Court of Appeal and Supreme Court. This rule currently requires that in civil appeals in the Court of Appeal, in addition to the copies of briefs that must be filed in the Court of Appeal, parties must file proof of delivery of 4 copies of briefs to the Supreme Court.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

The Supreme Court has traditionally provided the copies of Court of Appeal briefs provided under these rules to repository libraries for their collections. Because of limitations on storage space and other issues, the repository libraries have been moving away from retaining paper copies of these briefs. To facilitate transmission and storage of these copies, in 2008, the Judicial Council amended rule 8.212 to give parties the option of sending the Supreme Court a single electronic copy of such a brief, rather than four paper copies. Despite this change, in the majority of cases, the Supreme Court still receives four paper copies of these briefs, rather than an electronic copy. Sorting, boxing, and sending out these paper copies of briefs consumes Supreme Court staff time. It also takes resources for the recipients of these briefs to convert them to electronic format for storage.

### **The Proposal**

This proposal is intended to save Supreme Court staff time and resources by amending rule 8.212 to require that parties serve the Supreme Court with a single electronic copy of briefs in civil appeals unless doing so would cause undue hardship for the party filing the brief, in which case four paper copies could be served on the Supreme Court. It would also amend rule 8.44 to reflect this change.

Under the definitions in rule 8.10, the word “briefs” includes petitions for rehearing and answers thereto. Thus, under rules 8.44 and 8.212(c), parties in civil appeals in the Court of Appeal must send the Supreme Court copies not only of the opening, respondent’s, and appellant’s reply briefs, and any amicus briefs, but also of any petition for rehearing and related answer. Particularly given that the vast majority of petitions for rehearing are denied, the view of the committees is that it is not likely to be helpful for repository libraries to have these documents available and, therefore, that the cost to parties and the Supreme Court of providing, sorting, and distributing copies of these documents is unwarranted. This proposal would therefore amend rules 8.44 and 8.212 to provide that, for purposes of sending copies of briefs to the Supreme Court, a petition for rehearing or answer thereto is not considered a brief.

### **Alternatives considered**

The committees considered maintaining the current requirement that parties in civil cases in the Court of Appeal send copies of petitions for rehearing and answers to these petitions to the Supreme Court. The committee concluded, however, that that the costs of maintaining this requirement outweigh the benefits.

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

This proposal should not have appreciable implementation requirements or costs and should reduce costs for the Supreme Court associated with sorting, boxing, and sending out paper copies of Court of Appeal briefs sent to the Supreme Court.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the requirement in rule 8.212(c)(1) for service of a copy of each brief on the superior court clerk for delivery to the trial judge also be deleted?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- 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 system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rules 8.44 and 8.212 of the California Rules of Court would be amended, effective January 1, 2013, to read:

**Title 8. Appellate Rules**

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

**Chapter 1. General Provisions**

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

**Rule 8.44. Number of copies of filed documents**

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a reviewing court is as follows:

(a) \* \* \*

**(b) Documents filed in a Court of Appeal**

(1) An original and 4 copies of a brief, an amicus curiae brief, or an answer to an amicus curiae brief, and, in civil appeals, proof of delivery of 1 electronic copy or, in case of undue hardship, 4 paper copies to the Supreme Court, as provided in rule 8.212(c). For purposes of service on the Supreme Court, the term “brief” does not include a petition for rehearing or answers thereto;

(2) \* \* \*

(3) An original and 4 copies of any other petition, an answer, opposition or other response to a petition, or a reply;

(4) – (7) \* \* \*

**Chapter 2. Civil Appeals**

**Article 3. Briefs in the Court of Appeal**

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

(a) – (b) \* \* \*

**(c) Service**

1 (1) One copy of each brief must be served on the superior court clerk for delivery to the  
2 trial judge.

3  
4 (2) One electronic copy ~~or four paper copies~~ of each brief must be served on the  
5 Supreme Court ~~as provided in either (A) or (B)~~.

6  
7 ~~(A) One copy of each brief may be served on the Supreme Court electronically by~~  
8 ~~sending the copy to the Supreme Court’s electronic notification address. For~~  
9 ~~purposes of this requirement, the term “brief” does not include a petition for~~  
10 ~~rehearing or an answer thereto.~~

11  
12 ~~(i)(A)~~ The copy must be a single computer file in text-searchable Portable Document  
13 Format (PDF), and it must exactly duplicate the appearance of the paper copy,  
14 including the order and pagination of all of the brief’s components. By  
15 electronically serving the copy, the filer certifies that the copy complies with  
16 these requirements and that all reasonable steps have been taken to ensure that  
17 the copy does not contain computer code, including viruses, that might be  
18 harmful to the court’s electronic filing system and to other users of that system.

19  
20 ~~(ii)(B)~~ If the Court of Appeal has ordered the brief sealed, the party serving the brief  
21 must include as the first page in the PDF document a cover sheet that contains  
22 the information required by rule 8.204(b)(10) and labels the contents as  
23 “CONDITIONALLY UNDER SEAL.” The Court of Appeal clerk must  
24 promptly notify the Supreme Court of any court order unsealing the brief. In  
25 the absence of such notice, the Supreme Court clerk must keep all copies of the  
26 brief under seal.

27  
28 ~~(B)(C)~~ If it would cause undue hardship for the party filing the brief to serve an  
29 electronic copy of the brief on the Supreme Court, the party may ~~instead of~~  
30 serve four paper copies of each the brief ~~may be~~  
31 served on the Supreme Court. If the Court of Appeal has ordered the brief  
32 sealed, the party serving the brief must place all four copies of the brief in a  
33 sealed envelope and attach a cover sheet that contains the information required  
34 by rule 8.204(b)(10) and labels the contents as “CONDITIONALLY UNDER  
35 SEAL.” The Court of Appeal clerk must promptly notify the Supreme Court of  
36 any court order unsealing the brief. In the absence of such notice the Supreme  
37 Court clerk must keep all copies of the brief under seal.

38  
39 (3) One copy of each brief must be served on a public officer or agency when required  
40 by rule 8.29.

41  
42 **Advisory Committee Comment**

43  
44 **Subdivision (b).** \* \* \*

45  
46 **Subdivision (c).** In subdivision (c)(2) the word “brief” means only: (1) an appellant’s opening brief; (2) a  
47 respondent’s brief; (3) an appellant’s reply brief; (4) ~~a petition for rehearing, (5) an answer thereto, or~~

1 ~~(6)~~ an amicus curiae brief; or (5) an answer thereto. It follows that no other documents or papers filed in  
2 the Court of Appeal, whatever their nature, should be served on the Supreme Court. Further, only briefs  
3 filed in the Court of Appeal “in a civil appeal” must be served on the Supreme Court. It follows that no  
4 briefs filed in the Court of Appeal in criminal appeals or in original proceedings should be served on the  
5 Supreme Court.

6  
7 **Subdivision (c).** “Electronic notification address” is defined in rule 2.250. The Supreme Court’s  
8 electronic filing address and additional information about sending electronic copies of briefs to the  
9 Supreme Court can be found on the California Courts Web site at ~~www.courtinfo.ca.gov/courts/supreme~~  
10 www.courts.ca.gov/appellatebriefs.htm.

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