

Judicial Council of California

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INVITATION TO COMMENT SPR17-05

Title Appellate Procedure: Service of Briefs in Misdemeanor Cases	Action Requested Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 8.882	Proposed Effective Date January 1, 2018
Proposed by Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding service of briefs in misdemeanor appeals to add provisions requiring the defendant's appellate counsel to send to the defendant a copy of each brief for the defendant. This proposal is based on a suggestion from an attorney.

Background

California Rules of Court, rule 8.360(d), addresses service of briefs in felony appeals. This rule contains special requirements for defendant's appellate counsel to send a copy of each brief for the defendant to the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs. The history of this rule indicates that these provisions were adopted to ensure that the defendant was kept apprised of the arguments being made in his or her case.

Rule 8.882 does not currently include similar requirements for the service of briefs by defendant's appellate counsel in misdemeanor cases. There does not appear to be a reason that the rule on misdemeanor briefs should not also include these provisions for keeping the defendant informed.

The Proposal

The committee is proposing that rule 8.882(e) be amended to apply the same requirements for sending copies of briefs to defendants in misdemeanor appeals that are in rule 8.360(d) governing the service of briefs on defendants in felony appeals.

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 These proposals are circulated for comment purposes only.

In addition to these substantive amendments, the attached proposal includes a minor technical amendment to correct cross-references in rule 8.882(e)(1) and (4). These paragraphs currently refer to rules 8.25 and 8.29, respectively, both of which address service and filing in the Supreme Court and Courts of Appeal. The proposal would change this reference to rule 8.817, which addresses service and filing in the superior court appellate division.

Alternatives Considered

The committee considered not recommending any changes to these rules, but concluded that it would be appropriate for the rules to treat defendants in felony and misdemeanor appeals similarly with respect to being sent copies of briefs in their cases.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operation impacts are anticipated.

Request for Specific Comments

The advisory committee seeks comments from *courts* on the following cost and implementation matters:

- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rule 8.882, at page 3

Rule 8.882 of the California Rules of Court would be amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

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

Rule 8.882. Briefs by parties and amici curiae

(a)–(d) * * *

(e) Service and filing

- (1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.
- (2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.
- (3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.
- (4) A copy of each brief must be served on a public officer or agency when required by rule ~~8.29~~ 8.817.
- (5) In misdemeanor appeals:
 - (A) Defendant’s appellate counsel must serve each brief for the defendant on the People and must send a copy of each brief to the defendant personally unless the defendant requests otherwise.
 - (B) The proof of service under (A) must state that a copy of the defendant’s brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.
 - (C) The People must serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal.