

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W12-02

Title	Action Requested
Appellate Procedure: Filing Fees	Review and Submit Comments by Tuesday, January 24, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.25 and 8.26; amend the advisory committee comments to rules 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520; and revise forms APP-001 and APP-015/FW-015-INFO	October 28, 2011
Proposed by	Contact
Administrative Presiding Justices Advisory Committee	Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov
Hon. Tani Cantil-Sakauye, Chair	
Appellate Advisory Committee	
Hon. Kathryn Doi Todd, Chair	

Summary

Public comments are being sought on amendments to the California Rules of Court and revisions to several Judicial Council forms relating to appellate fees that took effect on October 28, 2011, because these changes were not circulated for public comment before being adopted.

Discussion

Legislation

On August 30, 2011, the Governor signed into law Assembly Bill 110.¹ Among other things, this legislation established new fees in appellate proceedings for the first document filed by a party other than an appellant or petitioner in civil cases in the Supreme Court and Court of Appeal. Because this was urgency legislation, the new fees took effect on August 30, 2011, when the Governor signed the bill.

¹ Stats. 2011, ch. 193. This legislation can be accessed at: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_110_bill_20110830_chaptered.pdf.

Rule and Form Changes

To implement this urgency legislation, the Judicial Council amended the appellate rules relating to filing documents and fee waivers and revised the information sheets concerning civil appeals and appellate fee waivers. Because the statutes establishing the new fees were already in effect, the council made the rule and form changes effective immediately upon adoption at its October 28, 2011 meeting, without prior circulation for public comment. However, the council also directed that these rule and form changes be circulated for public comment after their adoption.

The main provisions of the rule and form changes that took effect on October 28, 2011, are discussed below and the full text is attached. Although changes are already in effect, to make it easier to see the changes that have been made, the attached copy shows the amendments to the rules using underlining and strikeouts.

Rule 8.25

Rule 8.25 of the California Rules of Court generally addresses filing of documents in the Supreme Court and Court of Appeal. This rule previously did not address the payment of filing fees. In contrast, since 1976, rule 8.100 and its predecessors have required that parties pay the statutory fee for filing a notice of appeal in a civil case or submit an application for a fee waiver at the time that they file the notice of appeal and that the clerk notify a party who does not do so of the potential consequences if the fee is not paid or a fee waiver application filed within a specified time.

The amendments to rule 8.25 are modeled on these fee-related provisions of rule 8.100 and require that any document for which a filing fee is required must be accompanied at the time of filing by either the required fee or an application for a fee waiver. In addition, they require the clerk to file a document not accompanied by a required fee or a fee waiver application,² but also to notify the filing party of this default, and specify that if the fee is not paid or a fee waiver application filed within the time specified in the clerk's notice, the document will be stricken. Because of the short time courts have to act after some of the documents to which these new fees apply are filed, however, rule 8.25 allows the clerk to set a shorter time for curing the default than is provided in rule 8.100. In addition, because the new fees may potentially apply to many different types of documents, these amendments identify the most common "first documents" for which such a fee may be required.

Since 1976, rule 8.100 and its predecessors have also made clear that, for purposes of requirements relating to filing fees, a respondent who files a notice of cross appeal is considered an appellant. Such parties pay the fee for filing a notice of appeal. The amendments to rule 8.25 reflect this long-standing definition and practice, making it clear that a respondent who files a

² Government Code section 68634.5(c) provides that a person shall be permitted to file his or her papers in an appellate court immediately, even if the person does not present the filing fee, or an application for, or order granting, a fee waiver.

notice of cross appeal is not considered a “party other than the appellant” for purposes of the new filing fee requirements. In addition, amendments to the advisory committee comment accompanying rule 8.25: (1) clarify that because amicus curiae are not parties, they are not required to pay the new filing fees applicable to “a party” other than the appellant or petitioner; and (2) reiterate the statutory prohibition on charging filing fees in juvenile cases, proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act.³

Rule 8.26 and forms APP-001 and APP-015-INFO

Rule 8.26 addresses waiver of court fees and costs in appellate proceedings. This rule indicates when applications to waive specified fees must be filed and identifies the court fees and costs that must be waived as part of an initial fee waiver. The amendments adopted in October 2011 updated this rule to specify when applications to waive the new filing fees must be filed and to add these new fees to the list of fees that must be waived as part of an initial fee waiver.

Information on Appeal Procedures for Unlimited Civil Cases (Appellate) (form APP-001) and *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO) were similarly revised to reflect the new fees and the timeframe for filing an application to waive these fees.

Advisory committee comments to rules 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520

The advisory committee comments accompanying the rules that address filing of the most common types of documents in the appellate courts—applications, motions, petitions, and briefs—were all amended to include a note about the possibility that a filing fee may apply and a cross-reference to rule 8.25.

³ Government Code sections 68926 and 68927 provide that fees may not be charged in appeals from, petitions for writs involving, or petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act.

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 1. General Provisions

6
7 Article 2. Service, Filing, Filing Fees, Form, and Number of Documents

8
9
10 Rule 8.25. Service, ~~and filing~~, and filing fees

11
12 (a)–(b) * * *

13
14 (c) Filing fees

15
16 (1) Unless otherwise provided by law, any document for which a filing fee is required
17 under Government Code sections 68926 or 68927 must be accompanied at the time
18 of filing by the required fee or an application for a waiver of court fees under rule
19 8.26.

20
21 (2) Documents for which a filing fee may be required under Government Code sections
22 68926 or 68927 include:

23
24 (A) A notice of appeal in a civil case. For purposes of this rule, “notice of appeal”
25 includes a notice of cross-appeal;

26
27 (B) A petition for a writ within the original civil jurisdiction of the Supreme Court
28 or Court of Appeal;

29
30 (C) A petition for review in a civil case in the Supreme Court;

31
32 (D) The following where the document is the first document filed in the Court of
33 Appeal or Supreme Court by a party other than the appellant or petitioner in a
34 civil case. For purposes of this rule, a “party other than the appellant” does not
35 include a respondent who files a notice of cross-appeal.

36
37 (i) An application or an opposition or other response to an application;

38
39 (ii) A motion or an opposition or other response to a motion;

40
41 (iii) A respondent’s brief;

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

- 1 (iv) A preliminary opposition to a petition for a writ, excluding a preliminary
- 2 opposition requested by the court unless the court has notified the parties
- 3 that it is considering issuing a peremptory writ in the first instance;
- 4
- 5 (v) A return (by demurrer, verified answer, or both) after the court issues an
- 6 alternative writ or order to show cause;
- 7
- 8 (vi) Any answer to a petition for review in the Supreme Court; and
- 9
- 10 (vii) Any brief filed in the Supreme Court after the Court grants review.
- 11
- 12 (3) If a document other than the notice of appeal or a petition for a writ is not
- 13 accompanied by the filing fee or an application for a waiver of court fees under rule
- 14 8.26, the clerk must file the document and must promptly notify the filing party in
- 15 writing that the court may strike the document unless, within the stated time of not
- 16 less than 5 court days after the notice is sent, the filing party either:
- 17
- 18 (A) Pays the filing fee; or
- 19
- 20 (B) Files an application for a waiver under rule 8.26 if the party has not previously
- 21 filed such an application.
- 22
- 23 (4) If the party fails to take the action specified in a notice given under (2), the reviewing
- 24 court may strike the document, but may vacate the striking of the document for good
- 25 cause.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (c). Government Code section 68926 establishes fees in civil cases for filing a notice of appeal, filing a petition a for a writ within the original civil jurisdiction of the Supreme Court or a Court of Appeal, and for a party other than appellant or petitioner filing its first document in such an appeal or writ proceeding in the Supreme Court or a Court of Appeal. Government Code section 68927 establishes fees for filing a petition for review in a civil case in the Supreme Court and for a party other than the petitioner filing its first document in a civil case in the Supreme Court. These statutes provide that fees may not be charged in appeals from, petitions for writs involving, or petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

Subdivision (c)(2)(A) and (D). Under rule 8.100(f) , “notice of appeal” includes a notice of a cross-appeal and a respondent who files a notice of cross-appeal in a civil appeal is considered an appellant and is required to pay the fee for filing a notice of appeal under Government Code section 68926.

A person who files an application to file an amicus brief is not a “party” and therefore is not subject to the fees applicable to a party other than the appellant or petitioner.

Subdivision (c)(3). Rule 8.100 establishes the procedures applicable when an appellant in a civil appeal fails to pay the fee for filing a notice of appeal or the deposit for the clerk’s transcript that must also be paid at that time.

Rule 8.26. Waiver of fees and costs

(a) * * *

(b) Filing the application

(1) *Appeals*

(A) The appellant should submit any application for initial waiver of court fees and costs for an appeal with the notice of appeal in the superior court that issued the judgment or order being appealed. For purposes of this rule, a respondent who files a notice of cross-appeal is an “appellant.”

(B) ~~The respondent~~ A party other than the appellant should submit any application for initial waiver of the court fees and costs for an appeal at the time the fees are to be paid to the court.

(2) *Writ proceedings*

(A) The petitioner should submit the application for waiver of the court fees and costs for a writ proceeding with the writ petition.

(B) A party other than the petitioner should submit any application for initial waiver of the court fees and costs at the time the fees for filing its first document in the writ proceeding are to be paid to the reviewing court.

(3) *Petitions for review*

(A) The petitioner should submit the application for waiver of the court fees and costs for a petition for review in the Supreme Court with the petition.

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

1 (B) A party other than the petitioner should submit any application for initial
2 waiver of the court fees and costs at the time the fees for filing its first
3 document in the proceeding are to be paid to the Supreme Court.
4

5 (c)–(d) * * *

6
7 **(e) Court fees and costs waived**
8

9 Court fees and costs that must be waived on granting an application for initial waiver of
10 court fees and costs in the Supreme Court or Court of Appeal include:
11

12 (1) The fee for filing the notice of appeal and the fee required for a party other than the
13 appellant filing its first document under Government Code section 68926;
14

15 (2) The fee for filing an original proceeding and the fee required for a party other than
16 the petitioner filing its first document ~~required~~ under Government Code section
17 68926;
18

19 (3) The fee for filing a petition for review and the fee required for a party other than the
20 petitioner filing its first document under ~~required by~~ Government Code section
21 68927; and
22

23 (4) Any court fee for telephonic oral argument.
24

25 (f)–(g) * * *

26
27
28 **Rule 8.50. Applications**
29

30 **(a) Service and filing**
31

32 Except as these rules provide otherwise, parties must serve and file all applications in the
33 reviewing court, including applications to extend the time to file records, briefs, or other
34 documents, and applications to shorten time. For good cause, the Chief Justice or presiding
35 justice may excuse advance service.
36

37 (b)–(d) * * *

38
39 **Advisory Committee Comment**
40

41 Rule 8.50 addresses applications generally. Rules 8.60, 8.63, and 8.68 address applications to extend or
42 shorten time.
43

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

1 **Subdivision (a).** A party other than the appellant or petitioner who files an application or opposition to an
2 application may be required to pay a filing fee under Government Code sections 68926 or 68927 if the
3 application or opposition is the first document filed in the appeal or writ proceeding in the reviewing
4 court by that party. See rule 8.25(c).

5
6 **Subdivision (b).** An exceptional showing of good cause is required in applications in certain juvenile
7 proceedings under rules 8.416, 8.450, 8.452, and 8.454.

8
9 **Rule 8.54. Motions**

10
11 **(a) Motion and opposition**

- 12
13 (1) Except as these rules provide otherwise, a party wanting to make a motion in a
14 reviewing court must serve and file a written motion stating the grounds and the
15 relief requested and identifying any documents on which the motion is based.
16
17 (2) A motion must be accompanied by a memorandum and, if it is based on matters
18 outside the record, by declarations or other supporting evidence.
19
20 (3) Any opposition must be served and filed within 15 days after the motion is filed.

21
22 **(b)–(c) * * ***

23
24 **Advisory Committee Comment**

25
26 **Subdivision (a).** A party other than the appellant or petitioner who files a motion or opposition to a
27 motion may be required to pay a filing fee under Government Code sections 68926 or 68927 if the motion
28 or opposition is the first document filed in the appeal or writ proceeding in the reviewing court by that
29 party. See rule 8.25(c).

30
31 **Subdivision (c).** * * *

32
33
34 **Chapter 2. Civil Appeals**

35
36 **Article 3. Briefs in the Court of Appeal**

37
38 **Rule 8.200. Briefs by parties and amici curiae**

39
40 **(a) Parties' briefs**

- 41
42 (1) Each appellant must serve and file an appellant's opening brief.
43

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

- 1 (2) Each respondent must serve and file a respondent's brief.
- 2
- 3 (3) Each appellant may serve and file a reply brief.
- 4
- 5 (4) No other brief may be filed except with the permission of the presiding justice,
- 6 unless it qualifies under (b) or (c)(6).
- 7
- 8 (5) Instead of filing a brief, or as part of its brief, a party may join in or adopt by
- 9 reference all or part of a brief in the same or a related appeal.
- 10

11 (b)–(c) * * *

12
13 **Advisory Committee Comment**

14
15 Subdivision (a)(2). A respondent, other than a respondent who has filed a notice of cross-appeal, who
16 files a respondent's brief may be required to pay a filing fee under Government Code sections 68926 if
17 the respondent's brief is the first document filed in the appellate proceeding in the Court of Appeal by that
18 party. See rule 8.25(c).
19

20 **Subdivision (b).** * * *

21
22 **Subdivision (c)(1).** * * *

23
24 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and**
25 **Court of Appeal**

26
27 **Rule 8.487. Opposition and Attorney General amicus briefs**

28
29 **(a) Preliminary opposition**

- 30
- 31 (1) Within 10 days after the petition is filed, the respondent or any real party in interest,
- 32 separately or jointly, may serve and file a preliminary opposition.
- 33

34 (2)–(4) * * *

35
36 **(b) Return or opposition; reply**

- 37
- 38 (1) If the court issues an alternative writ or order to show cause, the respondent or any
- 39 real party in interest, separately or jointly, may serve and file a return by demurrer,
- 40 verified answer, or both. If the court notifies the parties that it is considering issuing
- 41 a peremptory writ in the first instance, the respondent or any real party in interest
- 42 may serve and file an opposition.
- 43

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

1 (2)–(4) * * *

2
3 (c) * * *

4
5 **Advisory Committee Comment**

6
7 A party other than the petitioner who files a preliminary opposition under (a) or a return or opposition
8 under (b) may be required to pay a filing fee under Government Code section 68926 if the preliminary
9 opposition, return, or opposition is the first document filed in the writ proceeding in the reviewing court
10 by that party. See rule 8.25(c).

11
12 **Subdivision (a).** * * *

13
14 **Subdivision (b).** * * *

15
16 **Chapter 8. Miscellaneous Writs of Review**

17
18 **Rule 8.496. Review of Public Utilities Commission cases**

19
20 (a) * * *

21
22 (b) **Answer and reply**

23
24 (1) Within 35 days after the petition is filed, the commission or any real party in interest
25 may serve and file an answer.

26
27 (2) Within 25 days after an answer is filed, the petitioner may serve and file a reply.

28
29 (c) * * *

30
31 **Advisory Committee Comment**

32
33 Subdivision (b). A party other than the petitioner who files an answer may be required to pay a filing fee
34 under Government Code section 68926 if the answer is the first document filed in the writ proceeding in
35 the reviewing court by that party. See rule 8.25(c).

36
37
38 **Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment**
39 **Relations Board cases**

40
41 (a)–(b) * * *

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

1 **(c) Briefs**
2

- 3 (1) The petitioner must serve and file its brief within 35 days after the index is filed.
4
5 (2) Within 35 days after the petitioner’s brief is filed, the board must—and any real
6 party in interest may—serve and file a respondent’s brief.
7
8 (3) Within 25 days after the respondent’s brief is filed, the petitioner may serve and file
9 a reply brief.
10

11 **(d) * * ***
12

13 **Advisory Committee Comment**
14

15 A party other than the petitioner who files an answer or brief may be required to pay a filing fee under
16 Government Code section 68926 if the answer or brief is the first document filed in the writ proceeding in
17 the reviewing court by that party. See rule 8.25(c).
18
19

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

22 **Rule 8.500. Petition for review**
23

24 **(a) Right to file a petition, answer, or reply**
25

- 26 (1) A party may file a petition in the Supreme Court for review of any decision of the
27 Court of Appeal, including any interlocutory order, except the denial of a transfer of
28 a case within the appellate jurisdiction of the superior court.
29
30 (2) A party may file an answer responding to the issues raised in the petition. In the
31 answer, the party may ask the court to address additional issues if it grants review.
32
33 (3) The petitioner may file a reply to the answer.
34

35 **(b)–(g) * * ***
36

37 **Advisory Committee Comment**
38

39 Subdivision (a). A party other than the petitioner who files an answer may be required to pay a filing fee
40 under Government Code section 68927 if the answer is the first document filed in the proceeding in the
41 Supreme Court by that party. See rule 8.25(c).
42

Rules 8.25, 8.26, 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520 of the California Rules of Court were amended, effective October 28, 2011, to read:

1 Subdivision (a)(1) makes it clear that any interlocutory order of the Court of Appeal—such as an order
2 denying an application to appoint counsel, to augment the record, or to allow oral argument—is a
3 “decision” that may be challenged by petition for review.
4

5 **Subdivision (e).** * * *

6
7 **Subdivision (f).** * * *

8
9 **Rule 8.520. Briefs by parties and amici curiae; judicial notice**

10
11 **(a) Parties’ briefs; time to file**

12
13 (1) Within 30 days after the Supreme Court files the order of review, the petitioner must
14 serve and file in that court either an opening brief on the merits or the brief it filed in
15 the Court of Appeal.
16

17 (2) Within 30 days after the petitioner files its brief or the time to do so expires, the
18 opposing party must serve and file either an answer brief on the merits or the brief it
19 filed in the Court of Appeal.
20

21 (3) The petitioner may file a reply brief on the merits or the reply brief it filed in the
22 Court of Appeal. A reply brief must be served and filed within 20 days after the
23 opposing party files its brief.
24

25 (4) A party filing a brief it filed in the Court of Appeal must attach to the cover a notice
26 of its intent to rely on the brief in the Supreme Court.
27

28 (5) The time to serve and file a brief may not be extended by stipulation but only by
29 order of the Chief Justice under rule 8.60.
30

31 (6) The court may designate which party is deemed the petitioner or otherwise direct the
32 sequence in which the parties must file their briefs.
33

34 **(b)–(h)** * * *

35
36 **Advisory Committee Comment**

37
38 **Subdivision (a).** A party other than the petitioner who files a brief may be required to pay a filing fee
39 under Government Code section 68927 if the brief is the first document filed in the proceeding in the
40 Supreme Court by that party. See rule 8.25(c).
41

42 **Subdivisions (c) and (d).** * * *

Item W12-02 Response Form

Title: **Appellate Procedure: Filing Fees** (amend Cal. Rules of Court, rules 8.25 and 8.26; amend the advisory committee comments to rules 8.50, 8.54, 8.200, 8.487, 8.496, 8.498, 8.500, and 8.520; and revise forms APP-001 and APP-015/FW-015-INFO)

- 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: www.courts.ca.gov/policyadmin-invitationstocomment.htm

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DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, January 24, 2012

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.