



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2013

Title	Agenda Item Type
Appellate Procedure: Number of Copies of Filed Documents	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.44 and 8.212	January 1, 2014
Recommended by	Date of Report
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	November 13, 2013
	Contact
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Executive Summary

The Appellate Advisory Committee recommends amending the California Rules of Court relating to: (1) reduce the number of copies of some documents that must be filed in the Supreme Court and Courts of Appeal when an electronic copy is filed; (2) specifically permit reviewing courts to adopt local rules providing for submission of electronic copies in lieu of some or all of the paper copies of filed documents; (3) make other changes. These changes will provide cost savings and efficiencies for litigants and reviewing courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2014:

1. Amend rule 8.44 of the California Rules of Court to:
 - Allow the submission of one electronic copy and eight paper copies instead of:

- Thirteen paper copies of petitions for review, answers, replies, briefs on the merits, amicus curiae briefs, answers to amicus curiae briefs, petitions for rehearing, and answers to petitions for rehearing; and
 - Ten paper copies of petitions for writs within the court's original jurisdiction, oppositions or other responses to such petitions, and replies to such petitions filed in the Supreme Court; and
 - Specifically provide that the Supreme Court or Courts of Appeal may, by local rule, allow for the submission of an electronic copy of a filed document either in addition to the paper copies required or in place of one or more of these copies, and
2. Amend rules 8.44 and 8.212 to provide that the electronic copy of briefs in civil appeals to the Courts of Appeal that currently must be served on the Supreme Court must instead be submitted to the Courts of Appeal.

The text of the proposed rules is attached at pages 5–7.

Previous Council Action

The predecessor to rule 8.44, regarding the number of copies of documents that must be filed in proceedings in the Supreme Court and Courts of Appeal, was adopted by the Judicial Council as part of the original Rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. At that time, the rule required that in a civil case in the Courts of Appeal, an original and 20 copies of any printed paper be filed and that 17 of those copies be delivered to the Supreme Court (there were separate requirements for typewritten documents). In January 1962, the Judicial Council amended this rule to require that an original and three copies of such a document be filed along with proof of delivery or mailing of 17 copies to the Supreme Court. In January 1972, the Judicial Council amended this rule to separately identify the number of copies of different types of documents required to be filed. As amended, this rule required filing of an original and three copies and proof of delivery to the Supreme Court of seven copies of a brief or petition in a civil case in the Courts of Appeal. The Judicial Council subsequently amended this rule several times, ultimately reducing to four the number of copies of such briefs required to be delivered to the Supreme Court. On October 26, 2012, the Judicial Council amended rule 8.44 effective on January 1, 2013, to provide that either one electronic copy or four paper copies of civil briefs filed in the Courts of Appeal must be served on the Supreme Court.

The predecessor to rule 8.212, regarding the time to file briefs in civil appeals in the Courts of Appeal, was adopted by the Judicial Council as part of the original rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. As originally adopted, this rule did not address the number of copies of briefs to be filed. Effective January 1, 2002, the Judicial Council amended this rule to restate the provision from the predecessor to rule 8.44 regarding the number of copies of briefs that must be filed. Effective January 1, 2008, the Judicial Council

amended this provision to give parties in civil appeals the option of serving one electronic copy rather than four paper copies of their briefs on the Supreme Court.

On February 28, 2012, and October 26, 2012, the Judicial Council approved other amendments to rule 8.212 that took effect on January 1, 2013, including providing that parties in civil appeals in the Court of Appeal must serve one electronic copy of their briefs on the Supreme Court unless doing so would cause undue hardship for the party filing the brief, in which case the party must serve four paper copies on the Supreme Court.

Rationale for Recommendation

Rule 8.44 of the California Rules of Court specifies the number of copies of documents that must be filed in the Supreme Court and the Courts of Appeal. Currently, this rule generally requires that an original and 13 copies of a petition for review, an answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or an answer to a petition for rehearing be filed in the Supreme Court. It also requires an original and 10 copies of a petition for a writ within the court's original jurisdiction, an opposition or other response to the petition, or a reply be filed in the Supreme Court.

The Court Administrator and Clerk of the Supreme Court has indicated that an electronic copy of these documents could be used in lieu of some of the currently required paper copies. To provide cost savings and efficiencies for litigants and reviewing courts, this proposal would decrease the number of copies of these documents that are required when an electronic copy is filed.

In addition, some reviewing courts now accept electronic copies of filed documents, but rule 8.44 does not currently allow for this option. This proposal would recognize this practice by specifically permitting reviewing courts to adopt local rules providing for submission of electronic copies in lieu of some or all of the paper copies of filed documents.

Rule 8.212 addresses briefs in civil appeals to the Court of Appeal. Both rule 8.212 and rule 8.44 currently provide that either one electronic copy of such briefs or four paper copies must be served on the Supreme Court. If the Court of Appeal accepts electronic copies of filed documents, it is easier to have the electronic copy submitted to the Court of Appeal rather than the Supreme Court. Several districts of the appellate courts have already adopted this practice. This proposal would also recognize this practice by amending these rules to provide for submission of the electronic copy of such briefs to the Court of Appeal, rather than to the Supreme Court.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated for public comment between April 19 and June 19, 2013, as part of the regular Spring 2013 comment cycle. Eleven individuals or organizations submitted

comments. Ten agreed with the proposal. One agreed if modified and suggested minor clarifying changes. The committee agreed with these suggestions in concept and revised the proposal as suggested by the commentator, with minor modifications. The full text of the comments received and the committee responses are set out in the attached chart at pages 8–11.

Following the comment period, the committee received input from one of the Courts of Appeal expressing concerns about a portion of the proposal circulated for comment that would have made changes to the rules on electronic filing of documents. Based on these concerns, the committee is not recommending adoption of that portion of the proposal at this time.

Alternatives considered

The committee considered recommending no changes, but concluded that amending the rules would reduce costs for the Supreme Court and Courts of Appeal.

Implementation Requirements, Costs, and Operational Impacts

This proposal should impose no significant implementation burdens on either the superior or appellate courts and should provide significant cost savings for the Supreme Court and Courts of Appeal.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal will further the Judicial Council’s Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

1. Cal. Rules of Court, rules 8.44 and 8.212 at pages 5–7
2. Comment chart at pages 8–11

Rules 8.44 and 8.212 of the California Rules of Court are amended, effective January 1, 2014, to read:

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

2
3 Except as these rules provide otherwise, the number of copies of every brief, petition, motion,
4 application, or other document that must be filed in a reviewing court is as follows:

5
6 **(a) Documents filed in the Supreme Court**

7
8 (1) ~~Except as provided in (4),~~ An original and 13 copies of a petition for review, an
9 answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus
10 curiae brief, a petition for rehearing, or an answer to a petition for rehearing; and
11 either

12
13 (A) 13 paper copies; or

14
15 (B) 8 paper copies and one electronic copy;

16
17 (2) Unless the court orders otherwise, an original ~~and 10 copies~~ of a petition for a writ
18 within the court’s original jurisdiction, an opposition or other response to the
19 petition, or a reply; and either:

20
21 (A) 10 paper copies; or

22
23 (B) 8 paper copies and one electronic copy;

24
25
26 (3)–(6) * * *

27
28 **(b) Documents filed in a Court of Appeal**

29
30 (1) An original and 4 paper copies of a brief, an amicus curiae brief, or an answer to an
31 amicus curiae brief, ~~and, In civil appeals, proof of delivery of~~ for briefs other than
32 petitions for rehearing or answers thereto, 1 electronic copy or, in case of undue
33 hardship, proof of delivery of 4 paper copies to the Supreme Court, as provided in rule
34 8.212(c) is also required. ~~For purposes of service on the Supreme Court, the term~~
35 ~~“brief” does not include a petition for rehearing or answers thereto;~~

36
37 (2)–(7) * * *

38
39 **(c) Electronic copies**

40
41 A court may provide by local rule for the submission of an electronic copy of a document
42 either in addition to the copies of a document required to be filed under (a) or (b) or as a
43 substitute for one or more of these copies. The local rule must specify the format of the

1 electronic copy and provide for an exception if it would cause undue hardship for a party to
2 submit an electronic copy.

3
4 **Advisory Committee Comment**

5
6 The initial sentence of this rule acknowledges that there are exceptions to this rule’s requirements
7 concerning the number of copies. See, for example, rule 8.150, which specifies the number of copies of
8 the record that must be filed.

9
10 Information about electronic submission of copies of documents can be found on the web page for the
11 Supreme Court at: www.courts.ca.gov/appellatebriefs or for the Court of Appeal District in which the
12 brief is being filed at: www.courts.ca.gov/courtsofappeal.

13
14 Note that submitting an electronic copy of a document under this rule or under a local rule adopted
15 pursuant to subdivision (c) does not constitute filing a document electronically under rules 8.70–8.79 and
16 thus does not substitute for the filing of the original document with the court in paper format.

17
18
19 **Rule 8.212. Service and filing of briefs**

20
21 **(a)–(b) * * ***

22
23 **(c) Service**

24
25 **(1) * * ***

26
27 **(2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy of each**
28 **brief must be served on submitted to the Court of Appeal Supreme Court by sending the**
29 **copy to the Supreme Court electronic service address. For purposes of this requirement,**
30 **the term “brief” does not include a petition for rehearing or an answer thereto.**

31
32 **(A) The copy must be a single computer file in text-searchable Portable Document**
33 **Format (PDF), and it must exactly duplicate the appearance of the paper copy,**
34 **including the order and pagination of all of the brief’s components. By**
35 **electronically ~~submitting~~ submitting the copy, the filer certifies that the copy**
36 **complies with these requirements and that all reasonable steps have been taken**
37 **to ensure that the copy does not contain computer code, including viruses, that**
38 **might be harmful to the court’s ~~electronic filing~~ electronic filing system for receipt of electronic**
39 **copies or and to other users of that system.**

40
41 **(B) * * ***

42
43 **(C) If it would cause undue hardship for the party filing the brief to ~~serve~~ submit**
44 **an electronic copy of the brief on to the Supreme Court of Appeal, the party**
45 **may instead serve four paper copies of the brief on the Supreme Court. If the**
46 **Court of Appeal has ordered the brief sealed, the party serving the brief must**
47 **place all four copies of the brief in a sealed envelope and attach a cover sheet**

1 that contains the information required by rule 8.204(b)(10) and labels the
2 contents as “CONDITIONALLY UNDER SEAL.” The Court of Appeal clerk
3 must promptly notify the Supreme Court of any court order unsealing the
4 brief. In the absence of such notice, the Supreme Court clerk must keep all
5 copies of the brief under seal.
6

7 (3) * * *

8
9 **Advisory Committee Comment**

10
11 **Subdivision (a).** * * *

12
13 **Subdivision (b).** * * *

14
15 **Subdivision (c).** In subdivision (c)(2) the word “brief” means only (1) an appellant’s opening brief, (2) a
16 respondent’s brief, (3) an appellant’s reply brief, (4) an amicus curiae brief, or (5) an answer thereto. It
17 follows that no other documents or papers filed in the Court of Appeal, whatever their nature, should be
18 served on the Supreme Court. Further, only briefs filed in the Court of Appeal “in a civil appeal” must be
19 served on the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal appeals or
20 in original proceedings should be served on the Supreme Court.
21

22 ~~“Electronic service address” is defined in rule 8.70. The Supreme Court’s electronic filing address and~~
23 ~~additional information about sending electronic submission of copies of briefs to the Supreme Court of~~
24 ~~Appeal can be found on the web page for the Court of Appeal district in which the brief is being filed on~~
25 ~~the California Courts website at www.courts.ca.gov/appellatebriefs.htm ~~courts of appeal.~~~~

26
27 Examples of “undue hardship” under (2)(C) include but are not limited to when a party does not have
28 access to a computer or the software necessary to prepare an electronic copy of a brief or does not have e-
29 mail access to electronically ~~serve~~ submit a brief ~~on the Supreme to the~~ Court of Appeal.

SPR13-05**Appellate Procedure: Number of Copies of Filed Documents.** Amend Cal. Rules of Court, rules 8.44, 8.70, 8.72, and 8.212

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego Bar Association by: Rupa G. Singh, Chair	A	We support all efforts to reduce the number of copies of filed documents to only those needed by various courts. This will reduce costs, which is of particular benefit to low-income and/or unrepresented litigants. In addition, we note with great approval the environmental advantage of transitioning from paper copies to electronic copies when possible. We suggest that, in addition to the proposed language, the Judicial Council consider adding language to allow individual courts to authorize the filing of fewer copies by Local Rule, regardless of whether a party files an electronic or a paper copy.	The committee notes the commentator's support for the proposal. The committee appreciates this suggestion and will consider it during an upcoming rules cycle.
2.	Appellate Defenders, Inc., California Appellate Project - San Francisco, First District Appellate Project, and Sixth District Appellate Program By: Jonathan Soglin, Executive Director, First District Appellate Project San Francisco, California	A	We strongly support the proposed amendments which reduce the number of print copies of pleadings to be submitted to the Supreme Court and make other changes regarding electronic-submission and electronic-filing of pleadings. These amendments will significantly reduce costs and streamline procedures.	The committee notes the commentator's support for the proposal.
3.	California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California	A	Given the strong trend toward electronic recordkeeping, it makes eminent sense to reduce the number of required paper copies for court filings. This is good for the environment and good for litigants, especially unrepresented parties for whom every dollar counts when seeking relief in the judicial system.	The committee notes the commentator's support for the proposal.
4.	California Court Clerks Association By: Charlene Ynson, President	AM	Support and recommend inserting a reference to Rule 8.72 and 8.73 as shown	The committee notes the commentator's support for the proposal.

SPR13-05

Appellate Procedure: Number of Copies of Filed Documents. Amend Cal. Rules of Court, rules 8.44, 8.70, 8.72, and 8.212

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	Commentator	Position	Comment	Committee Response
	Fresno, California		<p>below.</p> <p>8.70(e) (3) <u>If a document is filed electronically [insert reference to rules 8.72 and 8.73 here], the paper copies of the document specified in rule 8.44 are not required to be filed.</u></p> <p>8.212 (c)(2) – Refers to an “an electronic service address.” The Court of Appeal does not have an electronic service address. This should instead state “by submitting the copy via the Court of Appeal’s Web site.</p> <p>Does the proposal reasonably achieve the stated purpose? <i>YES</i></p> <p>Would this proposal have an impact on public’s access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact? <i>Minimal impact, some savings in copying</i></p> <p>Would the proposal provide costs savings? <i>Minimal</i></p> <p>What would the implementation requirements</p>	<p>Based on other input, the committee is not moving forward with the amendments to rule 8.70 at this time.</p> <p>Based on this comment, the committee has revised the proposal to eliminate references to submitting documents via the Court of Appeal’s electronic service address. Because the proposed amendments to the advisory committee comment to rule 8.212 already indicates that information regarding electronic submission of documents is available on the courts’ websites, the committee concluded that it was not necessary to add this information to the text of the rule.</p>

SPR13-05

Appellate Procedure: Number of Copies of Filed Documents. Amend Cal. Rules of Court, rules 8.44, 8.70, 8.72, and 8.212

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	Commentator	Position	Comment	Committee Response
			<p>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. <i>The major imposition is on AOC staff to develop the automatic routing of civil briefs to the Law Libraries. Without automatic routing of said briefs, there would have to be considerable time taken by court staff to manually route the briefs. Minimal training but additional staff time of up to 4 hours a week.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes, if automatic routing can be implemented within that time.</i></p> <p>If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size? <i>Automated routing.</i></p>	
5.	Committee on Appellate Courts State Bar of California – By: Kira Klatchko, Acting Chair 2012-2013 San Francisco, California	A	This committee supports this proposal.	The committee notes the commentator’s support for the proposal.
6.	Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding	A	We commend the Appellate Advisory Committee for its efforts to promote efficiency and cost savings by revising rule 8.44 so that an	The committee notes the commentator’s support for the proposal.

SPR13-05**Appellate Procedure: Number of Copies of Filed Documents.** Amend Cal. Rules of Court, rules 8.44, 8.70, 8.72, and 8.212

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	Commentator	Position	Comment	Committee Response
	Justice San Diego, California		appellate court may adopt a local rule to permit the submission of electronic copies in addition to, or in lieu of, the required number of hard copies.	
7.	Laurie Hepler, Chair Appellate Practice Group Carroll, Burdick & McDonough LLP San Francisco	A	This is incremental progress, but progress nonetheless.	The committee notes the commentator's support for the proposal.
8.	Office of the County Counsel By: James Owens, Assistant County Counsel Los Angeles, California	A	No comments on this proposed amendment.	The committee notes the commentator's support for the proposal.
9.	Orange County Bar Association By: Wayne R. Gross, President Newport Beach, California	A	No additional comments	The committee notes the commentator's support for the proposal.
10.	Andrew Shear, Attorney Oakland	A	As an appellate attorney I fully support these changes to replace some of the wasteful and costly copying that is currently required when filing these documents. I would encourage the court to consider adopting a fully electronic system similar to that used by federal courts.	The committee notes the commentator's support for the proposal.
11.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	No additional comments.	The committee notes the commentator's support for the proposal.