

Invitation to Comment

Title	Attorney’s Fees: Time for Making a Claim in a Civil Case (amend Cal. Rules of Court, rule 3.1702)
Summary	Rule 3.1702 of the California Rules of Court provides that a claim for attorney’s fees in a civil action must be made within the time for filing a notice of appeal under rules 8.104 and 8.108 (generally 60 days, with extensions in certain circumstances). Rule 3.1702 does not expressly address what time frames apply to claiming attorney’s fees in limited civil cases: the periods in the appellate rules cross-referenced in rule 3.1702, which apply only to actions appealed to the Court of Appeal or Supreme Court, or the shorter periods of time for filing a notice of appeal applicable in limited civil cases which are appealed to the appellate division of superior court. The proposed amendment would relate the time frame for claiming attorney’s fees in limited civil actions directly to the shorter appellate time periods for such cases.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Anne M. Ronan, Office of the General Counsel, 415-865-8933, anne.ronan@jud.ca.gov.

As expressly authorized in Code of Civil Procedure section 1034, the Judicial Council has developed procedures for claiming prejudgment costs and costs on appeal in civil cases, including attorney’s fees authorized by contract, statute, or law. (See rule 3.1702.) The rule (formerly rule 870.2) initially applied only to attorney’s fees provided by contract and required that a claim for such fees be made within the time period applicable to filing a memorandum of costs (15 days after judgment or dismissal). The Judicial Council expanded the rule, effective January 1, 1994, to cover claims for statutory attorney’s fees as well as contractual ones. The 1994 amendment also provided that, except for attorney’s fees that are fixed by formula (which must be claimed as part of the memorandum of costs), the time for claiming attorney’s fees is the same as the time for filing a notice of appeal, cross-referencing the rules setting such time periods in matters appealed to the Court of Appeal or Supreme Court (generally 60 days, with some exceptions).

The 1994 amendment was intended to “relate the time for claiming attorney’s fees to the time for filing a notice of appeal.”¹ The cross-references in the rule, however, to rules 8.104 and 8.108, do not apply to appeals in limited civil cases. Rule 8.104 provides that the normal period of time to file a notice of appeal is 60 days after service of the notice of entry. Rule 8.108

¹ See Judicial Council of Cal., Civil and Small Claims Standing Advisory Com. Rep., *Time to Claim Attorney’s Fees—Rule 870.2* (Oct. 28, 1993), p. 1.

extends the time to file a notice of appeal when certain post-trial motions are made or a cross-appeal is filed, generally by 30 days after certain events occur. The appellate rules applicable to limited civil cases (rules 8.822 and 8.823) provide a shorter time period for filing a notice of appeal in such cases (generally 30 days) and for shorter extensions to that period in the event of post-trial motions.

In light of the differing times for filing notices of appeal in unlimited and limited civil actions, a superior court has asked the Judicial Council to amend rule 3.1702 to expressly address claims for attorney's fees in limited civil cases. This proposal recommends that the rule be amended to provide that the time for claiming attorney's fees in limited civil cases is directly related to the deadlines for filing appeals in those cases. This amendment will provide consistency in the rules applicable to a given case.

The Civil and Small Claims Advisory Committee considered amending the rule to instead provide that the same time period apply in both limited and unlimited civil cases, requiring that motion for attorney's fees in all civil cases be filed within the time for filing notice of appeal in an unlimited civil case, i.e., generally within 60 days of judgment. The committee concluded that it was more logical to have the time for claiming attorney's fees in limited civil cases relate to the time for filing appeals in those cases. In the rare instance where the attorney's fee application in a limited civil case might be complex enough to require longer time, a party may seek an extension of time from the court under rule 3.1702(d).

The Appellate Advisory Committee has been consulted on this issue. That committee's Rules and Forms Subcommittee came to the same conclusion as the Civil and Small Claims Advisory Committee—that the rule should be amended so that the time frame for filing attorney's fee claims in limited civil cases is directly related to the time frames stated in the appellate rules applicable to such cases.

In making this recommendation, the Civil and Small Claims Advisory Committee notes that two years ago the Judicial Council affirmed the differing times for filing notices of appeal in unlimited and limited civil actions. When the Judicial Council adopted a reorganization of the rules for the superior court appellate division, the council considered and rejected a proposal to make the time period for filing notices of appeal for cases appealed to that division the same as for cases appealed to the Court of Appeal, i.e., generally 60 days for both. The Judicial Council left the time for filing an appeal to the appellate division at 30 days. Hence, the proposed amendment to the attorney's fee rule would parallel that decision by the Judicial Council, providing for shorter timeframes in limited civil cases.

The proposed amendment to rule 3.1702(b) clarifies that the cross-references currently in the rule apply to claims for attorney's fees in unlimited civil cases and adds additional cross-references that are expressly applicable to claims in limited civil cases. (See proposed rule 3.1702(b)(1).) The section permitting the parties to stipulate to extend the time for filing is also

amended to add parallel provisions permitting shorter extensions limited civil cases. (See proposed rule 3.1702(b)(2).)

The proposal would also amend rule 3.1702(c), regarding the time for claiming attorney's fees following an appeal, in a similar fashion. That provision currently requires that motions to claim attorney's fees on appeal must be filed with the trial court within the time for filing the memorandum of costs on appeal under rule 8.278(c)(1) (40 days after notice of remittitur). The proposed amendment adds a cross-reference to the parallel appellate rule that applies in limited civil cases, rule 8.891(c)(1) (memorandum of costs to be filed 30 days after the remittitur).

Rule 3.1702 of the California Rules of Court would be revised, effective January 1, 2011, to read:

Title 3. Civil Rules

Division 17. Attorney's Fees and Costs

Rule 3.1702. Claiming attorney's fees

(a) ****.

(b) Attorney's fees before trial court judgment

(1) *Time for motion*

A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court—including attorney's fees on an appeal before the rendition of judgment in the trial court—must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case or under rules 8.822 and 8.823 in a limited civil case.

(2) *Stipulation for extension of time*

The parties may, by stipulation filed before the expiration of the time allowed under (b)(1), extend the time for filing a motion for attorney's fees:

(A) Until 60 days after the expiration of the time for filing a notice of appeal in an unlimited civil case or 30 days after the expiration of the time in a limited civil case; or

(B) If a notice of appeal is filed, until the time within which a memorandum of costs must be served and filed under rule 8.278(c) in an unlimited civil case or under rule 8.891(c)(1) in a limited civil case.

(c) Attorney's fees on appeal

(1) *Time for motion*

A notice of motion to claim attorney's fees on appeal—other than the attorney's fees on appeal claimed under (b)—under a statute or contract requiring the court to determine entitlement to the fees, the amount of the fees, or both, must be served and filed within the time for serving and filing the memorandum of costs under rule 8.278(c)(1) in an unlimited civil case or under rule 8.891(c)(1) in a limited civil case.

(2) *Stipulation for extension of time*

The parties may by stipulation filed before the expiration of the time allowed under (c)(1) extend the time for filing the motion up to an additional 60 days in an unlimited civil case or 30 days in a limited civil case.

44 **(d) Extensions**

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46 For good cause, the trial judge may extend the time for filing a motion for
47 attorney's fees in the absence of a stipulation or for a longer period than allowed by
48 stipulation.

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50 **(e) ******

Item SPR10-17 Response Form

Title: **Attorney's Fees: Time for Making a Claim in a Civil Case** (amend Cal. Rules of Court, rule 3.1702)

- 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.

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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.