
INVITATION TO COMMENT

SPR19-02

Title	Action Requested
Appellate Procedure: Form of Filed Documents in the Appellate Division	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 8.815	January 1, 2020
Proposed by	Contact
Appellate Advisory Committee	Sarah Abbott, 415-865-7687
Hon. Louis R. Mauro, Chair	sarah.abbott@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes the adoption of a new rule of court governing the form of filed documents in the appellate division. The rule is intended to provide clarity to litigants, court staff, and judges as to the proper formatting of applications, motions, and other documents to be filed in the appellate division. This proposal is in response to a suggestion from a member of this committee.

Background

Proceedings in the appellate division of the superior courts are generally governed by rules 8.800–8.936. The appellate division rules contain specific requirements governing the format of appellate division briefs for limited civil and misdemeanor appeals¹ and infraction appeals,² as well as briefs to be filed in the Court of Appeal after an order of transfer.³ However, whereas the existing appellate division rules describe specific requirements regarding service and filing,

¹ See rule 8.883, detailing formatting requirements and page number limitations for limited civil and misdemeanor briefs.

² See rule 8.928, detailing formatting requirements and page number limitations for infraction briefs.

³ See rule 8.1012, requiring that, except as otherwise provided, briefs following an order of transfer comply with the form and contents requirements of rule 8.204(a)(1), (b), and (d).

contents, envelope requirements, and disposition of applications and motions, they are silent as to the required format of these and other documents filed in the appellate division.⁴

The trial court rules, rules 2.1 through 2.1100, “apply to all cases in the superior courts unless otherwise specified by a rule or statute.”⁵ Rules 2.100 through 2.118, included within the trial court rules, govern the “form and format of papers to be filed in the trial courts”⁶ and contain detailed formatting requirements for trial court papers.

Separately, appellate rules 8.40 and 8.204 govern the format of “documents filed in a reviewing court,”⁷ which is defined to mean the Supreme Court or Court of Appeal and to exclude the appellate division of the superior courts.⁸ Rule 8.40 (Form of filed documents) generally provides that such documents “may be either produced on a computer or typewriter and must comply with the relevant provisions of rule 8.204(b).”⁹ Rule 8.204(b), in turn, contains detailed requirements regarding the formatting of briefs to be filed in civil appeals in the Court of Appeal. Although rule 8.204(b) is specific to civil briefs, it is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the Court of Appeal more generally.

Although there are similarities among the rules governing the form of filed documents in the trial courts and the Court of Appeal, as well as civil and misdemeanor briefs filed in the appellate division, there are also notable differences.¹⁰ In the absence of specific guidance for formatting motions, applications, and other documents in the appellate division, litigants are left to guess what format is appropriate.

The Proposal

To remedy this confusion as to the proper formatting of applications, motions, and other documents in the appellate division, the committee is proposing to adopt rule 8.815, which would govern the form of filed documents in that division. This new appellate division rule

⁴ See rule 8.806 (Applications); 8.808 (Motions).

⁵ See rule 2.2.

⁶ See rule 2.100(b).

⁷ See rule 8.40(a).

⁸ See rule 8.10(6) (“‘Reviewing court’ means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred”); rule 8.4 (“The rules in this division apply to: [¶] (1) Appeals from the superior courts, except appeals to the appellate divisions of the superior courts”).

⁹ See rule 8.40(a). Rule 8.40(b)–(c) governs cover colors and information to be included on the cover page.

¹⁰ For example, 12-point font is used in trial courts (rule 2.104) whereas 13-point font is used in the Court of Appeal (rule 8.204(b)(4)) and for civil and misdemeanor briefs in the appellate division (rule 8.883(c)(4)); papers in the trial court must contain line numbers (rule 2.108), Court of Appeal documents must not (rule 8.204(b)(5)), and rule 8.883(c) is silent as to line numbering of civil and misdemeanor briefs in the appellate division; and the requirements for the format of the first page of documents filed in the trial courts, appellate division, and Court of Appeal differ in numerous ways (compare rules 2.111, 8.40(b)–(c), 8.204(b)(10), 8.816(a), and 8.883(c)(8)). Compare generally rules 2.102–2.118 to rules 8.204(b) and 8.883(c).

would mirror rule 8.40(a), governing the form of filed documents in the Court of Appeal, and provide that documents filed in the appellate division must comply with the relevant provisions of rule 8.883(c), which states the formatting requirements for briefs in limited civil and misdemeanor cases in the appellate division.

Creating a parallel structure between the Court of Appeal rules and appellate division rules was a significant priority when the appellate division rules were repealed and replaced in full in 2008.¹¹ In the Court of Appeal, no rule expressly governs the proper format for applications, motions, or other documents. Instead, rule 8.40(a), which governs the form of filed documents, incorporates by reference the “relevant provisions” of the rule governing the form of civil briefs in the Court of Appeal, rule 8.204(b), and applies them generally to other documents. Adopting a new rule containing language that mirrors rule 8.40(a) and applies the relevant provisions of the appellate division rule governing the form of limited civil and misdemeanor briefs, rule 8.883(c), to other filed documents would maintain this parallel structure. In addition, since litigants in the appellate division will already be familiar with appellate division rules, and those appealing limited civil and misdemeanor cases will need to comply with the requirements of rule 8.883 in preparing their briefs, this approach should provide the most clarity for appellate division litigants.

Alternatives Considered

The committee considered not making any changes to the rules but concluded that the proposed new rule would provide clarity to litigants, court staff, and judges.

The committee also considered whether to amend existing rule 8.817 to add a subdivision (c) to address the form of filed documents. However, the committee decided that it would be advisable to maintain a parallel structure between the Court of Appeal rules and appellate division rules by creating a stand-alone formatting rule for the appellate division that mirrors Court of Appeal rule 8.40, rather than adding new subject matter to an existing rule.

The committee further considered whether to incorporate by reference the rules governing formatting in the trial courts (rules 2.100 through 2.118) or the Court of Appeal (rules 8.40 and 8.204(b)) into an appellate division rule regarding formatting, rather than incorporating rule 8.883(c), but decided that applying the formatting requirements contained in an existing appellate division rule would provide more clarity.

Finally, the committee considered whether to amend rules 8.806 and 8.808, the rules governing appellate division applications and motions, to include formatting requirements therein.

¹¹ See Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Feb. 6, 2008), p. 8. (“In developing its proposed revisions to the appellate division rules, the advisory committee therefore took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the appellate division rules.”) However, where appropriate to account for substantive differences between proceedings in the appellate division and in the Court of Appeal (including that appellate division matters are often “smaller” and involve unrepresented litigations) and to keep appellate division matters as simple as possible, not all existing appellate division rules mirror the corresponding rules governing the Court of Appeal. (*Ibid.*)

However, the committee concluded that the new formatting requirements should not be limited to applications and motions and that adopting a more general formatting rule governing all filed documents in the appellate division would be more useful.

Fiscal and Operational Impacts

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

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also 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), or modifying case management systems?
- Would three 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?

Attachments and Links

1. Cal. Rules of Court, rule 8.815, at page 5

1 **Rule 8.815. Form of filed documents**

2

3 Except as these rules provide otherwise, documents filed in the appellate division may be
4 either produced on a computer or typewritten and must comply with the relevant
5 provisions of rule 8.883(c).

6