



# Judicial Council of California

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## INVITATION TO COMMENT

### SPR24-04

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**Title**

Appellate Procedure: Deadline for Amicus Curiae Briefs

**Action Requested**

Review and submit comments by May 3, 2024

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 8.200

**Proposed Effective Date**

January 1, 2025

**Proposed by**

Appellate Advisory Committee  
Hon. Louis Mauro, Chair

**Contact**

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### Executive Summary and Origin

The Appellate Advisory Committee proposes amending California Rules of Court, rule 8.200 to provide a deadline for filing an application to file an amicus brief when no respondent's brief has been filed. The current rule requires that applications to file an amicus brief be filed within 14 days after the reply brief "is filed or could have been filed." The rule, however, does not provide a deadline in cases where the respondent does not file a brief and, therefore, there is no reply brief. The proposed amendment would close this gap in the rules. This proposal originated with a suggestion from the Family Violence Appellate Project.

### The Proposal

Under California Rules of Court, rule 8.200(c)(1), a person or entity may file an application for permission to file an amicus curiae brief "[w]ithin 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier."<sup>1</sup> Under rule 8.212, an appellant's optional reply brief must be served and filed "within 20 days after the respondent files its brief."<sup>2</sup> Thus, in the usual case, an amicus curiae application will be due no later than 34 days after the filing of the respondent's brief.

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<sup>1</sup> All further rule references are to the California Rules of Court unless otherwise noted.

<sup>2</sup> Rule 8.212(a)(3).

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

Rule 8.200, however, does not expressly indicate what happens when no respondent's brief is filed, and the resulting ambiguity could be subject to competing interpretations. One possible reading of rules 8.200 and 8.212 is that *no* amicus curiae applications can be filed when the respondent does not file a brief. When the respondent does not file a brief, it is impossible to calculate a deadline for the reply brief and thus impossible to determine when the reply brief "could have been filed" for purposes of rule 8.200(c)(1). Under such a reading, a potential amicus curiae's ability to participate in an appeal would depend on action by the respondent.

Another possible reading of the rules could be that when a respondent does not file a brief, the deadline for amicus curiae applications is based on the date the respondent's brief *could have* been filed. Under this reading, a court would take the latest date the respondent could have filed its brief (including the 15-day default notice window provided by rule 8.220(a)) and add 20 days to that date. This date would be the latest possible date the reply brief "could have been filed" had the respondent filed its brief. Any amicus curiae application would then be due 14 days later. This reading, which ensures that potential amici curiae are allowed to file their applications, would involve inserting language into rules 8.200 and 8.212.

To resolve this ambiguity and ensure that potential amici curiae have sufficient time to draft and file applications to participate in appeals, the committee proposes amending rule 8.200(c)(1) to add the following line: "If no respondent's brief is filed, the application is due within 34 days after the respondent's brief could have been filed." The committee also proposes amending rule 8.200(c)(7), which governs amicus curiae briefs filed by the Attorney General, to provide the same deadline in cases where the respondent fails to file a brief, to keep the deadlines of potential amici curiae consistent. In addition, the committee proposes amending the advisory committee comment to state that date the respondent's brief "could have" been filed includes the 15-day default notice period contained in rule 8.220(a). The proposed deadline ensures that amici curiae will have the same amount of time to draft their applications that they would have had if the respondent had filed the respondent's brief on the last possible day.

The committee notes that under the proposed rule, when no respondent's brief is filed, amici curiae will be required to calculate the latest date the respondent's brief could have been filed, and then add 34 days. An alternative approach would be to require the applications to be filed 79 days after the appellant's opening brief was actually filed. This alternate approach would not change the ultimate deadline in most cases<sup>3</sup> but would potentially make it easier on amici curiae to calculate the date their applications would be due. The committee seeks specific comment on whether this alternate approach would be preferable.

The committee also recognizes that when there is no respondent's brief, the proposed amici curiae will not have to consider or address arguments made in either the respondent's brief or

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<sup>3</sup> The exception to this would be cases where the respondent was granted an extension of time to file the respondent's brief but still ultimately failed to file the brief. In such situations, the deadline for amici curiae applications would be different based on whether the deadline was tied to the date the appellant's brief was filed or the date the respondent's brief could have been filed.

reply brief. The committee seeks specific comment on whether, in light of this fact, the deadline in the proposed rule should be shorter to allow more expeditious resolution of appeals.

### **Alternatives Considered**

The committee considered the alternative of taking no action but concluded that the proposal was needed to clarify an ambiguity in rule 8.200. As detailed above, the committee seeks specific comments on whether the deadline for amici curiae applications in situations where no respondent brief has been filed should be (1) based on the date of the filing of the appellant’s opening brief as opposed to the date the respondent’s brief could have been filed and (2) shorter than the 34 days currently proposed.

### **Fiscal and Operational Impacts**

The committee does not anticipate any fiscal or operational impacts on the courts as a result of the proposed rule amendments. Implementation requirements for courts would involve making judicial officers and staff aware of the changes.

#### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Should the deadline for amicus curiae applications in situations where no respondent brief has been filed be based on the date the appellant’s opening brief has been filed, as opposed to the date the respondent’s brief could have been filed?
- Should the deadline for amicus curiae applications be shorter than the proposed 34 days after the date the respondent’s brief could have been filed?

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

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 8.200, at page 4

Rule 8.200 of the California Rules of Court would be amended, effective January 1, 2025, to read:

1 **Rule 8.200. Briefs by parties and amici curiae**

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3 **(a)–(b) \* \* \***

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5 **(c) Amicus curiae briefs**

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7 (1) Within 14 days after the last appellant’s reply brief is filed or could have been filed  
8 under rule 8.212, whichever is earlier, any person or entity may serve and file an  
9 application for permission of the presiding justice to file an amicus curiae brief. If no  
10 respondent’s brief is filed, the application is due within 34 days after the  
11 respondent’s brief could have been filed. For good cause, the presiding justice may  
12 allow later filing.

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14 (2)–(6) \* \* \*

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16 (7) The Attorney General may file an amicus curiae brief without the presiding justice’s  
17 permission, unless the brief is submitted on behalf of another state officer or agency.  
18 The Attorney General must serve and file the brief within 14 days after the last  
19 appellant’s reply brief is filed or could have been filed under rule 8.212, whichever is  
20 earlier, ~~and~~. If no respondent’s brief is filed, the Attorney General must serve and file  
21 the amicus curiae brief within 34 days after the respondent’s brief could have been  
22 filed. The brief must provide the information required by (2) and comply with (5).  
23 Any party may serve and file an answer within 14 days after the brief is filed.

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25 **Advisory Committee Comment**

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27 **Subdivision (a)(2). \* \* \***

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29 **Subdivision (b). \* \* \***

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31 **Subdivision (c)(1).** The time within which a respondent’s brief or reply brief “could have been filed  
32 under rule 8.212” includes any authorized extension of the deadline specified in rule 8.212 or the 15-day  
33 default notice period specified in rule 8.220(a).