



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-144

For business meeting on September 19, 2023

Title

Appellate Procedure: Forms for Extension of Time

Agenda Item Type

Action Required

Effective Date

January 1, 2024

Rules, Forms, Standards, or Statutes Affected

Revise forms APP-006, APP-106, CR-126, JV-816, and JV-817

Date of Report

June 29, 2023

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary

The Appellate Advisory Committee recommends revising the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court to ensure that courts receive sufficient information to determine whether good cause exists for an extension. The recommended revisions would (1) add an item on the civil forms to indicate that the case is entitled to, or has been granted, calendar preference or priority; and (2) revise the item where the applicant explains why good cause exists for an extension to direct the applicant to address the relevant factors a court will use in ruling on the motion. Additionally, minor additions or corrections are being recommended to each form.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise the following forms to add items to indicate that an appeal is entitled or eligible for calendar preference or priority, revise the items addressing why good cause exists for an extension of time to file a brief, and make other minor additions and corrections:

- *Application for Extension of Time to File Brief (Civil Case)* (form APP-006)
- *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106)

- *Application for Extension of Time to File Brief (Criminal Case)* (form CR-126)
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case)* (form JV-816)
- *Application for Extension of Time to File Brief (Juvenile Dependency Case)* (form JV-817)

The proposed revised forms are attached at pages 9–18.

Relevant Previous Council Action

Form APP-006, for unlimited civil cases, was adopted effective January 1, 2004. It has been revised previously, most recently effective January 1, 2017, but these prior revisions are not relevant to this proposal. Form APP-106, for limited civil cases, was adopted effective January 1, 2010. Minor, nonsubstantive revisions were made to this form, effective January 1, 2017. Form CR-126, for criminal cases; form JV-816, for juvenile delinquency cases; and form JV-817, for juvenile dependency cases, were adopted effective January 1, 2015. Form CR-126 has never been revised. Minor, nonsubstantive revisions were made to forms JV-816 and JV-817, effective January 1, 2017.

Analysis/Rationale

California Rules of Court,¹ rules 8.212, 8.360, 8.412, 8.416, 8.417, and 8.810 permit parties to apply to the Court of Appeal for an extension of time to file a brief in civil, criminal, and juvenile appeals. Extensions of time to file a brief in the appellate division are permitted by rule 8.882. This proposal recommends revising the optional forms a party may use to request an extension of time to file a brief as follows.

Calendar preference

Forms APP-006 and APP-106 have been revised to add new items by which an applicant can indicate whether an appeal is eligible for, or has previously been granted, calendar preference or priority. The items then direct the applicant to either cite authority (such as a statute that gives the appeal preference or priority) or otherwise explain why the appeal should be given preference or priority.

For civil cases in the Court of Appeal, rule 8.240 governs calendar preference: “A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, ‘calendar preference’ means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument.” The advisory committee comment states that this rule is “broad in scope” and that the Court of Appeal can order calendar preference on the motion of a party or, where the ground is apparent on the face of the appeal, on its own without a motion. Additionally, the note recognizes that the rule covers motions for preference on the following grounds:

¹ All further rule references are to the California Rules of Court.

(1) [T]hat a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official], 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., *id.*, §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198-99); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).²

In its December 2022 report, the Chief Justice’s Appellate Caseflow Workgroup recommended that the Judicial Council consider whether form APP-006 should “require additional information such as whether the appeal is a priority case.”³ The committee believes requiring this information on the civil extension of time forms will aid the reviewing court in determining whether good cause exists for an extension and, if so, the appropriate length of the extension.⁴

Statement of reasons for extension

On each extension of time form, the item directing the applicant to state the reasons why the extension of time is needed has been revised. The instructional parenthetical has been revised to direct the appellant to (1) address the factors that the applicable rule of court require the court to use in ruling on the motion (rule 8.63 for APP-006, CR-126, JV-816, and JV-817; rule 8.811(b) for APP-106), and (2) specifically address possible prejudice to the parties, defendant, or juvenile. Additionally, the parenthetical on form JV-816 has been further revised to advise the applicant that an “exceptional showing of good cause is required” in cases subject to rule 8.417.⁵

Currently, the extension of time forms provide an open prompt for the applicant to list the reasons why an extension is needed and direct the applicant to the relevant rule for the “factors used in determining whether to grant extensions.” The committee has determined that instead directing the applicants to address these factors (as opposed to simply referring the applicant to them) will increase the likelihood that the applicant will provide sufficient information for the reviewing court to assess whether good cause exists for an extension.

Additionally, directing the applicant to address the prejudice factor in particular would be beneficial to reviewing courts given the potential importance of this factor. The committee notes that, in its December 2022 report, the Chief Justice’s Appellate Caseflow Workgroup recommended that the Judicial Council consider whether the civil and criminal extension of time

² Advisory Committee comment, Cal. Rules of Court, rule 8.240.

³ Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p.24, newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate_Caseflow_Workgroup_Report_Final.pdf.

⁴ See, e.g., Rule 8.63(b)(6) (listing “[w]hether the case is entitled to priority” as one of the factors to be considered in determining whether good cause for an extension exists); *id.*, rule 8.811(b)(6) (same).

⁵ See Rule 8.417(g).

forms should be revised to require additional information about whether an extension would prejudice the client, opponent, or criminal defendant.⁶

Proof of service items

The proof of service statement on form CR-126 has been revised to match the other applications for extensions of time. Currently, item 11 on form CR-126 provides: “A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d).)”

However, the rule regarding extensions of time does not require service on “all those entitled to receive a copy of the brief.” Rather, it requires service on “all parties.”⁷ For this reason, the other forms for requesting an extension of time in unlimited civil, juvenile dependency, and juvenile justice appeals all require service on “all other parties,” not those entitled to receive a copy of the brief. CR-126 has been revised to similarly require proof of service on “all parties.”

In addition, the proof of service statements on APP-006, JV-816, and JV-817 have been revised to cite to rule 8.60(c). Currently, these forms cite to rules that relate to applications in general, permit a court to order an extension of time to file a brief, or require service of briefs.⁸ The committee believes that rule 8.60(c), which requires an that extension of time application be served on all parties, is better authority for this item.

Additional revisions or corrections

The notice at the top of form APP-006 has been revised to correct the reference to form APP-001-INFO.

Item 4 on form APP-106 has been revised to correctly reflect the 15-day window for filing a brief on receipt of a default notice under rule 8.882(c).

Item 1 on forms APP-006, CR-126, JV-816, and JV-817 and item 2 on form APP-106 have been revised to add an option for the party to seek an extension of time to file a “supplemental or other brief.” Because an extension could be sought for such a brief after the filing of a reply brief or supplemental brief, options have been added for “ARB” and “Other” to item 5 on form APP-006; item 9 on form APP-106; and item 4 on forms CR-126, JV-816, and JV-817.

In response to a comment, item 1 on forms APP-006, CR-126, JV-816, and JV-817 has been reformatted to add subdivisions to ensure that the information regarding the current due date and requested extension date are provided.

⁶ Appellate Caseflow Workgroup, *supra*, at p. 24.

⁷ See Cal. Rules of Court, rule 8.60(c)(1).

⁸ See, e.g., *id.*, rule 8.50; rule 8.360(d); rule 8.412(c) and (e).

Item 2 on forms APP-006, CR-126, JV-816, and JV-817 and item 4 on APP-106 have been revised to add the word “default” before “notice.” The committee believes that identifying the notice as a “default notice” would clarify the item.

Item 4 on form APP-006 and item 6 on APP-106 have been revised to add a check box for the applicant to indicate that “the maximum stipulated time has already been used” in explaining why the parties are unable to stipulate to an extension of time.

Item 7 on form CR-126 has been revised to change “jury verdict” to “jury or court trial” to include convictions resulting from a court trial.

In response to a comment, hyperlinks to the applicable rules listing the factors a reviewing court will use in assessing whether good cause exists for an extension of time have been added to item 9 on form APP-006, item 8 on form APP-106, item 10 on form CR-126, item 9 on form JV-816, and item 7 on form JV-817.⁹

Nonsubstantive revisions to each form title have been made to conform with Judicial Council style guidelines. First, the parentheticals in the titles have been replaced with an em dash followed by a description of the case for which the form may be used. Second, the phrase “Civil Case” in the title of form APP-006 has been replaced with “Unlimited Civil Case” to clarify the cases for which that form is to be used. Third, the term “juvenile delinquency case” has been replaced with “juvenile justice case” on form JV-816.

Policy implications

These revisions will help ensure that the extension of time forms submitted in appeals provide the reviewing court with sufficient information to determine whether good cause exists for an extension. These revisions are therefore consistent with the *Strategic Plan for California’s Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment between March 30 and May 12, 2023 as part of the regular spring invitation-to-comment cycle. Eight comments were received: five from organizations of appellate practitioners; one from the Family Violence Appellate Project (FVAP), one from a county bar association, and one from a superior court. The comments largely agreed with the proposed changes stated above but disagreed with one of the proposed revisions circulated for comment. The principal comments are summarized below. A chart with the full text of the comments received and the committee’s responses is attached at pages 19–52.

⁹ Further, to comply with Judicial Council formatting guidelines, all other form and rule references on each form have been hyperlinked.

Item for listing amount of work completed on the appeal

The proposal as circulated for public comment included an item on each extension of time form for the applicant to state the amount of work that had been completed on the appeal at the time of the extension request. It had been suggested that the item would assist the courts in evaluating the extension of time request and would aid the appellate projects in supervising the work of panel attorneys. The committee sought specific comment on this item. In response, the majority of the commenters expressed their disagreement with the inclusion of this item.

The California Lawyers Association Committee on Appellate Courts (CAC) and FVAP noted that the rules require a reviewing court to consider eleven factors in determining whether an applicant seeking an extension of time has shown good cause.¹⁰ CAC and FVAP stated that an item requiring an applicant to list the amount of work done on the appeal would inject a new factor, not contained in the rules, into the inquiry. These commenters recommended keeping the inquiry focused on the factors contained in the rule. The San Diego County Bar Association Appellate Practice Section expressed its belief that the new item is unnecessary in light of the item on the forms requiring the applicant to explain why an extension of time is required. These commenters thus expressed their view that the factors contained in the rule are sufficient for a reviewing court to determine whether good cause exists for an extension of time.

Commenters also raised a variety of practical concerns with this proposed new item. The California Academy of Appellate Lawyers, CAC, Complex Appellate Litigation Group LLP, FVAP, and the San Diego County Bar Association Appellate Practice Section expressed a concern that this item could be read as requiring an attorney to divulge information protected by the attorney-client privilege or work product doctrine. FVAP further stated that the item may confuse self-represented litigants who may struggle to determine the level of detail, or nature of the disclosures, the item requires. Similarly, the Superior Court of San Diego County stated that the proposed item as worded was vague and overbroad. FVAP also expressed the concern that the new item would further complicate the extension of time applications, requiring an attorney to expend additional time to draft the application—time the attorneys may not have if they are seeking an extension.

Finally, the Sacramento County Bar Association Appellate Law Section disagreed with the proposed new item on two grounds. First, it stated that the item could suggest that an attorney must have completed some work on an appeal to be eligible for an extension of time. The commenter noted there may be situations in which an attorney has not yet begun work on an appeal but still requires an extension of time—for instance if the attorney is diligently working to settle the appeal. Second, it stated that the item could make obtaining extensions harder, thus leading to a situation where the hasty filing of briefs is given priority over other public policy considerations.

¹⁰ See Rules 8.63(b) and 8.811(b).

In light of these comments, the committee has modified the proposal to remove this item from each of the extension of time forms. The committee believes that the current item where applicants list the reasons for the extension of time (revised, as stated above, to direct the applicant to address the relevant factors) will provide reviewing courts with sufficient information to determine whether the requested extension is warranted by good cause. Further, to the extent that applicants believe that the work they have done on the appeals is relevant to one of the enumerated factors, they will be free to so indicate in that item. Finally, the committee concluded that, as noted by a commenter, the presence of the item may create the erroneous impression that some work must have been completed on an appeal before an extension of time could be received.

The committee recognizes that the proposal, as circulated with this item, was intended, in part, to aid the appellate projects in supervising the work of the panel attorneys. The committee concludes, however, that the proposal's other revisions, including the requirement that an attorney specifically address the relevant factors in the application when explaining why the extension is needed, will still aid the project's supervision of the panel attorneys.

Requesting information on prejudice to the parties

FVAP opposed revising the item where the applicant states the reasons an extension of time is needed to the extent the revision directs the applicant to address possible prejudice. It indicated that if a party is not claiming prejudice, it should not need to discuss the factor at all in the application. It relies on the fact that although the applicable rules require a court to consider certain factors, they do not require the parties to address them all.

The committee disagrees. Often, the presence or absence of prejudice will be an important consideration for a reviewing court, such as in a criminal case in which a criminal defendant's liberty is at issue. As FVAP recognizes, a court is required to consider the factors included in rule 8.63(b), and the degree of prejudice to any party from a grant or denial of an extension is one of the factors that must be considered. The parties are in the best position to articulate whether and, if so, to what extent there is a risk of prejudice should an extension of time be granted or denied. The committee believes that requiring the party to discuss possible prejudice in the application will aid the reviewing court in determining whether an extension is warranted. To the extent a party does not believe there is a risk of prejudice should an extension of time be granted or denied, the party may simply state that belief.

Whether the committee should consider making the application forms mandatory

In the invitation to comment, the committee sought specific comment on whether the committee should explore making the extension of time application forms mandatory in a future proposal.

FVAP stated that the application forms should be made mandatory, so long as they do not contain an item requiring the applicant to state the work that has been done on the appeal. FVAP noted that local forms are stylized differently and may seek different information. It stated that if a party used their own form, or a less-informative local form, important information including the relevant factors contained in the rules of court may be missed.

By contrast, the Orange County Bar Association and Sacramento County Bar Association Appellate Law Section stated the forms should not be made mandatory because a party may need to provide a more thorough explanation for why an extension of time is needed. The committee notes that the application forms allow an applicant to state the reasons an extension of time is needed either directly on the form or on an attached declaration.

The committee may address whether these forms should be made mandatory in a future proposal as time and resources allow. In any such proposal, the committee will consider whether any revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.

Alternatives considered

As discussed above, the committee considered adding to the extension of time forms an item that would require the applicant to state what work the applicant has completed on the appeal. In light of the comments received, the committee has revised the proposal to remove this item.

The committee also considered the alternative of taking no action but concluded that the proposed revisions will improve the extension of time forms, making them more usable and more likely to provide reviewing courts with the information needed to assess extension of time requests.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal, and there are no apparent barriers to implementation.

Attachments and Links

1. Forms APP-006, APP-106, CR-126, JV-816, and JV-817, at pages 9–18
2. Chart of comments, at pages 19–52

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____		SUPERIOR COURT CASE NUMBER:
APPELLANT: _____ RESPONDENT: _____		DRAFT 07.12.2023 Not approved by Judicial Council
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— UNLIMITED CIVIL CASE		
Notice: Please read Judicial Council form APP-001-INFO before completing this form.		

1. **a.** I (name): _____ request that the time to file (check one)
 - ☐ appellant's opening brief (AOB)
 - ☐ respondent's brief (RB)
 - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see [Cal. Rules of Court](#), rule [8.216](#))
 - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see [Cal. Rules of Court](#), rule [8.216](#))
 - ☐ appellant's reply brief (ARB)
 - ☐ supplemental or other brief
- b.** now due on (date): _____
- c.** be extended to (date): _____
2. I ☐ have ☐ have not received a [Cal. Rules of Court](#), rule [8.220](#) default notice.
3. I have received
 - ☐ no previous extensions to file this brief.
 - ☐ the following previous extensions:

(number of extensions): _____	extensions by stipulation totaling (total number of days): _____
(number of extensions): _____	extensions from the court totaling (total number of days): _____

 Did the court mark any previous extension "no further"? ☐ Yes ☐ No
4. I am unable to file a stipulation to an extension because
 - ☐ the other party is unwilling to stipulate to an extension.
 - ☐ the maximum stipulated time has already been used.
 - ☐ other reason (please specify): _____
5. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ **ARB** ☐ Other
filed on (date): _____
6. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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7. ☐ The trial court has ordered the proceedings in this case stayed until this appeal is decided.

8. ☐ This appeal is eligible for, or has been granted, calendar preference/priority (*cite authority or explain*):

9. The reasons that I need an extension to file this brief are stated

☐ below

☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the parties):

10. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

_____ (TYPE OR PRINT NAME)	 _____ (SIGNATURE OF PARTY OR ATTORNEY)
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Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to (date):

☐ denied

Date:

 _____ (SIGNATURE OF PRESIDING JUSTICE)
--

DRAFT
07.12.2023
Not approved
by Judicial
Council

Instructions

- This form is only for requesting an extension of time to file a brief in an appeal in a **limited civil case**. Note that any rules referenced in this form are from the California Rules of Court.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form **APP-101-INFO**) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form **APP-109-INFO**) and on the **Self-Help Guide to the California Courts** at www.courts.ca.gov/selfhelp-serving.htm.
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

- a. Name of party requesting extension of time to file brief:

- b. Party's contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: _____

Street

City

State

Zip

Mailing address (*if different*): _____

Street

City

State

Zip

Phone: _____ Email: _____

- c. Party's lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: _____ State Bar number: _____

Street address: _____

Street

City

State

Zip

Mailing address (*if different*): _____

Street

City

State

Zip

Phone: _____ Email: _____

Fax: _____

- 2 I am requesting an extension on the time to file:
- ☐ Appellant's opening brief, which is now due on (date): _____
- ☐ Respondent's brief, which is now due on (date): _____
- ☐ Appellant's reply brief, which is now due on (date): _____
- ☐ Supplemental or other brief, which is now due on (date): _____
- 3 I am requesting that the time to file the brief identified in 2 be extended to (date): _____
- 4 I ☐ have ☐ have not received a default notice under rule 8.882(c) from the clerk that this brief must be filed within 15 days.
- 5 The time to file the brief (check all that apply):
- ☐ Has not been extended before.
- ☐ Has been extended before by the stipulation of the parties. The parties stipulated to (number of extensions) _____ totaling (number of days) _____
- ☐ Has been extended before by the court. The court granted (number of extensions) _____ totaling (number of days) _____
- 6 I am not able to stipulate to an extension to file this brief because (check one):
- ☐ The other party is not willing to stipulate to an extension.
- ☐ The maximum stipulated time has already been used.
- ☐ Other reason (please describe the reason): _____
- 7 ☐ This appeal is eligible for calendar preference/priority because (cite authority or explain): _____
- 8 The reason I need an extension to file this brief is (describe the reason you need an extension; please address the rule 8.811(b) factors, including possible prejudice to the parties): _____
- 9 The last brief filed by any party in this case was:
- ☐ The appellant's opening brief, filed on (date): _____
- ☐ The respondent's brief, filed on (date): _____
- ☐ The appellant's reply brief, filed on (date): _____
- ☐ A supplemental or other brief, filed on (date): _____
- 10 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.
- ☐ I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

Type or print your name



Signature of party or attorney

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):		SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:		DRAFT 07.12.2023 Not approved by Judicial Council
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— CRIMINAL CASE		

1. a. I (name): request that the time to file (check one)
- ☐ appellant's opening brief (AOB)
☐ respondent's brief (RB)
☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
☐ appellant's reply brief (ARB)
☐ supplemental or other brief
- b. now due on (date):
- c. be extended to (date):
2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.360(c)(5) default notice.
3. I have received
- ☐ no previous extensions to file this brief.
☐ the following previous extensions:
 (number of extensions): extensions from the court totaling (total number of days):
 Did the court mark any previous extension "no further"? ☐ Yes ☐ No
4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on (date):
5. The record in this case is
- | | Volumes (#) | Pages (#) | Date filed |
|------------------------|-------------|-----------|------------|
| Clerk's Transcript: | | | |
| Reporter's Transcript: | | | |
| Augmentation/Other: | | | |
6. Defendant was convicted of (specify):
7. The conviction is based on a (check one)
- ☐ jury or court trial.
☐ plea of guilty or no contest.

APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following punishment:

9. The defendant ☐ is ☐ is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated

☐ below.

☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form **APP-031A**) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the defendant):

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form **APP-009**) or *Proof of Electronic Service (Court of Appeal)* (form **APP-009E**) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

		
(TYPE OR PRINT NAME)		(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to (date):
☐ denied

Date:

 (SIGNATURE OF PRESIDING JUSTICE)

1. a. I (name): _____ request that the time to file (check one)

☐ appellant's opening brief (AOB)

☐ respondent's brief (RB)

☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)

☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)

☐ appellant's reply brief (ARB)

☐ supplemental or other brief

b. now due on (date): _____

c. be extended to (date): _____

2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.412(d)(1) default notice.

3. I have received

☐ no previous extensions to file this brief.

☐ the following previous extensions:

(number of extensions): _____ extensions from the court totaling (total number of days): _____

Did the court mark any previous extension "no further"? ☐ Yes ☐ No

4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on (date): _____

5. The record in this case is

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s): _____

7. The disposition followed (check one)

☐ a contested hearing.

☐ an admission.

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated

☐ below.

☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the juvenile. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule 8.417.)

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to (date):
☐ denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

DRAFT
07.12.2023
Not approved
by Judicial
Council

- Page 1 of 2

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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6. c. ☐ section 366.28

d. ☐ other appealable orders relating to dependency (*specify*):

7. The reasons that I need an extension to file this brief are stated

☐ below.

☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.

(Please address the Cal. Rules of Court, rule 8.63(b) factors, including possible prejudice to the parties. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to (date):

☐ denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

SPR23-06

Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	N	The California Academy of Appellate Lawyers (“CAAL”) is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	No response necessary.
			CAAL could not reach consensus on the proposal concerning Forms for Extension of Time, Item Number SPR23-06. The debate centered around the part of the proposal adding space to indicate the work done to date on the appeal. Two main competing views emerged:	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			1. That the proposal should be supported because it places accountability for appellate delay on attorneys in tandem with the courts; and	See above response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-06

Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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	Commenter	Position	Comment	Committee Response
			2. That the proposal should be opposed because in some situations, disclosure of the work done to date on the appeal would invade attorney-client privilege and/or work-product privileged information. For example, work on a brief may occasionally be delayed because of tension in the attorney-client relationship, material and substantive disagreements about the case that are being discussed but are not yet resolved, or a client who is not meeting an obligation to the lawyer, such as paying fees.	See above response.
2.	California Lawyers Association, Litigation Section, Committee on Appellate Courts (CAC) by Kelly Woodruff Chair	NI	1. Space for Applicant to Provide Facts Regarding Amount of Work Completed on Appeal In SPR23-06, the AAC proposes to revise Judicial Council forms used by parties to request an extension of time to file a brief. Among the proposed revisions are: (1) adding space for the applicant to indicate the amount of work done to date on the appeal; (2) providing that service of the extension of time request is to “all parties” for Form CR-126 to conform to the forms for civil and juvenile appeals; (3) adding a calendar preference entry to have a party indicate whether the appeal is eligible for an expedited appeal; and (4) several minor typographical changes to the form for clarity.	No response required.
			The CAC disagrees with the proposal to have an applicant provide details regarding the amount	The committee appreciates the feedback. In light of this and other comments received on this point,

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SPR23-06**Appellate Procedure: Forms for Extension of Time** (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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	Commenter	Position	Comment	Committee Response
			<p>of work on the appeal completed to date on the form to request for extension of time to file a brief. First, under California Rules of Court, rule 8.63, the applicant must show good cause to obtain an extension of time. The Rule expressly recognizes that, “[f]or a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. (Cal. Rules of Ct., rule 8.63, subs.(a)(2).) The Rule’s multi-factor test for “good cause” seeks to “balance the competing policies” of accommodating applicants with legitimate grounds for needing more time with the need for “expeditious conduct for appellate business.” (Cal. Rules of Ct., rule 8.63, subd. (a)(3).) To that end, the existing rule—which the Appellate Advisory Committee does not propose to amend—sets forth ten non-exclusive specific factors, along with a “catch-all” provision, for the court to consider in granting an extension. (Cal. Rules of Ct., rule 8.63, subd. (b)(1)-(11).)</p>	<p>the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.</p>
			<p>The “good cause” multi-factor test would be undermined by the current proposal. Currently (and consistent with Rule 8.63), applicants are free to identify the factor(s) most applicable to their situation in requesting an extension of time. But the proposal highlights a single factor, the time that counsel has already spent on the case, for special consideration, which necessarily places more weight on this factor than others. [FN 1 Notably, the work already</p>	<p>See above response.</p>

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SPR23-06**Appellate Procedure: Forms for Extension of Time** (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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			<p>performed on the case is not even a specific factor for “good cause” enumerated under Rule 8.63, subdivision (b).] Applicants would likely be compelled to provide this information on the space provided, even if not required to do so. And courts may be more tempted to reject a well-supported application because they are not satisfied that the applicant has sufficiently progressed on the appellate work—even though “good cause” does not require that the applicant make any specific showing as to the work done on appeal. In short, this would upset the multi-factor balancing test for good cause. For this reason alone, the proposal should be reconsidered and abandoned.</p>	
			<p>Second, given the “good cause” requirement, the additional space for progression of the appeal is superfluous.</p>	<p>See above response.</p>
			<p>Third, there are numerous practical reasons for rejecting this proposal. Attorneys are concerned that providing facts concerning what work has been done could reveal confidential work product or attorney-client privilege. In addition, the proposal may also inadvertently lead to a power imbalance between the applicant, who must divulge work details, and the opposing party, who does not. It may give the opposing party an unfair litigation advantage and potentially undermine the applicant’s settlement position.</p>	<p>See above response.</p>

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SPR23-06

Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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			Finally, the CAC, which is composed of criminal and civil attorneys (including several who focus on family law), believes that none of the forms should include the proposed item on work progress. The reasons set forth above apply to attorneys in all fields, including criminal panel attorneys.	See above response.
			2. Other Proposals The CAC supports the other proposals set forth in SPR23-06. The CAC supports the proposal to “revise the parenthetical on these forms to direct the applicant to address the factors contained in the relevant rule, including prejudice to the parties (forms APP-006, APP106, and JV-817), defendant (form CR-126), or juvenile (form JV-816).” Indeed, the CAC believes this revision, which focuses the applicant on the specific “good cause” factors, comports with its stance above. The CAC believes that the extension form should focus on the “good cause” factors and not overweigh a factor that would be not required to be demonstrated for good cause, such as showing how much work was already done on the appeal. The proposed revisions to the extension request forms would do exactly that.	The committee appreciates the feedback.
			The CAC also supports the rule adding space for the applicant to indicate whether the item may be entitled to calendar preference. The CAC recognizes that attorneys practicing in	The committee appreciates the feedback.

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SPR23-06

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			appellate courts may not always be aware of the rules regarding the types of appeals eligible for calendar preference. This prompt may facilitate parties to research and seek calendar preference. The proposal will also assist the Court of Appeal in determining whether to grant an extension if appeal is eligible for calendar preference.	
			The CAC has no objections to changing Form CR-126 to have parties in criminal appeals serve the request for extension of time on “all parties.”	The committee appreciates the feedback.
			Finally, the CAC supports the minor typographical revisions and changes indicated in SPR23-06.	The committee appreciates the feedback.
3.	Complex Appellate Litigation Group LLP by Ben Feuer, Chairman	AM	The proposed revised extension of time forms ask lawyers to report what work they have completed on an appeal when requesting an extension of time.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an

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SPR23-06

Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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	Commenter	Position	Comment	Committee Response
				extension of time could be received.
			This type of information would appear to be privileged in most situations. The amount of work performed, what type of work has been performed, and the status of an ongoing unfiled brief is all confidential under Rule of Professional Conduct 3-100 and the Business & Profession 6068, at least for private client civil appellate litigation.	See above response.
			There are many reasons a party may not wish to disclose this kind of information to the opposing party, particularly if settlement remains a possibility. In particular clients hoping to settle before expending financial resources on a brief, or having trouble coming up with attorney fees, could be placed in a problematic position by this rule change.	See above response.
			Accordingly, I suggest the committee remove the requirement that attorneys disclose what work they have performed on a brief when requesting an extension of time for an appeal.	See above response.
4.	Family Violence Appellate Project by Cory Hernandez Senior Staff Attorney	NI	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's Invitation to Comment number SPR23-06. We support the recommendation except for item 9 on form APP-006, and have additional recommendations discussed below.	The committee appreciates the feedback and notes the commenters support for the proposal with the exception noted.

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SPR23-06

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			FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors.	No response necessary.
			I. OPTIONAL V. MANDATORY The forms should be mandatory, <i>unless the Council adds item 9 to APP-006, because as discussed below, we think that item is likely to require disclosure of privileged and confidential material, and so if that item were included, the forms should remain optional because we would not want to use APP-006.</i> Local forms are stylized differently and sometimes request different information. The Council's forms are not long and do not require too much information, but they do ask for targeted information and point to California Rules of Court, rule 8.63, which is important	The committee appreciates the feedback. The committee will consider the question of whether the extension of time forms should be made mandatory at a future date, as time and resources allow.

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SPR23-06

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Commenter	Position	Comment	Committee Response
		and may be missed if a party files their request on their own pleading form, or a less-informative local form.	
		Our recommendation extends to forms for stipulation of extending time—which should be addressed by the Council in a future proposal. For instance, the Second District has a local form 2DCA-01 for stipulating to an extension, and there is no apparent reason why a local form is needed. Indeed, the form is formatted in a way that can cause confusion. The items say the brief is extended “by a period of [x] days, so that the time to file the [brief] is extended to [y] days from the filing of the [brief].” Having these two numbers (x and y) so close to each other, and no clear date of when the extended deadline would be, we have seen courts and parties misunderstand which number, x or y, applies to the extension itself.	This recommendation is outside the scope of the instant proposal. The committee will consider this recommendation in the future as time and resources allow.
		II. FORM APP-006 <i>Item 1</i> We would recommend adding amicus briefs here, as amici may need to request an extension. (Cal. Rules of Court, rule 8.200(c)(1).) We recommend this for item 2 on form APP- 106 as well. We would also recommend adding a line break to separate “now due on <i>(date)</i> .” and “be	Amicus briefs are covered by the “supplemental or other brief” option already contained on the form. The committee has made the suggested revision.

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SPR23-06

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			<p>extended to <i>(date)</i>.” because we have seen parties forget to complete both items, and having both items so close together causes confusion.</p> <p>Further, we would recommend dividing item 1 into separate subparts, as we have seen many parties, especially those without counsel, forget to complete the “now due on” and “be extended to” parts. We would suggest having item 1(a) be the name, item 1(b) be the “request that the time to file” with the list of types of briefs, item 1(c) be “now due on,” and item 1(d) be “be extended to.”</p>	<p>The committee has revised item 1 on form APP-006 as well as form CR-126, JV-816, and JV-817 so that these items are divided into sub parts.</p>
			<p><i>Item 8</i></p> <p>There are some cases where the court has already granted calendar preference. There are others where the court has not yet granted preference, but the party may want to file that motion. We would thus suggest dividing item 8 into two subparts with checkboxes for the litigant to select one or the other: 8(a) “The Court granted this appeal calendar preference on []”; and 8(b) “This appeal is eligible for calendar ”</p>	<p>Item 8 has been revised to read “This appeal is eligible for, or has been granted, calendar preference/priority (<i>cite authority or explain</i>):” Item 7 on form APP-106 has been similarly revised.</p>
			<p><i>Item 9</i></p> <p>We STRONGLY OPPOSE adding item 9 on form APP-006, requiring the party to state the work they’ve completed so far. We oppose for</p>	<p>The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to</p>

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SPR23-06

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			many reasons. We oppose this item 8 on form APP-106 as well.	remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			First, this item goes beyond what is required in rule 8.60 or 8.63 of the California Rules of Court; if the Council wants to do rulemaking and amend either rule 8.60 or 8.63, then we suggest going that route instead of doing rulemaking by amending forms. There is already a lot that has to be discussed before requesting an extension of time to file a brief. This means, while a party is trying to prepare their brief and do all their other work, they have to take additional time to write up this application. Adding in more required information just means they must take even	See above response.

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			more time to write up the application, when they're already asking for additional time for the brief. The application should be as simple as possible, to reduce the workload required on parties.	
			Second, adding this item is likely to cause confusion for self-represented litigants. They may justifiably think they have to recount every entry on the appellate docket, and then go into even more detail on how much research they have done, how much they have written, to whom they have spoken for any guidance or advice (e.g., law library), and maybe even attach a copy of their draft brief so far to show what they have done. Indeed, some may think it would be simpler to write in item 9 "See attached" and just attach dozens or more of pages of cases they've read, their draft brief, and so on, thereby adding to the Court's and parties' workloads. The Council likely has better numbers available, but from what I could find, a 2008 study found that about one-third of appellate parties were self-represented. (Cordova, <i>Services for Self-Represented Litigants: What Can Be Done in California's Appellate Courts?</i> (Master's thesis, California State University, Sacramento, 2009) p. 4, tbl. 1.1.) We need to keep self-represented parties in mind for all court forms and rules, including appellate forms and rules.	See above response.
			Third, adding this item is, simply, unnecessary.	See above response.

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			The factors and requirements in rules 8.60 and 8.63 are more than sufficient to allow the Court to make a determination whether to grant an application. If a request for extension is denied and a party wants to try asking again, they can add in more information if needed, but asking for much more information upfront, compared to what is in the rules, should not be required of every party.	
			Fourth, this item is likely to lead to ethical issues. Since this item is added in addition to item 10, it must be asking for different information not already covered by item 10. That is likely to lead people to feel they have to disclose even more information about what they have been doing, and could lead to serious ethical issues. The phrase “work on this appeal” done so far may, and likely will, require disclosing attorney work-product, or other privileged or confidential material. If this item 9 were added, I would strongly suspect that many more attorneys will be filing their own pleading forms to request an extension, using rules 8.60 and 8.63, and not use this form APP-006. Indeed, I do not know if I would feel comfortable using this form APP-006, as I do not fully understand what this item 9 is asking about, and my reading of that item is basically asking me to divulge privileged and confidential information, which I would be unwilling and unable to do. (As such, if item 9 were added, the Council should not make this form APP-006	See above response.

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Commenter	Position	Comment	Committee Response
		mandatory.)	
		<i>Item 10</i> We oppose adding “including possible prejudice to the parties” to the parenthetical directions. We oppose this on item 9 for APP-106 as well. Again, rulemaking should be done through the rules and not court forms. Rule 8.63(b) says that these factors must be considered by the court, but not necessarily addressed by the parties. Rule 8.63(b)(1) does say that, “A party claiming prejudice must support the claim in detail,” but then, by its plain language, that provision suggests if a party is <i>not</i> claiming prejudice, they need not discuss it at all. As such, the directions in item 10 of this form add requirements beyond which are stated in the rule, which seems unnecessary and unduly burdensome.	The committee declines to modify its proposed revision to item 9 on form APP-106 as suggested. Prejudice to the parties if an extension is granted or denied is an important factor that should be addressed. Parties are in the best position to discuss potential prejudice to any party resulting from the grant or denial of an extension. The committee also notes that the Chief Justice’s Appellate Caseflow Workgroup specifically encouraged the council to consider whether the extension of time forms “should require additional information such as . . . the degree to which any extension might prejudice the client or opponent.” The committee believes that directing the applicant to address the any prejudice to the parties will aid the court in determining whether good cause for the extension exists. To the extent an applicant is not claiming prejudice, or does not believe that the other side will be prejudiced by the grant of an extension, the party can simply state that belief.
		Furthermore, we strongly suggest adding a hyperlink to where the California Rules of Court can be found. Self-represented litigants will likely not know how or where to find these rules. And Googling may lead to confusion because they may find outdated rules, or local	The committee agrees and has added a hyperlink to the applicable rules at item 10 on form APP-006, item 9 on form APP-106, item 11 on form CR-126, item 10 on form JV-816, and item 8 on form JV-817.

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SPR23-06

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Commenter	Position	Comment	Committee Response
		rules for specific districts or divisions.	
		<i>Item 12</i> We oppose the Council’s decision not to allow for space to say service is done through TrueFiling. This item cites to rule 8.60(c), but that rule just says the application has to be served on all parties, not that the application has to have a proof of service attached. It would be much simpler to have a checkbox on item 12 that allows parties and attorneys to state they are using the automatically produced proof of service generated by Truefiling. While paper filings may be used by some—and so the other options can be maintained in item 12 for parties attaching a proof of service—we would venture to guess (the Council likely has more accurate and precise numbers) most of these applications are submitted through TrueFiling. Requiring an additional proof of service just adds to the time and work needed to file this application—which is itself already about needing more time for other work on the appeal.	The committee declines to modify item 12 as suggested at this time. It would not be appropriate to reference a specific vendor on a Judicial Council form. Further, the committee believes the form in its current state allows a party to use their own proof of service form or a form automatically generated and attached by an e-filing service. While item 12 (and the related items on the other extension of time forms) states that the applicant “may use <i>Proof of Service (Court of Appeal)</i> (form APP-009) or <i>Proof of Electronic Service (Court of Appeal)</i> (form APP-009E) for this purpose,” these are optional forms and an applicant is not required to use them.
		III. ADDITIONAL SUGGESTION Since this proposal is about extending time to file briefs, we suggest the Council also consider amending rule 8.200(c)(1)—and/or the advisory committee comments to that rule—to clarify the deadline to file an amicus brief in an appeal where a respondent’s brief has not been filed.	This recommendation is outside the scope of the instant proposal. The committee will consider this recommendation at a later date as time and resources allow.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-06**Appellate Procedure: Forms for Extension of Time** (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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		Rule 8.200(c)(1) currently says the amicus brief is due “[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.” The advisory committee comment clarifies that the latter time “includes any authorized extension of the deadline specified in rule 8.212.” To us, this means, if no respondent’s brief is filed, the amicus brief would be due after the reply brief could’ve been filed, if the respondent’s brief were filed. But we have encountered differing interpretations depending on the division or district we are filing in. Discussing a hypothetical may help elucidate the issue.	See above response.
		Say the appellant files their opening brief on date A. The respondent’s brief would be due within 30 days, so by date B (A+30=B). (Rule 8.212(a)(2); while also taking into account whether that last day falls on a holiday or weekend, per rule 1.10.) If no respondent’s brief is filed, the Court would issue a 15-day default notice, setting the deadline at date C (B+15=C). (Rule 8.220.) Then, to us, the reply brief “could have been filed” by date D (C+20=D). (Rule 8.212(a)(3).) Then the amicus would be due 14 days after that, so by date E (D+14=E). (Rule 8.200(c)(1).)	See above response.
		However, we have seen differences with at least the Third and Fourth Districts. For them, in appeals where no respondent’s brief has been	See above response.

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SPR23-06

Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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	Commenter	Position	Comment	Committee Response
			filed, the amicus brief deadline is either <i>right after</i> the respondent's brief was due (Third District) or within 14 days after the <i>respondent's brief</i> could've been filed (Fourth District), even though rule 8.200(c)(1) makes no mention of the respondent's brief. We have received no explanation for how either Court interprets the rule in this way. Perhaps, though, it is because when no respondent's brief is filed, no reply brief "could have been filed," so perhaps they think rule 8.200(c)(1) simply makes no mention of when amicus briefs are due in appeals without respondent's briefs, so they think they need to craft a rule for themselves. (Also, arguably, under this type of interpretation, a Court could say, if no respondent's brief is filed, no amicus brief could be filed, because rule 8.200(c)(1) only mentions amicus briefs when reply briefs were or could have been filed.)	
			So for these (and perhaps other) Courts, if the opening brief is filed on date A, the respondent's brief would be due still by date B, as stated above. Then there would be the 15-day default notice, so the date C would be the same. And at this point, our views differ. For these other courts, if no respondent's brief is filed by date C, the amicus would be due immediately (Third District) or within C+14 days (Fourth District), instead of our reading of the rule, essentially, C+34 days (reaching date E, as noted above). This effectively removes at least	See above response.

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			20 days for amicus to prepare and file their brief.	
			We respectfully request the Council clarify in rule 8.200(c)(1), in the text itself and/or in the advisory committee comments, how the amicus brief deadline is supposed to work with appeals where no respondent's brief is filed. And if the deadline is different/earlier than appeals where a respondent's brief is filed, it could be helpful to explain why that difference exists, in the advisory committee comments.	See above response.
			This ambiguity and confusion make it more difficult to secure amicus support. Even without a respondent's brief on appeal, the heavy burden for demonstrating prejudicial legal error or abuse of discretion is difficult and with the appellant, so having amicus support can be quite useful.	See above response.
			In conclusion, we support much of this proposal but have major disagreements as noted above, and additional suggestions. Should you wish to discuss these comments further, please contact me.	The committee appreciates the feedback.
5.	Orange County Bar Association by Michael A. Gregg President	A	The changes to the forms address the stated purpose and allow a party to say what they have already done to further the appeal.	The committee appreciates the feedback.

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			The forms should not be mandatory because counsel for a party may need to provide a more thorough explanation.	The committee may address whether these forms should be mandatory, or remain optional, at a later date as time and resources allow. If the committee addresses this question in the future, it will consider whether revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.
6.	Sacramento County Bar Association, Appellate Law Section by Brendan J. Begley Co-Chair	N	We, the Sacramento County Bar Association's Appellate Law Section and its members, wish to comment on the revision that would add an item on the application an extension of time to file a brief where the applicant would state the amount of work that has been completed on the appeal at the time of the request for a continuance. As we understand it, there are two stated purposes of this proposed revision; one is to assist the appellate projects in supervising the work of panel attorneys, and the other is to assist the courts in considering these applications.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			We have no comment on how this revision might assist the appellate projects. However,	See above response.

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			we are very concerned that this well-intended revision – as it stands without more clarification on the form – will undermine rather than appropriately address this other stated purpose of assisting the courts in considering these applications. There are two reasons for this concern.	
			First, this revision runs a significant risk of misleading appellate justices who rule on these applications into believing that some amount of work must have been done on an appellate brief in order for a continuance to be warranted; in truth, such a factor is neither paramount nor even listed as an appropriate consideration in the applicable California Rules of Court. Second, this revision runs the risk of reinforcing a widespread and incorrect notion that the hasty filing of an appellate brief is a primary goal while other considerations are somehow secondary or subordinate to that aim.	See above response.
			Accordingly, if the application is to be revised to include this inquiry, we believe it should include more than just this bare question. For example, it could include a parenthetical statement acknowledging that there may be instances when it would be improper to have performed any work up to that point. Similarly, it may include a prompt for the applicant to explain why it would have been inappropriate to have performed such work by that point. Alternatively, rule 8.63 of the California Rules	See above response.

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			of Court could be revised to include a subdivision expressly clarifying the reality that no amount of previous work is actually required (so that applicants may point appellate justices to that rule when answering this inquiry).	
			<p>The Prosed Revision Risks Undermining Vital Public Policies</p> <p>To elaborate, there are many instances where it would be against both a client's best interest and public policy to perform work on a brief. The most obvious (but far from the only) example of when such work should be postponed is when the parties are striving to or have become engaged in settlement discussions. Any requirement (even an implicit one) that work on a brief must be performed leading up to or during settlement negotiations will drive up the cost of settlement while reducing the time counsel can devote to negotiating or achieving preliminary objectives to facilitate settlement; consequently, it will diminish the likelihood of a voluntary resolution.</p>	See above response.
			<p>Of course, the public policy of promoting settlement has been firmly established in California for well over a century. (See McClure v. McClure (1893) 100 Cal. 339, 343 [affirming that that settlement agreements “are highly favored as productive of peace and good will in the community” because they reduce “the expense and persistency of litigation”].) This public policy covers both pre-trial</p>	See above response.

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		settlements and post-judgment settlements. (See <i>Neary v. Regents of Univ. of California</i> (1992) 3 Cal. 4th 273, 278 [explaining that “appellate courts have enough to do without deciding cases the parties no longer wish to litigate”].)	
		Adopting this revision without appropriate clarification also runs the significant risk of further cementing the existing and growing problem of having an excessive number of appellate justices operating under the mistaken impression that the expedient preparation of appellate briefs is the paramount goal. Well-established public policies confirm that such expediency should not be mistaken as a primary objective.	See above response.
		For example, public policy acknowledges that “[t]he effective assistance of counsel to which a party is entitled” requires providing “adequate time for counsel to prepare briefs or other documents that fully advance the party’s interests.” (Cal. Rules of Court, rule 8.63(a)(2).) Honoring this public policy benefits not only appellate litigants but also appellate courts by facilitating “the preparation of accurate, clear, concise, and complete submissions that assist the courts.” (Ibid.)	See above response.
		Public policy also demands that a “client’s right to [be represented by her] chosen counsel” should be facilitated whenever possible.	See above response.

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			<p>(People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc. (1999) 20 Cal.4th 1135, 1145.) Attorneys who focus on appeals often (and quite sensibly) are the top choice of an existing or prospective client to handle an appeal, but many of those appellate attorneys are stretched thin (e.g., by settlement negotiations in the existing case or obligations in other cases or illness or other personal circumstances). Those lawyers will be stretched too thin to accept a new appeal or to continue handling an existing one if briefing deadlines become too immovable or needless work on an appellate brief is implicitly required but cannot be performed due to other valid constraints. Thus, prioritizing the hasty preparation of briefs harms rather than facilitates the right to be represented by chosen counsel, and it does so without any compelling reason.</p>	
			<p>Promoting the Needless or Hasty Preparation of Briefs is Unadvisable</p> <p>Indeed, there is no compelling public policy served by demanding the hasty (and frequently needless and counter-productive) preparation of appellate briefs. Instead, public policy expressly mandates that that briefing deadlines “should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice.” (Cal. Rules of Court, rule 8.63(a)(1).)</p>	See above response.

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			The proper metric should be used to measure whether appellate business is being carried out in an appropriately expeditious fashion; at the same time, the expeditious conduct of appellate business should not be confused with arbitrarily rushed conduct. In the vast majority of cases, the expeditious conduct of appellate business should be measured from when briefing concludes to when the matter is decided, rather than from when the notice of appeal is filed to when the matter is decided. Of course, some cases that have unusual urgency should be measured differently given their unique circumstances, but that is not the norm.	See above response.
			Requiring more cases to become fully briefed more quickly indisputably adds to the Court of Appeal's existing caseload and, in some courts, backlog. With more and more fully briefed cases awaiting decision and no more justices to decide them, it obviously will take longer for appellate courts to render a decision in many of those fully briefed cases that await decision. Thus, adopting an approach that will result in more briefs being filed sooner and fewer settlements being reached will negatively impact the metric of measuring the time from when a given case is fully briefed to when it is decided. In other words, this approach will measurably diminish the expeditious conduct of appellate business.	See above response.
			The alternative is unthinkable; i.e.,	See above response.

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			compromising the quality of the decisions in those burgeoning cases that are fully briefed and awaiting decision in order to improve the stats of both the improper and the proper metric. In this regard, “the expeditious conduct of appellate business” should not be confused with arbitrarily rushed conduct in connection with appellate business. (Cal. Rules of Court, rule 8.63(a)(1).) That is especially true when the rush to serve an inapplicable metric (i.e., the time between the notice of appeal and the decision) creates tension with meeting the aim of the proper metric (i.e., the time from when a case is fully briefed to the decision).	
			Public confidence in our appellate courts will be greatly damaged if those courts proclaim (or are forced to admit) that they sped up the average time between the fling of the notices of appeal and the resulting decisions while either 1) lengthening the average span of time between the cases being fully briefed and decided or 2) maintaining or even shortening that average timespan without taking any step to maintain (much less improve) the quality of the decisions in those rushed cases. The aim of being expeditious does not require imposing arbitrary conditions that create the reality of being rushed.	See above response.
			The Existing Applicable Rules Should be Honored In sum, the top two considerations to	See above response.

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		determine whether an application for an extension of time should be granted are 1) the degree of prejudice to the parties and 2) whether the established factors demonstrate good cause for the requested continuance. (Cal. Rules of Court, rule 8.63(b).) The amount of work already done on a brief is simply not an express factor; in many cases it is not a highly significant factor, and often it is not even an appropriate factor. Public confidence in the efficient administration of appellate justice is diminished, rather than bolstered, by reinforcing misguided notions that a hasty brief is the main objective while other well-established considerations (especially those that are mandated by the applicable rule or advance public policies) are subordinate.	
		Finally, because some situations require more elaborate explanation than the space on the application form (or even the related declaration form) provides, we do not believe the committee should explore making these application forms mandatory in a future proposal. The controlling rule already expressly requires any party who seeks a continuance to address the appropriate factors. (Cal. Rules of Court, rule 8.60(c)(2).) It is difficult for us to see what purpose would be served by forcing a party who needs a continuance to use a form that may well diminish that party's ability to address the pertinent factors adequately.	The committee may address whether these forms should be mandatory, or remain optional, at a later date as time and resources allow. If the committee addresses this question in the future, it will consider whether revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.

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			Thank you for considering our comments on this important question and for your efforts to improve the quality and efficiency of appellate justice.	The committee appreciates the feedback.
7.	San Diego County Bar Association, Appellate Practice Section by John T. Sylvester, Certified Legal Specialist – Family Law	NI	<p>The Appellate Practice Section of the San Diego County Bar Association (APS) supports some but not all of the proposed changes to Judicial Council forms regarding extensions of time to file briefs. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we submit the following comments.</p> <p>1. APS does not agree with adding an item to state the amount of work completed on the appeal.</p> <p>APS’s main comment addresses the proposed requirement of having the attorney-applicant specifying the work done to date on the appeal. Adding this as a requirement could require the attorney applicant to either divulge information that is protected attorney work product or violates client confidentiality. Thus, the attorney would be left with a Hobson’s choice: (1) decline to file an extension request to protect these duties but in doing so violate their duty of reasonable diligence, or (2) file an extension request without this required information and risk denial of the extension request, also violating their duty of reasonable diligence.</p>	<p>The committee appreciates the feedback.</p> <p>In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.</p>
			An extension request may be necessary to allow	See above response.

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			for further communication, research, and other legal purposes, making the request an act of reasonable diligence dedicated to the interest of the client. (Rules Prof. Conduct, rule 1.3.) Such requests are often considered reasonably standard by professional norms. (See <i>Strickland v. Washington</i> (1984) 466 U.S. 668, 688 [“proper measure of attorney performance remains simply reasonableness under prevailing professional norms.”].)	
			Currently, the extension request forms contain a section that allows the applicant to explain his or her need for additional time to file a brief. Attorneys should use this box already to identify and explain the “good cause” for an extension when appropriate. (See Rules of Court, rule 8.63(b) [addressing factors for good cause to grant an extension of time].) Thus, requiring a separate box for “work already completed” is unnecessary.	See above response.
			As proposed, item 9 reads: “I have completed the following work on this appeal.” Addressing work done could require reference to an attorney’s impressions, conclusions, opinions, legal research, or theories, which is protected by the attorney work product privilege under Code of Civil Procedure, section 2018.030. Further, an attorney is statutorily required to maintain inviolate the confidence of his or her client. (Bus. & Prof. Code, § 6068, subd. (e)(1).) Rule 1.6 of the Rules of Professional Conduct	See above response.

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		similarly prohibits an attorney from revealing information under Business and Professions Code section 6068, subdivision (e)(1).	
		The proposed change could be read to suggest that the attorney should expose information protected by the work-product privilege and violate the duty of client confidentiality. Therefore, a problem could arise if the attorney must communicate with a client before deciding whether there are issues that merit an appeal or if the client wants to abandon the appeal. Providing this information in an extension request could present the case to the court and opposing counsel as having a weak argument or otherwise potentially expose a weakness in the case.	See above response.
		For example, an attorney may need additional time to communicate with a client or trial counsel while deciding whether to file a brief under <i>Anders v. California</i> (1976) 386 U.S. 738, <i>People v. Wende</i> (1979) 25 Cal.3d 436, <i>In re Phoenix H.</i> (2010) 47 Cal.4th 835, <i>In re Sade C.</i> (1996) 13 Cal.4th 952, or <i>Conservatorship of Ben C.</i> (2007) 40 Cal.4th 529. Communications regarding grounds for filing one of the above briefs necessarily implicates client confidentiality. “As codified in Evidence Code section 954, the attorney-client privilege protects from disclosure confidential communications between lawyer and client.” (<i>City of San Diego v. Superior Court</i> (2018) 30	See above response.

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		Cal.App.5th 457, 466.)	
		Additional information from such communication may bring to light an issue that should be briefed or give rise to whether a habeas writ petition must be filed in conjunction with a brief. Such communication could be required to obtain authorization from a client as to whether to proceed with an appeal at all, depending on whether it is in the best interest of the client. Requiring the attorney applicant to indicate specifically what work product was completed would place the attorney in the unfair position of either not filing a necessary extension request, filing an extension request that may be perceived to be inadequate, or violating duties related to client confidentiality and work product.	See above response.
		Moreover, should such statements be required, and if an attorney chooses not to request an extension to avoid disclosure of work product and to protect client confidentiality, this could lead to undue delays in the case and related appellate court procedures. This is because such extension requests prevent further delays later in the case such when additional information comes to light that requires a brief to later be stricken or an entire appeal withdrawn. Therefore, an extension request may prevent unnecessary work, time, and expense by the court or opposing counsel.	See above response.

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			APS recognizes that additional time requested may seem more than warranted but highlights how there may be underlying reasons for which an attorney is precluded by statute, rule, and general standards of professional conduct to divulge to the court or opposing counsel. Thus, information about work done should not be required as reasons needed for additional time. Moreover, sometimes an extension is sought because no work has been able to be done due to illness, press of business, or other reasons, and making progress on the brief is not a requirement of the good cause showing per rule 8.63.	See above response.
			Due to the problems caused by these reasons for needing an extension, APS recommends the Council decline to add the item regarding work already completed to the civil, criminal, and juvenile extension request forms.	See above response.
			2. APS agrees with amending the proof of service statement. APS agrees that the proof of service statement on form CR-126 should be revised to match the other applications for extension of time. This would make this form consistent with the other forms for requesting an extension of time to file a brief and prevent confusion as to which parties must be served.	The committee appreciates the feedback.
			3. APS's suggested corrections and additions.	

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			<p>The APS suggests two additional technical amendments:</p> <p>a. In its present format, in the address box of the caption, the fillable field for the attorney applicant' State Bar Number automatically enters a comma in the middle of the state bar number. APS recommends reformatting the State Bar Number field to stop adding a comma.</p>	<p>The State Bar Number field has been corrected on APP-006, APP-106, CR-126, JV-816, and JV-817.</p>
			<p>b. Currently, there is a section described as "last brief filed by any party." Often this form is used prior to filing any briefs. For this reason, the APS proposes these boxes either be "un-clickable" or to add a box indicating something to the effect of: "no brief has been filed yet."</p>	<p>The committee declines to revise the items. In cases where an appellant is seeking an extension of time before any brief has been filed, the committee envisions that this item would simply not be filled out.</p>
			<p>Other than objecting to the including of "work completed" on the extension form, and the additional suggestions highlighted above, it is APS's position that the Judicial Council's proposal appropriately addresses the stated purpose of the proposed rule.</p> <p>Thank you for considering our feedback. If you have any further questions, you may contact Lisa Cannon, Appellate Practice Section Chair, at: ecannon@sandiego.edu</p>	<p>The committee appreciates the feedback.</p>
8.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	<p>Request for Specific Comments</p> <ul style="list-style-type: none">Does the proposal appropriately address the stated purpose? Yes.	<p>The committee appreciates the feedback.</p>

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		<ul style="list-style-type: none"> Should the committee explore making the extension of time application forms mandatory in a future proposal? No. 	The committee appreciates the feedback. The committee may address this question in the future as time and resources allow.
		<ul style="list-style-type: none"> Regarding the proposed new item on each form for the applicant to describe the work that has been completed on the appeal: <ul style="list-style-type: none"> Should this item be worded differently? Yes. The language is vague and overbroad. Should this item be included on the civil forms as well as the criminal and juvenile forms? No. Should it be combined with the following item on the forms in which the applicant describes the reasons for needing an extension? Yes. 	In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
		<ul style="list-style-type: none"> Should the application forms in criminal, juvenile, and limited civil cases include an item regarding calendar priority/preference? Yes. 	The committee appreciates the feedback.
		<ul style="list-style-type: none"> Would the proposal provide cost savings? If so, please quantify. No. 	The committee appreciates the feedback.
		<ul style="list-style-type: none"> 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 	The committee appreciates the feedback.

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			management systems? Minimal or none.	
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee appreciates the feedback.
			• How well would this proposal work in courts of different sizes? This proposal would work well in the San Diego Superior Court (a large court).	The committee appreciates the feedback.