



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 24, 2017

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Title

Appellate Procedure: Expedited Review of  
Certain Orders Denying Motions to Compel  
Arbitration

Agenda Item Type

Action Required

Effective Date

July 1, 2017

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rules 8.710–8.717;  
amend rule 8.104

Date of Report

March 9, 2017

Recommended by

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

Contact

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### Executive Summary

Recent legislation requires the Court of Appeal to issue its decision in cases involving the review of certain orders denying motions to compel arbitration no later than 100 days after the notice of appeal is filed. The legislation also requires the Judicial Council to adopt rules to implement this requirement and to establish a shortened notice of appeal period in these cases. The rules proposed by the Appellate Advisory Committee in this report are intended to fulfill this legislative obligation.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective July 1, 2017:

1. Adopt new rules 8.710–8.717 of the California Rules of Court to establish the procedures for expedited appellate review of superior court orders dismissing or denying a petition to compel arbitration involving a claim under the Elder Abuse and Dependent Adult Civil

Protection Act in which a party has been granted a preference under Code of Civil Procedure section 36;

2. Amend rule 8.104 of the California Rules of Court to add a cross-reference to proposed new rule 8.712; and
3. Amend the advisory committee comment to rule 8.104 to include information about the cases governed by rule 8.712 and the other rules that create exceptions to the normal notice of appeal period.

The text of the proposed rules is attached at pages 10–16.

### **Previous Council Action**

The Judicial Council opposed Senate Bill 1065, the bill that established the expedited review procedure for these orders denying motions to compel arbitration. This opposition was based on the council’s longstanding history of opposing legislation that establishes calendar preferences, as well as specific concerns about the feasibility of the 100-day time frame established by this statute and the likely adverse impact of this extremely tight time frame on other matters pending in the Court of Appeal, including those with their own calendar preferences.

Although the council has not previously considered rules to implement this legislation, it has adopted rules to implement other legislation mandating expedited review, including recent legislation relating to certain cases under the California Environmental Quality Act (CEQA). The Judicial Council adopted rule 8.497 effective July 1, 2012 to implement Assembly Bill 900 (Stats. 2011, ch. 354), which created an expedited judicial review procedure in the Court of Appeal for CEQA cases relating to “environmental leadership” projects. In 2013, the Legislature adopted legislation that changed the expedited CEQA review procedure in environmental leadership cases and also established expedited review in cases relating to a new sports arena in Sacramento (Senate Bill 743; Stats. 2013, ch. 386). SB 743 required the Judicial Council to adopt rules providing for the resolution of these cases, including any potential appeals, within 270 days of certification of the record of proceedings (Pub. Resources Code, §§ 21168.6.6 and 21185). The Judicial Council responded to SB 743 with the adoption of rules 3.1365, 3.2220–3.2231, and 8.700–8.705 and the repeal of rule 8.497, effective July 1, 2014. At its December 2016 meeting, the council amended rules 8.700–8.705, effective January 1, 2017, to implement new legislation making the expedited review procedures applicable to CEQA challenges to “capital annex” projects. (Senate Bill 836; Stats. 2016, ch. 31.)

### **Rationale for Recommendation**

On September 25, 2016, the Governor signed into law Senate Bill 1065. This legislation enacted new Code of Civil Procedure section 1294.4, which provides for expedited appellate review of superior court orders dismissing or denying a petition to compel arbitration involving a claim

under the Elder Abuse and Dependent Adult Civil Protection Act in which a party has been granted a preference under Code of Civil Procedure section 36. Under this new statute, the Court of Appeal is required to issue its decision no later than 100 days after the notice of appeal is filed and may grant extensions of time only if good cause is shown and the extension will promote the interests of justice. The legislation requires that, on or before July 1, 2017, the Judicial Council adopt rules to implement these statutory requirements and to establish a shortened notice of appeal period for these cases.

Proposed new rules 8.710–8.717 are intended to fulfill the Judicial Council’s statutory obligation to adopt rules to implement this legislation. These proposed new rules are generally modeled on existing rules 8.700–8.702, the portion of the CEQA rules described above that implement the statutory requirements for expedited appeals. There is an important difference in the underlying statutes, however, that necessitated differences between proposed new rules 8.710–8.717 and current rules 8.700–8.702. Under the relevant CEQA provisions, the council was required to adopt rules providing for the resolution of these actions or proceedings, including any potential appeals therefrom, within 270 days of certification of the administrative record (Pub. Res. Code, §§ 21168.6.6 and 21185). Dividing this time equally between the trial and appellate courts results in approximately 135 days for resolution of the CEQA appeals under rules 8.700–8.702. As noted above, new Code of Civil Procedure section 1294.4 provides for resolution of appeals of these arbitration matters within 100 days, giving the court 35, or approximately one third, fewer days in these matters. As a result, in an effort to meet the time for issuance of a decision specified in section 1294.4, the time frames under proposed new rules 8.710–8.717 are even shorter for some of the steps in the appellate process than the extremely short deadlines under current rules 8.700–8.702. It is also important to note that section 1294.4 permits extensions of time “if good cause is shown and the extension will promote the interests of justice,” so, depending on the circumstances, in an individual case some of the deadlines specified in the proposed rules may be extended, causing the resolution of the case to extend beyond the 100-day period specified in the statute.

Among other things, proposed new rules 8.710–8.717 address the following:

- ***Electronic service and filing.*** Proposed rule 8.711(a) would require that documents be served electronically on parties who have consented to electronic service or who are otherwise required by law or court order to accept electronic service. It would also provide that all parties represented by counsel are deemed to have consented to electronic service and that all self-represented parties may so consent. In addition, the proposed rule would also require that all parties except self-represented parties file all documents electronically except as otherwise provided by these rules, the local rules of the reviewing court, or court order and would permit a court in one of these appeals to order a self-represented party to file documents electronically. These provisions are different from the existing CEQA rules, reflecting, in part, recent changes to the general rules on electronic filing and service in the appellate courts.

- ***Notice of appeal period.*** As noted above, section 1294.4 specifically requires that the Judicial Council adopt rules to establish a shortened notice of appeal period for these cases. Proposed new rule 8.712(b) would require that a notice of appeal in these cases be filed within 20 days from service of notice of entry of the order being appealed. This would be 40 days, or two-thirds, shorter than the normal 60-day period for filing a notice of appeal in an unlimited civil case. Rule 8.104, which establishes the normal notice of appeal period, would also be amended to alert rule users to the fact that the normal 60-day notice of appeal period does not apply in these cases and its accompanying advisory committee comment would be amended to provide a description of the cases governed by rule 8.712, as well as descriptions of the other types of cases with atypical notice of appeal periods.

Note that the e proposed 20-day notice of appeal period is longer than the notice of appeal period under the existing CEQA rules. Under both sets of rules, the time from service of notice of entry of the judgment or order being appealed until the time for filing the appellant's opening brief is a total of 30 days, but this period is divided up differently under the two sets of rules. Under the existing CEQA rules, the notice of appeal must be filed within 5 days from service of notice of entry of the judgment and the deadline for filing the appellant's opening brief is 25 days from the filing of the notice of appeal. By contrast, under proposed new rule 8.712, the time for filing the notice of appeal would be 20 days from service of notice of entry of the judgment, and under proposed new rule 8.715 the deadline for filing the appellant's opening brief would be within 10 days of the filing of the notice of appeal. The committee concluded that providing for a longer notice of appeal period in the cases governed by section 1294.4 would provide greater flexibility within the 100-day period provided by the statute and address some issues about overlap with the period for filing motions for reconsideration in the trial courts, while still giving the appellant a total of 30 days to prepare an opening brief.

- ***Extensions of time to appeal.*** Like current rules 8.108 and 8.702(c), proposed rule 8.712(c) would extend the time to file a notice of appeal when a motion to reconsider the order being appealed is timely filed and denied or when a cross-appeal is filed. Like current rule 8.702, the proposed rule provides for a much shorter extension of the appeal period than does rule 8.108: 5 court days, rather than 30 days in the case of the motion or 20 days in the case of a cross-appeal. Unlike rule 8.702, proposed rule 8.712 does not provide for extensions for motions for a new trial or to vacate a judgment because these motions do not appear applicable in the case of orders denying a motion to compel arbitration.
- ***Record on appeal.*** Like current rule 8.702(d), proposed rule 8.713 makes several changes to the general rules relating to records on appeal, including requiring that:
  - Parties proceed by appendix in lieu of using a clerk's transcript, which reduces the burden on the trial court associated with preparing the record in these cases and eliminates the possibility of delay associated with preparation of a clerk's transcript

- The appellant's notice designating the record be filed with the notice of appeal, which is 10 days earlier than in regular appeals
- A reporter's transcript be used if the appellant wants a record of the oral proceedings (in other appeals, appellants have additional options, such as an agreed statement, that can be used instead of a reporter's transcript.)
- The reporter's transcript be prepared within 10 days after the court notifies the reporter to prepare the transcript, which is 20 days earlier than in regular appeals

Proposed rule 8.713(b)(4) also includes a procedure modelled on rule 8.153 for a party who has not purchased a copy of the record to borrow the appellant's copy.

Unlike current rule 8.702(d), proposed rule 8.713 does not include a separate provision addressing what happens if an appellant files an application for payment of a reporter's transcript costs out of the Transcript Reimbursement Fund. The committee concluded that such applications were much less likely in the cases covered by section 1294.4 than in CEQA cases. However, if such an application is filed in one of these appeals, proposed rule 8.713 includes a cross-reference to rule 8.130, which addresses Transcript Reimbursement Fund applications.

- ***Briefs on appeal.*** Proposed rule 8.715 establishes a very quick briefing schedule. Unless otherwise ordered by the reviewing court:
  - Appellant is required to serve and file the opening brief within 10 days after the notice of appeal is served and filed (as noted above, this timing is shorter than under existing rule 8.702(f));
  - Respondent is required to file his or her brief within 25 days after the appellant files its opening brief; and
  - Appellant is required to file any reply brief within 15 days after respondent files its brief.

Similar to the CEQA rules, proposed new rule 8.715(c) provides that if the parties stipulate to extend the time to file briefs, the 100-day period will be extended for the length of the stipulated extension. Subdivision (d) of this rule would also provide that if a party fails to timely file a brief, the party will have only 2 days from service of notice by the clerk to cure that default or sanctions may be imposed.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

The proposed rules were circulated for public comment between December 5, 2016, and January 11, 2017. Nine individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposal, four agreed with the proposal if modified, and two did not indicate a position on the proposal overall but provided comments. A 10th person submitted input to the comment box, but the input was not about this proposal. The full text of the

comments received on the proposal and the committee's responses are set out in the attached comments chart, at pages 17–36. The main substantive comments and committee's responses are also discussed below.

***Notice of appeal period.*** In the invitation to comment, the committee specifically sought comments on whether the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief was preferable to the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief. Five commentators provided specific input on this question:

- Two commentators expressed a preference for the 5-day notice of appeal period:
  - One commentator expressed support for making the briefing periods for appellants and respondents similar and suggested that appellants might want to file the notice of appeal early for purposes of obtaining a stay.
  - One court expressed a desire for the rules to be similar to those for the expedited CEQA review.
- One Court of Appeal that commented suggested shortening the notice of appeal period to 10 or 15 days in order to shorten the overall period for completing these cases.
- Two commentators expressed a preference for the proposal as circulated, with the longer notice of appeal period:
  - One noted the jurisdictional nature of the deadline for filing the notice of appeal and expressed concern about the likelihood of inadvertent defaults when the notice of appeal period is very short.
  - The other, a county bar association, simply expressed that the proposed approach is preferable.

Although, in terms of numbers, the weight of the comments favors lengthening the notice of appeal period, the committee is recommending adoption of the rule as circulated—with the 20-day notice of appeal period—for the following reasons:

- As noted by one commentator, because the notice of appeal period is jurisdictional, making the notice of appeal period shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether.
- Under Code of Civil Procedure section 1008, the deadline for filing a motion for reconsideration is “within 10 days after service upon the party of written notice of entry of the order,” so a 5-day or even 10-day notice of appeal period will create potential conflicts with the deadline for filing a motion for reconsideration in the trial court.
- Shortening the notice of appeal period and lengthening the briefing time will not actually increase the overall length of time available for the appellant to prepare its opening brief.

- Although shortening the notice of appeal period and lengthening the briefing time is likely to reduce the number of cases in which the reporter's transcript is unavailable when the appellant's opening brief is due (necessitating filing a later, final brief that includes citations to the transcript), these adjustments are unlikely to eliminate this issue altogether because the deadlines will remain very tight.
- Increasing the time for filing the opening brief would necessitate reducing the already short time that either the parties have for briefing or the Court of Appeal has to consider the matter and issue its decision in these cases.

One commentator raised a legitimate concern about appellants who may wish to file a notice of appeal quickly for purposes of obtaining a stay. Under the proposal, such an appellant would have a substantially shorter time to file the opening brief. However, such an appellant could still seek a stay in the trial court even if the notice of appeal was not yet filed.

***Extensions of the notice of appeal period.*** As circulated for public comment, proposed rule 8.712(c) mirrored provisions in rules 8.108 and 8.702 that provide extensions on the time for filing the notice of appeal when certain post-trial motions are filed in the trial court, including motions for a new trial or to vacate judgment. Five commentators provided input on this provision:

- Three commentators expressed concern about or suggested eliminating all or part of this provision:
  - One recommended eliminating this provision entirely, indicating that motions for new trials and motions to vacate judgments are inapplicable to orders denying motions to compel arbitration.
  - A Court of Appeal that commented also indicated that the use of a motion for new trial or to vacate judgment is very uncommon following the denial or dismissal of a motion to compel arbitration. The court also expressed concern over the lack of guidance about how the courts are to handle conflicts between the deadlines for the filing of the notice of appeal and these post-trial motions (in the proposal that was circulated, the potential for these conflicts was noted in the advisory committee comment to the rule).
  - A presiding justice in another Court of Appeal expressed concern that these extensions of the time for filing the notice of appeal are inconsistent with the intent of the legislation that these appeals be disposed of within 100 days.
- Two commentators expressed support for including a provision that addresses the time for filing a cross-appeal.

Based on these comments and further research, the committee revised the proposed rules to delete the provisions regarding motions for new trials and motions to vacate judgments as

inapplicable in appeals involving motions to compel arbitration. The committee also deleted the related advisory committee comment that addressed these provisions.

The committee retained the provision addressing extensions when a motion for reconsideration is filed, however. Case law indicates that motions for reconsideration can be made following an order on a petition to compel arbitration. (See *Blake v. Ecker* (2001) 93 Cal.App.4th 728, 739 [disapproved on other grounds in *Le Francois v. Goel* (2005) 35 Cal.4th 1094, fn. 5], and Knight et al., Cal. Prac. Guide: Alternative Dispute Resolution (The Rutter Group 2016) ¶ 5:335.6.) The legislation enacting new Code of Civil Procedure section 1294.4 did not eliminate the right to seek reconsideration of these rulings. The committee therefore concluded that it would be best for the proposed rules to follow the model of rule 8.108 in clarifying the impact on the time for filing a notice of appeal in the event that such a motion is filed in the trial court. Because the legislation is focused on limiting the time spent on the appellate process, not the trial court process, the committee's view is that including such a provision is inconsistent with the intent of the legislation.

Based on the comments, the committee also retained the provision that gives guidance about the time to file a cross-appeal.

### **Alternatives**

Because adoption of rules to implement Code of Civil Procedure section 1294.4 is mandated by statute, the committee did not consider the option of not proposing implementing rules. It did, however, consider several alternatives with respect to particular aspects of the proposed rule.

The committee considered how much of the 100-day period permitted by section 1294.4 to allocate to various steps in the appellate process. For example, the committee considered setting a 5-day notice of appeal period, similar to that in the CEQA rules, and then giving a longer time for filing the appellant's opening brief. As discussed above, the committee ultimately decided that the approach of having a somewhat longer notice of appeal period and shorter opening brief deadline was preferable. This conclusion is in part because this approach will provide greater flexibility in scheduling the remaining briefing while still allowing time for the court's deliberations during the statutorily mandated 100-day period for the appeal.

The committee also considered what the best approach would be to provide rule users with adequate notice regarding the situations in which the standard 60-day notice of appeal period does not apply. The proposed amendments to rule 8.104 would add a cross-reference to proposed new rule 8.712, and the proposed amendments to the accompanying advisory committee comment would provide information about the types of proceedings that rule 8.712 covers, as well as information about the other rule provisions currently cross-referenced in rule 8.104. The committee considered the alternative of adding more descriptive information to the text of the rule but decided against this approach because it would make the rule text longer and potentially more difficult to understand.



The committee also considered and sought public comments on whether it is necessary to include provisions specifically addressing the potential effect of a cross-appeal on the time to file a notice of appeal and Transcript Reimbursement Fund applications. As discussed above, the committee decided to keep the provision relating to cross-appeals and, given the cross-reference to rule 8.130, decided that it is not necessary to include a provision specifically addressing Transcript Reimbursement Fund applications.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementing Code of Civil Procedure section 1294.4 will generate costs and operational impacts for the Courts of Appeal in which the proceedings governed by this statute are filed. The committee does not anticipate that these proposed rules will add to the burden created by this new statutory procedure; rather, they should lessen the impact by clarifying the procedures.

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.104 and 8.710–8.717, at pages 10–16
2. Chart of comments, at pages 17–36
3. Link A: Senate bill 1065, as adopted by the Legislature and approved by the Governor, [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1065](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1065)

Rules 8.710–8.717 of the California Rules of Court are adopted and rule 8.104 is amended, effective July 1, 2017, to read:

**Rule 8.104. Time to appeal**

**(a) Normal time**

- (1) Unless a statute, or rules 8.108, ~~or rule 8.702, or 8.712~~ provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A)–(C) \* \* \*

(2)–(3) \* \* \*

**(b)–(e) \* \* \***

**Advisory Committee Comment**

**Subdivision (a).** This subdivision establishes the standard time for filing a notice of appeal and identifies rules that establish very limited exceptions to this standard time period for cases involving certain postjudgment motions and cross-appeals (rule 8.108), certain expedited appeals under the California Environmental Quality Act (rule 8.702), and appeals under Code of Civil Procedure section 1294.4 of an order dismissing or denying a petition to compel arbitration (rule 8.712).

Under subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk served the document. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(A) begins to run.

Subdivision (a)(1)(B) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(B) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the requirement is reiterated here because of the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

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

1 **Chapter 12. Appeals Under Code of Civil Procedure Section 1294.4 from an Order**  
2 **Dismissing or Denying a Petition to Compel Arbitration**

5 **Rule 8.710. Application**

7 **(a) Application of the rules in this chapter**

9 The rules in this chapter govern appeals under Code of Civil Procedure section 1294.4  
10 from a superior court order dismissing or denying a petition to compel arbitration.

12 **(b) Application of general rules for civil appeals**

14 Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to  
15 civil appeals, apply to appeals under this chapter.

18 **Rule 8.711. Filing and service**

20 **(a) Method of service**

22 Except as otherwise provided by law:

24 (1) All documents must be served electronically on parties who have consented to  
25 electronic service or who are otherwise required by law or court order to accept  
26 electronic service. All parties represented by counsel are deemed to have consented  
27 to electronic service. All self-represented parties may so consent.

29 (2) All documents that the rules in this chapter require be served on the parties that are  
30 not served electronically must be served by personal delivery, express mail, or other  
31 means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013  
32 and reasonably calculated to ensure delivery of the document to the parties not later  
33 than the close of the business day after the document is filed or lodged with the  
34 court.

36 **(b) Electronic filing**

38 In accordance with rule 8.71, all parties except self-represented parties are required to file  
39 all documents electronically except as otherwise provided by these rules, the local rules of  
40 the reviewing court, or court order. Notwithstanding rule 8.71(b), in appeals governed by  
41 this chapter, a court may order a self-represented party to file documents electronically.

1 **(c) Exemption from extension of time**

2  
3 The extension of time provided in Code of Civil Procedure section 1010.6 for service  
4 completed by electronic means does not apply to any service in actions governed by these  
5 rules.

6  
7  
8 **Rule 8.712. Notice of appeal**

9  
10 **(a) Contents of notice of appeal**

11  
12 (1) The notice of appeal must state that the superior court order being appealed is  
13 governed by the rules in this chapter.

14  
15 (2) Copies of the order being appealed and the order granting preference under Code of  
16 Civil Procedure section 36 must be attached to the notice of appeal.

17  
18 **(b) Time to appeal**

19  
20 The notice of appeal must be served and filed on or before the earlier of:

21  
22 (1) Twenty days after the superior court clerk serves on the party filing the notice of  
23 appeal a document entitled “Notice of Entry” of the order dismissing or denying a  
24 petition to compel arbitration or a filed-endorsed copy of the order, showing the date  
25 either was served; or

26  
27 (2) Twenty days after the party filing the notice of appeal serves or is served by a party  
28 with a document entitled “Notice of Entry” of the order dismissing or denying a  
29 petition to compel arbitration or a filed-endorsed copy of the order, accompanied by  
30 proof of service.

31  
32 **(c) Extending the time to appeal**

33  
34 (1) *Motion to reconsider appealable order*

35  
36 If any party serves and files a valid motion under subdivision (a) of Code of Civil  
37 Procedure section 1008 to reconsider the order dismissing or denying a petition to  
38 compel arbitration, the time to appeal from that order is extended for all parties until  
39 five court days after the superior court clerk or a party serves an order denying the  
40 motion or a notice of entry of that order.

1       (2) Cross-appeal

2  
3       If an appellant timely appeals from the order dismissing or denying a petition to  
4       compel arbitration, the time for any other party to appeal from the same order is  
5       extended until five court days after the superior court clerk serves notification of the  
6       first appeal.

7  
8  
9       **Rule 8.713. Record on appeal**

10  
11       **(a) Record of written documents**

12  
13       The record of the written documents from the superior court proceedings must be in the  
14       form of a joint appendix or separate appellant's and respondent's appendices under rule  
15       8.124.

16  
17       **(b) Record of the oral proceedings**

18  
19       (1) The appellant must serve and file with its notice of appeal a notice designating the  
20       record under rule 8.121 specifying whether the appellant elects to proceed with or  
21       without a record of the oral proceedings in the trial court. If the appellant elects to  
22       proceed with a record of the oral proceedings in the trial court, the notice must  
23       designate a reporter's transcript.

24  
25       (2) Within 10 days after the superior court notifies the court reporter to prepare the  
26       transcript under rule 8.130(d)(2), the reporter must prepare and certify an original of  
27       the transcript and file the original and required number of copies in superior court.

28  
29       (3) If the appellant does not present its notice of designation as required under (1) or if  
30       any designating party does not submit the required deposit for the reporter's  
31       transcript under rule 8.130(b)(1) or a permissible substitute under rule 8.130(b)(3)  
32       with its notice of designation or otherwise fails to timely do another act required to  
33       procure the record, the superior court clerk must serve the defaulting party with a  
34       notice indicating that the party must do the required act within two court days of  
35       service of the clerk's notice or the reviewing court may impose one of the following  
36       sanctions:

37  
38       (A) If the defaulting party is the appellant, the court may dismiss the appeal; or

39  
40       (B) If the defaulting party is the respondent, the court may proceed with the appeal  
41       on the record designated by the appellant.  
42

- (4) Within 10 days after the record is filed in the reviewing court, a party that has not purchased its own copy of the record may request the appellant, in writing, to lend it the appellant's copy of the record at the time that the appellant serves its final opening brief under rule 8.715(b)(2). The borrowing party must return the copy of the record when it serves its brief or the time to file its brief has expired. The cost of sending the copy of the record to and from the borrowing party shall be treated as a cost on appeal under rule 8.891(d)(1)(B).

**Rule 8.714. Superior court clerk duties**

Within five court days following the filing of a notice of appeal under this rule, the superior court clerk must:

- (1) Serve the following on each party:
- (A) Notification of the filing of the notice of appeal; and
- (B) A copy of the register of actions, if any.
- (2) Transmit the following to the reviewing court clerk:
- (A) A copy of the notice of appeal, with the copies of the order being appealed and the order granting preference under Code of Civil Procedure section 36 attached; and
- (B) A copy of the appellant's notice designating the record;

**Rule 8.715. Briefing**

**(a) Time to serve and file briefs**

Unless otherwise ordered by the reviewing court:

- (1) An appellant must serve and file its opening brief within 10 days after the notice of appeal is served and filed;
- (2) A respondent must serve and file its brief within 25 days after the appellant files its opening brief; and
- (3) An appellant must serve and file its reply brief, if any, within 15 days after the respondent files its brief.

1  
2 **(b) Contents and form of briefs**  
3

4 (1) The briefs must comply as nearly as possible with rule 8.204.  
5

6 (2) If a designated reporter's transcript has not been filed at least 5 days before the date  
7 by which a brief must be filed, an initial version of the brief may be served and filed  
8 in which references to a matter in the reporter's transcript are not supported by a  
9 citation to the volume and page number of the reporter's transcript where the matter  
10 appears. Within 10 days after the reporter's transcript is filed, a revised version of  
11 the brief must be served and filed in which all references to a matter in the reporter's  
12 transcript must be supported by a citation to the volume and page number of the  
13 reporter's transcript where the matter appears. No other changes to the initial version  
14 of the brief are permitted.  
15

16 **(c) Stipulated extensions of time to file briefs**  
17

18 If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed  
19 to have agreed that such an extension will promote the interests of justice, that the time for  
20 resolving the action may be extended beyond 100 days by the number of days by which the  
21 parties stipulated to extend the time for filing the brief, and that to that extent, they have  
22 waived any objection to noncompliance with the deadlines for completing review stated in  
23 Code of Civil Procedure section 1294.4 for the duration of the stipulated extension.  
24

25 **(d) Failure to file brief**  
26

27 If a party fails to timely file an appellant's opening brief or a respondent's brief, the  
28 reviewing court clerk must serve the party with a notice indicating that if the required brief  
29 is not filed within two court days of service of the clerk's notice, the court may impose  
30 one of the following sanctions:  
31

32 (1) If the brief is an appellant's opening brief, the court may dismiss the appeal;  
33

34 (2) If the brief is a respondent's brief, the court may decide the appeal on the record,  
35 the opening brief, and any oral argument by the appellant; or  
36

37 (3) Any other sanction that the court finds appropriate.  
38  
39

40 **Rule 8.716. Oral argument**  
41

42 The reviewing court clerk must send a notice of the time and place of oral argument to all parties  
43 at least 10 days before the argument date. The presiding justice may shorten the notice period for

good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

### **Rule 8.717. Extensions of time**

The Court of Appeal may grant an extension of the time in appeals governed by this chapter only if good cause is shown and the extension will promote the interests of justice.



## ITC SP16-13

### Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Committee Response
1.	California Assisted Living Association by Heather S. Harrison Vice President of Public Policy Sacramento, CA	AM	<p>On behalf of the California Assisted Living Association (CALA), I am submitting these comments regarding Proposal SP16-13, proposed amendments to the California Rules of Court 8.104 and 8.710 through 8.717.</p> <p>CALA addresses its comments to the question of whether it is preferable to have a longer notice of appeal period and a shorter time for filing the appellant's opening brief or the alternative of having only five days to file a notice of appeal and a longer period for filing the appellant's opening brief. CALA concludes that it is preferable to have a shorter notice of appeal period to allow for an adequate period to prepare and file appellant's opening brief and to ensure both appellant and appellee have similar time period for preparing briefs without penalizing the appellant for filing a notice of appeal right away.</p> <p>A party will generally need less time to decide whether to appeal an adverse ruling and more time to prepare the appellate brief. Typically, a party whose petition to compel arbitration has been denied will not need a full twenty days to decide whether to appeal the court's decision. And once that decision is made, preparing and filing the notice of appeal itself is not time consuming. Accordingly, reducing the time to file the notice of appeal to five days is unlikely to pose a hardship. Preparing an appellate brief in ten days, however, may be quite burdensome.</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period.</p> <p>Under these proposed rules, the appellant would have a total of 30 days to both determine whether to file an appeal and to prepare and file an opening brief. This gives the appellant a slightly longer time to prepare its opening brief than the 25-day period provided for the respondent to prepare its brief. The proposal circulated for public comment divided this total 30-day period by providing 20 days before the notice of appeal must be filed and 10 days after the notice of appeal is filed until the appellant's opening brief is due. Shortening the notice of appeal period and lengthening the briefing time as suggested by the commentator will simply change how this period is divided; it will not increase the overall length of time available for the appellant to prepare its opening brief.</p> <p>As noted by another commentator, because the notice of appeal period is jurisdictional, making the notice of appeal period shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether. In addition, a 5-day or even 10-day notice of appeal period will create potential conflicts with the deadline for filing a</p>

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			<p>On balance, therefore, more time should be allotted to preparation of the appellate brief than filing the notice of appeal.</p> <p>Fairness also weighs in favor of increasing the briefing period. Both appellants and appellees should have similar time to prepare their briefs. Although an appellant could delay filing a notice of appeal until the end of the twenty-day notice-of-appeal deadline to allow more time to draft the opening brief, an appellant may want to file the notice of appeal quickly. For example, an appellant may want to appeal immediately and ask the appellate court to stay trial court proceedings pending appeal. Under the proposed rules, an appellant who files a notice of appeal early would be penalized with fewer days to prepare the appellate brief. In this scenario, an appellant must choose between (1) accessing appellate court remedies as soon as possible and (2) having adequate time to prepare the appellate brief. Appellants should not be forced to make such a choice.</p> <p>CALA asks the Council to modify the proposed rule to reallocate the days for filing the notice of appeal and the appellant's brief so that both appellant and appellee have similar and adequate time to prepare their briefs without penalizing the appellant for seeking appellate court remedies quickly.</p>	<p>motion for reconsideration in the trial court. Finally, increasing the time for filing the opening brief will reduce the already short time that the Court of Appeal has to issue its decision in these cases.</p> <p>The longer notice of appeal period does mean that an appellant would have to sacrifice briefing time if he or she wants to file the notice of appeal early for purposes of obtaining a stay of any trial court proceedings. However, the appellant could still seek a stay of any trial court proceedings even if the notice on appeal had not yet been filed.</p>

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			CALA further notes that the reference to "rule 3.2237" in proposed Rule 8.712(c)(1) appears to be in error.	The committee appreciates the commentator pointing out this error. Based on other comments, the committee has revised the proposal to delete this provision in its entirety.
2.	Consumer Attorneys of California by Saveena K. Takhar Associate Staff Counsel Sacramento, CA	NI	<p>I write on behalf of the Consumer Attorneys of California (CAOC) to comment on Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration. CAOC generally supports the proposed rules, but has technical concerns with some of the proposed terminology and procedure outlined below.</p> <p><b>Background</b> Consumer Attorneys of California co-sponsored by SB 1065 (Monning), along with the California Advocates for Nursing Home Reform and the Congress of California Seniors. SB 1065, signed by Governor Brown, will ensure speedy access to justice for victims of elder abuse who have proven to the court they are elderly and dying and have been granted a trial court preference by providing that when there is an appeal from an order dismissing or denying a petition to compel arbitration, the court of appeal must issue its decision within 100 days after the notice of appeal is filed.</p> <p><u>8.712(b) – Time to appeal</u> CAOC is concerned about the references to a judgment in both subsections (b)(1) and (b)(2). An order denying arbitration would not result in a judgment of any kind. The references in 8.712</p>	<p>Under the definitions used in the Appellate Rules, the term “judgment” includes any judgment or order that may be appealed. However, since this chapter is limited to appeals from orders dismissing or denying petitions to</p>

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			<p>(b)(1) and (2) should instead refer to an order, not a judgment, because the applicable document at this phase of the case is an appealable order.</p> <p><u>8.712(c) – Extending the time to appeal</u> CAOC recommends that 8.712(c) be deleted in its entirety.</p> <p>Subsection (c)(1) creates a procedure for filing a motion for a new trial. This is not relevant or necessary because motions for new trials are not filed after an order compelling arbitration.</p> <p>Subsection (c)(2) discusses motions to vacate judgment, as stated above, no judgment results from an order to compel arbitration. Subsection (c)(3) regarding motions for reconsideration is at odds with the statute as well. Defendants have the right of immediate appellate review, so subsection (c)(3) is not necessary.</p> <p><u>8.713 &amp; 8.715 – Record on appeal &amp; briefing</u> One other possible problem CAOC would like to highlight is the interplay between designating the record on appeal in 8.713 and the briefing schedule in 8.715, which requires the appellant to file the opening brief on the same day the court reporter may file the transcript. The solution would be to instead change the designation of record rule, 8.713, to require appellant to file a certified copy of the reporters' transcript along with the Notice of Appeal, which would also eliminate the need for 8.715(c)(2).</p>	<p>compel arbitration, the committee has revised the proposed rule to refer to orders.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has revised the proposal to eliminate paragraphs (1) and (2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Case law indicates that parties may move for reconsideration of an order denying a motion to compel arbitration. See <i>Blake v. Ecker</i> (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in <i>Le Francois v. Goel</i> (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5). The committee's view is that the rules should reflect the availability of this procedure in the trial court.</p> <p>The committee appreciates this suggestion, but requiring appellants to obtain and file a certified transcript with their notice of appeal would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to propose such a rule at a later date.</p>

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3.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	A	<p><b>Comment One</b> We propose that the underscored provision should be added to subdivision (a)(2) of proposed rule 8.712.</p> <p><b><u>Rule 8.712. Notice of appeal</u></b></p> <p><b><u>(a) Contents of notice of appeal</u></b></p> <p>(1)</p> <p>(2) <u>Copies of the order being appealed and the order granting preference under Code Civ. Proc., § 36</u> must be attached to the notice of appeal.</p> <p><b>Comment Two</b> One of the Presiding Justices of this district is of the opinion that extending the time to file the notice of appeal for various post-order events under subdivision (c) of rule 8.712, as well as allowing parties to stipulate for extensions under subdivision (d) of rule 8.715, impermissibly extends beyond 100 days the time to dispose of the appeals that are subject to these proposed rules. This Presiding Justice is of the view that the intent of the legislature is clear that these appeals must be disposed within 100 days and that it is contrary to the demonstrated intent of the legislature to fashion provisions that will permit delays in disposition exceeding 100 days. This problem is acute, in this Presiding Justice's view, in that post-order proceedings may be drawn out and extended by the vagaries of trial court schedules.</p>	<p>The committee agrees with this suggestion and has modified the proposal as suggested by the commentator.</p> <p>The committee appreciates this input. With respect to subdivision (c) in proposed rule 8.712, based on other comments, the committee has revised the proposal to eliminate paragraphs (1) and (2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Under the law in effect prior to the enactment of Code of Civil procedure section 1294.4, parties may move for reconsideration of an order denying a motion to compel arbitration. See <i>Blake v. Ecker</i> (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in <i>Le Francois v. Goel</i> (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5. The legislation did not eliminate this option. The committee's view is that the</p>

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				<p>proposed rules should follow the model of rule 8.108 in terms of clarifying how the filing of a motion for reconsideration would impact the time to appeal. The committee does not believe that clarifying this is inconsistent with the intent of the legislation, which is to limit the duration of the appellate proceedings in order to protect the interests of the injured elder person. The proposed language of (c)(3) does not extend the 100-day period specified by Code of Civil Procedure section 1294.4(a ) since that period begins upon the filing of the notice of appeal.</p> <p>With respect to subdivision (d) of proposed rule 8.715, the committee does not believe that this is inconsistent with the underlying intent of the legislation. Such a stipulated extension cannot occur without the agreement of the attorney for the injured elder person. This insures that the elder person's interests will be protected.</p>
4.	Court of Appeal, Fourth Appellate District, Division One by Hon. Judith McConnell San Diego, CA	NI	<p><b>I. RULE 8.710.</b> Rule 8.710(a) sets forth the scope of application of the new chapter 12 to Title 8, Division 1 of the rules and provides:</p> <p>"The rules in this chapter govern appeals to review a superior court order dismissing or denying a petition to compel arbitration under Code of Civil Procedure section 1294.4."</p> <p>Since Code of Civil Procedure section 1294.4 does not include specific provisions addressing</p>	The committee agrees in concept with the commentator's suggestion and has modified both the title of the chapter and rule 8.710(a) so that they no longer refer to petitions to compel arbitration under section 1294.4.

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			<p>petitions to compel arbitration, we suggest a slight re-wording of this rule to specify that the rules in chapter 12 apply to appeals from a superior court order "dismissing or denying a petition to compel arbitration <i>in an action subject to Code of Civil Procedure section 1294.4.</i>" (Italics added.)</p> <p><b>RULE 8.711</b></p> <p>Rule 8.711 sets out the rules for the filing and service of documents in a proceeding specified in Code of Civil Procedure section 1294.4. Paragraph (a) is entitled "Service" and specifies that except as otherwise ordered or required by law, the parties must use a method of service "reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court." Paragraph (b), which is entitled "Electronic filing and service," incorporates additional requirements for electronic service of documents. Finally, proposed rule 8.715(a) also specifies that unless otherwise ordered by the court, the parties must file all briefs electronically.</p> <p>We suggest that these proposed rules be reorganized so that the requirements for service be set forth in the same paragraph or, at a minimum, that the heading of paragraph (a) be revised to "Method of service." Similarly, we believe that the requirements for electronic filing</p>	<p>The committee agrees with this suggestion and has revised the proposal to consolidate the provisions discussing service and to delete proposed 8.715(a).</p>

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			<p>are adequately set forth in proposed rule 8.711(b), such that proposed rule 8.715(a) may be deleted as superfluous.</p> <p>As to proposed rule 8.711(b)(1), dealing with electronic service, we note there is a typographical error in line 2, with the words "documents" and "electronically" missing a space between them.</p> <p>This paragraph also specifies that self-represented parties are not required to use electronic filing unless the court of appeal orders otherwise. Given the strict time constraints applicable to proceedings subject to these rules, we recommend that the Committee revise this rule to require a self-represented party to use electronic filing unless otherwise ordered by the court.</p> <p><b>RULE 8.712</b> Rule 8.712 addresses the requirements for the content and timing of the filing of the notice of appeal. Paragraph (b) provides that the notice of</p>	<p>The committee appreciates the commentator pointing out this typographical error. The committee has modified the proposal to correct this error.</p> <p>The committee considered this suggestion but decided that it is preferable to retain the provision allowing the Court of Appeal to order a self-represented parties to file electronically, rather than making electronic filing the default for these parties. The proposed rule's authorization for the Court of Appeal to order self-represented litigants to file electronically already expands the courts' authority in these cases. Under rule 8.71, the general rule relating to electronic filing, self-represented litigants cannot be ordered to file electronically. The requirement for an order is designed to ensure that the Court makes a determination that electronic filing is feasible for the self-represented litigant, rather than putting a burden on the self-represented litigant to seek to be excused from electronic filing.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has revised the proposal to eliminate paragraphs (1) and (2), relating to motions for new trials and</p>



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			<p>appeal must be filed within 20 days of the service by either the superior court or a party (whichever occurs first) of a notice of entry of judgment or a file-endorsed copy of the judgment. Paragraph (c) of that rule provides that the time for filing the notice of appeal is extended where the superior court denies a motion for new trial, a motion to vacate judgment or motion for reconsideration.</p> <p>The Committee comment to the proposed rule provides "It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for new trial, a motion for reconsideration, or a motion to vacate the judgment." However, neither the comment nor rule 8.712 provide any guidance or explanation as to whether the rule is intended to (1) bar a notice of appeal that is not filed within the time specified by paragraph (b) even if one of the specified motions is filed after the deadline in (b) has passed, (2) preclude a party from filing any of the specified motions after a notice of appeal is filed in compliance with paragraph (b), or (3) achieve some other result.</p> <p>We urge the Committee to clarify the intent of the rule in this regard and note the following for its consideration: (a) anecdotally, it appears that the use of a motion for new trial or to vacate judgment is very uncommon following the denial or dismissal of a motion to compel arbitration; and (b) extending the time for filing of the notice of appeal to accommodate traditional post-trial</p>	<p>motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Case law indicates that parties may move for reconsideration of an order denying a motion to compel arbitration. See <i>Blake v. Ecker</i> (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in <i>Le Francois v. Goel</i> (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5). The committee's view is that the rules should reflect that this procedure is available in the trial court and should, like rule 8.108, address how the filing of such a motion would impact the time to appeal. Since, under Code of Civil Procedure section 1008, the deadline for filing a motion for reconsideration is "within 10 days after service upon the party of written notice of entry of the order," the proposed advisory committee comment was incorrect that this deadline would expire before the proposed 20-day notice of appeal period. This advisory committee comment has also been deleted.</p>

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			<p>motions to challenge a judgment or order will significantly prolong the time for resolution of cases the Legislature intended to expedite by enacting Code of Civil Procedure section 1294.4.</p> <p>The Committee has also asked for specific comment on whether rule 8.712(c)(4), which addresses the time for the filing of a cross-appeal, is necessary. Given the strict time constraints of Code of Civil Procedure section 1294.4, we believe that it is.</p> <p><b>RULE 8.713</b> Rule 8.713 sets forth the applicable requirements for the record on appeal. Paragraph (b)(2) deals with reporter's transcripts and specifies that the reporter has 10 days from notice of the transcript request to prepare and certify the transcript. As civil proceedings in many courts now involve the use of private court reporting services rather than reporters employed by the superior courts, we suggest that the Committee provide further specification in this rule that an extension of time to file and certify a reporter's transcript in a proceeding subject to these rules will only be granted on a showing of exceptional good cause.</p> <p><b>RULE 8.715</b> Rule 8.715 addresses the requirements for briefing in proceedings subject to Code of Civil Procedure section 1294.4. As noted above, we believe that proposed rule 8.714(a) can be eliminated as superfluous in light of the</p>	<p>The committee considered this suggestion but concluded that it additional language regarding extensions of time not necessary. Under rule 8.60, only the Court of Appeal is authorized to extend the deadline for completing a reporter's transcript, so the court will be able to determine if any such extension is appropriate in these cases.</p> <p>As noted above, the committee has revised the proposal to eliminate 8.714(a), as suggested by the commentator.</p>

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			<p>requirements of rule 8.71 l(b)(l ). In addition, we are concerned that the language of rule 8.714(c)(l), specifying that briefs must comply "as nearly as possible" with traditional requirements for briefs set forth in rule 8.204, is too ambiguous to provide any guidance to parties or the courts as to what is required. We urge the Committee to adopt a more traditional standard (e.g., substantial compliance) for determining the adequacy of briefs.</p> <p>In conclusion, thank you for the opportunity to comment on the proposed rule changes.</p>	<p>With respect to the language of rule 8.71(b)(1), this is modeled on existing rule 8.702(f)(3)(A), which addresses briefs in expedited CEQA appeals. The committee’s view is that these rules should use consistent language for equivalent provisions. Therefore, the committee will consider whether to recommend amending both these provisions at a later date.</p>
5.	Court of Appeal, Fifth Appellate District by Charlene Ynson Court Administrator/Clerk Fresno, CA	AM	<p>Instead of 8.712 (a)(1), there should be a special form for this type of appeal stating the deadlines (in addition the trial court should be required to state the deadlines at the hearing, while providing the special form).</p> <p>8.712(b)- instead of 20 days in (b) it should be 10 or 15 days for the serving of the NOA. (if our time doesn’t start until the NOA is served, then the concern would be not so much about our clock, but about the clock in general since these are cases requiring expedited treatment)</p> <p>8.713(b)(4) because we are recommending changing the times in 8.715 the word “final” can be eliminated on the third line (before opening brief)</p>	<p>The committee appreciates this suggestion, but proposing a new notice of appeal form would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to develop such a form at a later date.</p> <p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. The proposed 20-day notice on appeal period is already 40 days (or two-thirds) shorter than the 60-day period generally applicable in civil appeals to the Court of Appeal. As noted by another commentator,</p>

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			<p>8.714 change 5 days to 2 days because we need every day we can get and with electronic filing it shouldn't be hard to serve within 2 days; however, if we change the numbers in 8.715 as discussed below, then that would give respondent and appellant equal time after the NOA is filed to file their briefs.</p> <p>8.715 (b)(1) change the 10 days to 15 days, (b)(2) change 25 days to 20 days, (b)(3) change 15 days to 5 days. (The reason for respondent to have 5 days more than appellant is because appellant can start working on their brief as soon as they file the NOA, or even earlier because they probably know they are going to file it during the time in 8.712 (b) "Time to appeal").</p> <p>8.715 (c)-because we are giving appellant 5 more days to file their opening brief either eliminate (c)(2) altogether or reduce 10 days to 5 days.</p> <p>One last question: Is it practical for the court to order self-represented parties to file electronically when that conflicts with other rules of court? Do we maybe want to clearly state that in this particular instance or case, the self-represented party is ordered to file electronically? (8.711(a-c))</p> <p>CLARIFICATION TO EARLIER COMMENTS FROM 5TH DCA: I would like to clarify the below questions submitted earlier today - these comments are in</p>	<p>because the notice of appeal period is jurisdictional, making the notice of appeal period even shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether. In addition, a 10-day notice of appeal period will create potential conflicts with the deadline for filing a motion for reconsideration in the trial court. Finally, the committee does not believe that increasing the time for filing the opening brief by 5 or 10 days will eliminate the potential for the appellant having to file its opening brief before the transcript is available.</p> <p>The committee believes that it is appropriate in this limited group of appeals in which the Legislature has set an extraordinarily short timeframe to give the Court of Appeal the authority to order self-represented litigants to electronically file documents. The committee has revised the proposed language to make it clearer that this authority is limited to these particular appeals.</p>

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			<p>response to the comments from the 4th Appellate District where the suggestion was made to "revise this rule to require a self-represented party to use electronic filing unless otherwise ordered by the court."</p> <p>One last question: Is it practical for the court to order self-represented parties to file electronically when that conflicts with other rules of court? Do we maybe want to clearly state that in this particular instance or case, the self-represented party is ordered to file electronically? (8.711(a))</p> <p>Our question is really, Can we require self-represented parties to use e-filing unless otherwise ordered by the court? and if so, shouldn't we clearly state in the rule that this requirement only applies to these particular cases?</p>	
6.	Curt R. Craton CRATON, SWITZER & TOKAR LLP Long Beach, CA	A	<p>The proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief is preferable to the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief for the following reasons:</p> <p>The deadline to file a notice of appeal is jurisdictional whereas the period for filing the appellant's opening brief is not. If the press of business in an attorney's law practice causes him or her to miss the deadline to file a notice of appeal, the client's rights are prejudiced. By contrast, if the deadline to file a brief is missed, the court of appeal</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.</p>

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			<p>generally grants an extension or the attorney can seek relief from the default. The latter is less prejudicial to the client.</p> <p>Court Rules ought to account for (to the extent reasonably practicable) the realities of practicing law. On any given day, a typical lawyer places and returns calls with clients, engages in frequent communications with opposing counsel, and must meet constant administrative deadlines in more than one case that the attorney oversees. Many of these deadlines are beyond the attorney's control because they are set by statute, court rule, or a court order in a pending case. A jurisdictional deadline of only 5 days to file a notice of appeal invites the practical probability of missing the filing deadline. For example, the period of time between the Wednesday before the Thanksgiving holiday and the following Monday is only 4 days. Thus a 5-day deadline to file a notice of appeal in that situation would effectively be reduced to only 1 court day. That problem could be mitigated by making the rule 5 court days. But the point remains: intervening events in the life of an attorney such as a death in the family or even a brief hospital stay due to illness or injury could cause a short deadline to be missed. By contrast, an unforeseeable intervening event such as just described would be grounds for relief from a short deadline to file an opening brief.</p> <p>The consequential effect of missing a jurisdictional deadline is a probable malpractice claim by the</p>	

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			<p>aggrieved client against the attorney. By contrast, the ability of an attorney to obtain relief from a missed briefing deadline mitigates the likelihood of a malpractice claim. Accordingly, a short notice of appeal deadline will likely increase court congestion arising from malpractice cases, which easily can be avoided by implementing the proposed longer notice of appeal period with the shorting briefing period.</p> <p>Thank you for considering my comments. Please let me know if I should present my comments in a more formal manner. The instructions that my local bar association sent to me did not indicate the form or manner in which comments should be submitted. It appeared that a mere email to you was all that was required.</p>	
7.	Marci Harness East Palo Alto, CA		Comments not related to proposal.	No response required.
8.	Orange County Bar Association by Michael L. Baroni President New Port Beach, CA	A	<p><b>The Judicial Council requested comments on four points.</b></p> <p>The first question was: <b>“Whether the proposed amendment to the advisory committee comment to rule 8.104 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule.”</b></p> <p>We believe the proposed amendment to the advisory committee comment to Rule 8.104 is sufficient to provide adequate notice and that more</p>	The committee appreciates this input.

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			<p>information would make the Rule confusing.</p> <p>The second question was: <b>“Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant’s opening brief (which will allow longer periods for the respondent’s and reply briefs) or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant’s opening brief (but which will require shorter periods for the respondent’s and reply briefs in order to comply with the 100-day period for adjudicating appeals).”</b>  The proposed approach is preferable.</p> <p>The third questions was: <b>“Whether it is necessary for the rules to include a provision such as proposed in 8.712(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal.”</b>  Rule 8.712(c)(4) appears acceptable as proposed.</p> <p>The last question was: <b>“Whether the proposed rules should include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund.”</b>  We believe the Judicial Council should follow Rule 8.153 with respect to any lending of the record.</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.</p> <p>The committee appreciates this input. Based this and on other comments, the committee retained the proposed paragraph (c)(4) relating to cross-appeals.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has retained the proposed provision regarding lending the record, but also included a cross-reference to a provision in rule 8.130 allowing a Transcript Reimbursement Fund application to serve as a substitute for the reporter’s transcript deposit.</p>



## ITC SP16-13

### Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Committee Response
9.	Peter G. Rose Managing Attorney Court of Appeal, First Appellate District	AM	<p>The statute at issue is narrow and it is unlikely my court will be asked to decide many appeals under its terms. But accelerated appeals are becoming more common and I anticipate the rules drafted to implement this statute will be used as a template for future statutes with wider applicability. Therefore I think it is important to respond to this proposal. My comments on this topic are informed by my court's recent experience deciding an accelerated appeal in a CEQA case under California Rules of Court, rules 8.700 through 8.705. As Managing Attorney for my court, I was able to see how those rules impacted each stage of the decision-making process. That experience leads me to conclude the 100-day period from notice of appeal to decision is too short. As I read the proposed rules, an appellate court will only have about 40 days to read the briefs, conduct the necessary research, write an opinion, hear oral argument, and file an opinion. That is not enough time.</p> <p>I understand the 100-day standard is statutorily mandated and there is nothing the Judicial Council can do to change it. But there is something else the Judicial Council can do.</p> <p>The size of appellate briefs is dictated by the Rules of Court and the proposed rules for this statute allow parties to file full-sized 14,000 word briefs. I believe the size of briefs for this and all other accelerated appeals should be limited. The most recent statistics published by the Judicial Council's Office of Court Research show the median period between</p>	<p>The committee appreciates this suggestion. However, proposing shorter briefs would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to propose such a change at a later date.</p>

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			<p>the filing of a notice of appeal and the filing of an opinion in a civil case is 509 days. The 100-day period mandated by new Code of Civil Procedure, section 1294.4, subdivision (a) is less than one-fifth of that amount. While a commensurate reduction in the size of the appellate briefs would be justified, it might be too drastic for some members of the bar. A more conservative approach, and one that I urge the Judicial Council to adopt, would be to limit the briefs in this type of appeal to 7,000 words.</p> <p>Limiting the size of briefs is consistent with legislative intent. When the Legislature adopted Code of Civil Procedure section 1294.4, it stated specifically it intended to enact “a limited expedited appeal process.” Shortened briefs are also a practical necessity. It would be difficult for a court to perform all the steps necessary to prepare and file a decision within the time allotted if the parties are allowed to file full-sized 14,000 word briefs. If the size of the briefs is limited, courts will at least have a chance to meet the statutorily mandated 100-day standard.</p>	
10.	Superior Court Los Angeles by Sandra Pigati-Pizano Management Analyst Management Research Unit Los Angeles, CA	AM	<p><i>Whether the proposed amendment to the advisory committee comment to rule 8.14 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule.</i></p> <p>The proposed amendment is sufficient and consistent with similar rules re 8.702 filing.</p>	The committee appreciates this input.

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		<p><i>Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant’s opening brief or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant’s opening brief.</i></p> <p>From the appeals unit perspective, the latter is preferred. A 5-day notice of appeal period is consistent with (expedited) rule 8.702 in CEQA cases.</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.</p>
		<p><i>Whether it is necessary for the rules to include a provision such as proposed in 8.71(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal.</i></p> <p>Yes, a provision re cross-appeals should be included, similar to 8.702(c)(4).</p>	<p>The committee appreciates this input. Based this and on other comments, the committee retained the proposed paragraph (c)(4) relating to cross-appeals.</p>
		<p><i>Whether it is necessary for the rules to include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund.</i></p> <p>The correct rule is 8.702(d)(2)(B). For consistency in the rules there should be included a provision similar to rule 8.702(d)(2)(B) regarding application for reimbursement from the Transcript Reimbursement Fund (TRF). Although the committee elected to exclude a similar provision because of concerns relating to delay in the preparation of the record, and because the ‘appellant in these cases in unlikely to qualify for such reimbursement,’ and as an alternative included</p>	<p>The committee appreciates this input. Based on this and other comments, the committee has retained the proposed provision regarding lending the record, but also included a cross-reference to a provision in rule 8.130 allowing a Transcript Reimbursement Fund application to serve as a substitute for the reporter’s transcript deposit.</p>

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			<p>a provision regarding lending of the record. We would argue that a party electing a reporter's transcript as required for the oral record is ordinarily permitted to apply for reimbursement from the TRF. Unless specifically prohibited from using this fund, consistency in rules is always best for all parties.</p> <p><i>What would the implementation requirements be for the courts?</i></p> <p>Staff training – 1 hour for review, discussion, identification Creation and testing of docket codes in CMS – 24 hours</p> <p><i>Would 3 months from JC approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p>