



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

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Title

Appellate Procedure: Service of Briefs in  
Misdemeanor Cases

Agenda Item Type

Action Required

Effective Date

January 1, 2018

Rules, Forms, Standards, or Statutes Affected  
Amend Cal. Rules of Court, rule 8.882

Date of Report

July 11, 2017

Recommended by

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

Contact

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### Executive Summary

To ensure that defendants in misdemeanor appeals are kept apprised of the arguments being made in their cases, the Appellate Advisory Committee recommends amending the rule regarding service of briefs in misdemeanor appeals. The rule would be amended to add provisions requiring the defendant's appellate counsel to send to the defendant a copy of each brief and requiring the People to serve an extra copy of their briefs on defendant's appellate counsel.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rule 8.882 to:

1. Add a provision requiring that defendant's appellate counsel send a copy of each brief to the defendant personally unless the defendant requests otherwise;
2. Add a provision requiring that the People serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal; and
3. Correct cross-references in subdivisions (e)(1) and (e)(4).

The amended rule is attached at page 4.

### **Previous Council Action**

The Judicial Council adopted rule 8.882 effective January 1, 2009, as part of a comprehensive set of new rules and forms for superior court appellate division proceedings. The council has amended this rule several times since its adoption, but the provisions regarding service of briefs have remained substantively unchanged.

### **Rationale for Recommendation**

California Rules of Court, rule 8.360(d) addresses service of briefs in felony appeals. This rule contains special requirements for defendant's appellate counsel to send to the defendant a copy of each brief for the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs. The history of this rule indicates that these provisions were adopted to ensure that the defendant was kept apprised of the arguments being made in his or her case.

Rule 8.882 does not currently include similar requirements for the service of briefs by defendant's appellate counsel in misdemeanor cases. There does not appear to be a reason that the rule on misdemeanor briefs should not also include these provisions for keeping the defendant informed.

In addition to this substantive issue, there are some incorrect cross-references in subdivisions (e)(1) and (e)(4) of the rule. These subdivisions currently refer to rules 8.25 and 8.29, respectively, each of which addresses service and filing in the Supreme Court and Courts of Appeal, rather than to rule 8.817, which addresses service and filing in the superior court appellate division.

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

#### **External comments**

This proposal was circulated for public comment from February 27 to April 28, 2017, as part of the regular spring 2017 invitation-to-comment cycle. Seven individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position on the proposal but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 5–9.

The one commentator who agreed with the proposal if amended expressed concern that the requirement for serving a misdemeanor defendant could potentially interfere with an attorney's ability to timely file a notice of appeal if he or she were not able to locate his or her client. However, the committee is only proposing an amendment to the rule that addresses the service of briefs, and thus the proposal will not impact service of the notice of appeal. The remaining

comments either expressed support for the proposal or provided input on implementation requirements for courts. Based on these comments, the committee is recommending adoption of the proposed amendment as circulated for public comment.

### **Alternatives**

The committee considered not proposing amendments to rule 8.882. The committee concluded, however, that it would be appropriate for the rules to treat defendants in felony and misdemeanor appeals similarly with respect to being sent copies of briefs in their cases. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

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

No appreciable implementation requirements, costs, or operational impacts are anticipated. The three court representatives who provided input on the potential implementation requirements indicated in their comments that the impacts would be moderate to minimal.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

These proposed amendments support strategic Goal III, Modernization of Management and Administration (Goal III.B), and objective III.B.5 of the related operational plan, to develop and implement effective trial and appellate case management practices,

### **Attachments and Links**

1. Amended Cal. Rules of Court, rule 8.882, at page 4
2. Chart of comments, at pages 5–9

Rule 8.882 of the California Rules of Court is amended, effective January 1, 2018, to read:

## **Title 8. Appellate Rules**

### **Division 2. Rules Relating to the Superior Court Appellate Division**

#### **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

##### **Rule 8.882. Briefs by parties and amici curiae**

**(a)–(d) \* \* \***

##### **(e) Service and filing**

- (1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.
- (2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.
- (3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.
- (4) A copy of each brief must be served on a public officer or agency when required by rule ~~8.29~~ 8.817.
- (5) In misdemeanor appeals:
  - (A) Defendant's appellate counsel must serve each brief for the defendant on the People and must send a copy of each brief to the defendant personally unless the defendant requests otherwise.
  - (B) The proof of service under (A) must state that a copy of the defendant's brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.
  - (C) The People must serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal.

## ITC SPR17-05

### Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

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

	Commentator	Position	Comment	Committee Response
1.	California Public Defenders Association by Charles Denton, President Sacramento, CA	AM	<p>The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators is concerned that precluding defendant's appeal may be a possible unintended consequence of the proposal that appellate counsel be required to send a copy of all briefs to the defendant unless the defendant requests otherwise.</p> <p>In our experience many defendants convicted of misdemeanors are out of custody and transient. Consequently, while the defendant's former trial counsel may be able to contact the defendant on appointed court dates, there is often no dependable way to locate a defendant in order to send him a copy of all of his briefs as this rule requires. When combined with the short time limits, for filing a misdemeanor appeal, this proposal could have the unintended consequence of precluding defendant's appellate counsel from filing an appeal even when the defendant has requested the appeal be filed.</p> <p>However, we would support this proposal if the proposal were amended to allow defendant's appellate counsel to file the appeal, even if he is unable to locate the defendant, with a declaration stating that appellate council was unable to send the defendant a copy of the appeal because he was unable to locate the defendant.</p>	This proposal would only amend the rule regarding service of briefs, it would not impact service of the notice of appeal.

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	Commentator	Position	Comment	Committee Response
			Thank you for the opportunity to comment on this proposal. Please contact me at <a href="mailto:chuck.denton@acgov.org">chuck.denton@acgov.org</a> or 510-272-6600 if you have any questions.	
2.	Albert DeLaIsla Principal Administrative Analyst IMPACT Team Criminal Operations Orange County, CA	NI	<p>Currently the requirement of service to the defendant of the briefs filed by Appellate Counsel and the People are only required on Felony Appeals. The proposal is to make it required on Misdemeanor Appeals as well. Current felony procedures do not require a POS to be filed stamped, the brief is automatically forwarded to the trial Judge for review. If we follow this process, there would be no impact to Operations. If it is decided that a POS should be included and filed with the Court on a Misdemeanor case, then procedures would have to be modified.</p> <p><i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Minimal if any, potentially a new docket code and updating of procedures.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p>	The committee appreciates the commentator's input on these implementation questions; no response required.

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	Commentator	Position	Comment	Committee Response
			Yes.	
3.	Orange County Bar Association by: Michael L. Baroni, President	A	Rule 8.369(d) of the California Rules of Court addresses the service of briefs in felony appeals and requires appellate counsel to send a copy of each brief for the defendant to the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs, so that one copy can be sent to the defendant by his counsel. Rule 8.882, which governs the service of briefs in misdemeanor cases currently does not include these provisions. The proposal is to amend rule 8.882 to conform to 8.369(d) with respect to these requirements. This is a good idea. The appellant in a misdemeanor appeal should be just as informed as the appellant in a felony appeal.	The committee notes the commentator's support for the proposal; no response required.
4.	State Bar of California's Standing Committee on the Delivery of Legal Services By: Sharon Djemal, Chair	NI	<i>Does the proposal appropriately address the stated purpose?</i> Yes. The proposal is an improvement because defendants in felony and misdemeanor appeals will be treated similarly with respect to being sent copies of briefs in their cases by their appellate counsel. Under the rule, counsel will be required to keep defendants apprised of arguments that are being made on their behalf.	The committee appreciates the commentator's input on this question.
5.	Superior Court Los Angeles County	A	<i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and</i>	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.

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			<i>procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</i> Minimal staff training would be required.  <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes. The three-month effective date is sufficient for implementation.	
6.	Superior Court Orange County Appellate Division by Michael Porter	A	Great proposal.	The committee notes the commentator's support for the proposal; no response required.
7.	Superior Court of California County of San Diego by Mike Roddy Executive Officer	A	The advisory committee seeks comments from <i>courts</i> on the following cost and implementation matters:  <i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Moderate implementation – if defendant's appellate counsel or the People fail to properly serve the briefs, the clerk would have to issue a deficiency notice and follow-up to ensure receipt of amended proof of service. The rules do not specify what happens if the briefs are not properly served on defendant.	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.



**ITC SPR17-05**  
**Title of proposal** (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

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	Commentator	Position	Comment	Committee Response
			<i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.	