



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 24, 2019

Title	Agenda Item Type
Appellate Procedure: Form of Filed Documents in the Appellate Division	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 8.815	January 1, 2020
Recommended by	Date of Report
Appellate Advisory Committee	July 29, 2019
Hon. Louis Mauro, Chair	Contact
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Executive Summary

The Appellate Advisory Committee recommends adopting rule 8.815 to govern the form of filed documents in the appellate division. The new rule would incorporate by reference the existing formatting requirements in rule 8.883(c) for civil and misdemeanor briefs filed in the appellate division. The new rule will resolve uncertainty and provide clarity regarding the proper formatting of documents filed in the appellate division of the superior courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020, adopt rule 8.815 to govern the form of filed documents in the appellate division by incorporating the existing formatting requirements in rule 8.883(c) for civil and misdemeanor briefs filed in the appellate division set forth.

The text of the new rule is attached at page 7.

Relevant Previous Council Action

The rules governing the appellate division of the superior courts, rules 8.800 through 8.936 of the California Rules of Court, were repealed and replaced in full, effective January 1, 2009. Rule 8.883 was amended in 2011, 2013, 2014, and 2016, but these amendments are not relevant to this proposal.

Analysis/Rationale

Proceedings in the appellate division of the superior courts are generally governed by rules 8.800 through 8.936. The appellate division rules contain specific requirements governing the format of appellate division briefs for limited civil and misdemeanor appeals¹ and infraction appeals,² as well as briefs to be filed in the Court of Appeal after an order of transfer from the appellate division.³ However, whereas existing appellate division rules describe specific requirements regarding service and filing, contents, envelope requirements, and disposition of applications and motions, they are silent as to the required format of these and other documents filed in the appellate division.⁴ This has been a source of confusion for litigants.

The trial court rules, rules 2.1 through 2.1100, “apply to all cases in the superior courts unless otherwise specified by a rule or statute.”⁵ Rules 2.100 through 2.118, included within these rules, govern the “form and format of papers to be filed in the trial courts”⁶ and contain detailed formatting requirements for trial court papers. Arguably, in the absence of any appellate division rule specifically governing the format of applications, motions, and other documents in that division, these trial court formatting rules should apply. However, this is unclear under the existing statutory scheme.

Separately, appellate rules 8.40 and 8.204 govern the format of “documents filed in a reviewing court,”⁷ which is defined to mean the Supreme Court and Court of Appeal and to exclude the appellate division of the superior courts.⁸ There is no rule expressly governing the proper format

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

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

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

⁴ See rules 8.806 (Applications) and 8.808 (Motions).

⁵ See rule 2.2.

⁶ See rule 2.100(b).

⁷ See rule 8.40(a).

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

for applications, motions, or other documents in the appellate courts. Instead, existing rule 8.40⁹ generally provides that such documents “may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 8.204(b).” Rule 8.204(b), in turn, contains detailed requirements regarding the formatting of briefs to be filed in civil appeals in the Court of Appeal. Although specific to civil briefs, rule 8.204(b) is incorporated by reference into rule 8.40 and thus is also applicable to other documents filed in the appellate courts more generally, including applications and motions. As noted above, however, these rules do not apply to documents filed in the appellate division.

Although there are similarities among the rules governing the form of filed documents in the trial courts and appellate courts, as well as civil and misdemeanor briefs filed in the appellate division, there are also notable differences.¹⁰ In the absence of specific guidance for formatting motions, applications, and other documents in the appellate division, litigants are left to format their submissions as best they can. Proposed new rule 8.815 is intended to provide clarity as to the proper formatting of applications, motions, and other documents filed in the appellate division. The new rule would mirror existing rule 8.40(a) governing formatting in the appellate courts, and provide that documents filed in the appellate division must comply with the relevant provisions of rule 8.883(c), which states the formatting requirements for briefs in limited civil and misdemeanor cases in the appellate division. Since litigants in the appellate division should already be familiar with the appellate division rules, and those appealing limited civil and misdemeanor cases will need to comply with the requirements of rule 8.883 in preparing their briefs, this approach would provide clarity for litigants and courts.

Policy implications

The committee did not identify any significant policy implications relating to the proposed new rule. The committee notes, however, that if the separate proposal to amend several appellate rules to create a uniform formatting scheme for electronically filed documents in the appellate courts is approved by the council, then new appellate division rule 8.815 will no longer mirror Court of Appeal rule 8.40(a) (and existing appellate division formatting rule 8.883(c) will no longer mirror amended Court of Appeal formatting rule 8.204(b)). However, as discussed further below, the committee believes that this difference is appropriate, given the relevant operational differences between the appellate division and the appellate courts, including differences in the

⁹ There is a separate proposal, *Appellate Procedure: Uniform Formatting Rules for Electronic Documents*, currently before the council that would, among other things, amend rules 8.40 and 8.204 to create uniform formatting rules for documents filed electronically in the appellate courts. The discussion of rules 8.40 and 8.204 included herein relates to the *existing* version of the rules.

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

electronic filing requirements and capabilities of the various appellate divisions throughout the state.

Comments

The proposed new rule was circulated for public comment between April 11 and June 10, 2019, as part of the regular spring comment cycle. One law firm, two organizations (the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association and the Orange County Bar Association), and four courts submitted comments on this proposal. All seven commenters agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 8–11.

Two commenters, the Superior Court of San Bernardino County and the Superior Court of Los Angeles County, agreed with the proposal without providing further comment. One commenter, the Committee on Appellate Courts of the Litigation Section of the California Lawyers Association, specifically noted that the proposal “addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants.”

The only comment addressing the substance of the proposed new rule was submitted by a law firm (Horvitz & Levy LLP), which agreed with the proposal but noted, “The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact.” The Appellate Advisory Committee understands this comment to refer to the potential interplay between this proposal and another proposal currently before the council that would, among other things, amend rules 8.40, 8.72, 8.74, and 8.204 to create uniform formatting rules for electronic documents filed in the Court of Appeal and Supreme Court (the appellate courts). If the uniform formatting rules proposal is approved as it was circulated for public comment during this spring cycle (SPR19-07), it would significantly revise and standardize the formatting requirements for documents filed electronically in the appellate courts.

The committee does not recommend that this proposal to adopt new rule 8.815 be modified based on this comment. The separate uniform formatting rules proposal does not address the format of electronically filed documents in the appellate division, creates no inconsistencies in the appellate division rules that must be addressed in this proposal, and will not alter any existing formatting requirements in the appellate division. Thus, any modification, such as adding an advisory committee comment, would seem to create, rather than negate, confusion about the interplay of the two separate rules schemes.

Additionally, it is true that proposed new rule 8.815, which incorporates by reference the formatting requirements for appellate division briefs in rule 8.883(c), was initially drafted to mirror existing appellate rule 8.40(a), which in turn incorporates by reference the existing

formatting requirements for civil appellate briefs in rule 8.204(b). And if the separate proposal relating to electronically filed documents in the appellate courts is approved by the council, then new appellate division rule 8.815 and existing rule 8.883(c) will no longer mirror the amended appellate rules. The committee does not view this as an issue that requires modification of this proposal. While it is beneficial for the appellate division and appellate rules to be parallel where appropriate, this is an instance where the rules should differ, at least for now. Electronic filing is not available in all appellate divisions, and the proposed new uniform rules scheme governing electronic filing in the appellate courts is not currently appropriate for all appellate divisions or all case types within an appellate division. In any event, adding formatting requirements for electronically filed documents in the appellate division would exceed the scope of this proposal. However, electronic filing is increasing in the appellate division, and in the future the committee may well take up the issue.

Alternatives considered

The committee considered not making any changes to the rules, but concluded that a new rule specifically addressing the proper format for documents filed in the appellate division would provide clarity to litigants and courts.

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

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

The committee also considered whether to amend rules 8.806 and 8.808, the rules governing appellate division applications and motions, to include formatting requirements. However, the committee concluded that the new formatting requirements should not be limited to applications and motions and that adopting a more general formatting rule governing all filed documents in the appellate division would be more useful.

Finally, in response to the comment discussed above about formatting for electronically filed documents (presumably in connection with the separate proposal before the council), the committee also considered whether further revision of proposed new rule 8.815, existing rule 8.883, or any other appellate division rules is necessary to address this issue. For the reasons discussed above, the committee concluded that no modification of the proposal is needed. Electronic filing in the appellate division, including rules governing the formatting of electronically filed documents in that division, may be considered in the future.

Fiscal and Operational Impacts

Some minimal fiscal and/or operational impacts are expected. In their comments, the Superior Courts of San Diego, Orange, and Los Angeles Counties addressed the potential implementation requirements. The San Diego court stated that some staff training on the new rule would be required, additional counter time working with self-represented parties would be expected, and procedures for handling noncomplying filings would need to be created. The Orange court pointed out that, because the new formatting rule incorporates existing guidelines, “training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs.” The Los Angeles court does not believe any additional training will be required. It appears from these comments that any potential implementation requirements would be minimal and should not present a barrier to adoption of the new rule.

Attachments and Links

1. Cal. Rules of Court, rule 8.815, at page 7
2. Chart of comments, at pages 8–11

Rule 8.815 of the California Rules of Court is adopted, effective January 1, 2020, to read:

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

2

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

6

SPR19-02**Appellate Procedure: Form of Filed Documents in the Appellate Division** (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
1.	Committee on Appellate Courts of the Litigation Section of the California Lawyers Association Sacramento, CA	A	The Committee on Appellate Courts supports this proposal. The proposal addresses a genuine problem for litigants and counsel in determining which formatting rules, trial court or court of appeal, govern the format of applications, motions, and other documents in the appellate division. The proposed new rule provides clarity and consistency for appellate division litigants.	The committee notes the commenter's support for the proposal; no response is required.
2.	Horvitz & Levy By Andrea Russi, Senior Counsel San Francisco, CA	A	<p>Currently it is unclear whether an appellate brief filed in superior court should follow the formatting rules for superior court filings or for appellate court filings (Rule 8.204). Under the new rule, the appellate division would be governed by rule 8.815 which adopts rule 8.883 setting forth the content and form of briefs (which largely mirrors 8.204).</p> <p>The new rule and Rule 8.883 do not address electronically filed documents (and I don't know if appellate divisions in superior court currently allow for electronic filing but I assume they are moving in that direction) but given Rule 8.72 alters the formatting in Rule 8.204, there should likely be some discussion or explanation of how these rules interact.</p>	The committee appreciates this comment and suggestion. The separate proposal to amend several rules governing the format of electronically filed documents in the Court of Appeal and the Supreme Court does not address the format of electronically filed documents in the appellate division. It creates no inconsistencies in the appellate division rules that must be addressed in this proposal. However, e-filing is increasing in the appellate division, and the committee agrees that rules for this process, including the format of electronically filed documents, should be considered in the future.
3.	Orange County Bar Association By Deirdre Kelly, President	A	Subject to the comments of the administering courts, this change clarifies the formatting for documents to be filed in the appellate division of the Superior Courts.	The committee notes the commenter's support for the proposal; no response is required.

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

SPR19-02

Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
4.	Superior Court of Los Angeles County	A	No specific comment.	The committee notes the commenter’s support for the proposal; no response is required.
5.	Superior Court of Orange County By Denise Parker, Program Coordinator/Specialist	NI	<p>Agree with the proposal. The new rule of court was created to remedy the absence of formatting rules for the appellate division for superior courts. The new rule essentially states that the appellate division should follow the same guidelines as rule 8.883(c) which was written for filings in the Court of Appeal.</p> <p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <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), or modifying case management systems? Because the new format mimics existing guidelines, training requirements would be minimal for staff. Staff would just need to be made aware that specific guidelines now exist and that they are similar to what is used for misdemeanor briefs. 	The committee notes the commenter’s support for the proposal and has considered the stated potential implementation requirements; no further response is required.

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

SPR19-02

Appellate Procedure: Form of Filed Documents in the Appellate Division (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • How well would this proposal work in courts of different sizes? The proposal should work for courts of all sizes. There should be no difference to the implementation plan. 	
6.	Superior Court of San Bernardino County By Hon. Carlos M. Cabrera, Appellate Division Presiding Judge	A	No specific comment.	The committee notes the commenter’s support for the proposal; no response is required.
7.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC, I, II, III & Lead positions. The expected number of hours are unknown; additional counter time working with self-represented parties would be expected. Procedures would have to be created for handling non-complying filings. 	The committee notes the commenter’s support for the proposal and has considered the stated potential implementation requirements; no further response is required.

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

SPR19-02**Appellate Procedure: Form of Filed Documents in the Appellate Division** (adopt rule 8.815)

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

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none">• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.• How well would this proposal work in courts of different sizes? It would work well. Additional counter time working with self-represented parties would be expected.	

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