



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

Title

Appellate Procedure: Service Copy of
Petition for Review

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 8.500

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair
Information Technology Advisory
Committee
Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

August 6, 2019

Contact

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Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommend amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the rules. The proposed amendment does not change the requirement to serve a copy of the petition on the superior court clerk in all instances, and, if a petitioner files in paper format, to also serve a copy of the petition on the Court of Appeal.

Recommendation

The Information Technology Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2020, amend California Rules of

Court, rule 8.500(f)(1) to require a petitioner to serve a copy of a petition for review on the clerk/executive officer of the Court of Appeal only when the petition is filed in paper format, and to clarify that a service copy to the Court of Appeal is not required when a petition is filed electronically.

The text of the amended rule is attached at page 4.

Relevant Previous Council Action

Although the Judicial Council has acted previously on this rule, this proposal recommends only minor revisions that streamline the service requirements adopted through prior action. The Judicial Council adopted the predecessor to rule 8.500(f) effective January 1, 2004. Effective January 1, 2007, the Judicial Council amended the rule to require that a petition for review also be served on the clerk of the superior court and the Court of Appeal. Effective January 1, 2018, the Judicial Council amended the rule again to require service of the petition for review on the clerk for the superior court and the clerk/executive officer of the Court of Appeal.

Analysis/Rationale

Recognizing that the Courts of Appeal are automatically receiving copies of petitions for review when they are filed electronically, this proposal would clarify that electronic filing constitutes service of a petition on the clerk/executive officer of the Court of Appeal, and that electronic filers do not need to serve a duplicate copy of an electronically filed petition on the clerk/executive officer of the Court of Appeal. When a petition for review is filed in paper format, however, the filer must still serve the petition on the superior court clerk and the clerk/executive officer of the Court of Appeal. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the current rule nevertheless requires an electronic filer to serve a copy of the petition on the clerk/executive officer of the Court of Appeal. This service requirement causes additional effort and expense for the electronic filer and additional workload for the Courts of Appeal.

Policy implications

This proposal is intended to eliminate unnecessary cost and effort for counsel and self-represented litigants in preparing and serving copies of e-filed petitions, and to eliminate duplicative processing efforts for appellate court staff relating to petitions that, in effect, already have been served on the Court of Appeal.

Comments

This proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal, without modifications.

A chart with the full text of the comments received and the committees' responses is attached at pages 5–6.

Alternatives considered

The committees considered maintaining the current requirement that petitioners serve on the Court of Appeal duplicate copies of petitions filed electronically. The committees concluded that the proposed changes were appropriate because they eliminate unnecessary and duplicative effort and expense.

Fiscal and Operational Impacts

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures, but do not anticipate any appreciable implementation costs. The superior court commenter states that minimal training in the revised procedures would be needed. The committees expect that the amended rule should save court resources by eliminating duplicate paper filings for electronically filed petitions.

Attachments and Links

1. Cal. Rules of Court, rule 8.500, at page 4
2. Chart of comments, at pages 5–6

Rule 8.500 of the California Rules of Court is amended, effective January 1, 2020, to read:

1 **Rule 8.500. Petition for review**

2

3 **(a)–(e) * * ***

4

5 **(f) Additional requirements**

6

7 (1) The petition must also be served on the superior court clerk and, if filed in
8 paper format, the clerk/executive officer of the Court of Appeal. Electronic
9 filing of a petition constitutes service of the petition on the clerk/executive
10 officer of the Court of Appeal.

11

12 **(2)–(3) * * ***

13

14 **(g) * * ***

15

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

	Commenter	Position	Comment	DRAFT Committees Responses
1.	Orange County Bar Association by Deirdre Kelly, President	A	No specific comment.	The committees note the commenter’s support for the proposal.
2.	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. The committees also seek comments from courts on the following cost and implementation matters: •Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. •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? Implementation requirements for court would be: Training for staff at the COC I, II, III & Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with working the counter in Appeals. Procedures would need to be revised to indicate the change. •Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. 	The committees note the commenter’s support for the proposal, and appreciate the commenter’s input on these questions.

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

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	Commenter	Position	Comment	DRAFT Committees Responses
			•How well would this proposal work in courts of different sizes? <i>Fine.</i>	

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