

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-03

Title	Action Requested
Appellate Procedure: Time for filing applications to file amicus curiae briefs	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.25	January 1, 2012
Proposed by	Contact
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov

Discussion

Currently, under rule 8.25(b) of the California Rules of Court, most appellate documents are considered timely if the clerk receives them before the time to file them expires. However, certain documents, including briefs, are covered by a special rule on timeliness under which they are considered timely if the time to file the document has not expired on the date the document is mailed by priority or express mail, as shown on the postmark or the postal receipt, or is delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt.

Currently, it is unclear whether an application to file an amicus curiae brief is covered by this special rule on the timeliness of filings. Rule 8.25 does not list applications among the types of documents that are subject to this special rule. However, amicus applications might be considered to fall within the category of briefs because, under rules 8.200(c)(4) and 8.520(f)(5), the proposed amicus curiae brief must accompany the application to file the brief.

This proposal would amend rule 8.25 to specifically provide that applications to file amicus curiae briefs and answers to amicus curiae briefs are subject to the special rule on timeliness of filings.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Rule 8.25 of the California Rules of Court would be amended, effective January 1, 2012, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 1. General Provisions

Article 2. Service, Filing, Form, and Number of Documents

Rule 8.25. Service and filing

(a) * * *

(b) Filing

- (1) A document is deemed filed on the date the clerk receives it.
- (2) Unless otherwise provided by these rules or other law, a filing is not timely unless the clerk receives the document before the time to file it expires.
- (3) A brief, an application to file an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, an answer to a petition for rehearing, a petition for transfer of an appellate division case to the Court of Appeal, an answer to such a petition for transfer, a petition for review, an answer to a petition for review, or a reply to an answer to a petition for review is timely if the time to file it has not expired on the date of:
 - (A) Its mailing by priority or express mail as shown on the postmark or the postal receipt; or
 - (B) Its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.
- (4) The provisions of (3) do not apply to original proceedings.
- (5) * * *

Advisory Committee Comment

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Subdivision (b)(3). This rule applies to applications to file amicus curiae briefs because, under rules 8.200(c)(4) and 8.520(f)(5), a proposed amicus curiae brief must accompany the application to file the brief.

Item SPR11-03 Response Form

Title: Appellate Procedure: Time for filing applications to file amicus curiae briefs
(amend Cal. Rules of Court, rule 8.25)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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Email: invitations@jud.ca.gov

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.