

Invitation to Comment

Title	Appellate Procedure: Certificate of Interested Entities and Persons (amend Cal. Rules of Court, rules 8.208 and 8.490, and approve <i>Certificate of Interested Entities or Persons</i> (form APP-008))
Summary	This proposal would amend the rules requiring parties in civil appeals and writ proceedings to file a Certificate of Interested Entities or Persons to clarify that: (1) the requirement to file a certificate does not apply in criminal, family, juvenile, guardianship, or conservatorship cases; (2) in appeals, the certificate must be filed with the principal brief or with an application or motion if one is filed before the brief; and (3) a party may seek to file a certificate under seal if the identity of a party has not been publicly disclosed. A new, optional Judicial Council form <i>Certificate of Interested Entities and Persons</i> (form APP-008) is also being proposed.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 8.208 of the California Rules of Court requires parties in civil appeals to file a Certificate of Interested Entities or Persons. This requirement was adopted effective January 1, 2006, to help justices of the Courts of Appeal determine whether to disqualify themselves from a proceeding by providing them with additional information about the financial or other relationships that may not be apparent on the face of the record. A similar requirement was also added to rule 8.490, relating to writ proceedings.</p> <p>Based on suggestions received from courts and practitioners, this proposal would make several clarifying changes to these rules. First, it would amend both rules 8.208 and 8.490 to specify that the requirement to file a certificate applies only in civil cases other than family, juvenile, guardianship, and conservatorship cases and that it does not apply in criminal cases. The committee recommends that a certificate not be required in these cases because, unlike in civil cases involving corporate entities, in these cases the identity of all the interested entities and persons is typically clear from the face of the papers and the record. The committee would particularly appreciate any comments about whether certificates should be required in any additional types of cases or if there are additional types of cases where such a certificate should not be required.</p> <p>Second, this proposal would clarify that in appeals, the certificate must</p>

be filed with the party's principal brief unless the party files a motion or application or an opposition to a motion or application before that brief is filed, in which case the certificate must be filed with that motion, application, or opposition. This timing will insure that the justices receive these certificates before they must act on the matter.

Third, this proposal would clarify that if the identity of a party has not been publicly disclosed in the case, a party may request that the certificate be filed under seal. In some proceedings, the identity of a party may be confidential. Serving and filing a certificate that would be accessible to the public in such circumstances could undermine this confidentiality.

Finally, the committee proposes that there be an optional Judicial Council *Certificate of Interested Entities or Persons* form. The draft form on which the committee is seeking comment is based on a combination of the forms currently being used in the Courts of Appeal, First and Fourth Appellate Districts.

Attachment

Rules 8.208 and 8.490 of the California Rules of Court would be amended and optional *Certificate of Interested Entities or Persons* (form APP-008), would be approved, effective January 1, 2008, to read:

1 **Rule 8.208. Certificate of Interested Entities or Persons**

2
3 (a) * * *

4
5 **(b) Application**

6
7 This rule applies in appeals in civil cases other than family, juvenile, guardianship,
8 and conservatorship cases. This rule does not apply in criminal cases.

9
10 ~~(b)~~(c) * * *

11
12 **(e)(d) Serving and filing a certificate**

13
14 (1) Except as otherwise provided in this rule, each party must serve and file a
15 certificate at the time it files its first document in the Court of Appeal. Each
16 party must also include a copy of the certificate in its principal brief. The
17 certificate must appear after the cover and before the tables. If a party files a
18 motion or application in the Court of Appeal or an opposition to such a motion
19 or application before filing its principal brief, however, the party must serve
20 and file a certificate at the time it files the motion, application or opposition
21 and include a copy of the certificate in the principal brief. If the identity of any
22 party has not been publicly disclosed in the proceedings, the party may serve
23 and file an application for permission to file its certificate under seal separately
24 from its principal brief.

25
26 (2) If a party fails to file a certificate as required under (1), the clerk must notify
27 the party by mail that the party must file the certificate within 15 days after the
28 clerk's notice is mailed and that failure to comply ~~will~~ may result in one of the
29 following sanctions:

30
31 (A) If the party is the appellant, the court will strike the document or dismiss
32 the appeal; or

33
34 (B) If the party is the respondent, the court will strike the document or decide
35 the appeal on the record, the opening brief, and any oral argument by the
36 appellant.

37
38 (3) If the party fails to comply with the notice under (2), the court may impose the
39 sanctions specified in the notice.
40

1 **(d)(e) Contents of certificate**

- 2
- 3 (1) If an entity is a party, that party’s certificate must list any other entity or person
- 4 that the party knows has an ownership interest of 10 percent or more in the
- 5 party.
- 6
- 7 (2) If a party knows of any other person or entity that has a financial or other
- 8 interest in the outcome of the proceeding that the party reasonably believes the
- 9 justices should consider in determining whether to disqualify themselves under
- 10 canon 3E of the Code of Judicial Ethics, the party’s certificate must list that
- 11 entity or person and identify the nature of the interest of the person or entity.
- 12 For purposes of this subdivision:
- 13
- 14 (A) A mutual or common investment fund’s ownership of securities or bonds
- 15 issued by an entity does not constitute a financial interest in that entity.
- 16
- 17 (B) An interest in the outcome of the proceeding does not arise solely because
- 18 the entity or person is in the same industry, field of business, or regulatory
- 19 category as a party and the case might establish a precedent that would
- 20 affect that industry, field of business, or regulatory category.
- 21
- 22 (3) If the party knows of no entity or person that must be listed under (1) or (2),
- 23 the party must so state in the certificate.
- 24

25 **(e)(f) Supplemental information**

26

27 A party that learns of changed or additional information that must be disclosed

28 under (d)(e) must promptly serve and file a supplemental certificate in the reviewing

29 court.

30

31

32 **Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition**

33

34 **(a)–(h) * * ***

35

36 **(i) Certificate of Interested Entities or Persons**

37

- 38 (1) This subdivision applies in writ proceedings in civil cases other than family,
- 39 juvenile, guardianship, and conservatorship cases. This subdivision does not
- 40 apply in criminal cases.
- 41

1 ~~(1)~~(2) Each party must comply with the requirements of rule 8.208 concerning
2 serving and filing a Certificate of Interested Entities or Persons.

3
4 ~~(2)~~(3) The petitioner's certificate must be included in the petition. The certificates of
5 the respondent and real party in interest must be included in their preliminary
6 opposition or, if no such opposition is filed, in their return, if any. The
7 certificate must appear after the cover and before the tables. If the identity of
8 any party has not been publicly disclosed in the proceedings, the party may file
9 an application for permission to file its certificate under seal separately from
10 the petition, preliminary opposition, or return.

11
12 ~~(3)~~(4) If a party fails to file a certificate as required under ~~(1)~~(2) and ~~(2)~~(3), the clerk
13 must notify the party by mail that the party must file the certificate within 10
14 days after the clerk's notice is mailed and that failure to comply will result in
15 one of the following sanctions:

16
17 (A) If the party is the petitioner, the court will strike the petition; or

18
19 (B) If the party is the respondent or the real party in interest, the court will
20 strike the document.

21
22 ~~(4)~~(5) If the party fails to comply with the notice under ~~(3)~~(4), the court may impose
23 the sanctions specified in the notice.
24

<p>COURT OF APPEAL, APPELLATE DISTRICT, DIVISION</p>	<p>Court of Appeal Case Number:</p>
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):</p> <hr/> <p>TELEPHONE NO.: FAX NO. (<i>Optional</i>):</p> <p>E-MAIL ADDRESS (<i>Optional</i>):</p> <p>ATTORNEY FOR (<i>Name</i>):</p>	<p>Superior Court Case Number:</p>
	<p><i>FOR COURT USE ONLY</i></p>
<p>APPELLANT:</p> <p>RESPONDENT:</p>	
<p>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</p>	

Notice: Please read rules 8.208 and 8.490(i) before completing this form. You may use this form for the initial certificate when you file your brief, or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal in civil appeals, and when you file a petition for an extraordinary writ in a civil case. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

This form is being submitted on behalf of the following party (*fill in name of party*): _____

(Check one) INITIAL CERTIFICATE SUPPLEMENTAL CERTIFICATE

Please check the applicable box:

There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208.

Interested entities or persons are listed below:

Full Name of Interested Person / Entity	Party	Non Party	Nature of Interest (<i>Explain</i>)
	(<i>Check one</i>)		
1.	<input type="checkbox"/>	<input type="checkbox"/>	
2.	<input type="checkbox"/>	<input type="checkbox"/>	
3.	<input type="checkbox"/>	<input type="checkbox"/>	
4.	<input type="checkbox"/>	<input type="checkbox"/>	
5.	<input type="checkbox"/>	<input type="checkbox"/>	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies), have either (1) an ownership interest of 10 percent or more in the party if an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PARTY)

Item SPR07-03 Response Form

Title: Appellate Procedure: Certificate of Interested Entities and Persons
(amend Cal. Rules of Court, rules 8.208 and 8.490, and approve
Certificate of Interested Entities or Persons (form APP-008))

- 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: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

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