



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 26, 2012

Title	Agenda Item Type
Appellate Procedure: Reference to Fee Amounts for Filing Notice of Appeal	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.821	October 26, 2012
Recommended by	Date of Report
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	August 20, 2012
	Contact
	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule relating to filing a notice of appeal in a limited civil case to reflect recent increases in filing fees established by statute. Because this proposal would simply correct the references to the applicable statutes and replace the references to fee amounts with a reference to a web page containing current fee information, the advisory committee recommends that these amendments be adopted effective immediately without being circulated for public comment.

Recommendation

The Appellate Advisory Committees recommends that, effective October 26, 2012, the Judicial Council:

1. Amend rule 8.821 of the California Rules Court to include a reference to Government Code section 70602.5;

2. Amend the advisory committee comment accompanying rule 8.821 to replace the references to the amount of the fee for filing a notice of appeal in a limited civil case with a reference to the web page containing current fee information; and
3. Further amend the advisory committee comment accompanying rule 8.821 to update a referenced web address.

The text of the proposed amended rule is attached at page 5.

Previous Council Action

The Judicial Council adopted the predecessor to rule 8.821 regarding the filing of a notice of appeal in a limited civil case effective September 15, 1945. As adopted, this rule did not address payment of the fee for filing a notice of appeal. Effective January 1, 1980, this rule was amended to require payment of the statutory filing fee at the time of filing the notice of appeal or within 10 days thereafter. As amended, this rule included a citation to the Government Code section establishing the filing fee, but did not include a reference to the amount of the fee. In February 2008, the Judicial Council repealed all of the rules relating to the superior court appellate division and replaced them with new rules, effective January 1, 2009, including new rule 8.821 relating to filing a notice of appeal in a limited civil case. This rule, like its predecessor, contained a reference to the Government Code section establishing the filing fee and the accompanying advisory committee comment included a reference to the amount of the fee.

At its July 27, 2012, meeting, the Judicial Council approved an amendment to rule 8.100 relating to notices of appeal in unlimited civil cases and revisions to *Information on Appeal Procedures for Unlimited Civil Cases (Appellate)* (form APP-001) to reflect recent changes in the fee for filing a notice of appeal in an unlimited civil case. These rule and form changes were adopted by the council effective immediately without being circulated for public comment.

Rationale for Recommendation

Rule 8.821 addresses the filing of a notice of appeal in a limited civil case. Subdivision (b) of this rule addresses the payment of the fees required by statute for filing such a notice of appeal and includes a citation to Government Code section 70621 as establishing the applicable filing fee. The advisory committee comment accompanying this rule currently states that the amount of the filing fee is \$180 if the amount claimed in the case is \$10,000 or less and \$300 if the amount claimed in the case is more than \$10,000.

Since rule 8.821 was adopted by the Judicial Council in 2008, the statutes establishing the fees for filing a notice of appeal in a limited civil case have been changed three times. The base filing fee established by Government Code section 70621 has been increased twice and is now \$205 if the amount claimed in the case is \$10,000 or less and \$330 if the amount claimed in the case is more than \$10,000. In addition, effective October 19, 2010, the Legislature adopted Government Code section 70602.5, which among other things added a supplemental fee to the base fee

established by section 70621. The total fee for filing a notice of appeal in a limited civil case is now \$225 if the amount claimed in the case is \$10,000 or less and \$370 if the amount claimed in the case is more than \$10,000. Thus both the statutory references and the fee amounts indicated in rule 8.821 and its accompanying advisory committee comment are incorrect.

Having the incorrect filing fee in this rule may cause confusion for litigants and result in appellants not submitting the correct fee. Such errors cost both litigants and courts time and money. Superior courts must notify the appellant about such an error and give the appellant an opportunity to correct it. If the error is not corrected, the appeal will be dismissed, but the appellant can request that the superior court appellate division vacate the dismissal for good cause.

To avoid this potential confusion and the costs associated with trying to correct these errors, the committee recommends that rule 8.821 be amended to reflect the changes in the statutory filing fee. The committee recommends that a citation to Government Code section 70602.5 be added to the rule so that the rule will include citations to both the statutory provisions that, together, establish the total fee for filing a notice of appeal in a limited civil case. To avoid the need to update the rule in the event of future fee increases, the committee recommends replacing the references to the amount of the filing fee in the advisory committee comment accompanying rule 8.821 with a reference to a web page that provides current civil fee information.¹

Comments, Alternatives Considered, and Policy Implications

The amendments to rule 8.821 proposed in this report were not circulated for public comment. Under rule 10.22(d)(2), an amendment to the California Rules of Court may be recommended for adoption by the council without circulation for comment if the proposal presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy. The committee is recommending that, similar to the recent amendments to rule 8.100 to reflect changes to the fee for filing a notice of appeal in an unlimited civil case, these proposed amendments to rule 8.821 be adopted without circulation for public comment as corrections or minor substantive changes that are unlikely to create controversy.

The committee considered recommending that the fee amounts specified in the advisory committee comment accompanying rule 8.821 simply be updated to reflect the current statutory fees. This was the approach recommended by the committee and adopted by the council with respect to references in rule 8.100. However, the committee concluded that because, unlike the fees for appeals to the Court of Appeal in unlimited civil cases, the fees for appeals to the superior appellate division in limited civil cases have changed quite frequently, the rule would

¹ Please note that *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), like rule 8.821, includes a citation to Government Code section 70621 as establishing the fee for filing a notice of appeal in a limited civil case. Another report on the Judicial Council's agenda at this meeting recommends revisions to form APP-101-INFO, effective January 1, 2013 to, among other things, replace the reference to section 70621 with a reference to the web page containing current fee information.

most likely quickly become outdated again. The committee therefore concluded that it was preferable to replace the fee amounts in the advisory committee comment with a reference to a web page containing current fee information. This change will better ensure that litigants receive current, accurate fee information and will also reduce costs associated with repeated rule amendments and form revisions.

The committee also considered recommending that the advisory committee comment to rule 8.821 include a suggestion to ask the clerk of the trial court where the notice of appeal is being filed for information about the amount of the filing fee. Some members thought this suggestion would be helpful to litigants who do not have access to the internet. Others thought that the comment to a rule was not the appropriate place for such a suggestion. Members noted that such a suggestion is already included in the information sheet regarding appeals in limited civil cases – *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO). The committee ultimately decided not to recommend that the advisory committee comment to rule 8.821 include such a suggestion.

In addition, the committee considered not proposing any change to rule 8.821 or recommending that these changes not take effect immediately. However, to avoid the potential confusion created by the references to the old, outdated fee amount and the costs associated with correcting errors in the payment of filing fees, the committee concluded that it was preferable to propose that the rule amendment be adopted immediately.

Implementation Requirements, Costs, and Operational Impacts

This proposal should create no significant implementation requirements, costs, or operational impacts for the courts and should reduce costs associated with errors in the payment of filing fees.

Attachments

1. Cal. Rules of Court, rule 8.821, at page 5

Rule 8.821 of the California Rules of Court is amended, effective October 26, 2012, to read:

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Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 2. Appeals and Records in Limited Civil Cases

Article 1. Taking Civil Appeals

Rule 8.821. Notice of appeal

(a) * * *

(b) **Filing fee**

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the filing fee required under Government Code sections 70621 and 70602.5, an application for a waiver of court fees and costs on appeal under rule 8.818, or an order granting an application for a waiver of court fees and costs. The filing fee is nonrefundable.

(2) * * *

(c)–(e) * * *

Advisory Committee Comment

Subdivision (a). *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~ www.courts.ca.gov/forms.htm.

Subdivision (b). ~~The filing fee required under Government Code section 70621 is \$180 if the amount claimed in the case is \$10,000 or less and \$300 if the amount claimed in the case is more than \$10,000.~~ For information about the amount of the filing fee, see the current Statewide Civil Fee Schedule linked at www.courts.ca.gov/7646.htm (note that the “Appeal and Writ Related Fees” section appears near the end of the schedule and that there are different fees for limited civil cases depending on the amount demanded in the case).

Subdivision (c)(2). * * *

