

Invitation to Comment

Title	Appellate Procedure: Notices of Appeal and Notices of Various Defaults (amend Cal. Rules of Court, rules 8.100, 8.108, 8.140, 8.220, 8.308, and 8.400)
Summary	This proposal would amend the rules relating to the notices sent by the clerk when a party fails to timely fulfill various obligations under the rules to clarify that the court may impose sanctions for these defaults. This proposal would also amend the rules regarding notices of appeal to clarify: (1) when a notice of appeal must be filed if the court issues an order granting a new trial conditional on the plaintiff’s acceptance of a remittitur; and (2) when a notice of a cross-appeal must be filed.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p><u>Notices of Default</u> Rules 8.100(c), (d), and (f), relating to failure to pay appellate fees and failure to submit a civil case information sheet; 8.140(a) relating to failure to procure the record; and 8.220(a), relating to failure to timely file a brief in a civil appeal, all contain similar provisions requiring that the clerk send the defaulting party a notice concerning the potential sanctions if the default is not corrected. Currently, all of these provisions require that the notice state that the court “will impose” the sanctions identified in the applicable rule, suggesting that imposition of these sanctions is mandatory. All of these provisions also state, however, that the court “may” impose the identified sanctions if the party does not timely correct the default, indicating that imposition actually is discretionary.</p> <p>To make the notice and sanction provisions in these rules more consistent with each other, this proposal would amend the notice provisions in these rules to clarify that the court may impose sanctions if these defaults are not corrected. In addition, by placing these provisions in separate subdivisions of rule 8.100, this proposal would clarify the different notice and sanction provisions that apply when an appellant fails to pay the appellate filing fee and when an appellant fails to pay the additional deposit to the superior court.</p> <p><u>Notices of Appeal</u> This proposal would also make several clarifying changes to the rules regarding when a notice of appeal must be filed.</p>

Rule 8.108 addresses various circumstances in which the time to file a notice of appeal is extended. Subdivision (a) of this rule provides that if any party serves and files a valid notice of intention to move for a new trial and the motion is denied, the time to appeal from the judgment is extended for all parties until the earliest of: (1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order; (2) 30 days after denial of the motion by operation of law; or (3) 180 days after entry of judgment. It is not uncommon, however, for a court to issue an order granting a new trial conditional on the plaintiff's acceptance of a remittitur of damages within a specified period. If the plaintiff accepts within the time specified, the new trial is denied. If such a conditional order is considered an order denying the motion for a new trial, the time to file the notice of appeal would be running, and could run out, while the plaintiff decided whether to accept the remittitur. To address this situation, this proposal would add a new provision setting the time frame for filing the notice of appeal in these circumstances.

Rule 8.104 provides that the normal time to file a notice of appeal in a civil case is within 60 days after the clerk or a party mails a notice of entry of judgment or a file-stamped copy of the judgment. Rule 8.108(e) currently provides that the time for filing a cross-appeal is "extended" until 20 days after the superior court clerk mails notification of the first appeal. However, if the first notice of appeal is filed early, for example only 30 days after the Notice of Entry is mailed, the "extension" to 20 days after the clerk mails notice of the first appeal will actually result in the notice of appeal being due *before* the normal 60-day appeal period expires. To avoid this potential shortening of the time to appeal, this proposal would amend 8.108(e) to provide that the time to file a cross-appeal is either the normal time for filing a notice of appeal or 20 days after notice of the first appeal is mailed, whichever is later. In addition, this proposal would make similar amendments to rules 8.308 and 8.400, relating to appeals in criminal and juvenile proceedings, respectively, which both contain similar language regarding the time to file cross-appeals.

Attachment

Rules 8.100, 8.108, 8.140, 8.220, 8.308, and 8.400 of the California Rules of Court would be amended, effective January 1, 2008, to read:

1 **Rule 8.100. Filing the appeal**

2
3 **(a)–(b) * * ***

4
5 **(c) Failure to pay filing fee ~~or deposit~~**

6
7 (1) The reviewing court clerk must promptly notify the appellant in writing if:

8
9 (A) The reviewing court receives a notice of appeal without the filing fee
10 required by (b)(1), a certificate of cash payment under (d)(5), or an
11 application for, or order granting, a fee waiver under rules 3.50–3.63;

12
13 (B) A check for the filing fee is dishonored; or

14
15 (C) An application for a waiver under rules 3.50–3.63 is denied.

16
17 (2) A clerk’s notice under (1) must state that the appeal ~~will~~ may be dismissed
18 unless, within 15 days after the notice is sent, the appellant either:

19
20 (A) Pays the fee; or

21
22 (B) Files an application for a waiver under rules 3.50–3.63 if the appellant has
23 not previously filed such an application.

24
25 ~~(3) If the appellant fails to comply with (b)(2), the superior court clerk must~~
26 ~~promptly notify the appellant in writing that the appeal will be dismissed~~
27 ~~unless, within 15 days after the notice is sent, the appellant either:~~

28
29 ~~(A) Makes the deposit; or~~

30
31 ~~(B) Files an application in the superior court for a waiver under rules 3.50–~~
32 ~~3.63 if the appellant has not previously filed such an application.~~

33
34 ~~(4) If the appellant fails to comply with a notice given under (3), the superior court~~
35 ~~clerk must notify the reviewing court of the default.~~

36
37 ~~(5)~~(3) If the appellant fails to comply with a notice given under (2), ~~or the superior~~
38 ~~court clerk notifies the reviewing court under (4) of a default,~~ the reviewing
39 court may dismiss the appeal, but may vacate the dismissal for good cause.
40

1 **(d) Failure to pay deposit**

2
3 (1) If the appellant fails to pay the deposit to the superior court required under
4 (b)(2), the superior court clerk must promptly notify the appellant in writing
5 that the appeal may be dismissed unless, within 15 days after the notice is sent,
6 the appellant either:

7
8 (A) Makes the deposit; or

9
10 (B) Files an application in the superior court for a waiver under rules 3.50–
11 3.63 if the appellant has not previously filed such an application.

12
13 (2) If the appellant fails to comply with a notice given under (1), the superior court
14 clerk must notify the reviewing court of the default.

15
16 (3) If the superior court clerk notifies the reviewing court under (2) of a default,
17 the reviewing court may dismiss the appeal, but may vacate the dismissal for
18 good cause.

19
20 ~~(d)~~(e) * * *

21
22 ~~(e)~~(f) * * *

23
24 ~~(f)~~(g) **Civil case information statement**

25
26 (1)–(2) * * *

27
28 (3) If the appellant fails to timely file a case information statement under (2), the
29 reviewing court clerk must notify the appellant by mail that the appellant must
30 file the statement within 15 days after the clerk’s notice is mailed and that
31 failure to comply ~~will~~ may result in either the imposition of monetary sanctions
32 or dismissal of the appeal. If the appellant fails to comply with the notice, the
33 court may impose the sanctions specified in the notice.
34
35

36 **Rule 8.108. Extending the time to appeal**

37
38 **(a) Motion for new trial**

39
40 If any party serves and files a valid notice of intention to move for a new trial, the
41 time to appeal from the judgment is extended for all parties as follows:
42

1 (1) ~~If the motion is denied, the time to appeal from the judgment is extended for all~~
2 ~~parties~~ until the earliest of:

3
4 ~~(1)(A)~~ 30 days after the superior court clerk mails, or a party serves, an order
5 denying the motion or a notice of entry of that order;

6
7 ~~(2)(B)~~ 30 days after denial of the motion by operation of law; or

8
9 ~~(3)(C)~~ 180 days after entry of judgment.

10
11 (2) If any party serves an acceptance of a conditionally ordered remittitur or
12 additur of damages pursuant to a trial court finding of excessive or
13 inadequate damages, until 30 days after the date the party serves the
14 acceptance.

15
16 (b)–(d) * * *

17
18 (e) **Cross-appeal**

19
20 (1) If an appellant timely appeals from a judgment or appealable order, the time
21 for any other party to appeal from the same judgment or order is ~~extended until~~
22 either the time specified under rule 8.104 (a) or 20 days after the superior court
23 clerk mails notification of the first appeal, whichever is later.

24
25 (2) If an appellant timely appeals from an order granting a motion for new trial, an
26 order granting—within 150 days after entry of judgment—a motion to vacate
27 the judgment, or a judgment notwithstanding the verdict, the time for any other
28 party to appeal from the original judgment or from an order denying a motion
29 for judgment notwithstanding the verdict is extended until 20 days after the
30 clerk mails notification of the first appeal.

31
32 (f) * * *

33
34
35 **Rule 8.140. Failure to procure the record**

36
37 (a) **Notice of default**

1 If a party fails to timely do an act required to procure the record, the superior court
2 clerk must promptly notify the party by mail that it must do the act specified in the
3 notice within 15 days after the notice is mailed, and that failure to comply ~~will~~ may
4 result in one of the following sanctions:
5

- 6 (1) If the defaulting party is the appellant, the appeal will be dismissed; or
7
8 (2) If the defaulting party is the respondent, the appeal will proceed on the record
9 designated by the appellant.
10

11 (b)–(c) * * *

12
13
14 **Rule 8.220. Failure to file a brief**
15

16 (a) **Notice to file**
17

18 If a party fails to timely file an appellant’s opening brief or a respondent’s brief, the
19 reviewing court clerk must promptly notify the party by mail that the brief must be
20 filed within 15 days after the notice is mailed and that failure to comply ~~will~~ may
21 result in one of the following sanctions:
22

- 23 (1) If the brief is an appellant’s opening brief, the court will dismiss the appeal;
24
25 (2) If the brief is a respondent’s brief, the court will decide the appeal on the
26 record, the opening brief, and any oral argument by the appellant.
27

28 (b)–(d) * * *

29
30
31 **Rule 8.308. Time to appeal**
32

33 (a) * * *

34
35 (b) **Cross-appeal**
36

37 If the defendant or the People timely appeals from a judgment or appealable order,
38 the time for any other party to appeal from the same judgment or order is ~~extended~~
39 until either the time specified in (a) or 30 days after the superior court clerk mails
40 notification of the first appeal, whichever is later.
41

1 (c)-(e) * * *
2
3

1 **Rule 8.400. Appeals in juvenile cases generally**

2
3 **(a)–(c) * * ***

4
5 **(d) Time to appeal**

- 6
7 (1) Except as provided in (2) and (3), a notice of appeal must be filed within 60
8 days after the rendition of the judgment or the making of the order being
9 appealed. Except as provided in rule 8.66, no court may extend the time to file
10 a notice of appeal.
11
12 (2) In matters heard by a referee not acting as a temporary judge, a notice of
13 appeal must be filed within 60 days after the referee's order becomes final
14 under rule 5.540(c).
15
16 (3) When an application for rehearing of an order of a referee not acting as a
17 temporary judge is denied under rule 5.542, a notice of appeal from the
18 referee's order must be filed within 60 days after that order is served under rule
19 5.538(b)(3) or 30 days after entry of the order denying rehearing, whichever is
20 later.
21
22 (4) If an appellant timely appeals from a judgment or appealable order, the time
23 for any other party to appeal from the same judgment or order is ~~extended until~~
24 either the time specified in (d)(1) or 20 days after the superior court clerk mails
25 notification of the first appeal, whichever is later.
26

27 **(e)–(g) * * ***

Item SPR07-07 Response Form

Title: Appellate Procedure: Notices of Appeal and Notices of Various Defaults (amend Cal. Rules of Court, rules 8.100, 8.108, 8.140, 8.220, 8.308, and 8.400)

- 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
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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.