

Invitation to Comment

Title	Appellate Procedure: Timeliness of Filings (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)
Summary	This proposal would amend the rules relating to the timeliness of all appellate filings to provide that a document mailed by an inmate or patient from a custodial institution is deemed timely if the envelope shows that the document was mailed or delivered to custodial officials for mailing within the period for filing the document.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>The California Rules of Court currently provide that if the court clerk receives a notice of appeal in a criminal, juvenile, or conservatorship case or a notice of intent to file a writ petition in a juvenile dependency case by mail from a custodial institution after the deadline for filing the notice has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing before the deadline expired, the notice is deemed timely (see, for example, rules 8.308(e), 8.450(e)(5), and 8.853(e)). These provisions reflect the “prison-delivery rule” articulated by the California Supreme Court in <i>In re Jordan</i> (1992) 4 Cal.4th 116. The purpose of this rule is to give self-represented prisoners, who must rely on prison mail systems, an opportunity to file these notices that is equal to that afforded non-prisoners and prisoners whose counsel can file documents for them.</p> <p>Recently, the California Supreme Court held that this same prison-delivery rule also applies to notices of appeal in civil cases (<i>Silverbrand v. County of Los Angeles</i> (2009) 46 Cal.4th 106). In reaching this conclusion, the court in <i>Silverbrand</i> reasoned that prisoners who are parties in civil appeals face the same institutional obstacles to preserving their rights as prisoners do in criminal appeals. They cannot mail or hand-deliver copies of a notice of appeal to the superior court clerk. Their only available means for filing the required notice is delivering it to prison authorities for mailing and, once that is done, they have no control over when the notice is actually mailed or filed with the court. In addition, the court noted that applying the prison delivery rule in civil appeals achieves administrative benefits similar to those achieved when this rule is applied in criminal appeals.</p>

Having a clear rule for the timeliness of these notices mailed from prison minimizes uncertainty for court clerks and avoids individualized assessments and collateral litigation about whether they were deposited with prison officials sufficiently in advance of the filing deadline to timely reach the court and other issues. (*Silverbrand supra*, 46 Cal.4th at pp. 119–121.) Footnote 19 in the *Silverbrand* opinion specifically recommends that the Judicial Council review the relevant rules of court to determine whether any revisions might be appropriate or helpful in light of the court’s decision.

Based on the reasoning in the *Silverbrand* opinion, the advisory committee is proposing that the prison delivery rule be applied not only to notices of appeal and notice of intent, but to all documents filed by inmates or patients by mail from custodial institutions in appellate proceedings, including briefs, motions, petitions for review, and writ petitions. The committee acknowledges that such documents differ from notices of appeal in important ways: the filing of these documents is not jurisdictional and the court can typically relieve a party from default for their late filing. However, prisoners face the same institutional barriers to the timely filing of these other appellate documents as they do to the timely filing of notices of appeal. In addition, applying the bright-line prison-delivery rule to these other appellate filings avoids the administrative burdens, for both prisoners and the courts, associated with requests for relief from default. The rules of court for several other jurisdictions, including the Federal Rules of Appellate Procedure and the state court rules in Florida, Oregon, Tennessee, and Washington, currently apply the prison-delivery rule to all appellate filings.¹

The committee is also proposing that the rule specify that it applies only to filings *from an inmate or patient* in a custodial institution. While the case law only discusses filings from such individuals, the current rule language does not spell out this limitation.

The committee would particularly appreciate comments on whether the existing language in rules 8.308(e), 8.406(c), 8.450(e)(5), 8.853(e) and 8.902(e) concerning notices of appeal and notice of intent to file writ petitions mailed from custodial institutions should be replaced with a cross-reference to proposed new rule 8.25(b)(5) or 8.817(b)(5) or should be retained.

Attachment

¹ See Fed. Rules App.Proc., rule 25(a)(2)(C); Fla. Rules App.Proc., rule 9.420(a)(2); Or. Rules App.Proc., rule 1.35(4); Tenn. Rules App.Proc., rule 20(g); and Wash. Court Rules, rule GR 3.1(a).

Rules 8.25, 8.104,² 8.308, 8.406,³ 8.450, 8.454, 8.500, 8.817, 8.822, 8.853 and 8.902 of the California Rules of Court would be amended, effective July 1, 2010 to read:

1 Title 8. Appellate Rules

2
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4
5 Chapter 1. General Provisions

6
7 Article 2. Service, Filing, Form, and Number of Documents

8
9
10 Rule 8.25. Service and filing

11
12 (a) * * *

13
14 (b) Filing

15
16 (1) A document is deemed filed on the date the clerk receives it.

17
18 (2) Unless otherwise provided by these rules or other law, a filing is not timely
19 unless the clerk receives the document before the time to file it expires.

20
21 (3) A brief, a petition for rehearing, an answer to a petition for rehearing, a
22 petition for review, an answer to a petition for review, or a reply to an answer
23 to a petition for review is timely if the time to file it has not expired on the date
24 of:

25
26 (A) Its mailing by priority or express mail as shown on the postmark or the
27 postal receipt; or

28
29 (B) Its delivery to a common carrier promising overnight delivery as shown
30 on the carrier's receipt.

31
32 (4) The provisions of (3) do not apply to original proceedings.

33
34 (5) If the clerk receives a document by mail from an inmate or patient in a
35 custodial institution after the period for filing the document has expired but the
36 envelope shows that the document was mailed or delivered to custodial

² Rule 8.104 will be amended effective January 1, 2010 (see <http://www.courtinfo.ca.gov/jc/documents/reports/102309itema1.pdf>). The proposed amendments in this invitation to comment are shown to the rule that will be effective January 1, 2010.

³ The rules relating to juvenile appeals will be amended effective July 1, 2010 (see <http://www.courtinfo.ca.gov/jc/documents/reports/102309itema31.pdf>). The proposed amendments in this invitation to comment are shown to the version of rule 8.406 that will be effective July 1, 2010.

1 officials for mailing within the period for filing the document, the document is
2 deemed timely. The clerk must retain in the case file the envelope in which the
3 document was received.

4
5 Advisory Committee Comment

6
7 **Subdivision (a).** * * *

8
9 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk before the
10 time for filing that document expires. There are, however, some limited exceptions to this general rule.
11 For example, ~~(5) the rules currently provides that if the superior court clerk receives a notice of appeal in~~
12 ~~a criminal, juvenile, or conservatorship case or notice of intent in a juvenile dependency case~~ document
13 by mail from a custodial institution after the deadline for filing the notice document has expired but the
14 envelope shows that the notice document was mailed or delivered to custodial officials for mailing before
15 the deadline expired, the notice document is deemed timely (see rules 8.308(e), 8.400(f), 8.450(e)(5),
16 8.480(a)). ~~These~~ This provisions applies to notices of appeal as well as to other documents mailed from a
17 custodial institution and reflects the “prison-delivery” exception articulated by the California Supreme
18 Court in *In re Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th
19 106.

20
21
22 Chapter 2. Civil Appeals

23
24 Article 1. Taking the Appeal

25
26
27 Rule 8.104. Time to appeal

28
29 (a) Normal time

30
31 Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on
32 or before the earliest of:

- 33
34 (1) 60 days after the superior court clerk serves the party filing the notice of
35 appeal with a document entitled “Notice of Entry” of judgment or a file-
36 stamped copy of the judgment, showing the date either was served;
37
38 (2) 60 days after the party filing the notice of appeal serves or is served by a party
39 with a document entitled “Notice of Entry” of judgment or a file-stamped copy
40 of the judgment, accompanied by proof of service; or
41
42 (3) 180 days after entry of judgment.
43
44 (4) Service under (1) and (2) may be by any method permitted by the Code of
45 Civil Procedure, including electronic service when permitted under Code of
46 Civil Procedure section 1010.6 and rules 2.250–2.261.
47

1 (b) Timeliness; ~~N~~o extension of time; late notice of appeal

2
3 Rule 8.25(b) governs when notices of appeal are deemed filed, including notices
4 mailed by inmates or patients from custodial institutions. Except as provided in rule
5 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is
6 filed late, the reviewing court must dismiss the appeal.
7

8 (c) – (f) * * *

9
10 Advisory Committee Comment

11
12 **Subdivision (a).** * * *

13
14 **Subdivision (b).** See rule 8.25(b)(5) for provisions concerning the timeliness of notices of appeal mailed
15 by inmates and patients from custodial institutions. Subdivision (b) is declarative of the case law, which
16 holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of appeal. (*Hollister*
17 *Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666–674; *Estate of Hanley* (1943) 23 Cal.2d 120,
18 122–124.)

19
20 In criminal cases, the time for filing a notice of appeal is governed by rule 8.308 and by the case law of
21 “constructive filing.” (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)
22

23
24 Chapter 3. Criminal Appeals

25
26 Article 1. Taking the Appeal

27
28
29 Rule 8.308. Time to appeal

30
31 (a) Normal time

32
33 Except as provided in (b) or as otherwise provided by law, a notice of appeal and
34 any statement required by Penal Code section 1237.5 must be filed within 60 days
35 after the rendition of the judgment or the making of the order being appealed.
36 Except as provided in rule 8.66, no court may extend the time to file a notice of
37 appeal.
38

39 (b) – (c) * * *

40
41 (d) Timeliness; ~~L~~ate notice of appeal

42
43 Rule 8.25(b) governs when notices of appeal are deemed filed, including notices
44 mailed by inmates or patients from custodial institutions. The superior court clerk
45 must mark a late notice of appeal “Received [date] but not filed,” notify the party

1 that the notice was not filed because it was late, and send a copy of the marked
2 notice of appeal to the district appellate project.

3
4 ~~(e) Receipt by mail from custodial institution~~

5
6 ~~If the superior court clerk receives a notice of appeal by mail from a custodial~~
7 ~~institution after the period specified in (a) has expired but the envelope shows that~~
8 ~~the notice was mailed or delivered to custodial officials for mailing within the~~
9 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the case~~
10 ~~file the envelope in which the notice was received.~~

11
12 Advisory Committee Comment

13
14 **Subdivision (c).** * * *

15
16 **Subdivision (d).** See rule 8.25(b)(5) for provisions concerning the timeliness of notices of appeal mailed
17 by inmates or patients from custodial institutions. The subdivision is not intended to limit a defendant's
18 appeal rights under the case law of constructive filing. (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re*
19 *Benoit* (1973) 10 Cal.3d 72.)

20
21
22 Chapter 5. Juvenile Appeals and Writs

23
24 Article 1. Appeals

25
26 Rule 8.406. Time to appeal

27
28 (a) Normal time

29
30 (1) Except as provided in (2) and (3), a notice of appeal must be filed within 60
31 days after the rendition of the judgment or the making of the order being
32 appealed.

33
34 (2) In matters heard by a referee not acting as a temporary judge, a notice of
35 appeal must be filed within 60 days after the referee's order becomes final
36 under rule 5.540(c).

37
38 (3) When an application for rehearing of an order of a referee not acting as a
39 temporary judge is denied under rule 5.542, a notice of appeal from the
40 referee's order must be filed within 60 days after that order is served under
41 rule 5.538(b)(3) or 30 days after entry of the order denying rehearing,
42 whichever is later.

43
44 (b) * * *

45
46 ~~(e) Receipt by mail from custodial institution~~

1
2 ~~If the superior court clerk receives a notice of appeal by mail from a custodial~~
3 ~~institution after the period specified in (a) has expired but the envelope shows that~~
4 ~~the notice was mailed or delivered to custodial officials for mailing within the~~
5 ~~period specified in (a), the notice is deemed timely. The clerk must retain in the case~~
6 ~~file the envelope in which the notice was received.~~
7

8 ~~(d)~~(c) Timeliness; No extension of time; late notice of appeal
9

10 Rule 8.25(b) governs when notices of appeal are deemed filed, including notices
11 mailed by inmates or patients from custodial institutions. Except as provided in rule
12 8.66, no court may extend the time to file a notice of appeal. The superior court
13 clerk must mark a late notice of appeal “Received [date] but not filed,” notify the
14 party that the notice was not filed because it was late, and send a copy of the marked
15 notice of appeal to the district appellate project.
16

17 ~~(e)~~(d) * * *

18
19 Advisory Committee Comment
20

21 Subdivision (c). See rule 8.25(b)(5) for provisions concerning the timeliness of notices of intent mailed
22 by inmates or patients from custodial institutions.
23
24

25 Article 3. Writs
26

27 Rule 8.450. Notice of intent to file writ petition to review order setting hearing under
28 Welfare and Institutions Code section 366.26
29

30 (a) – (d) * * *

31
32 (e) Notice of intent
33

34 (1) – (3) * * *

35
36 (4) The date of the order setting the hearing is the date on which the court states
37 the order on the record orally, or issues an order in writing, whichever occurs
38 first. The notice of intent must be filed according to the following timeline
39 requirements:
40

41 (A) If the party was present at the hearing when the court ordered a hearing
42 under Welfare and Institutions Code section 366.26, the notice of intent
43 must be filed within 7 days after the date of the order setting the hearing.
44

1 (B) If the party was notified of the order setting the hearing only by mail, the
2 notice of intent must be filed within 12 days after the date the clerk
3 mailed the notification.
4

5 (C) If the party was notified of the order setting the hearing by mail, and the
6 notice was mailed to an address outside California but within the United
7 States, the notice of intent must be filed within 17 days after the date the
8 clerk mailed the notification.
9

10 (D) If the party was notified of the order setting the hearing by mail, and the
11 notice was mailed to an address outside the United States, the notice of
12 intent must be filed within 27 days after the date the clerk mailed the
13 notification.
14

15 (E) If the order was made by a referee not acting as a temporary judge, the
16 party has an additional 10 days to file the notice of intent as provided in
17 rule 5.540(c).
18

19 (5) Rule 8.25(b) governs when notices of intent are deemed filed, including
20 notices mailed by inmates or patients from custodial institutions. ~~If the~~
21 ~~superior court clerk receives a notice of intent by mail from a party in a~~
22 ~~eustodial institution after the time specified in (4) has expired but the envelope~~
23 ~~containing the notice of intent shows that it was mailed or delivered to~~
24 ~~eustodial officials for mailing within the time specified in (4), the notice is~~
25 ~~deemed timely. The clerk must retain in the case file the envelope in which the~~
26 ~~notice was received.~~
27

28 (f) – (i) * * *

29
30 Advisory Committee Comment
31

32 **Subdivision (d).** * * *

33
34 **Subdivision (e)(5).** See rule 8.25(b)(5) for provisions concerning the timeliness of notices of intent
35 mailed by inmates or patients from custodial institutions.
36
37

38 Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code
39 section 366.28 to review order designating specific placement of a dependent
40 child after termination of parental rights
41

42 (a) – (e) * * *

43
44 (f) Timeliness: ~~Pp~~ premature or late notice of intent to file writ petition
45

- 1 (1) A notice of intent to file a writ petition under Welfare and Institutions Code
2 section 366.28 is premature if filed before a date for a postdetermination
3 placement order has been made. The reviewing court may treat the notice as
4 filed immediately after the postdetermination order has been made.
5
6 (2) The superior court clerk must mark a late notice of intent to file a writ petition
7 under section 366.28 “Received [date] but not filed,” notify the party that the
8 notice was not filed because it was late, and send a copy of the marked notice
9 to the party’s counsel of record, if applicable.
10
11 (3) Rule 8.25(b) governs when notices of intent are deemed filed, including
12 notices mailed by inmates or patients from custodial institutions.
13

14 (g) – (j) * * *

15
16 Advisory Committee Comment
17

18 Subdivision (f)(3). See rule 8.25(b)(5) for provisions concerning the timeliness of notices of intent
19 mailed by inmates or patients from custodial institutions.
20

21
22 Chapter 9. Proceedings in the Supreme Court
23

24 Rule 8.500. Petition for review
25

26 (a) – (d) * * *

27
28 (e) Time to serve and file
29

- 30 (1) A petition for review must be served and filed within 10 days after the Court
31 of Appeal decision is final in that court. For purposes of this rule, the date of
32 finality is not extended if it falls on a day on which the clerk’s office is closed.
33
34 (2) The time to file a petition for review may not be extended, but the Chief
35 Justice may relieve a party from a failure to file a timely petition for review if
36 the time for the court to order review on its own motion has not expired.
37
38 (3) If a petition for review is presented for filing before the Court of Appeal
39 decision is final in that court, the Supreme Court clerk must accept it and file it
40 on the day after finality.
41
42 (4) Any answer to the petition must be served and filed within 20 days after the
43 petition is filed.
44
45 (5) Any reply to the answer must be served and filed within 10 days after the
46 answer is filed.

- 1 (3) A brief, a petition for rehearing, or an answer to a petition for rehearing is
2 timely if the time to file it has not expired on the date of:
3
4 (A) Its mailing by priority or express mail as shown on the postmark or the
5 postal receipt; or
6
7 (B) Its delivery to a common carrier promising overnight delivery as shown
8 on the carrier’s receipt.
9
10 (4) The provisions of (3) do not apply to original proceedings.
11
12 (5) If the clerk receives a document by mail from an inmate or patient in a
13 custodial institution after the period for filing the document has expired but the
14 envelope shows that the document was mailed or delivered to custodial
15 officials for mailing within the period for filing the document, the document is
16 deemed timely. The clerk must retain in the case file the envelope in which the
17 document was received.

18
19 Advisory Committee Comment
20

21 **Subdivision (a).** * * *

22
23 **Subdivision (b)(2).** In general, to be filed on time, a document must be received by the clerk before the
24 time for filing that document expires. There are, however, some limited exceptions to this general rule.
25 For example, ~~rule 8.853(e) (5)~~ provides that ~~in a misdemeanor appeal~~, if the superior court clerk receives
26 a ~~notice of appeal~~ document by mail from a custodial institution after the deadline for filing the ~~notice~~
27 document has expired but the envelope shows that the ~~notice~~ document was mailed or delivered to
28 custodial officials for mailing before the deadline expired, the ~~notice~~ document is deemed timely. This
29 provision reflects the “prison-delivery” exception articulated by the California Supreme Court in *In re*
30 *Jordan* (1992) 4 Cal.4th 116 and *Silverbrand v. County of Los Angeles* (209) 46 Cal.4th 106.
31
32

33 Chapter 2. Appeals and Records in Limited Civil Cases
34

35 Article 1. Taking Civil Appeals
36

37 Rule 8.822. Time to appeal
38

39 (a) Normal time
40

41 Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on
42 or before the earliest of:
43

- 44 (1) 30 days after the trial court clerk mails the party filing the notice of appeal a
45 document entitled “Notice of Entry” of judgment or a file-stamped copy of the
46 judgment, showing the date either was mailed;

1
2 (2) 30 days after the party filing the notice of appeal serves or is served by a party
3 with a document entitled “Notice of Entry” of judgment or a file-stamped copy
4 of the judgment, accompanied by proof of service; or
5

6 (3) 90 days after the entry of judgment.
7

8 (b) – (c) * * *

9
10
11 (d) Timeliness: ~~L~~ate notice of appeal
12

13 Rule 8.817(b) governs when notices of appeal are deemed filed, including notices
14 mailed by inmates or patients from custodial institutions. If a notice of appeal is
15 filed late, the appellate division must dismiss the appeal.
16

17 Advisory Committee Comment
18

19 Under rule 8.804(23), the term “judgment” includes any order that may be appealed.
20

21 Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of notices of appeal
22 mailed by inmates or patients from custodial institutions.
23

24
25 Chapter 3. Appeals and Records in Misdemeanor Cases
26

27 Article 1. Taking Appeals in Misdemeanor Cases
28

29
30 Rule 8.853. Time to appeal
31

32 (a) Normal time
33

34 A notice of appeal must be filed within 30 days after the rendition of the judgment
35 or the making of the order being appealed. If the defendant is committed before
36 final judgment for insanity or narcotics addiction, the notice of appeal must be filed
37 within 30 days after the commitment.
38

39 (b) - (c) * * *

40
41 (d) Timeliness: ~~L~~ate notice of appeal
42

43 Rule 8.817(b) governs when notices of appeal are deemed filed, including notices
44 mailed by inmates or patients from custodial institutions. The trial court clerk must
45 mark a late notice of appeal “Received [date] but not filed” and notify the party that
46 the notice was not filed because it was late.

1
2 ~~(e) — Receipt by mail from custodial institution~~

3
4 ~~If the trial court clerk receives a notice of appeal by mail from a custodial institution~~
5 ~~after the period specified in (a) has expired but the envelope shows that the notice~~
6 ~~was mailed or delivered to custodial officials for mailing within the period specified~~
7 ~~in (a), the notice is deemed timely. The clerk must retain in the case file the~~
8 ~~envelope in which the notice was received.~~

9
10
11 Advisory Committee Comment

12
13 Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of notices of appeal
14 mailed by inmates or patients from custodial institutions.

15
16
17 Chapter 5. Appeals in Infraction Cases

18
19 Article 1. Taking Appeals in Infraction Cases

20
21 Rule 8.902. Time to appeal

22
23 (a) Normal time

24
25 A notice of appeal must be filed within 30 days after the rendition of the judgment
26 or the making of the order being appealed. If the defendant is committed before
27 final judgment for insanity or narcotics addiction, the notice of appeal must be filed
28 within 30 days after the commitment.

29
30 (b) – (c) * * *

31
32 (d) Timeliness: Late notice of appeal

33
34 Rule 8.817(b) governs when notices of appeal are deemed filed, including notices
35 mailed by inmates or patients from custodial institutions. The trial court clerk must
36 mark a late notice of appeal “Received [date] but not filed” and notify the party that
37 the notice was not filed because it was late.

38
39 ~~(e) — Receipt by mail from custodial institution~~

40
41 ~~If the trial court clerk receives a notice of appeal by mail from a custodial institution~~
42 ~~after the period specified in (a) has expired but the envelope shows that the notice~~
43 ~~was mailed or delivered to custodial officials for mailing within the period specified~~
44 ~~in (a), the notice is deemed timely. The clerk must retain in the case file the~~
45 ~~envelope in which the notice was received.~~

1
2
3
4
5
6
7
8

Advisory Committee Comment

Subdivision (d). See rule 8.817(b)(5) for provisions concerning the timeliness of notices of appeal mailed by inmates or patients from custodial institutions.

Item W10-01 Response Form

Title: Appellate Procedure: Timeliness of Filings (amend California Rules of Court, rules 8.25, 8.104, 8.308, 8.406, 8.450, 8.454, 8.500, 8.817, 8.822, 8.853, and 8.902)

- 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.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 22, 2010
--

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.