

Invitation to Comment

Title	Appellate Procedure: Briefs (amend Cal. Rules of Court, rules 8.200, 8.216, 8.520, 8.882, and 8.884 <sup>1</sup> and revise <i>Application for Extension of Time to File Brief (Civil Case)</i> form APP-006)
Summary	<p>This proposal would make several changes to the rules regarding briefs in the Supreme Court, Court of Appeal, and superior court appellate divisions, including: (1) requiring that a person or entity, other than the California Attorney General, seeking to file an amicus brief must indicate whether the brief was authored in whole or in part by a party or counsel for a party and must identify every person or entity, other than the amicus, who made a monetary contribution to the preparation or submission of the brief; (2) adding a provision to the rules on appeals in the superior court appellate division allowing parties in limited civil cases to stipulate to extensions of briefing time; and</p> <p>(3) clarifying that in a case in which a cross-appeal has been filed, a combined brief from a party that is both an appellant and a respondent must address the issues in each appeal separately.</p> <p>This proposal would also revise the form for applications to extend briefing time in civil appeals in the Court of Appeal to include spaces for an applicant to indicate whether the appeal relates to an interlocutory order and, if so, whether the trial court proceedings have been stayed.</p>
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>Applications to File Amicus Briefs</u>  Rules 8.200(c), 8.520(f), and 8.882(c) address amicus briefs in the Court of Appeal, Supreme Court, and superior court appellate division, respectively.<sup>2</sup> Currently, all of these rules require that an application to file an amicus brief must state the applicant’s interest.</p>

<sup>1</sup> Rules 8.882 and 8.884 concerning briefs in appeals in misdemeanor and limited civil cases were adopted by the Judicial Council on February 22, 2008, and will take effect on January 1, 2009. A copy of these rules can be accessed at: <http://www.courtinfo.ca.gov/rules/amendments/jan2009.pdf>

<sup>2</sup> Rule 8.200 addresses briefs in civil appeals in the Court of Appeal, but subdivision (f) of rule 8.360, which addresses briefs in felony appeals, provides that amicus curiae briefs may be filed in felony appeals as provided in rule 8.200(c). Similarly, rule 8.882 addresses briefs in civil and misdemeanor appeals in the superior court appellate division, but under rule 8.925 (which will also take effect on January 1, 2009, as part of the new appellate division rules), rule 8.882(c) also covers amicus briefs in infraction appeals.

Rule 37 of the rules for the United States Supreme Court also provides for amicus briefs. To help the court ensure that the amicus process is not being used to circumvent limits on briefing by the parties and also to help the court better identify the source of amicus briefs, United States Supreme Court rule 37.6 requires that all amicus briefs other than those filed by the Solicitor General and certain other government entities (1) indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief and (2) identify every person, other than the amicus curiae, its members, or its counsel, who made such a monetary contribution.

This proposal would amend rules 8.200, 8.520, and 8.882 to require that applications to file an amicus brief in a California appellate court to provide this same information.

#### Stipulated Extensions of Briefing Time

Rule 8.200, which addresses briefs in unlimited civil cases, provides that parties can stipulate to extend the time for filing briefs by up to 60 days. The rules regarding appeals in limited civil cases do not currently authorize parties to stipulate to such extensions. This proposal would amend rule 8.882 to add a provision similar to that in 8.200 allowing parties in limited civil cases to stipulate to extend the time for filing briefs by up to 30 days.

#### Combined Briefs Where There is a Cross-Appeal

Rules 8.216 and 8.884 address briefing in cases in which a cross-appeal has been filed. Subdivision (b) in each of these rules requires a party that is both an appellant and a respondent to combine its respondent's brief with its appellant's opening brief or its reply brief, depending on the briefing sequence the court has ordered. These provisions also require that a combined brief address each appeal—the first appeal and the cross-appeal—separately. Under the current rule language, it is not clear whether a party filing such a combined brief must prepare a separate statement of facts for each appeal or only needs to separately address the points raised in each appeal. When a cross-appeal concerns many of the same points as the appeal, separate statements of fact may be unnecessarily duplicative.

This proposal would amend rules 8.216 and 8.884 to clarify that a combined brief need only separately address the points raised in each appeal.

Application for Extension of Time to File Brief

*Application for Extension of Time to File Brief (Civil Case)* (form APP-006) is an optional form that parties in civil appeals in the Court of Appeal can use to ask the court to extend the deadline for filing a brief. In considering such an application, it is helpful for the presiding justice to know whether the appeal in the case is from an interlocutory order of the trial court and whether the trial court proceedings have been stayed pending the appeal. Currently, however, form APP-006 does not provide any spaces where a party can provide this information. This proposal would revise form APP-006 to add spaces where a party can indicate whether the appeal is from an interlocutory order and whether the trial court proceedings have been stayed pending the appeal.

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Attachment

Rules 8.200, 8.216, 8.520, 8.882, and 8.884 of California Rules of Court would be amended, effective January 1, 2009, to read:

**Title 8. Appellate Rules**

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

**Chapter 2. Civil Appeals**

**Article 2. Briefs in the Court of Appeal**

**Rule 8.200. Briefs by parties and amici curiae**

**(a)–(b) \* \* \***

**(c) Amicus curiae briefs**

- (1) Within 14 days after the last appellant’s reply brief is filed or could have been filed under rule 8.212, whichever is earlier, any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief. For good cause, the presiding justice may allow later filing.
- (2) The application must state the applicant’s interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.
- (3) The application must also identify:
  - (A) Any party or any counsel for a party in the pending appeal who authored the proposed amicus brief in whole or in part;
  - (B) Any party or any counsel for a party in the pending appeal who made a monetary contribution intended to fund the preparation or submission of the brief; and
  - (C) Every person or entity who made a monetary contribution to the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.
- ~~(3)~~(4) The proposed brief must be served and must accompany the application, and may be combined with it.
- ~~(4)~~(5) The covers of the application and proposed brief must identify the party the applicant supports, if any.

1       ~~(5)~~(6) If the court grants the application, any party may file an answer within the  
2           time the court specifies. The answer must be served on all parties and the  
3           amicus curiae.  
4

5       ~~(6)~~(7) The Attorney General may file an amicus curiae brief without the presiding  
6           justice’s permission, unless the brief is submitted on behalf of another state  
7           officer or agency. The Attorney General must serve and file the brief within 14  
8           days after the last appellant’s reply brief is filed or could have been filed under  
9           rule 8.212, whichever is earlier, and must provide the information required by  
10          (2) and comply with ~~(4)~~(5). Any party may serve and file an answer within 14  
11          days after the brief is filed.  
12  
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14       **Rule 8.216. Appeals in which a party is both appellant and respondent**  
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16       **(a) \* \* \***  
17

18       **(b) Contents of briefs**  
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- 20           (1) A party that is both an appellant and a respondent must combine its  
21           respondent’s brief with its appellant’s opening brief or its reply brief, if any,  
22           whichever is appropriate under the briefing sequence that the reviewing court  
23           orders.  
24  
25           (2) A combined brief must address the points raised in each appeal separately.  
26  
27           (3) A party must confine a reply brief, or the reply portion of a combined brief, to  
28           points raised in its appeal.  
29  
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31                               **Chapter 8. Proceedings in the Supreme Court**  
32

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34       **Rule 8.520. Briefs by parties and amici curiae; judicial notice**  
35

36       **(a)–(e) \* \* \***  
37

38       **(f) Amicus curiae briefs**  
39

- 40           (1) After the court orders review, any person or entity may serve and file an  
41           application for permission of the Chief Justice to file an amicus curiae brief.

1 (2) The application must be filed no later than 30 days after all briefs that the  
2 parties may file under this rule—other than supplemental briefs—have been  
3 filed or were required to be filed. For good cause, the Chief Justice may allow  
4 later filing.

5  
6 (3) The application must state the applicant’s interest and explain how the  
7 proposed amicus curiae brief will assist the court in deciding the matter.  
8

9 (4) The application must also identify:

10 (A) Any party or any counsel for a party in the pending appeal who authored  
11 the proposed amicus brief in whole or in part;

12 (B) Any party or any counsel for a party in the pending appeal who made a  
13 monetary contribution intended to fund the preparation or submission of  
14 the brief; and

15 (C) Every person or entity who made a monetary contribution to the  
16 preparation or submission of the brief, other than the amicus curiae, its  
17 members, or its counsel in the pending appeal.

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20  
21  
22 ~~(4)~~(5) The proposed brief must be served. It must accompany the application and  
23 may be combined with it.

24  
25 ~~(5)~~(6) The covers of the application and proposed brief must identify the party the  
26 applicant supports, if any.

27  
28 ~~(6)~~(7) If the court grants the application, any party may file an answer within 20  
29 days after the amicus curiae brief is filed. It must be served on all parties and  
30 the amicus curiae.

31  
32 ~~(7)~~(8) The Attorney General may file an amicus curiae brief without the Chief  
33 Justice’s permission unless the brief is submitted on behalf of another state  
34 officer or agency. The Attorney General must serve and file the brief within  
35 the time specified in (2) and must provide the information required by (3) and  
36 comply with ~~(5)~~(6). Any answer must comply with ~~(6)~~(7).

37  
38 (g) \* \* \*

1                   **Division 2. Rules Relating to the Superior Court Appellate Division**

2  
3                   **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and**  
4                   **Misdemeanor Appeals**

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6  
7 **Rule 8.882. Briefs by parties and amici curiae**

8  
9 **(a) Briefs by parties**

- 10           (1) The appellant must serve and file an appellant’s opening brief within 30 days  
11           after the record is filed in the appellate division.  
12  
13           (2) Any respondent’s brief must be served and filed within 30 days after the  
14           appellant files its opening brief.  
15  
16           (3) Any appellant’s reply brief must be served and filed within 20 days after the  
17           respondent files its brief.  
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19           (4) No other brief may be filed except with the permission of the presiding judge.  
20  
21           (5) Instead of filing a brief, or as part of its brief, a party may join in a brief or  
22           adopt by reference all or part of a brief in the same or a related appeal.  
23  
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25 **(b) Extensions of time**

- 26  
27           (1) In a civil case, the parties may extend each period under (a) by up to 30 days  
28           by filing one or more stipulations in the appellate division before the brief is  
29           due. Stipulations must be signed by and served on all parties. The original  
30           signature of at least one party must appear on the stipulation filed in the  
31           appellate division; the signatures of the other parties may be in the form of fax  
32           copies of the signed signature page of the stipulation.  
33  
34           (2) A stipulation under (1) is effective on filing. The appellate division may not  
35           shorten a stipulated extension.  
36

37 ~~(b)~~**(c) Failure to file a brief**

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39           \* \* \*

1 ~~(e)~~**(d)** **Amicus curiae briefs**

2  
3 (1) Within 14 days after the appellant’s reply brief is filed or was required to be  
4 filed, whichever is earlier, any person or entity may serve and file an  
5 application for permission of the presiding judge to file an amicus curiae brief.  
6 For good cause, the presiding judge may allow later filing.  
7

8 (2) The application must state the applicant’s interest and explain how the  
9 proposed amicus curiae brief will assist the court in deciding the matter.  
10

11 (3) The application must also identify:

12  
13 (A) Any party or any counsel for a party in the pending appeal who authored  
14 the proposed amicus brief in whole or in part;  
15

16 (B) Any party or any counsel for a party in the pending appeal who made a  
17 monetary contribution intended to fund the preparation or submission of  
18 the brief; and  
19

20 (C) Every person or entity who made a monetary contribution to the  
21 preparation or submission of the brief, other than the amicus curiae, its  
22 members, or its counsel in the pending appeal.  
23

24 ~~(3)~~(4) The proposed brief must be served and must accompany the application and  
25 may be combined with it.  
26

27 ~~(4)~~(5) The Attorney General may file an amicus curiae brief without the presiding  
28 judge’s permission, unless the brief is submitted on behalf of another state  
29 officer or agency; but the presiding judge may prescribe reasonable conditions  
30 for filing and answering the brief.  
31

32 ~~(d)~~**(e)** **Service and filing**

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34 \* \* \*  
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1 **Rule 8.884. Appeals in which a party is both appellant and respondent**

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3 (a) \* \* \*

4  
5 (b) **Contents of briefs**

6  
7 (1) A party that is both an appellant and a respondent must combine its  
8 respondent's brief with its appellant's opening brief or its reply brief, if any,  
9 whichever is appropriate under the briefing sequence that the appellate division  
10 orders under (a).

11  
12 (2) A party must confine a reply brief to points raised in its own appeal.

13  
14 (3) A combined brief must address the points raised in each appeal separately.  
15

<b>COURT OF APPEAL, APPELLATE DISTRICT, DIVISION</b>	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, state bar number, and address</i> ):  _____	Superior Court Case Number:
TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>
APPELLANT:  RESPONDENT:	
<b>APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)</b>	
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form.</b>	

1. I (*name*):  
request that the time to file  appellant's opening brief (AOB)  respondent's brief (RB)  appellant's reply brief (ARB),  
now due on (*date*): \_\_\_\_\_ be extended to (*date*): \_\_\_\_\_
2. I  have  have not received a rule 8.220 notice.
3. I have received:  
 no previous extensions to file this brief.  the following previous extensions:  
(*number of extensions*): \_\_\_\_\_ extensions by stipulation totaling (*total number of days*): \_\_\_\_\_  
(*number of extensions*): \_\_\_\_\_ extensions from the court totaling (*total number of days*): \_\_\_\_\_
4. I am unable to file a stipulation to an extension because  
 the other party is unwilling to stipulate to an extension.  other reason (*please specify*): \_\_\_\_\_
5. The reason I need an extension to file this brief is (*please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions*): \_\_\_\_\_
6. The last brief filed by any party was:  AOB  RB filed on (*date*): \_\_\_\_\_
7. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Appendix/Clerks Transcript:	_____	_____	_____
Reporters Transcript:	_____	_____	_____
Augmentation/other:	_____	_____	_____
8. This  is not  is an appeal of an order made before the final judgment.  
The trial court proceedings in this case  have  have not been stayed.
9. For attorneys filing application on behalf of client:  
 I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

EXTENSION OF TIME IS:

- Granted to \_\_\_\_\_
- Denied

Date: \_\_\_\_\_ (SIGNATURE OF PRESIDING JUSTICE)

**ORDER**

**APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)**  
**(Appellate)**

## Item SPR08-05 Response Form

**Title:** **Appellate Procedure: Briefs** (amend Cal. Rules of Court, rules 8.200, 8.216, 8.520, 8.882 and 8.884; revise form APP-006)

- 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 written on this form, prepared in a letter format, or submitted online. 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.

**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

**Email:** [invitations@jud.ca.gov](mailto: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

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, June 20, 2008
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*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.*