

for comment.

Petition to Transfer an Appellate Division Case to the Court of Appeal

Rule 8.1008(b) allows a party in an appellate division case, under certain circumstances, to petition the Court of Appeal to transfer the case from the appellate division to the Court of Appeal. Currently, this petition must be filed within eight days after the appellate division judgment is final in that court. Rule 8.708, in turn, provides that if a party timely files a petition for rehearing or application for certification for transfer in the appellate division, an appellate division judgment is final 30 days after judgment is pronounced or when all such petitions or applications are denied, whichever is earlier. Because parties are not typically present when the court rules on a petition for rehearing or application for certification, they do not know immediately when a petition for rehearing or application for certification has been denied. The parties generally receive notice of the appellate division's decision by mail. This often takes several days, which may use up some or all of the eight days that a party has to file a petition for transfer.

This proposal would amend rule 8.1008 to extend the time to file a petition to transfer from 8 days to 15 days after finality. Fifteen days should be enough time for the parties to receive notice of the denial of a petition for rehearing or application for certification and to file a petition for transfer.

In addition, similar to the current rule regarding answers to petitions for rehearing, the proposal would provide that a party may not file an answer to a petition for transfer unless the court requests an answer. This is intended to remove pressure from parties to file answers in all cases and reduce costs for parties. Parties would have 10 days from the date the court requests an answer to file the answer.

Attachment

Rules 8.32, 8.155, and 8.1008 California Rules of Court would be amended, effective January 1, 2008, to read:

1 **Rule 8.32. Address and telephone number of record; notice of change**

2
3 (a)–(c) * * *

4
5 (d) **Multiple offices**

6
7 If an attorney has more than one office, only one office address for that attorney
8 may be used in a given case.
9

10
11 **Rule 8.155. Augmenting and correcting the record**

12
13 (a) **Augmentation**

14
15 (1) * * *

16
17 (2) A party must attach to its motion a copy, if available, of any document or
18 transcript that it wants added to the record. The pages of the attachments must
19 be consecutively numbered. If the reviewing court grants the motion it may
20 augment the record with the copy.
21

22 (3) If the party cannot attach a copy of the matter to be added, the party must
23 identify it as required under rules ~~8.120~~ 8.122 and 8.130.
24

25 (b)–(d) * * *

26
27
28 **Rule 8.1008. Transfer**

29
30 (a) * * *

31
32 (b) **Petition to transfer**

33
34 (1) * * *

35
36 (2) The petition must be served and filed within ~~eight~~ 15 days after the appellate
37 division judgment is final in that court and must show delivery of a copy to the
38 appellate division.
39

40 (3) * * *

1 (4) ~~Within seven days after the petition is filed, any other party may serve and file~~
2 ~~an answer. A party must not file an answer to a petition for transfer unless the~~
3 ~~court requests an answer. The clerk must promptly send to the parties copies of~~
4 ~~any order requesting an answer and immediately notify the parties by~~
5 ~~telephone or another expeditious method. Any answer must be served and filed~~
6 ~~within 10 days after the order is filed unless the court orders otherwise. A~~
7 ~~petition for transfer normally will not be granted unless the court has requested~~
8 ~~an answer.~~

9
10 (5) * * *

11
12 (c)-(f) * * *

Item SPR07-05 Response Form

Title: Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008)

- 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., Friday, June 15, 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.