



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.

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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](http://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.*