

**JAN. 1, 2008, AMENDMENTS TO CALIFORNIA RULES OF COURT
RELEVANT TO COURT-APPOINTED APPELLATE COUNSEL**

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Several amendments to the [California Rules of Court](#) took effect on January 1, 2008. Fortunately, unlike other recent years, there is no entire renumbering of the rules to learn. All the amendments can be perused on the Judicial Council Web site "[New and Amended](#)" rules [page](#)¹. Below is a summary of amendments most relevant to court-appointed appellate practice. (Amendments relevant solely to capital appellate defense practice are excluded.)

California Style Manual ("CSM") or Blue Book O.K. for Citations, But CSM is Encouraged

In new rule [1.200](#)², the Judicial Council has clarified that for trial- and appellate-court pleadings either the California Style Manual or the Blue Book styles may be used for citations, although the same style must be used throughout a document. Appellate practitioners should note that a new advisory committee comment to rule [8.204](#) (contents and forms of briefs in civil cases) cites new rule [1.200](#) and states "Brief writers are encouraged to follow the citation form of the *California Style Manual* (4th ed., 2000)." (Rule [8.360](#), which governs the content and form of briefs in criminal appeals, incorporates rule [8.204](#).)

Certificates of Interested Entities/Persons Not Required in Family, Juvenile, Guardianship and Conservatorship Cases.

New subdivisions (b) of rule [8.208](#) (civil appeals) and (i)(1) of rule [8.490](#) (writs) clarify that the requirement of a certificate of interested entities and persons in appellate briefs "applies in appeals in civil

¹ <http://www.courtinfo.ca.gov/rules/amendments.htm>

² In the electronic version of this document rules numbers are hyperlinked to the corresponding electronic version of the rule on the Judicial Council Web site.

cases other than family, juvenile, guardianship, and conservatorship cases.”

Although the rule does not specifically exclude habeas cases, note that when the certificate requirement was first adopted in former rule 14.5, the First District advised FDAP and the panel, as described in a [FDAP news item](#)³, that the requirement did not apply to, “cases in which a habeas petition is filed ancillary to the appeal” and “Cases (rare) in which a free-standing habeas petition is filed (e.g. from a parole denial hearing).”

(The amendments also include re-numbering/re-lettering of the other subdivisions, changes regarding service and filing, and the advisory committee comments to both rules note the adoption of an optional form for the certificate.)

Service of Briefs on Supreme Court (Non-panel cases only)

Rule 8.212(c) formerly provided that a party filing a brief in the court of appeal in a civil case must serve four copies of the brief on the Supreme Court. An amendment effective January 1, 2008, allows for service of an electronic copy of the brief, instead of four paper copies. This rule, however, does not apply to criminal appeals, original petitions, or civil appeals (i.e. court appointed appeals). (See Rule 8.212, Advisory Committee Comment (“no briefs filed in the Court of Appeal in criminal appeals or in original proceedings should be served on the Supreme Court”) and 8.412(e)(5) (“The parties must not serve copies of their briefs on the Supreme Court under rule 8.44(b)(1)”.)

Remittitur in Writ Proceedings

The rule governing remittiturs in writ proceedings is moved from 8.272(a) to new rules 8.386 (habeas proceedings) and 8.499 (writ proceedings). New rule 8.386 provides that the court of appeal must issue a remittitur in a habeas proceeding, “except when the court

³ <http://www.fdap.org/news-8-4-06.html>

denies the petition without issuing an order to show cause.” New rule 8.499 similarly provides that a court of appeal must issue a remittitur in a writ proceeding, “except when the court denies the petition without issuing an alternative writ or order to show cause.” Both rules 8.386 (habeas) and 8.499 (other writs) provide that when a remittitur issues, subdivisions (b)-(d) of rule 8.272, which remain unchanged, govern.

Cross Reference of Rules

Rule 8.366 cross-references the rules on hearing and decision in civil appeals, and formerly provided that “Rules 8.248 through 8.276 govern the hearing and decision in the Court of Appeal of an appeal in a criminal case.” Rule 8.248, however, addresses prehearing conferences in civil appeals and is not applicable in criminal appeals. The amendment deletes the reference to rule 8.248. The amendment would also clarify that subdivision (a)(1) of rule 8.276, which as revised, authorizes sanctions for frivolous appeals does not apply in criminal appeals. But rule 8.276’s provisions for sanctions on other grounds do apply in criminal cases. (See the next item for other changes relating to sanctions and costs.) The amended rule thus now reads: “Rules 8.252 through 8.272 govern the hearing and decision in the Court of Appeal of an appeal in a criminal case. Except for (a)(1), rule 8.276 also applies in criminal appeals.”

Sanctions and Costs

Several amendments clarify and/or establish that in criminal appeals sanctions can be imposed for: including in the record material not reasonably material to the appeal’s determination, filing a frivolous motion, or committing any other unreasonable violation of the rules. But in a criminal appeal sanctions may not be imposed for taking a frivolous appeal or appealing solely to cause delay. In addition, costs may not be awarded in criminal appeals.

Under the amendments, *former rule 8.276*, which governed both costs and sanctions, has been split in two, with new rule 8.276 governing sanctions and 8.278 governing costs. Rule 8.366 (Hearing and Decision in the Court of Appeal), which incorporates for criminal

appeals most of the rules governing hearing and decision in civil appeals, incorporates rule 8.276, but expressly *excludes* subdivision (a)(1) of 8.276, which provides for sanctions for “taking a frivolous appeal or appealing solely to cause delay.” But, subdivisions (a)(2)-(4) are incorporated into criminal appeals through rule 8.366 and, thus, sanction could be imposed in criminal appeals for:

- (2) including in record material not reasonably material to appeal’s determination
- (3) filing a frivolous motion
- (4) committing any other unreasonable violation of these rules.

Rule 8.276's provisions for the *procedures* governing imposition of sanctions have been renumbered 8.276(b)-(e).

Rule 8.366 does not incorporate rules 8.278 which govern costs for prevailing parties in civil cases other than juvenile appeals. (In a somewhat related change, rule 8.366 no longer incorporates into criminal appeals rule 8.248, which governs prehearing conferences in civil appeals.)

Corresponding changes are also made to 8.490, which governs mandate, prohibition, and certiorari writs. Subdivision (m) continues to govern costs for writs, which expressly does not apply to court-appointed cases. New subdivision (n), which governs sanctions, does not except court-appointed cases. Subdivision (n) provides for sanctions for filing a frivolous petition or filing a petition solely for purposes of delay (8.490(n)(1)(A)) and for other unreasonable violations of the rules (8.490(n)(1)(B)). Given the exception found in rule 8.366 precluding application of 8.276(a)(1)’s provision for sanctions for frivolous and appeals filed for purpose of delay in criminal appeal, it would be safe to presume that the related provision for writs (8.490(n)(1)(A)) will not be applied to criminal appeals.

These changes to the rules regarding sanctions in appeals and writs appear to be for purposes of clarifying the possible grounds for which sanctions may be imposed. FDAP has received no indication that the First Appellate District intends to modify the frequency with which, or situations in which, it has imposed sanctions in the past.

Timing of Notice of Cross Appeal

The rules governing cross appeals formerly provided that a notice of cross appeal must be filed no later than 30 days (adult criminal) or 20 days (juvenile) after the clerk mails notification of the first appeal. The amended rules provide that the notice of cross-appeal is also timely if filed in the normal 60-days-from-judgment time period. (Rules [8.308\(b\)](#) (adult criminal) [8.400\(e\)](#) (formerly [8.400\(d\)\(4\)](#)).

Normal Record - Jury Instructions

Amendments to rules [8.122\(b\)\(3\)\(C\)](#) (formerly [8.120\(b\)\(3\)\(C\)](#)) (CT in civil appeals) and [8.320\(b\)\(4\)](#) (CT in criminal appeals) make the language in the two rules consistent regarding the inclusion of *requested* jury instructions and to more clearly encompass the written instructions given by the court. The amended criminal rule now states that the Clerk's Transcript must contain:

- (4) All jury instructions that any party submitted in writing and the cover page required by rule [2.1055\(b\)\(2\)](#) indicating the party requesting each instruction, and any written jury instructions given by the court.

Notices of Intent to File Writ Petition in Dependency Cases.

Who files? Amendments to rules [8.450\(c\)](#) (setting of .26 hearing) and [8.454\(c\)](#) (post-termination placement order) clarify that in the absence of trial counsel, the "party" is responsible for filing a notice of intent to file a writ petition.

Reporter's Transcripts? Amendments to [8.450\(g\)](#) and [8.454\(h\)](#) state that reporter's transcripts are to be prepared for "each session" of the hearing that resulted in the order under review.

Amicus Briefs in the California Supreme Court

Rule 8.520(f)(2) is amended to change the standard for permitting a later filing of an amicus curiae briefs in the supreme court. The new rule states that “**For good cause**, the Chief Justice may allow later filing.” (Emphasis added.) (The former version required the applicant to show “specific and compelling reasons for the delay.”)

Transfer from Appellate Department

The time to petition for a transfer is extended from 8 to 15 days after the appellate division judgment. (Rule 8.1008(b)(2).) The deadline for an answer is deleted from the rule and no answer is permitted unless requested by the court. “Any answer must be served and filed within 10 days after the order is filed unless the court orders otherwise.” And, “[a] petition for transfer normally will not be granted unless the court has requested an answer.” (Rule 8.1008(b)(4).)