



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

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Title	Agenda Item Type
Appellate Procedure: Time to Appeal	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.104, 8.108, 8.822, and 8.823	July 1, 2012
Recommended by	Date of Report
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	January 25, 2012
	Contact
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### Executive Summary

The Appellate Advisory Committee recommends amending the rules establishing the time for filing a notice of appeal in a civil case and providing for extensions of this time under certain circumstances. These amendments would clarify that even if the parties waived notice in the trial court of the order that is the subject of the appeal, the longer time to appeal applies unless either the court or a party serves notice of entry of judgment or a file-stamped copy of the judgment. The amendments would also fill a gap in the rules by adding a new provision establishing an extension of time to appeal the granting of a new trial motion under certain circumstances.

### Recommendation

The Appellate Committee recommends that the Judicial Council Court, effective July 1, 2012:

1. Amend rules 8.104 and 8.822 to indicate that, when notice of the ruling being appealed has been waived in the trial court under Code of Civil Procedure section 1019.5, the longer appeal period applies unless the court or a party serves notice of entry of the judgment or a file-stamped copy of the judgment;

2. Amend rules 8.108 and 8.823 to provide that when a new trial is granted because a party rejects a conditional additur or remittitur or if the additur or remittitur is deemed rejected because the time for accepting it has expired, any party has 30 days from the time the party serves the rejection of the additur or remittitur or it is deemed rejected to appeal the grant of the new trial motion; and
3. Make other nonsubstantive changes to these rules.

The text of the proposed rules is attached at pages 7–11.

### **Previous Council Action**

The predecessor to rule 8.104, which specifies the time to appeal civil cases to the Court of Appeal, was adopted by the Judicial Council effective July 1, 1943. As adopted, this rule required that the notice of appeal be filed within 60 days from the date of entry of the judgment. The predecessor to rule 8.822, which specifies the time to appeal civil cases to the superior court appellate division, was adopted effective September 15, 1945. As adopted, this rule required that the notice of appeal be filed within 30 days after notice of entry of the judgment but in no event later than 60 days from the date of entry of the judgment. Effective September 17, 1965, both rules were amended to provide that the notice of appeal must be filed before the earliest of specified time periods after the trial court mails or a party serves notice of entry of the judgment (60 days in the Court of Appeal and 30 days in the appellate division) or after the judgment is entered (180 days in the Court of Appeal and 90 days in the appellate division). These rules were subsequently amended and renumbered, but the time periods for filing a notice of appeal have remained essentially unchanged.

The predecessor to rule 8.108, which specifies extensions to the time for filing a notice of appeal in civil cases in the Court of Appeal, was adopted by the Judicial Council effective July 1, 1943; and the predecessor to rule 8.823, which specifies such extensions in civil cases in the superior court appellate division, was adopted effective September 15, 1945. As originally adopted, both rules provided for extensions when a valid notice of intention to move for a new trial or motion to vacate a judgment was filed and denied. These rules were subsequently amended and renumbered, but the provision regarding extensions related to motions for new trial remained substantively unchanged until January 1, 2008, when the Judicial Council amended rule 8.108 to address situations in which a new trial is granted under the condition of plaintiff's acceptance of an additur or a remittitur. Effective January 1, 2009, the Judicial Council repealed all rules relating to the superior court appellate division and replaced them with new rules, including new rule 8.823, relating to extensions of the time to appeal in limited civil cases. The provisions of new rule 8.823 were based on those in rule 8.108.

## **Rationale for Recommendation**

### **Waiver of notice of ruling on motion and time to appeal**

Rules 8.104 and 8.822 establish the time for filing a notice of appeal in a civil case in the Court of Appeal and superior court appellate division, respectively. These rules provide that the notice of appeal must be filed before the earliest of specified time periods after the trial court or a party mails or serves notice of entry of the judgment or a file-stamped copy of the judgment (60 days in the Court of Appeal and 30 days in the appellate division) or after the judgment is entered (180 days in the Court of Appeal and 90 days in the appellate division). The term “judgment” in these rules includes an appealable order, such as a ruling on a motion, if the appeal is from such an order.

Under Code of Civil Procedure section 1019.5, parties can stipulate to waive notice of a ruling on a motion. If parties waive notice of an appealable order and neither the court nor a party serves a notice of entry of the judgment or a file-stamped copy of the judgment, under rules 8.104 and 8.822 a party has the longer period (180 or 90 days) running from entry of the judgment to file a notice of appeal (see *E.M. v. Los Angeles Unified School Dist.* (2011) 194 Cal.App.4th 736). However, when a party waives notice of a ruling in the trial court, he or she may not have focused on the potential impact on the time to appeal. If a party who waived notice in the trial court later concludes that he or she would prefer the shorter appeal period (60 or 30 days) running from service of such a notice, nothing prevents that party from subsequently serving notice of entry of the judgment or a file-stamped copy of the judgment.

To make the applicable time periods clearer, this proposal would add a provision to both rule 8.104 and rule 8.822 indicating that when notice of the ruling being appealed is waived in the trial court under Code of Civil Procedure section 1019.5, the longer appeal period applies unless the court or a party serves notice of entry of the judgment or a file-stamped copy of the judgment.

### **Extension of time to appeal the granting of a motion for a new trial**

Rules 8.108 and 8.823 address extensions of the time to appeal in a civil case in the Court of Appeal and superior court appellate division, respectively. Subdivision (b) in each rule provides for extension of the time to appeal when a party files a new trial motion.

Sometimes when a party files a new trial motion on the grounds that the damages awarded in a judgment were either inadequate or excessive, a trial court may grant the new trial motion under Code of Civil Procedure section 662.5 but also may provide that if a party agrees either to pay more damages (additur) or accept a reduction in the damages (remittitur), then the new trial motion will be denied. Because of the conditional nature of this type of new trial order, it may not be clear if the time to appeal runs from the date the trial court issued the conditional order or from the date the party accepts or rejects the condition. Rules 8.108(b)(2) and 8.823(b)(2) both

provide for an extension of the time to appeal from the judgment when a party accepts an additur or a remittitur, thus resulting in a denial of the new trial order. However, these rules do not currently provide for an extension on the time to appeal the grant of a new trial motion when a party rejects an additur or a remittitur.

The proposed rule changes would fill this gap. They would provide that when a new trial is granted because a party rejects a conditional additur or remittitur or if the additur or remittitur is deemed rejected because the time for accepting it has expired, any party has 30 days from the time the party serves the rejection of the additur or remittitur or 30 days from the date it is deemed rejected, whichever is earlier, to appeal the grant of the new trial motion.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated between April 21 and June 20, 2011, as part of the regular spring 2011 comment cycle. Nine individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal, four agreed with the proposal if modified, and one did not indicate a position on the proposal. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 12–16. The main substantive comments and the committee’s responses are also discussed below.

#### **Waiver of notice of ruling on motion and time to appeal**

*Comments.* Instead of amending the text of rules 8.104 and 8.822 to address the time to appeal when notice of the ruling being appealed has been waived in the trial court under Code of Civil Procedure section 1019.5, the proposal that was circulated for public comment would have added a provision to the advisory committee comments accompanying these rules to indicate that notice of entry of the judgment could still be served by a party to start the shorter appeal period. Two commentators suggested that this provision should be incorporated into the text of rules 8.104 and 8.822 rather than being addressed in the advisory committee comment. One of these commentators also suggested that the rule clarify that when there has been a waiver of notice of a ruling in the trial court, the longer appeal period applies unless a party serves either notice of entry of the judgment or a file-stamped judgment. The committee agreed with both of these suggestions and modified its proposal to incorporate the suggested changes.

*Alternatives considered.* The committee considered the following additional alternatives to amending rules 8.104 and 8.822 as recommended in this report:

**Option 1: Automatic application of shorter appeal period.** The committee considered, but decided against, recommending that the rules be amended to automatically apply the shorter appeal time period if there has been a waiver of notice under Code of Civil Procedure section 1019.5 of the ruling being appealed. The committee was concerned that, if this approach were adopted, trial counsel might waive the notice of the ruling in the trial court without being aware of the implications for the appeal period. The committee was also concerned that such a rule

amendment might raise questions about when notice was waived (on the date of the hearing or when the waiver was entered in the final clerk's minutes) and could result in additional litigation regarding these issues. Ultimately, the committee concluded that the better approach was to maintain the current rule structure that provides a bright line for starting the shorter appeal period: service of notice of entry of the judgment or a file-stamped copy of the judgment.

**Option 2: Make no changes to rules.** The committee also considered not recommending any changes to rules 8.104 and 8.822. However, the committee understands that there have been recurring questions about the time to appeal when notice of a ruling is waived in the trial court. The committee concluded that amending the rules to address this issue would provide helpful guidance to rule users and reduce collateral litigation about the time to appeal in this situation, thus reducing costs for both litigants and the courts.

### **Extension of time to appeal the granting of a motion for a new trial**

*Comments.* Two commentators suggested changes to the proposed amendments to rules 8.108 and 8.823, including a clarification that, in order to trigger the extension of the time to appeal, an acceptance or rejection of an additur or a remittitur must be timely filed. The committee agreed with these suggestions and modified its proposal to incorporate the suggested changes.

*Alternatives considered.* In addition to the alternatives suggested in the public comments, the committee considered not recommending any changes to rules 8.108 and 8.823. However, the committee understands that there have been recurring questions regarding the time to appeal the grant of a new trial motion when a party rejects a conditional additur or remittitur. The suggestion to amend these rules to address this issue was jointly submitted by the California Chamber of Commerce and the Consumer Attorneys of California, which suggests broad support for addressing this issue.<sup>1</sup> As with the proposed amendments to rules 8.104 and 8.822, the committee also concluded that amending 8.108 and 8.823 was likely to reduce collateral litigation about the time to appeal in this situation, thus reducing costs for both litigants and the courts.

### **Implementation Requirements, Costs, and Operational Impacts**

As noted above, the rule amendments recommended in this report should result in reducing costs for both litigants and courts associated with litigation to clarify the time to appeal in these situations. The proposal should not result in appreciable implementation requirements, costs, or operational impacts.

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<sup>1</sup> Both the Consumer Attorneys of California and California Chamber of Commerce also supported legislation in 2011, Assembly Bill 1403, to amend Code of Civil Procedure section 662.5 to provide that if a deadline for acceptance or rejection of the addition or reduction of damages is not set forth in the conditional order, the deadline is 30 days from the date the conditional order is served by the clerk of the court. This bill enacted as Chapter 409, Statutes of 2011.

## **Attachments**

1. Cal. Rules of Court, rules 8.104, 8.108, 8.822, and 8.823 at pages 7–11
2. Comment Chart, at pages 12–16

Rules 8.104, 8.108, 8.822, and 8.823 of the California Rules of Court are amended, effective July 1, 2012, to read:

1 **Title 8. Appellate Rules**

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

4  
5 **Chapter 2. Civil Appeals**

6  
7 **Article 1. Taking the Appeal**

8  
9 **Rule 8.104. Time to appeal**

10  
11 **(a) Normal time**

12  
13 (1) Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on  
14 or before the earliest of:

15  
16 ~~(1)(A)~~ 60 days after the superior court clerk serves on the party filing the notice of  
17 appeal a document entitled “Notice of Entry” of judgment or a file-stamped  
18 copy of the judgment, showing the date either was served;

19  
20 ~~(2)(B)~~ 60 days after the party filing the notice of appeal serves or is served by a party  
21 with a document entitled “Notice of Entry” of judgment or a file-stamped copy  
22 of the judgment, accompanied by proof of service; or

23  
24 ~~(3)(C)~~ 180 days after entry of judgment.

25  
26 ~~(4)(2)~~ Service under (1)(A) and ~~(2)(B)~~ may be by any method permitted by the Code of  
27 Civil Procedure, including electronic service when permitted under Code of Civil  
28 Procedure section 1010.6 and rules 2.250–2.261.

29  
30 (3) If the parties stipulated in the trial court under Code of Civil Procedure section  
31 1019.5 to waive notice of the court order being appealed, the time to appeal under  
32 (1)(C) applies unless the court or a party serves notice of entry of judgment or a file-  
33 stamped copy of the judgment to start the time period under (1)(A) or (B).

34  
35 **(b)–(e) \* \* \***

1  
2  
3 **Advisory Committee Comment**

4 **Subdivision (a).** Under subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment)  
5 must show the date on which the clerk served the document. The proof of service establishes the date that  
6 the 60-day period under subdivision (a)(1)(A) begins to run.

7 Subdivision (a)(2)(1)(B) requires that a notice of entry of judgment (or a copy of the judgment) served by  
8 or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day  
9 period under subdivision (a)(2)(1)(B) begins to run. Although the general rule on service (rule 8.25(a))  
10 requires proof of service for all documents served by parties, the requirement is reiterated here because of  
11 the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).  
12

13 **Subdivision (b).** \* \* \*

14  
15  
16 **Rule 8.108. Extending the time to appeal**

17  
18 **(a)** \* \* \*

19  
20 **(b) Motion for new trial**

21  
22 If any party serves and files a valid notice of intention to move for a new trial, ~~the time to~~  
23 ~~appeal from the judgment is extended for all parties as follows~~ the following extensions of  
24 time apply:

25  
26 (1) If the motion for a new trial is denied, the time to appeal from the judgment is  
27 extended for all parties until the earliest of:

28  
29 (A) 30 days after the superior court clerk or a party serves an order denying the  
30 motion or a notice of entry of that order;

31  
32 (B) 30 days after denial of the motion by operation of law; or

33  
34 (C) 180 days after entry of judgment.

35  
36 (2) If the trial court makes a finding of excessive or inadequate damages and grants the  
37 motion for a new trial subject to the condition that the motion is denied if a party  
38 consents to the additur or remittitur of damages, the time to appeal is extended as  
39 follows:

40  
41 (A) If any party serves an acceptance of a the conditionally ordered additur or  
42 remittitur of damages pursuant to a trial court finding of excessive or  
43 inadequate damages within the time for accepting the additur or remittitur, the



1                    time to appeal from the judgment is extended for all parties until 30 days after  
2                    the date the party serves the acceptance.

3  
4                    (B) If a party serves a rejection of the additur or remittitur within the time for  
5                    accepting the additur or remittitur or if the time for accepting the additur or  
6                    remittitur expires, the time to appeal from the new trial order is extended for all  
7                    parties until the earliest of 30 days after the date the party serves the rejection  
8                    or 30 days after the date on which the time for accepting the additur or  
9                    remittitur expired.

10  
11                    (c)–(h) \* \* \*

12  
13  
14                    **Division 2. Rules Relating to the Superior Court Appellate Division**

15  
16                    **Chapter 2. Appeals and Records in Limited Civil Cases**

17  
18                    **Article 1. Taking Civil Appeals**

19  
20                    **Rule 8.822. Time to appeal**

21  
22                    **(a) Normal time**

23  
24                    (1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on  
25                    or before the earliest of:

26  
27                    ~~(1)~~(A) 30 days after the trial court clerk mails the party filing the notice of appeal a  
28                    document entitled “Notice of Entry” of judgment or a file-stamped copy of the  
29                    judgment, showing the date either was mailed;

30  
31                    ~~(2)~~(B) 30 days after the party filing the notice of appeal serves or is served by a party  
32                    with a document entitled “Notice of Entry” of judgment or a file-stamped copy  
33                    of the judgment, accompanied by proof of service; or

34  
35                    ~~(3)~~(C) 90 days after the entry of judgment.

36  
37                    ~~(4)~~(2) Service under (1)(A) and ~~(2)~~(B) may be by any method permitted by the Code of  
38                    Civil Procedure, including electronic service when permitted under Code of Civil  
39                    Procedure section 1010.6 and rules 2.250-2.261.

40  
41                    (3) If the parties stipulated in the trial court under Code of Civil Procedure section  
42                    1019.5 to waive notice of the court order being appealed, the time to appeal under

1                    (1)(C) applies unless the court or a party serves notice of entry of judgment or a file-  
2                    stamped copy of the judgment to start the time period under (1)(A) or (B).

3  
4 **(b)–(d) \* \* \***

5  
6                    **Advisory Committee Comment**

7  
8 Under rule 8.804(23), the term “judgment” includes any order that may be appealed.

9  
10 **Subdivision (d).** See rule 8.817(b)(5) for provisions concerning the timeliness of documents mailed by  
11 inmates or patients from custodial institutions.

12  
13  
14 **Rule 8.823. Extending the time to appeal**

15  
16 **(a) \* \* \***

17  
18 **(b) Motion for a new trial**

19  
20 If any party serves and files a valid notice of intention to move for a new trial, ~~the time to~~  
21 ~~appeal from the judgment is extended for all parties as follows~~ the following extensions of  
22 time apply:

23  
24 (1) If the motion is denied, the time to appeal from the judgment is extended for all  
25 parties until the earliest of:

26  
27 (A) 15 days after the trial court clerk mails, or a party serves, an order denying the  
28 motion or a notice of entry of that order;

29  
30 (B) 15 days after denial of the motion by operation of law; or

31  
32 (C) 90 days after entry of judgment; or

33  
34 (2) If the trial court makes a finding of excessive or inadequate damages and grants the  
35 motion for a new trial subject to the condition that the motion is denied if a party  
36 consents to the additur or remittitur of damages:

37  
38 (A) If any party serves an acceptance of a the conditionally ordered additur or  
39 remittitur of damages under a trial court finding of excessive or inadequate  
40 damages within the time for accepting the additur or remittitur, the time to  
41 appeal from the judgment is extended for all parties until 15 days after the date  
42 the party serves the acceptance.  
43

1                    (B) If a party serves a rejection of the additur or remittitur within the time for  
2                    accepting the additur or remittitur or if the time for accepting the additur or  
3                    remittitur expires, the time to appeal from the new trial order is extended for all  
4                    parties until the earliest of 30 days after the date the party serves the rejection  
5                    or 30 days after the date on which the time for accepting the additur or  
6                    remittitur expired.

7  
8    **(c)-(h) \* \* \***



**SPR11-05****Appellate Procedure: Time to Appeal** (amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
1.	Appellate Court Committee San Diego County Bar Association By Cecilia O. Miller, Chair	AM	<p>We commend the committee for addressing the persistently confusing issue of the time to appeal. We believe, however, the proposed clarifying note does not go far enough to adequately ameliorate the confusion.</p> <p>The proposed clarifying note to the comment on rules 8.104 and 8.822 addresses the situation where the parties waive notice of a ruling under Code of Civil Procedure section 1019.5, but then subsequently serve notice of entry of the order. The comment, however, does not address the applicable period to appeal when notice is waived and no subsequent notice of entry is served. Although the committee's discussion suggests that the longer period of 180 or 60 days would apply, this is not apparent from the language of the rule itself or the proposed clarifying language. Our members noted that some trial courts and practitioners construe the waiver of notice as the equivalent of receiving notice on the date of the hearing. Such a construction leads to the interpretation that the shorter period begins to run on the date of the hearing. Although our members recognize this may not be the proper application of the rules, an abundance of caution suggests such an application.</p> <p>In addition, the proposed clarifying note does not address the same problem when applied to statutory writ petitions. For example, a party must file a petition for peremptory writ arising</p>	<p>Based on this and other comments, the committee has revised the proposal to: (1) move the provision addressing the time to appeal when notice of a ruling was waived under Code of Civil Procedure section 1019.5 into the text of the rule; and (2) directly address in this provision the time to appeal when notice of entry or a file-stamped copy of the judgment is not served.</p> <p>The committee appreciates the suggestion that the committee also address the issue of the time file certain writ petitions when notice of a ruling was waived under Code of Civil Procedure section</p>

**SPR11-05**

**Appellate Procedure: Time to Appeal** (amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822)

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	Commentator	Position	Comment	Proposed Committee Response
			<p>from the denial of a motion for summary judgment "within 20 days after service upon him or her of a written notice of entry of the order." (Code Civ. Proc., § 437c, subd. (m)(l).) When notice of entry is waived by the parties, however, what is the deadline for filing the writ petition? The current Rules of Court do not address this issue; neither does the proposed clarifying note. Because the proposal concerns rules governing the time for appeal, we believe the proposal touches on these larger issues that should be addressed. We also believe the significance of this clarification warrants treatment in the language of the rule, not merely in a comment thereto that may be overlooked.</p> <p>We propose adding clarifying language to rules 8.104 and 8.822. Rules 8.104(a)(3) and 8.822(a)(3) would clarify that a stipulation to waive notice pursuant to Code of Civil Procedure section 1019.5 is not effective to start the shorter appeal period (60 or 30 days) running. Rule 8.104(a)(3) and rule 8.822(a)(3) would also include the currently proposed commentary text, noting that even if parties stipulated to waive notice of the court's decision, notice of entry can be served to start the shorter time period, moved up from the comment into the language of the rule. To avoid confusion, we also recommend replacing the word "decision" in the current proposed text with the words "order or judgment."</p>	<p>1019.5. The committee will consider this suggestion, which is beyond the scope of the proposal that was circulated for public comment, during an upcoming committee year.</p>

**SPR11-05****Appellate Procedure: Time to Appeal** (amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
2.	Committee on Appellate Courts State Bar of California Benjamin Shatz, Chair	A	The Committee supports this proposal.	No response required.
3.	Judith McConnell, Presiding Justice Court of Appeal, Fourth Appellate District, Division One	AM	I support clarification of the effect of a waiver of notice of ruling on the time to appeal. I suggest, however, that the Committee incorporate the clarification as a new Rule 8.104(a)(1)(3) rather than as an Advisory Committee Comment. I also believe it is helpful that the amendment specifies the time to appeal the grant of a new trial when a party rejects an additur or remittitur.	Based on this and other comments, the committee has revised the proposal to move the provision addressing the time to appeal when notice of a ruling was waived under Code of Civil Procedure section 1019.5 into the text of the rule.
4.	Orange County Bar Association By John Hueston, President	A	No specific comment.	No response required.
5.	Rules and Legislation Committee of the State Bar of California's Litigation Section By Reuben A. Ginsburg - Co-chair	AM	The Rules and Legislation Committee agrees with the proposal, but suggests that the language of rule 8.108(b)(2)(A) and (B) be modified. Although (A) and (B) refer to the acceptance of the additur or remittitur by "any party," it appears that the reference should be limited to the party or parties whose consent to the additur or remittitur the denial of a new trial was conditioned on. Also, the time to appeal should be extended only if that party's acceptance of the additur or remittitur is timely. We would also propose other changes to (B) for clarity and consistency. Accordingly, we suggest the following modifications (additions underscored, deletions shown by strikethrough):	The committee agrees with these suggestions and has revised the proposal to clarify that only an acceptance or rejection of an additur or remittitur that is filed by a party before the time for filing an acceptance expires is sufficient to trigger an extension of the time to appeal. Based on this and other comments, the committee also modified the language of proposed 8.108(b)(20)(B) to clarify that the notice of appeal must be filed by the earliest of 30 days after a rejection is timely filed by a party or 30 days after the date on which the time for filing an acceptance expired.

**SPR11-05****Appellate Procedure: Time to Appeal** (amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			<p>“(A) If <del>any party serves an acceptance</del> of the additur or remittitur <u>is timely accepted</u>, the time to appeal from the judgment is extended for all parties until 30 days after the date the party serves the acceptance.”</p> <p>“(B) If <del>any party serves a rejection</del> of the additur or remittitur <u>is timely rejected</u> or the time for accepting the additur or remittitur expires, the time to appeal from the new trial order is extended for all parties until 30 days after <u>the earlier of</u> the date the party serves the rejection or the date on which the time for accepting the additur or remittitur <u>expires</u>.”</p>	
6.	Superior Court of Los Angeles County	AM	<p>The proposed change to rule 8.823(b)(2)(B) is unclear. Suggest that the proposed rule be modified to read as follows:</p> <p>(B) If any party serves a rejection of the additur or remittitur or the time for accepting the additur or remittitur expires, the time to appeal from the new trial order is extended for all parties until the earliest of 30 days after the date the party serves the rejection or 30 days after the date on which the time for accepting the additur or remittitur expired.</p>	The committee agrees with this suggestion and has revised the proposal to incorporate the changes suggested by the commentator.
7.	Superior Court of Monterey County By Rosalinda Chavez – ACEO	A	No specific comment.	No response required.
8.	Superior Court of Sacramento County By Robert Turner - ASO II	NI	No specific comment.	No response required.



**SPR11-05**

**Appellate Procedure: Time to Appeal** (amend Cal. Rules of Court, rules 8.108 and 8.823 and the advisory committee comments to rules 8.104 and 8.822)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
	Research & Evaluation Division			
9.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comment.	No response required.

