



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

Title	Agenda Item Type
Appellate Procedure: Extensions of Time to File Briefs	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 8.212; revise form APP-006; and approve new optional forms CR-126, JV-816, JV-817, APP-012, and APP-031	January 1, 2015
Recommended by	Date of Report
Appellate Advisory Committee	September 18, 2014
Justice Raymond J. Ikola, Chair	Contact
	Heather Anderson, Senior Attorney
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Executive Summary

The Appellate Advisory Committee recommends (1) amending the rule governing stipulations for extensions of time to file a brief in a civil appeal to clarify that such stipulations are not available if the time to file the brief has already been extended by the court on application of the party and to reflect the recent amendments to the rules on sealed records; (2) revising the existing form for applying to the Court of Appeal for extensions of time to file briefs in civil appeals to, among other things, give form users the option of specifying the reasons for an extension on the form or on an attached declaration; (3) adopting new optional forms for applying to the Court of Appeal for extensions of time to file briefs in criminal and juvenile cases; and (4) adopting a new optional form for stipulations to extend briefing time in civil appeals. These changes are intended to reduce courts' costs associated with the preparation of individualized applications for extensions of time by appointed counsel and the review of applications and stipulations for extensions of time that are in a wide variety of formats.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend rule 8.212 to:
 - Clarify that stipulations to extend the time to file a brief are unavailable if the time to file the brief has already been extended by the court on application of the party; and
 - Reflect the recent amendments to the rules on sealed records;
2. Revise *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006) to:
 - Add more space for form users to specify the reasons warranting the extension, and give them the option of attaching a separate declaration specifying these reasons;
 - Eliminate the integrated proof of service;
 - Provide space for the presiding justice to make his or her order on the application form or to indicate that there is a separate order concerning the application; and
 - Make other minor changes;
3. Approve new optional form *Attached Declaration (Court of Appeal)* (form APP-031(A)), which parties may use to specify the reasons warranting the extension of time;
4. Approve new optional form *Stipulation for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-012); and
5. Approve new optional forms *Application for Extension of Time to File Brief (Criminal Case) (Appellate)* (form CR-126); *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)* (form JV-816); and *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)* (form JV-817).

The text of the amended rule and the forms is attached at pages 8–20.

Previous Council Action

The predecessor to rule 8.212, regarding the time to file briefs, was adopted by the Judicial Council as part of the original Rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. Since its adoption, the rule has provided that parties in civil appeals in the Court of Appeal can stipulate to extend the time to file their briefs and that, for good

cause, the presiding justice may also extend the time for filing a brief. The original 1928 rule had separate sentences that articulated the parties' authority to stipulate to an extension and the presiding justice's authority to grant an extension, without any provisions addressing the relationship between the two. As part of an overall revision of the appellate rules, effective July 1, 1943, the Judicial Council adopted a new rule on the time to file briefs in civil appeals. Similar to the 1928 rule, this 1943 rule provided that the parties could stipulate to extend the time to file a brief. However, it further provided that "thereafter the time may be extended only by the ... Presiding Justice, for good cause shown." This language remained unchanged until January 1 2002, when the council adopted a new rule on the time to file briefs as part of another comprehensive revision of the appellate rules. The 2002 rule specifically provided that an application to the presiding justice for an extension of time to file a brief must show not only good cause for the extension, but also either that the applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation or that the parties had already stipulated to the 60-day maximum. Although this rule has been renumbered and amended in other ways, this provision has remained substantively unchanged since 2002.

Effective January 1, 2014, on the recommendation of the Appellate Advisory Committee, the Judicial Council adopted new appellate rules and rule amendments relating to sealed and confidential records, including new provisions regarding the labeling of sealed and conditionally sealed filings.

Rationale for Recommendation

Stipulations and applications for extensions of briefing time in civil appeals

Rule 8.212. California Rules of Court, rule 8.212, addresses service and filing of briefs in civil appeals. Among other things, this rule provides that except as otherwise provided by statute, the parties may extend the briefing period for each brief by up to 60 days by filing one or more stipulations in the reviewing court before the brief is due. Rule 8.212 also provides that if a party is unable to stipulate to an extension, the party may apply to the presiding justice for an extension of briefing time before the brief is due. Rule 8.220 also addresses applications for extension of time, providing that when the clerk has notified a party that its brief was not timely filed and must be filed within 15 days, within that 15-day period the party may apply to the presiding justice for an extension of briefing time.

The general understanding is that once the court has granted a party's application for an extension of time to file a brief, the parties may not stipulate to further extend that briefing time. Based on the suggestion of a Court of Appeal staff attorney, the committee recommends that rule 8.212(b) be amended to more clearly reflect this understanding by providing that stipulations for extensions of time to file a brief in a civil appeal are not available if the time to file a brief has already been extended by the court on application of the party.

Rule 8.212 also addresses service of briefs, including briefs that are filed conditionally under seal. Effective January 1, 2014, the rules relating to the sealed records, including the rules

specifying what information needs to be included on the cover of conditionally sealed filings, were amended. Rule 8.212 does not currently reflect these amendments. The committee recommends that rule 8.212 also be amended to reflect these recent amendments to the rules on sealed records.

Application for Extension of Time to File Brief (Civil Case) (Form APP-006). *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006) is an optional Judicial Council form that a party may use to seek an extension of time from the court in a civil appeal. The form currently provides only a very small space for a party to specify the reasons that warrant the requested extension of time. As a result, applicants for extensions of time must often include an attachment specifying these reasons. To make the form more user-friendly, the committee recommends enlarging the space available for applicants to specify the reasons for a requested extension. In addition, the committee recommends making clear on this form that the party may attach a separate declaration specifying those reasons if additional space is needed. To facilitate using such attachments when necessary, the committee also recommends the approval of a new optional declaration form—*Attached Declaration (Court of Appeal)* (form APP-031(A))—that can be attached to an extension application.

The second page of form APP-006 is currently entirely taken up by an optional proof of service form. Although proofs of service integrated into individual forms may be helpful, timely updating them can be difficult. Keeping a single, stand-alone proof of service form updated is much easier. The committee therefore recommends that the proof of service provisions be deleted from form APP-006 and replaced with a note that *Proof of Service (Court of Appeal)* (form APP-009) may be used for this purpose. Deleting the integrated proof of service also provides the additional space needed to expand the area for the reasons warranting the extension while keeping the total length of the form at two pages, or both sides of one sheet of paper.

Form APP-006 currently includes space for the presiding justice to make his or her order granting or denying the extension request on the form itself. Some appellate districts are moving toward electronic filing of extension requests. Depending on the format of the document filed and the e-filing system, producing and delivering a separate order may be easier than adding the presiding justice's signature to the document filed by a party and then sending that signed document to the parties. To facilitate electronic filing and service of these applications and associated orders, the committee recommends revising form APP-006 to include check boxes that the court may use to indicate that it is making its order either on the same form as the application or in a separate document. The proposed revisions will maintain the convenience of an integrated application and order for those districts that want and can use this format while allowing other courts to use the application form but issue a separate order.

The committee also recommends several minor changes to form APP-006, including:

- Updating the header to:

- Specify that the e-mail address and fax number of the filer must be provided (if available), as required by rule 8.40(c); and
- Establish separate fields for each element of the filer’s contact information to facilitate electronic filing;
- Adding separate spaces for parties to request extension of combined briefs under rule 8.216 when there is a cross-appeal; and
- Adding a space for the applicant to indicate if the court marked any previous extension “no further.”

Proposed new Stipulation for Extension of Time to File Brief (Civil Case) (Appellate) (form APP-012). Although stipulations to extend the time to file a brief in a civil appeal are among the most common filings in the Court of Appeal, no Judicial Council form currently exists for such stipulations. Because these stipulations must be individually prepared, they are not in a uniform format, making it difficult for clerks to easily find important information about the new due dates of briefs. To encourage uniformity in stipulation format and thereby facilitate review of such stipulations by appellate court clerks, the committee recommends approval of new optional *Stipulation for Extension of Time to File Brief (Civil Case) (Appellate) (form APP-012).*

Applications for extensions of briefing time in felony and juvenile appeals

Like rule 8.212, rule 8.360, relating to briefs in felony appeals, and rules 8.412 and 8.416, which address briefs in juvenile appeals, permit parties to apply to the Court of Appeal for an extension of time to file a brief. Although several Court of Appeal districts have local forms for this purpose, currently no Judicial Council forms exist for filing applications for extensions of briefing time in felony and juvenile appeals.

To help reduce costs associated with preparation of these applications by appointed counsel and with review of these applications by the court, the committee recommends approval of three new optional Judicial Council forms:

- *Application for Extension of Time to File Brief (Criminal Case) (Appellate) (form CR-126);*
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate) (form JV-816);* and
- *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate) (form JV-817).*

These recommended forms are modeled on a combination of the current Judicial Council *Application for Extension of Time to File Brief (Civil Case) (Appellate) (form APP-006)* and the local forms adopted by several Court of Appeal districts.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Seven individuals or organizations submitted comments on this proposal. Four

commentators agreed with the proposal, two agreed with the proposal if modified, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 21–25.

As circulated for public comment, all of the application-for-extension forms—APP-006, CR-126, JV-816, and JV-817—would have included a note at the top of the form indicating that parties are expected to use the “grace period” allowed by the rules of court for late briefs rather than filing an application for an extension of time, if the brief can be filed within the time allowed by those rules. This language was modeled on language in a footnote in the local application form of one of the Court of Appeal districts. Two commentators, including a Court of Appeal, raised concerns about this language. Based on these comments, the committee revised its proposal to remove this language from the application forms.

One commentator, also a Court of Appeal, suggested that, consistent with the proposed amendment to rule 8.212, the proposed new stipulation form should more clearly indicate that a stipulation cannot be used if an extension of the time to file the brief has already been granted by the presiding justice. Based on this comment, the committee revised proposed new form APP-012 to include this caution in the note at the top of the form.

Alternatives

In addition to the alternatives considered as a result of the public comments, the committee considered a variety of alternative language and provisions in developing the proposed amendments to rule 8.212, proposed revisions to form APP-006, and proposed new forms CR-126, JV-816, JV-817, APP-012, and APP-031. Options considered, but ultimately not recommended by the committee, included:

- Adding the text of the requirements regarding labeling of sealed and conditionally sealed filings in the proposed amendments to rule 8.212, rather than cross-referencing to rule 8.47. Although this added text would make it easier for users of rule 8.212 to find these labeling requirements, the committee concluded that this benefit was outweighed by the costs associated with duplicating all of these requirements and ensuring that multiple rules are appropriately updated.
- Proposing a stipulation form that could be used to extend the time for filing multiple briefs at the same time. Although this form would be convenient for some applicants, the committee concluded that such a form was likely to make it more difficult for clerks to easily identify the due dates of briefs. Further, the committee's view was that if parties wished to extend the due dates of multiple briefs at the same time, they could simply file separate stipulation forms for each brief.

The committee also considered not proposing these rule amendments and form changes. However, the committee concluded that clarifying the rule and creating standardized stipulation and application forms would assist both counsel and the courts, resulting in reduced court costs

associated with the time for appointed counsel to prepare individualized application forms and for the courts to review applications and stipulations that are in a wide variety of formats. Given these potential costs savings, the committee concluded that it should recommend these rule amendments and forms at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal should result in no implementation costs for the courts and, as noted above, should reduce costs for the courts associated with the time for appointed counsel to prepare individualized application forms and for the courts to review applications and stipulations that are in a wide variety of formats.

Attachments

1. Cal. Rules of Court, rule 8.212, at pages 8–9
2. Forms APP-006, APP-012, APP-031, CR-126, JV-817, and JV-817, at pages 10–20
3. Chart of comments, at pages 21–25

Rule 8.212 of the California Rules of Court is amended, effective January 1, 2015, to read:

1 **Rule 8.212. Service and filing of briefs**

2
3 (a) * * *

4
5 (b) **Extensions of time**

6
7 (1) Except as otherwise provided by statute or when the time to file the brief has
8 previously been extended under (3) or rule 8.220(d), the parties may extend each
9 period under (a) by up to 60 days by filing one or more stipulations in the reviewing
10 court before the brief is due. Stipulations must be signed by and served on all parties.

11
12 (2) A stipulation under (1) is effective on filing. The reviewing court may not shorten a
13 stipulated extension.

14
15 (3) Before the brief is due, a party may apply to the presiding justice for an extension of
16 each period under (a), or under rule 8.200(c)(6) or (7), on a showing that there is
17 good cause and that:

18
19 (A) The applicant was unable to obtain—or it would have been futile to seek—the
20 extension by stipulation; or

21
22 (B) The parties have stipulated to the maximum extension permitted under (1) and
23 the applicant seeks a further extension.

24
25 (4) A party need not apply for an extension or relief from default if it can file its brief
26 within the time prescribed by rule 8.220(a). The clerk must file a brief submitted
27 within that time if it otherwise complies with these rules.

28
29 (c) **Service**

30
31 (1) * * *

32
33 (2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy of each
34 brief must be submitted to the Court of Appeal. For purposes of this requirement, the
35 term “brief” does not include a petition for rehearing or an answer thereto.

36
37 (A) * * *

38
39 (B) ~~If the Court of Appeal has ordered~~ the brief discloses material contained in a
40 sealed or conditionally sealed record, the party serving the brief must comply
41 with rule 8.46(f) and include as the first page in the PDF document a cover

1 sheet that contains the information required by rule 8.204(b)(10), and labels the
2 contents as “~~CONDITIONALLY UNDER SEAL.~~” The Court of Appeal clerk
3 must promptly notify the Supreme Court of any court order unsealing the brief.
4 In the absence of such notice, the Supreme Court clerk must keep all copies of
5 the brief under seal.
6

7 (C) If it would cause undue hardship for the party filing the brief to submit an
8 electronic copy of the brief to the Court of Appeal, the party may instead serve
9 four paper copies of the brief on the Supreme Court. If ~~the Court of Appeal has~~
10 ~~ordered~~ the brief discloses material contained in a sealed or conditionally
11 sealed record, the party serving the brief must comply with rule 8.46(f) ~~place~~
12 ~~all four copies of the brief in a sealed envelope~~ and attach a cover sheet that
13 contains the information required by rule 8.204(b)(10), and labels the contents
14 as “~~CONDITIONALLY UNDER SEAL.~~” The Court of Appeal clerk must
15 promptly notify the Supreme Court of any court order unsealing the brief. In
16 the absence of such notice, the Supreme Court clerk must keep all copies of the
17 unredacted brief under seal.
18

19 (3) * * *
20

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION		COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: <input type="checkbox"/> STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:		
NAME:				
FIRM NAME:				
STREET ADDRESS:				
CITY:	STATE:			ZIP CODE:
TELEPHONE NO.:	FAX NO. (if available):			
E-MAIL ADDRESS (if available):				
ATTORNEY FOR (name):				
APPELLANT:				
RESPONDENT:				
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)				
Notice: Please read Judicial Council form APP-001 before completing this form.				

1. I (name): request that the time to file (check one):

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- 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):
- Did the court mark any previous extension "no further?" Yes No

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 last brief filed by any party was: AOB RB RB and AOB ARB and RB filed on (date):

6. The record in this case is:

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

7. The trial court has ordered the proceedings in this case stayed until this appeal is decided.

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The reasons that I need an extension to file this brief are stated

below

on a separate declaration

You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

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).

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

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)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to *(date)* _____

Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO. (if available):		
E-MAIL ADDRESS (if available):			
ATTORNEY FOR (name):			
APPELLANT:			
RESPONDENT:			
STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)			

Notice: Please read Judicial Council form APP-001 before completing this form. Before a brief is due, parties may extend the time to file the brief up to a maximum of 60 days by filing one or more stipulations. However, parties may not stipulate to extend the time to file a brief if the court has previously granted an application to extend the time to file the brief. See California Rules of Court, rule 8.212(b).

1. All parties to this appeal stipulate to extend the time under Cal. Rules of Court, rule 8.212(a), to file the following brief (*check one*):

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

2. This brief is now due on (*date*):

3. The parties agree to extend the due date by (*number*): _____ days, so that the new date is (*date*):

4. The time to file this brief (*check one*):

- has not been extended by stipulations previously.
- has been extended previously by one or more stipulations totaling (*number*) _____ days.

The combined extensions to file this brief by this stipulation and any previous stipulation do not exceed 60 days. (See rule 1.10 regarding the computation of time.)

5. For attorneys filing on behalf of a client, I certify that I have delivered a copy of this stipulation to my client. (See rule 8.60.)

6. A proof of service of this stipulation on all parties is attached (see rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
---------------------------	------------------------------

Date: _____

 (TYPE OR PRINT NAME)  _____
 (SIGNATURE OF PARTY OR ATTORNEY)

 (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date: _____

 (TYPE OR PRINT NAME)  _____
 (SIGNATURE OF PARTY OR ATTORNEY)

 (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date: _____

 (TYPE OR PRINT NAME)  _____
 (SIGNATURE OF PARTY OR ATTORNEY)

 (IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER: SUPERIOR COURT CASE NUMBER:
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ATTACHED DECLARATION (COURT OF APPEAL)
(This form must be attached to another form or court paper before it can be filed in court.)

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

Date:

_____ (TYPE OR PRINT NAME)

 _____ (SIGNATURE OF DECLARANT)

- Attorney for
 Appellant
 Respondent
 Other *(specify):*

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:	
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER:	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:		ZIP CODE:
TELEPHONE NO.:	FAX NO. (if available):		
E-MAIL ADDRESS (if available):			
ATTORNEY FOR (name):			
<p style="margin-left: 40px;">APPELLANT:</p> <p style="margin-left: 40px;">RESPONDENT:</p>			
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE)			

1. I (name): request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): be extended to (date):

2. I have have not received a rule 8.360(c)(5) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): extensions from the court totaling (total number of days):

Did the court mark any previous extension "no further?" Yes No

4. The last brief filed by any party was: AOB RB RB and AOB ARB and RB filed on (date):

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:	_____	_____	_____
Reporter's Transcript:	_____	_____	_____
Augmentation/Other:	_____	_____	_____

6. Defendant was convicted of (specify):

7. The conviction is based on a (check one):

- jury verdict
- plea of guilty or no contest

APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following punishment:

9. The defendant is is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

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)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____
 Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		SUPERIOR COURT CASE NUMBER(S):
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY: STATE: ZIP CODE:		
TELEPHONE NO.: FAX NO. (if available):		
E-MAIL ADDRESS (if available):		
ATTORNEY FOR (name):		
Case Name: In re _____, person(s), coming under the juvenile court law		
APPELLANT:		
RESPONDENT:		
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)		

1. I (name): _____ request that the time to file (check one)

- appellant's opening brief (AOB)
- respondent's brief (RB)
- combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
- combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
- appellant's reply brief (ARB)

now due on (date): _____ be extended to (date): _____

2. I have have not received a rule 8.412(d)(1) notice.

3. I have received

- no previous extensions to file this brief.
- the following previous extensions:

(number of extensions): _____ extensions from the court totaling (total number of days): _____

Did the court mark any previous extension "no further?" Yes No

4. The last brief filed by any party was: AOB RB RB and AOB ARB and RB
filed on (date): _____

5. The record in this case is:

	<u>Volumes (#)</u>	<u>Pages (#)</u>	<u>Date filed</u>
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed (check one):

- a contested hearing
- an admission

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated

below.

on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

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)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

Granted to (date): _____
 Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:
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6. c. Section 366.28
 d. Other appealable orders relating to dependency (*specify*):

7. The reasons that I need an extension to file this brief are stated:
 below.
 on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

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)

Order on Application is below on a separate document

ORDER

EXTENSION OF TIME IS:

- Granted to (date): _____
 Denied

Date: _____

 (SIGNATURE OF PRESIDING JUSTICE)

SPR14-02

Appellate Procedure: Extensions of Time to File briefs; Amend Cal. Rules of Court, rule 8.212
 Revise form APP-006; and approve new optional forms CR-126, JV-816, APP-012, and APP -031
 All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District Thomas Kallay Managing Attorney	A	<p>1. We support this proposal. It is already the general practice of this court.</p> <p>2. We agree that there will be no implementation costs for the courts.</p> <p>3. We support the new optional Judicial Council forms for extensions of time. We agree that these forms will save time for counsel and will facilitate the review of applications for extensions of time.</p> <p>4. The form (SPR14-02) should state specifically that a stipulation is precluded if an extension of time has already been granted by the presiding justice.</p> <p>5. Two months is sufficient time to implement this proposal.</p>	<p>The committee notes the commentator's support for the proposal.</p> <p>Based on this comment, the committee has revised the notice box on proposed new form APP-012 to more directly state that a stipulation is not available if the court has previously extended the time to file a brief on application of a party.</p>
2.	Court of Appeal, Third Appellate District Collette M. Bruggman Assistant Clerk/Administrator	AM	<p>APP-006 contains a "Notice" box which states: "Notice: Please read Judicial Council form APP-001 before completing this form. Parties are expected to use the time allowed by California Rules of Court, rule 8.220(a), rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule."</p> <p>The language "Parties are expected to use the time allowed by California Rules of Court, rule 8.220(a), rather than filing an application for an</p>	<p>Based on this and other comments, the committee has revised its proposal to remove this sentence from the notice box.</p>

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	Commentator	Position	Comment	Committee Response
			<p>extension of time, if the brief can be filed within the time allowed by that rule,” of the notice creates problems because rule 8.220(a) requires the Clerk’s Office to give notice if a brief hasn’t been timely filed and allow 15 additional days to file. According to the Notice on APP-006, the Clerk’s Office would have to give notice of default in every case before a party could file a request for extension of time, and every attorney needing an extension of time would be issued a default notice first.</p> <p>Currently, a party can request an extension of time at any time prior to the filing of the brief without the Clerk’s Office having to issue a notice of default. The Notice in the new form creates a lot of extra work and changes the entire operation of the Clerk’s Office regarding extensions of time, or this Court would have to issue a Miscellaneous Order setting forth that we will not use the JC Form. Overall, we support the use of standardized forms, but cannot support the language in this “Notice” box. I would recommend removing the language “Parties are expected to use the time allowed by California Rules of Court, rule 8.220(a), rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule.”</p> <p>Form CR-136 has the same “Notice” box, citing rule 8.360(c)(5) and will cause the same problems, only in criminal cases. This would</p>	

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	Commentator	Position	Comment	Committee Response
			<p>also result in default notices to court-appointed panel attorneys. An unintended consequence of this provision is that the number of default notices a panel attorney receives may influence a decision about whether that attorney may stay on the panel of court-appointed attorneys; this is why court-appointed attorneys prefer to request extensions of time rather than receive default notices. Same recommendation to remove language from the “Notice” box here.</p> <p>Forms JV-816 and JV-817 have the same “Notice” box, citing rules 8.412(d) and 8.416(g) and will cause the same problems as stated for criminal cases. Same recommendation to remove language from the “Notice” box here.</p>	
3.	Los Angeles County Counsel Dawyn Harrison Assistant County Counsel	AM	I wanted to comment that the proposed new admonishment on the juvenile extension form—that “Parties are expected to use the time allowed by California Rules of Court, rules 8.412(d) or 8.416(g) rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule”—is confusing. One way of reading that admonition is that the court is telling attorneys that even if they are going to be late filing their brief, if they can get it filed less than 30 days late, they should just let the default issue rather than apply for an extension. But, the invitation to comment states “The notice box at the top of the form includes a statement that parties, when notified that a brief is late, are expected to use	Based on this and other comments, the committee has revised its proposal to remove this sentence from the notice box.

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			<p>the "grace period" provided by the rules to file the brief, if possible." If that rational is true, then the court is just dissuading requests for extensions after the default notice has issued.</p> <p>Under what circumstances is the Court discouraging requests for extension of time? Is it only after the default notice issues as the invitation to comment suggests, or is it also under circumstances where the default notice has not issued yet, but counsel believes they can file their brief within the soon-to-begin thirty day default period? If the rational provided in the invitation to comment is correct, maybe that language should appear on the form since it is more clear.</p>	
4.	Orange County Bar Association	A	<p>In response to the “Request for Specific Comment” asking “whether the proposal appropriately addresses the stated purpose”, we state:</p> <p>The primary stated purpose of the proposal is to amend rule 8.212 to make it clearer that a stipulation to extend briefing deadlines is not allowed in civil matters once an application for extension has been filed; the proposed amendment does accomplish that primary stated purpose. A further stated purpose is for revision and creation of standardized forms to assist counsel and the courts (versus their having to prepare or review and consider individualized forms that are in a wide variety of formats); we</p>	The committee notes the commentator’s support for the proposal; no response required.

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	Commentator	Position	Comment	Committee Response
			believe the revised and new forms would achieve this stated purpose as well.	
5.	Superior Court of Los Angeles County	A	The amendments and forms will bring clarity to the confusion surrounding stipulations and applications for continuances. The lack of clarity exists in the rules governing appeals to the Appellate Division. The proposed changes do not, however, amend the companion Rules of Court that apply to appeals to the Appellate Division.	The committee notes the commentator's support for the proposal. The committee is in the process of forming an Appellate Division subcommittee and will refer this comment to that subcommittee.
6.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comments	The committee notes the commentator's support for the proposal; no response required.
7.	Ed Wigdahl Director Neighborhood Nation Escondido, CA	N	Time restrictions are fair for those who practice law. But unrepresented litigants should be able to request an extension due to the complicated laws that rule appeals.	The committee respectfully disagrees. Unrepresented litigants are generally required to comply with the same procedural requirements as those that are represented.