

Invitation to Comment

SPR10-08

Title	Appellate Procedure: Transfer of Appellate Division Cases to the Court of Appeal (adopt Cal. Rules of Court, rule 8.1006; amend rules 8.25, 8.40, 8.887, 8.890, 8.1000, 8.1002, 8.1005, 8.1008, 8.1012, 8.1014, 8.1016, and 8.1018; and amend and renumber rule 8.1010)
Summary	This proposal would amend the rules relating to transfer of cases within the appellate jurisdiction of the superior court appellate division to the Court of Appeal. Among other things, it would: (1) clarify that if an appeal in a traffic case is assigned to a single appellate division judge, that judge may certify the case for transfer; (2) allow a party to file a petition for transfer even if the appellate division has certified its opinion for publication; (3) clarify the requirements concerning the form and contents of petitions for transfer and answers to those petitions; (4) specify that a petition for transfer is to be filed after the appellate division issues its decision in the case; (5) clarify that petitions for transfer and answers to these petitions are among the documents considered timely filed under rule 8.25 if the time to file has not expired on the date the document is mailed or sent by overnight carrier; (6) eliminate the requirements that the Court of Appeal be sent all appellate division opinions certified for publication and the record in these cases; (7) clarify the provisions concerning the record sent to the Court of Appeal to assist it in determining whether to order transfer; (8) change the time within which a Court of Appeal can order transfer to 20 days after the record is filed in the Court of Appeal when a petition for transfer is filed and 30 days after the appellate division decision is final if transfer is being ordered on the Court of Appeal's own motion; (9) clarify the provisions relating to remittitur and finality of decisions relating to transfer or decisions in transferred cases; (10) update cross-references to the new appellate division rules and to language in those rules; and (11) make other clarifying changes.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov

Rules 8.1000– 8.1018 of the California Rules of Court set out the procedures for transferring cases within the appellate jurisdiction of the superior court appellate division to the Court of Appeal as permitted under Code of Civil Procedure section 911. This statute and these rules allow the Court of Appeal to order a case transferred to it if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law. Transfer can be ordered if the appellate division certifies the

case for transfer, on petition for transfer by a party, or on the Court of Appeal's own motion.

Certification for transfer by the superior court appellate division

Currently, rule 8.1005 provides that a case may be certified for transfer “by a majority of the appellate division judges to whom the case has been assigned or who decided the appeal or, if the case has not yet been assigned, by any two appellate division judges.” This language presumes that the case was or will be heard by three appellate division judges. However, Code of Civil Procedure section 77(h) provides that an appeal of a traffic conviction can be heard by a single appellate division judge. This proposal would amend rule 8.1005 to provide that, if an appeal is assigned to a single appellate division judge, that judge may certify the case for transfer.

Petitions for transfer

Currently, the provisions relating to petitions for transfer are part of rule 8.1008. This makes it more difficult for rule users to find these provisions. To make these provisions easier to find, this proposal would also move the provisions relating to petitions for transfer out of rule 8.1008 and into new rule 8.1006. The proposal would also make several substantive changes to these provisions.

Right to file petition. In many ways, the rules on transfer are designed to mirror the procedures for seeking review in the California Supreme Court. Like those rules, the transfer rules are designed to assist the higher court—the Court of Appeal—in identifying cases where review is needed. To assist the Supreme Court, the rules permit parties to file petitions seeking review of almost any Court of Appeal decision. In contrast, the rules relating to transfer of cases from the appellate division to the Court of Appeal currently provide more limited opportunities for parties to seek transfer. Under rule 8.1008(b), if the appellate division decides not to grant an application for certification, a party may file a petition in the Court of Appeal asking the court to order transfer, but only if the appellate division also does not write an opinion and certify that opinion for publication. If the appellate division does certify an opinion for publication, rule 8.1008(d) permits a party only to write a letter to the Court of Appeal supporting or opposing transfer on the court's own motion.

To provide the Court of Appeal with additional assistance in identifying cases that are appropriate for transfer, this proposal would permit parties to file a petition for transfer in the Court of Appeal even if the appellate division certified its opinion for publication. The only prerequisite for filing a petition would be that an application for certification for transfer was filed in and denied by the appellate division. Current rule 8.1008(d), allowing for letters from parties urging transfer, would be deleted in light of the proposed new authority to file a petition for transfer even when an opinion is certified for publication.

Format of petitions. Rule 8.1008(b)(5) currently provides for the form and contents of petitions for transfer by requiring that these petitions “comply as nearly as possible with rule 8.504,” the rule concerning the form and contents of petitions for review in the Supreme Court. However, many of the requirements in rule 8.504 do not apply in the context of an appellate division case. Furthermore, the basic format requirements in rule 8.504 are established through yet another cross-reference, this one to rule 8.204. Finally, the general rule on the format of appellate documents, rule 8.40, does not specify the color of covers for petitions for transfer or answers to these petitions. This makes the form and content requirements for petitions for transfer difficult to find and understand.

To make these requirements easier to find and understand, this proposal would clarify the cross-reference to rule 8.204 by citing the specific applicable subdivisions of that rule. It would also add provisions to rule 8.40 specifying the cover color for petitions for transfer and answers to those petitions. Finally, it would replace the cross-reference to rule 8.504 with the text of the applicable language from that rule. However, this proposal would reduce the permissible length of petitions for transfer. Currently, through the cross-reference to rule 8.504, rule 8.1008 permits petitions on transfer to be the same length as petitions for review—8,400 words or 30 pages. In contrast, under rule 8.1012(d), briefs to the Court of Appeal in transferred cases are permitted only to be 5,600 words or 20 pages long. This proposal would apply the shorter length limit for such briefs to petitions for transfer. It would also make similar changes to the provisions relating to answers to petitions for transfer.

Time to file and timeliness of petitions. Rule 8.1008(b)(2) (which would be renumbered as rule 8.1006(b)(1) under this proposal) addresses the time to file a petition for transfer. Currently, this rule provides that such petitions must be filed within 15 days after the appellate division judgment is final in that court. Under this rule, a petition for transfer could be filed before the appellate division issues its decision in the case. To give the appellate division the opportunity to decide the matter and to ensure that the parties and the Court of Appeal have the benefit of that decision in determining whether to petition for or order transfer of a case, this proposal would amend the rules to provide that a petition for transfer may be filed only after the appellate division issues its decision.

Rule 8.25(b) addresses filing documents in the Supreme Court or Court of Appeal. Under this rule, a document is generally considered timely filed if it is received by the clerk by the due date. However, this rule also creates an exception for certain documents, including petitions for review and answers to these petitions, providing that these documents are deemed timely filed if the time for filing them has not expired when they are deposited for mailing or for overnight delivery. Because petitions for transfer are analogous to petitions for review, this proposal would add petitions for transfer and answers to these petitions to the list of documents deemed timely filed if deposited for mailing or overnight delivery before the date for filing has expired.

Sending the record to the Court of Appeal

Currently, rule 8.1010 addresses the record that is transmitted to the Court of Appeal to assist it in determining whether to order transfer. Because rule 8.1010 follows the rule regarding orders for transfer and because of some of the language used in this rule, some rule users have thought that the transmission of this record signifies that a case has been transferred to the Court of Appeal. To make it clearer that this record is sent to the Court of Appeal before the decision to transfer is made, not when a case is transferred, this rule would be renumbered as rule 8.1007, so that it precedes the rule on orders for transfer. To further clarify this point, the term “record on transfer” would be eliminated as it may create the impression that transfer has already been ordered. In addition, to provide the court with additional information to assist it in considering whether to order transfer, the rule would be amended to include any application for certification for transfer, any answer to that application, and the order of the appellate division on that application in the record transmitted to the Court of Appeal.

Sending copies of appellate division opinions to the Court of Appeal

Currently, rule 8.887 requires that, whenever an appellate division opinion is certified for publication, a copy of the opinion must be sent to the Court of Appeal. In addition, rule 8.1010 (which would be renumbered as rule 8.1007 under this proposal) currently requires that, along with the opinion certified for publication, the appellate division must also send the Court of Appeal a record of the proceedings in the case. The intended purpose of these requirements is to facilitate the Court of Appeal’s consideration of whether to order transfer on its own motion.

In part because it is relatively rare for an appellate division opinion to be certified for publication, these requirements have caused confusion. In addition, they do not seem necessary. With the proposed amendments to rule 8.1008 discussed above, transfer on the Court of Appeal’s own motion would no longer be the sole means of transfer when an appellate division opinion is certified for publication; the parties would be able to file a petition for transfer in these circumstances. Furthermore, there is no similar requirement that Court of Appeal opinions certified for publication and the records in these cases be sent to the Supreme Court to facilitate its consideration of whether to order review on its own motion. This proposal would therefore delete the requirements for sending to the Court of Appeal copies of appellate division opinions that are certified for publication and the record in these cases.

Ordering transfer

Rule 8.1008(c) addresses the time within which the Court of Appeal can order transfer. Currently, this rule provides that the court has 20 days from the filing of the record to order transfer on its own motion or when the appellate division has certified the case for transfer and 20 days from the filing of a petition for transfer. Having the record in the case may be as important for the Court of Appeal in deciding whether to grant transfer after a petition as it is after the appellate division has certified the case for transfer.

Therefore, this proposal would make the time for granting transfer in both these circumstances the same—20 days after the filing of the record in the Court of Appeal.

This proposal would also make the time for granting transfer on the Court of Appeal's own motion the same as the time for the Supreme Court to grant review on its own motion – 30 days after the lower court's decision is final. Right now, because there is no outer limit on when the Court of Appeal can request the record from the appellate division and the time for granting review on the court's own motion is keyed to when that record is filed, there is essentially no outer limit on when the Court of Appeal can order transfer on its own motion. This could cause difficulty because the time to issue remittitur in an appellate division is keyed to the time within which the Court of Appeal can order transfer (see rule 8.890). Requiring the Court of Appeal to order transfer on its own motion within 30 days after the appellate division decision is final gives the Court of Appeal a clear window of opportunity to order review and gives the appellate division a clear line for when it can issue a remittitur. Note that the current rule allows the Court of Appeal to extend the time within which it can order transfer by up to 20 days; this proposal would not alter that authority.

To shorten rule 8.1008 and make relevant provisions easier to find, this proposal would also remove the provisions relating to topics other than ordering transfer. As noted above, the provisions relating to petitions for transfer would be placed in new rule 8.1006. The provisions relating to limitations on the issues to be briefed or argued would be moved to rule 8.1012, which already addresses briefing.

Finality and remittitur

Rules 8.1018 and rule 8.1016(b)(2) address finality and remittitur in cases in which transfer is sought or ordered. Rule 8.890 also addresses the issuance of remittitur by the appellate division following the grant or denial of transfer. This proposal would move the provisions relating to finality and remittitur out of rule 8.1016(b)(2) and place them in rule 8.1018. It would also amend rule 8.1018 to make it more consistent with rule 8.890 and to clarify that, if the Court of Appeal issues a decision in a transferred case, finality of that decision and remittitur are generally governed by the same rules that apply to other Court of Appeal decisions— rules 8.264 and 8.272, respectively.

Other proposed changes

The rules on transfer currently contain outdated language from rules relating to appellate division proceedings that were repealed in 2009. This proposal would update the rule language to reflect the new appellate division rules that went into effect on January 1, 2009. For example, the language in rule 8.1005(b) concerning the time for filing an application for certification for transfer in the appellate division would be updated to mirror the language in new rule 8.889 regarding the time for filing a petition for rehearing in the appellate division.

Because both these transfer rules and the rules relating to appellate division opinions call for an appellate division “certification,” it may not always be clear whether “certification” means certification for transfer or certification of an opinion for publication. To clarify this distinction, this proposal would amend the transfer rules to consistently refer to certification or certifying a case “for transfer.” It would also require that an appellate division order certifying a case for transfer clearly state that the appellate division is certifying the case for transfer to the Court of Appeal.

Rule 8.1006 of the California Rules of Court would be adopted; rules 8.25, 8.40, 8.887, 8.890, 8.1000 8.1002, 8.1005, 8.1008, 8.1012, 8.1014, 8.1016, and 8.1018, would be amended, and rule 8.1010 would be amended and renumbered, effective January 1, 2011, to read:

1 **Title 8. Appellate Rules**

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

4
5
6 **Rule 8.25. Service and filing¹**

7
8 (a) * * *

9
10 (b) **Filing**

11
12 (1)–(2) * * *

13
14 (3) A brief, a petition for rehearing, an answer to a petition for rehearing, a
15 petition for transfer of appellate division case to the Court of Appeal, an
16 answer to such a petition for transfer, a petition for review, an answer to a
17 petition for review, or a reply to an answer to a petition for review is timely if
18 the time to file it has not expired on the date of:

19
20 (A) Its mailing by priority or express mail as shown on the postmark or the
21 postal receipt; or

22
23 (B) Its delivery to a common carrier promising overnight delivery as shown
24 on the carrier’s receipt.

25
26 (4) * * *

27
28
29 **Rule 8.40. Form of filed documents**

30
31 (a) * * *

32
33 (b) **Cover color**

34

¹ The committee has recommended that other amendments to this rule be adopted effective July 1, 2010. You can view these recommended amendments in the materials for the Judicial Council’s April 2010 meeting at: www.courtinfo.ca.gov/jc/meetings.htm.

1
2
3

(1) As far as practicable, the covers of briefs and petitions must be in the following colors:

Appellant's opening brief or appendix	green
Respondent's brief or appendix	yellow
Appellant's reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray
Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red
Reply to answer (or opposition) to petition for original writ	red
<u>Petition for transfer of appellate division case to Court of Appeal</u>	<u>white</u>
<u>Answer to petition for transfer of appellate division case to Court of Appeal</u>	<u>blue</u>
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white
Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

4
5
6
7
8
9
10

(2)–(3) * * *

(c) * * *

1 **Division 2. Rules Relating to the Superior Court Appellate Division**

2
3 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor**
4 **Appeals**

5
6 **Rule 8.887. Decisions**

7
8 **(a)–(b)** * * *

9
10 **(c) Opinions certified for publication**

11
12 (1) * * *

13
14 (2) When the decision is final as to the appellate division in a case in which the
15 opinion is certified for publication, the clerk must immediately send:

16
17 (A) ~~To the Reporter of Decisions:~~ two paper copies and one electronic copy
18 to the Reporter of Decisions in a format approved by the Reporter.

19
20 (B) ~~To the Courts of Appeal for the district: one copy bearing the notation~~
21 ~~“To be published in the Official Reports.” The Courts of Appeal clerk~~
22 ~~must promptly file that copy or make a docket entry showing its~~
23 ~~receipt.~~

24
25
26 **Rule 8.890. Remittitur**

27
28 **(a)** * * *

29
30 **(b) Clerk’s duties**

31
32 (1) If an appellate division case is not transferred to the Court of Appeal under
33 rule 8.1000 et seq., the appellate division clerk must:

34
35 (A) Issue a remittitur immediately after the Court of Appeal denies transfer,
36 or the period for granting transfer under rule 8.1008(e)(a) expires if
37 there will be no further proceedings in the appellate division;

38
39 (B)–(C) * * *

40
41 (2) If an appellate division case is transferred to a Court of Appeal under rule
42 8.1000 et seq., on receiving the Court of Appeal remittitur, the appellate

1 division clerk must issue a remittitur and return documents to the trial court
2 as provided in rule 8.1018.

3
4 (c)–(d) * * *

5
6
7 **Division 4. Transfer of Appellate Division Cases to the Court of Appeal**

8
9 **Rule 8.1000. Application**

10
11 Rules 8.1000–8.1018 ~~apply to proceedings for transferring~~ govern the transfer of cases
12 within the appellate jurisdiction of the superior court—other than appeals in small claims
13 cases—to the Court of Appeal ~~for review~~. Unless the context requires otherwise, the term
14 “case” as used in these rules means cases within that jurisdiction.

15
16 **Advisory Committee Comment**

17
18 The rules in this division implement the authority of the Court of Appeal under Code of Civil Procedure
19 section 911 to order any case on appeal to a superior court in its district transferred to the Court of Appeal
20 if it determines that transfer is necessary to secure uniformity of decision or to settle important questions of
21 law.

22
23
24 **Rule 8.1002. Transfer authority**

25
26 A Court of Appeal may order a case transferred to it for hearing and decision if ~~the~~
27 ~~appellate division certifies under rule 8.1005—~~ or the Court of Appeal it determines under
28 ~~rule 8.1008~~ that transfer is necessary to secure uniformity of decision or to settle an
29 important question of law. Transfer may be ordered on:

30
31 (1) Certification of the case for transfer by the superior court appellate division under
32 rule 8.1005;

33
34 (2) Petition for transfer under rule 8.1006; or

35
36 (3) The Court of Appeal’s own motion.

37
38
39 **Rule 8.1005. Certification for transfer by the appellate division**

40
41 (a) **Authority to certify**

- 1 (1) The appellate division may certify a case for transfer to the Court of Appeal
2 on its own motion or on a party's application if it determines that transfer is
3 necessary to secure uniformity of decision or to settle an important question
4 of law.
5
6 (2) Except as provided in (3), a case may be certified for transfer by a majority of
7 the appellate division judges to whom the case has been assigned or who
8 decided the appeal or, if the case has not yet been assigned, by any two
9 appellate division judges.
10
11 (3) If an appeal from a conviction of a traffic infraction is assigned to a single
12 appellate division judge under Code of Civil Procedure section 77, the case
13 may be certified for transfer by that judge.
14
15 (4) If an assigned or deciding judge is unable to act on the certification for
16 transfer, a judge designated or assigned to the appellate division by the chair
17 of the Judicial Council may act in that judge's place.
18

19 **(b) Application for certification**
20

- 21 (1) A party may serve and file an application ~~for certification~~ asking the
22 appellate division to certify a case for transfer at any time after the record on
23 appeal is filed in the appellate division ~~and within~~ but no later than 15 days
24 after: ~~judgment is pronounced or a modification order changing the appellate~~
25 ~~judgment is filed.~~
26
27 (A) The decision is filed;
28
29 (B) A publication order restarting the finality period under rule 8.888(a)(2);
30
31 (C) A modification order changing the appellate judgment under rule
32 8.888(b); or
33
34 (D) The filing of a consent under rule 8.888(c).
35
36 (2) The party may include the application in a petition for rehearing.
37
38 ~~(2)~~(3) The application must explain why transfer is necessary to secure uniformity
39 of decision or to settle an important question of law.
40
41 ~~(3)~~(4) Within five days after the application is filed, any other party may serve and
42 file an ~~opposition~~ answer.
43

1 (4)(5) No hearing will be held on the application. Failure to certify the case within
2 the time specified in (c) is deemed a denial of the application.

3
4 ~~(e)~~ **Finality of appellate division judgments**

5
6 An appellate division judgment is final in that court as provided in rule 8.888.

7
8 ~~(d)~~(c) **Time to certify**

9
10 The appellate division may certify a case ~~may be certified~~ for transfer at any time
11 after the record on appeal is filed in the appellate division and before the appellate
12 division ~~judgment~~ decision is final in that court.

13
14 ~~(e)~~(d) **Contents of certification order certifying case for transfer**

15
16 An ~~certification~~ order certifying a case for transfer must:

17
18 (1) Clearly state that the appellate division is certifying the case for transfer to
19 the Court of Appeal;

20
21 ~~(1)~~(2) Briefly describe any conflict of decision—citing the decisions creating the
22 conflict—or why transfer is necessary to secure uniformity of decision or to
23 settle an important question of law to be settled; and

24
25 ~~(2)~~(3) State whether there was a judgment decision on appeal and, if so, its date and
26 disposition.

27
28 ~~(f)~~(e) **Superior court clerk's duties**

29
30 (1) If the appellate division orders ~~certification~~ a case certified for transfer, the
31 clerk must promptly send a copy of the certification order to the Court of
32 Appeal clerk, the parties, and, in a criminal case, the Attorney General.

33
34 (2) If the appellate division denies an certification application by order, the clerk
35 must promptly send a copy of the order to the parties.

36
37
38 **Rule 8.1006. Petition for transfer**

39
40 **(a) Right to file petition**

1 A party may file a petition in the Court of Appeal-asking for an appellate division
2 case to be transferred to that court only if an application for certification for transfer
3 was first filed in the appellate division and denied.

4
5 **(b) Time to file petition**

6
7 (1) The petition must be served and filed in the Court of Appeal after the
8 appellate division issues its decision in the case but no later than 15 days
9 after the decision is final in that court. A copy of the petition must also be
10 served on the appellate division.

11
12 (2) The time to file a petition for transfer may not be extended, but the presiding
13 justice may relieve a party from a failure to file a timely petition for transfer
14 if the time for the Court of Appeal to order transfer on its own motion has not
15 expired.

16
17 **(c) Form and contents of petition**

18
19 (1) Except as provided in this rule, a petition must comply with the form and
20 contents requirements of rule 8.204(a)(1), (b), and (d).

21
22 (2) The body of the petition must begin with a concise, nonargumentative
23 statement of the issues presented for review, framing them in terms of the
24 facts of the case but without unnecessary detail.

25
26 (3) The petition must explain why transfer is necessary to secure uniformity of
27 decision or to settle an important question of law.

28
29 (4) The petition must not exceed 5,600 words, including footnotes, if produced on
30 a computer and 20 pages if typewritten. A petition produced on a computer
31 must include a certificate by counsel or an unrepresented party stating the
32 number of words in the document. The person certifying may rely on the word
33 count of the computer program used to prepare the document. A certificate
34 stating the number of words, the tables required by rule 8.204(a)(1), the cover
35 information required under rule 8.204(b)(10), any signature block, and any
36 attachment permitted under rule 8.204(d) are excluded from these length
37 limits.

38
39 **(d) Answer to petition**

40
41 (1) Any answer must be served and filed within 10 days after the petition is filed
42 unless the court orders otherwise.

- 1 (3) ~~Any order or opinion~~ The decision of the appellate division; and
2
3 (4) Any application for certification for transfer, any answer to that application,
4 and the appellate division's order on the application.
5
6

7 **Rule 8.1008. Order for transfer**
8

9 ~~(a) Authority to transfer on Court of Appeal's own motion or a party's petition~~

10
11 The Court of Appeal may order transfer of a case on the court's own motion or on a
12 party's petition to transfer.
13

14 ~~(b) Petition to transfer~~

- 15
16 (1) ~~If the appellate division denies an application for certification and does not~~
17 ~~certify its opinion for publication, a party may serve and file in the Court of~~
18 ~~Appeal a petition to transfer the case to that court.~~
19
20 (2) ~~The petition must be served and filed within 15 days after the appellate~~
21 ~~division judgment is final in that court and must show delivery of a copy to~~
22 ~~the appellate division.~~
23
24 (3) ~~The petition must explain why transfer is necessary to secure uniformity of~~
25 ~~opinion or to settle an important question of law.~~
26
27 (4) ~~A party must not file an answer to a petition for transfer unless the court~~
28 ~~requests an answer. The clerk must promptly send to the parties copies of any~~
29 ~~order requesting an answer and immediately notify the parties by telephone~~
30 ~~or another expeditious method. Any answer must be served and filed within~~
31 ~~10 days after the order is filed unless the court orders otherwise. A petition~~
32 ~~for transfer normally will not be granted unless the court has requested an~~
33 ~~answer.~~
34
35 (5) ~~The petition and any answer must comply as nearly as possible with rule~~
36 ~~8.504.~~
37

38 ~~(e)~~**(a) Time to transfer**
39

- 40 (1) The Court of Appeal may order transfer:
41
42 (A) ~~After certification~~ the appellate division certifies the case for transfer or
43 ~~on its own motion~~ on petition for transfer, within 20 days after the

1 record on transfer sent under rule 8.1007 is filed in the Court of
2 Appeal; or

3
4 (B) On ~~petition to transfer~~ its own motion, within ~~20~~ 30 days after the
5 ~~petition is filed~~ appellate division decision is final in that court.

6
7 (2) Within either period specified in (1), the Court of Appeal may order an
8 extension not exceeding 20 days.

9
10 (3) If the Court of Appeal does not timely order transfer, transfer is deemed
11 denied.

12
13 ~~(d)~~ **Letter supporting or opposing transfer**

14
15 ~~(1)~~ Except when a party files a petition to transfer under (b), any party may send
16 the Court of Appeal a letter supporting or opposing transfer within 10 days
17 after a record on transfer is filed in that court. The letter must be served on all
18 other parties.

19
20 ~~(2)~~ The letter must be double-spaced and must not exceed 1,400 words if
21 produced on a computer or five pages if typewritten.

22
23 ~~(e)~~ **Limitation of issues**

24
25 ~~(1)~~ On or after ordering transfer, the Court of Appeal may specify the issues to
26 be briefed and argued. Unless the court orders otherwise, the parties must
27 limit their briefs and arguments to those issues and any issues fairly included
28 in those issues.

29
30 ~~(2)~~ Notwithstanding an order specifying issues under (1), the court may, on
31 reasonable notice, order oral argument on fewer or additional issues or on the
32 entire case.

33
34 ~~(f)~~ **(b) Court of Appeal clerk's duties**

35
36 (1) When a transfer order is filed, the clerk must promptly send a copy of the
37 order to the superior court clerk, the parties, and, in a criminal case, the
38 Attorney General.

39
40 (2) With the copy of the transfer order sent to the parties and the Attorney
41 General, the clerk must send notice of the time to serve and file any briefs
42 ordered under rule 8.1012 and, if specified by the Court of Appeal, the issues
43 to be briefed and argued.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- (3) If the court denies transfer after ~~certification~~ the appellate division certifies a case for transfer or after a party files a petition for transfer, the clerk must ~~return the record on transfer and any exhibits to the superior court clerk and~~ promptly send notice of the denial to the parties, the appellate division, and, in a criminal case, the Attorney General.
- (4) Failure to send any order or notice under this subdivision does not affect the jurisdiction of the Court of Appeal.

Rule 8.1012. Briefs and argument

(a) ~~Who may file~~ When briefs permitted

- (1) After the Court of Appeal orders transfer, the parties may file briefs in the Court of Appeal only if ordered by the court. The court may order briefs either on a party's application or the court's own motion. The court must prescribe the briefing sequence in any briefing order.
- (2) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief filed in the Court of Appeal in the same or a related case.

1 (b) **Time to file briefs**

2
3 Unless otherwise provided in the court's order under (a):

- 4
5 (1) The opening brief must be served and filed within 20 days after entry of the
6 briefing order.
7
8 (2) The responding brief must be served and filed within 20 days after the
9 opening brief is filed.
10
11 (3) Any reply brief must be served and filed within 10 days after the responding
12 brief is filed.
13

14 (c) **Additional service requirements**

- 15
16 (1) Any brief of a defendant in a criminal case must be served on the prosecuting
17 attorney and the Attorney General.
18
19 (2) Every brief must ~~show delivery of a copy to~~ be served on the appellate
20 division from which the case was transferred.
21

22 (d) **Form and contents of briefs**

- 23
24 (1) Except as provided in this rule, briefs must comply with the form and
25 contents requirements of rule 8.204(a)(1), (b), and (d).
26
27 (2) No brief may exceed 5,600 words if produced on a computer or 20 pages if
28 typewritten. ~~In all other respects briefs must comply with rule 8.204. The~~
29 ~~person certifying may rely on the word count of the computer program used~~
30 ~~to prepare the document. A certificate stating the number of words, the~~
31 ~~tables required by rule 8.204(a)(1), the cover information required under~~
32 ~~rule 8.204(b)(10), any signature block, and any attachment permitted under~~
33 ~~rule 8.204(d) are excluded from these length limits.~~
34

35 (e) **Limitation of issues**

- 36
37 (1) On or after ordering transfer, the Court of Appeal may specify the issues to
38 be briefed and argued. Unless the court orders otherwise, the parties must
39 limit their briefs and arguments to those issues and any issues fairly included
40 in those issues.
41

1 (2) Notwithstanding an order specifying issues under (1), the court may, on
2 reasonable notice, order oral argument on fewer or additional issues or on the
3 entire case.
4
5

6 **Rule 8.1014. Proceedings in the appellate division after certification or transfer**
7

8 When the appellate division certifies a case for transfer or the Court of Appeal orders
9 transfer, further action by the appellate division is limited to preparing and sending the
10 record under rule 8.1007 until termination of the proceedings in the Court of Appeal.
11

12
13 **Rule 8.1016. Disposition of transferred case**
14

15 **(a) Decision on limited issues**
16

17 The Court of Appeal may decide fewer than all the issues raised and may retransfer
18 the case to the appellate division for decision on any remaining issues.
19

20 **(b) Retransfer without decision**
21

22 (1)—The Court of Appeal may vacate a transfer order without decision and
23 retransfer the case to the appellate division with or without directions to
24 conduct further proceedings.
25

26 (2)—~~If the appellate division pronounced judgment before transfer and the Court~~
27 ~~of Appeal directs no further proceedings, the judgment is final when the~~
28 ~~appellate division receives the order vacating transfer, and its clerk must~~
29 ~~promptly issue a remittitur.~~
30

31
32 **Rule 8.1018. Finality and remittitur**
33

34 **(a) Finality When transfer is denied**
35

36 If the Court of Appeal denies The denial of a transfer of a case from the appellate
37 division of the superior court after the appellate division certifies the case for
38 transfer or after a party files a petition for transfer, the denial is final immediately.
39 On receiving notice under rule 8.1008(b) that the Court of Appeal has denied
40 transfer or if the period for ordering transfer under rule 8.1008(a) expires, the
41 appellate division clerk must promptly issue a remittitur if there will be no further
42 proceedings in that court.
43

1 **(b) When transfer order is vacated**

2
3 If the appellate division issued a decision before transfer and the Court of Appeal
4 vacates its transfer order under rule 8.1016(b) and retransfers the case without
5 directing further proceedings, the appellate division’s decision is final when the
6 appellate division receives the order vacating transfer. The appellate division clerk
7 must promptly issue a remittitur.
8

9 **(b)(c)When Court of Appeal remittitur issues decision**

10
11 If the Court of Appeal clerk must promptly issue a remittitur when a decision of the
12 court is final issues a decision on a case it has ordered transferred from the
13 appellate division of the superior court, filing, finality, and modification of that
14 decision are governed by rule 8.264 and remittitur is governed by rule 8.272,
15 except that the clerk must address the remittitur to the appellate division and send
16 that court two copies of the remittitur and two file-stamped copies of the Court of
17 Appeal opinion or order. On receipt of the Court of Appeal remittitur, the appellate
18 division clerk must promptly issue a remittitur if there will be no further
19 proceedings in that court.
20

21 **(e) Appellate division remittitur**

22
23 On receiving the Court of Appeal remittitur, the appellate division clerk must
24 promptly issue a remittitur if there will be no further proceedings in that court.
25

26 **(d) Documents to be returned**

27
28 Each reviewing court When the Court of Appeal denies or vacates transfer or issues
29 a remittitur under (c), the Court of Appeal clerk must return to the appellate
30 division all original records, documents, the record sent to the Court of Appeal
31 under 8.1007 and any exhibits with the remittitur but need not return any
32 certification, transcripts on appeal, briefs, or notice of appeal.

Item SPR10-08 Response Form

Title: **Appellate Procedure: Transfer of Appellate Division Cases to the Court of Appeal** (adopt Cal. Rules of Court, rule 8.1006; amend rules 8.25, 8.40, 8.887, 8.890, 8.1000, 8.1002, 8.1005, 8.1008, 8.1012, 8.1014, 8.1016, and 8.1018; and amend and renumber rule 8.1010)

- 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: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.