

RESOLUTION 03-06-2006

DIGEST

Limited Civil Appeals: Filing of Briefs

Amends California Rules of Court, rule 105, to create a procedure in appeals from limited jurisdiction matters where a party fails to file a timely brief or is filing a combined brief.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 105, to create a procedure in appeals from limited jurisdiction matters where a party fails to file a timely brief or is filing a combined brief. This resolution should be approved in principle because it would conform the rules for limited jurisdiction appeals to those for unlimited jurisdiction appeals.

Currently, California Rules of Court, rule 16, sets forth the requirements in unlimited jurisdiction appeals for a combined brief, and rule 17 sets forth the procedure the court follows when a party fails to file a timely brief. This resolution imports the language of these rules into rule 105, thereby making the procedures for limited jurisdiction appeals the same as those for unlimited jurisdiction appeals. This will result in a clearer, fairer process for the parties to limited jurisdiction matters.

SECTION/COMMITTEE REPORT

COMMITTEE ON APPELLATE COURTS

APPROVE IN PRINCIPAL

The proposed amendments make sense, fill existing gaps in the rules, and parallel the counterpart provisions in the rules governing appeals in unlimited civil cases.

This position is only that of the State Bar of California's Committee on Appellate Courts. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 105, to read as follows:

1 Rule 105.

2 (a) [Time for filing] In civil and criminal cases the appellant shall file an opening
3 brief within 20 days after the filing of record on appeal; the respondent shall file a brief
4 within 20 days after the filing of appellant's opening brief, and the appellant may file a reply
5 brief within 10 days after the filing of respondent's brief, but not later than the time of the
6 hearing. Any party may join another party or other parties in a brief or may adopt by
7 reference any brief in the same or a companion case.

8 (b) [Brief of amicus curiae] A brief of amicus curiae may be filed on permission first
9 obtained from the presiding judge, subject to conditions he or she may prescribe. If the brief
10 is in support of the position of one of the parties, that fact shall be noted in the brief's
11 heading.

12 The Attorney General may file an amicus curiae brief without obtaining the presiding
13 judge's permission, unless the Attorney General is presenting the brief on behalf of another
14 state officer or agency; but the presiding judge may prescribe reasonable conditions for
15 filing and answering the brief.

16 (c) [Contents of briefs] Each brief shall state concisely the propositions of both law
17 and fact relied on by the party filing it, with reference (by line and page, if possible) to the
18 parts of the record supporting such propositions of fact and citations of the authorities for
19 such propositions of law. Each point to be made, with the argument in support thereof, shall
20 be presented separately under an appropriate heading with subheadings if desired, showing
21 its nature. No quotation or extract from the record or from any legal authority shall exceed
22 15 full lines of typewriting, ~~and no brief shall exceed 15 pages in length, except by~~
23 ~~permission of the presiding judge.~~

24 (1) [Page limit] No brief shall exceed 15 pages in length, except by permission of the
25 presiding judge or as provided in (c)(2).

26 (2) [Combined Briefs] A party that is both an appellant and a respondent must
27 combine its respondent's brief with its appellant's opening brief or its reply brief, if any,
28 whichever is appropriate. A combined brief shall not exceed 30 pages in length, except by
29 permission of the presiding judge. Parties filing combined briefs must address each appeal
30 separately and must confine any reply to points raised in its own appeal.

31 (d) [Format] All briefs shall be prepared as provided in subdivisions (b), (c), (d), and
32 (h) of Rule 15, except that such briefs shall be bound at the top.

33 (e) [Service and filing] Every brief shall, before filing, be served by the party filing it
34 on each adverse party who has appeared separately, and every brief of amicus curiae shall,
35 before filing, be served on all parties to the appeal. The original brief, with proof of service
36 thereof, shall be filed with the clerk. The clerk shall not file any brief which does not
37 conform to these rules or which is tendered to him for filing after the time fixed by these
38 rules or by any order extending or fixing the time therefor, unless by order of the presiding
39 judge. The presiding judge may make such order, in his discretion, where the infraction of
40 the rules is of minor character and will not affect the rights of the parties or seriously
41 hamper the court in its examination of the appeal. Service in unfair competition cases under
42 Business and Professions Code section 17209 must also comply with rule 16(d).

43 (f) [Copy for trial judge] No brief shall be filed without proof of the deposit of one
44 copy with the clerk of the trial court for delivery to the judge who presided at the trial of the

45 case. The clerk shall deliver the brief to the judge and need not maintain a copy in the court
46 file.

47 (g) [Use of recycled paper for records on appeal from limited civil cases and for
48 briefs filed in the appellate divisions] The use of recycled paper is required for the original
49 record on appeal from a limited civil case and for any brief filed with the court in a matter to
50 be heard in the appellate division. The use of recycled paper is required for all copies of
51 these documents filed with the court or served on other parties.

52 (h) [Unfair competition cases] In an unfair competition proceeding under Business
53 and Professions Code section 17200 et seq., each brief and each petition shall contain the
54 following statement on the front cover: “Unfair competition case. (See Bus. & Prof. Code, §
55 17209 and Cal. Rules of Court, rule 16(d).)”

56 (i) [Failure to file a brief]

57 (1) Notice to file. If a party fails to timely file an appellant’s opening brief or a
58 respondent’s brief, the reviewing court clerk must promptly notify the party by mail that the
59 brief must be filed within 15 days after the notice is mailed, and that failure to comply will
60 result in one of the following sanctions:

61 (A) if the brief is an appellant’s opening brief, the court will dismiss the appeal;

62 (B) if the brief is a respondent’s brief, the court will decide the appeal on the record,
63 the opening brief, and any oral argument by the appellant.

64 (2) Combined brief. A party that is both an appellant and a respondent may file its
65 combined respondent’s brief and appellant’s reply brief within the period specified in the
66 notice under (a).

67 (3) Sanction. If a party fails to comply with a notice under (i)(1), the court may
68 impose the sanction specified in the notice.

69 (4) Extension of time. Within the period specified in the notice under (i)(1), a party
70 may apply to the presiding judge for an extension of that period for good cause. If the
71 extension is granted and the brief is not filed within the extended period, the court may
72 impose the sanction under (i)(3) without further notice.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Unlike California Rules of Court governing appeals in unlimited civil appeals (see Cal. Rules of Ct. rules 16 and 17), current court rules governing limited civil appeals do not address: 1) combined briefs in cases involving cross-appeals; and 2) the failure of a party to file a timely opening brief. Similarly, there are no provisions in the court rules providing notice to parties of default for failure to timely file their brief in limited civil appeals.

This Resolution: Would: 1) add provisions for combined briefs in limited civil cases involving cross-appeals similar to California Rules of Court rule 16 for unlimited civil appeals; and 2) add identical language set forth in California Rules of Court rule 17 governing the failure to file a timely brief in an unlimited civil appeal to the court rules governing limited civil appeals. It

provides for notice to the parties of default for failing to file a timely brief in limited civil appeals and provides a 15 day period to cure the default by filing the brief. It provides specified sanctions if the default is not cured.

The Problem: Current court rules governing limited civil appeals do not provide a clear means to address default based on a party's failure to file timely opening briefs in limited civil appeals. In some counties, the court requires a defaulting party to obtain relief by motion to the appellate division. In other counties, the appeal generally languishes without court action unless one of the parties moves for relief or moves for dismissal. This is cumbersome compared to the rules governing appeals from unlimited civil cases in which the clerk mails notice of default giving the offending party 15 days to correct the default. Likewise, it is unfair that a party in a limited civil appeal with less monetary value at stake faces more cumbersome procedures to cure a default than if the party was on appeal in an unlimited civil case.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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