

RESOLUTION 06-06-08

DIGEST

Rules of Court: Timely Filing by Overnight Delivery of Documents in Writ Proceedings.

Amends California Rules of Court, rule 8.25 to provide that overnight delivery of documents in original appellate proceedings is timely, except as the court may otherwise direct.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 8.25 to provide that overnight delivery of documents in original appellate proceedings is timely, except as the court may otherwise direct. This resolution should be approved in principle because it makes the rule permitting overnight delivery for the filing of documents in original appellate proceedings consistent with the rule governing other appellate filings.

California Rules of Court, rule 3.1306, presently allows as timely filed appellate briefs, rehearing petitions and answers to rehearing petitions which are sent by priority or express mail or delivered to an overnight delivery service before the time to file has expired. This resolution would expand that rule to include any document permitted or required to be filed in original proceedings in appellate courts, other than the initial filing. It also allows the court to direct otherwise on a case by case basis.

There is no reason to continue to treat filings of subsequent documents in writ proceedings in appellate courts differently from appellate proceedings.

SECTION/COMMITTEE REPORTS

COMMITTEE ON APPELLATE COURTS

APPROVE IN PRINCIPLE

Under rule 8.25(b) of the California Rules of Court, an appellate brief, a petition for rehearing, an answer to a petition for rehearing, a petition for review, an answer to a petition for review, or a reply to an answer to a petition for review is timely if the time to file it has not expired on the date of a) its mailing by priority or express mail as shown on the postmark or the postal receipt; or b) its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt. Rule 8.25(b)(4) currently provides that these provisions do not apply to original proceedings. Under this resolution, the provisions would apply to any document permitted or required to be filed in an original proceeding, other than the initial filing, except as the court may otherwise direct. The State Bar of California's Committee on Appellate Courts supports this resolution for the reasons articulated by the proponent.

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 legislation be sponsored to amend California Rules of Court, rule 8.25 as follows:

- 1 Rule 8.25. Service and filing
- 2 (a) Service
- 3 (1) Before filing any document , a party must serve, by any method permitted by
- 4 the Code of Civil Procedure, one copy of the document on the attorney for each party
- 5 separately represented, on each unrepresented party, and on any other person or entity
- 6 when required by statute or rule.
- 7 (2) The party must attach to the document presented for filing a proof of service
- 8 showing service on each person or entity required to be served under (1). The proof must
- 9 name each party represented by each attorney served.
- 10 (b) Filing
- 11 (1) A document is deemed filed on the date the clerk receives it.
- 12 (2) Except as provided in (3) and (4), a filing is not timely unless the clerk receives
- 13 the document before the time to file it expires.
- 14 (3) A brief, a petition for rehearing, an answer to a petition for rehearing, a petition
- 15 for review, an answer to a petition for review, or a reply to an answer to a petition for
- 16 review is timely if the time to file it has not expired on the date of:
- 17 (A) Its mailing by priority or express mail as shown on the postmark or the postal
- 18 receipt; or,
- 19 (B) Its delivery to a common carrier promising overnight delivery as shown on the
- 20 carrier's receipt.
- 21 (4) Any document permitted or required to be filed in an original proceeding, other
- 22 than the initial filing, is timely as provided in subdivision (3) except as the court may
- 23 otherwise direct.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

Existing law: Under rule 8.25, California Rules of Court, an appellate brief is timely if it is sent by priority or express mail or delivered to an overnight delivery service before the time to file the brief has expired. The rule applies to rehearing petitions and answers to rehearing petitions,

petitions for review in the California Supreme Court, answers to petitions for review and replies to answers to petitions for review. Any of these documents is timely filed if sent by priority or express mail or delivered to an overnight carrier on the day it is due in the clerk's office.

This resolution: Would amend the rule to include filings in original appellate proceedings—for example, a preliminary opposition to a writ petition, return to an OSC or alternative writ or a reply to a return. The amendment would not apply to a writ petition or other initial filing in an original appellate proceeding, which would still have to be physically filed with the appellate court clerk within the allowed time. The amendment would permit the court to require physical delivery to the clerk by a specific date.

The problem: Under rule 8.25, briefs and similar documents are considered timely filed if sent by priority or express mail or delivered to an overnight service, such as UPS or Federal Express on or before the date when the document is due. The rule does not, however, apply to documents filed in original appellate proceedings, such as a petition for writ of mandate or prohibition. A preliminary opposition, return to an order to show cause or alternative writ, or a reply to a return, must still be physically delivered to the clerk's office on or before the due date.

There is good reason to require the initial document in original appellate proceeding, usually a petition for extraordinary writ, to be physically filed with the clerk within the time allowed. Filing a writ petition is akin to filing a notice of appeal. Just as a notice of appeal must be physically filed before expiration of the time to appeal, so should a writ petition be physically filed before expiration of any time provided by statute or rule.

But, if the court agrees to hear the petition, there is no apparent justification for not allowing parties to file subsequent documents the same way that briefs may be filed in an appeal, sending the document on the due date by priority or express mail or delivering it to an overnight service.

The proposed amendment cures this anomalous treatment of documents filed in appellate writ proceedings.

In cases where the appellate court must act very quickly, it may be appropriate to require actual physical delivery to the clerk by the due date. The proposed amendment, therefore, order actual delivery to the clerk, providing that a document may be filed by priority or express mail or delivery to an overnight service "except as the court may otherwise direct."

IMPACT STATEMENT

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

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