

[West's Annotated California Codes](#)

[California Rules of Court \(Refs & Annos\)](#)

[Title 8. Appellate Rules \(Refs & Annos\)](#)

[Division 1. Rules Relating to the Supreme Court and Courts of Appeal \(Refs & Annos\)](#)

[Chapter 2. Civil Appeals \(Refs & Annos\)](#)

[Article 1. Taking the Appeal \(Refs & Annos\)](#)

Cal.Rules of Court, Rule 8.104
Formerly cited as CA ST A Rule 2

Rule 8.104. Time to appeal

Effective: March 1, 2020

[Currentness](#)

(a) Normal time

(1) Unless a statute or rules 8.108, [8.702](#), or [8.712](#) provide otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;

(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or

(C) 180 days after entry of judgment.

(2) Service under (1)(A) and (B) may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under [Code of Civil Procedure section 1010.6](#) and rules 2.250-2.261.

(3) If the parties stipulated in the trial court under [Code of Civil Procedure section 1019.5](#) to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a filed-endorsed copy of the judgment to start the time period under (1)(A) or (B).

(b) No extension of time; late notice of appeal

Except as provided in [rule 8.66](#), no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

(c) What constitutes entry

For purposes of this rule:

- (1) The entry date of a judgment is the date the judgment is filed under [Code of Civil Procedure section 668.5](#), or the date it is entered in the judgment book.
- (2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.
- (3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.
- (4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.
- (5) An order signed electronically has the same effect as an order signed on paper.

(d) Premature notice of appeal

- (1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.
- (2) The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.

(e) Appealable order

As used in (a) and (d), “judgment” includes an appealable order if the appeal is from an appealable order.

Credits

(Formerly Rule 2, adopted, eff. Jan. 1, 2002. As amended, eff. Jan. 1, 2005. Renumbered Rule 8.104 and amended, eff. Jan. 1, 2007. As amended, eff. Jan. 1, 2010; Jan. 1, 2011; July 1, 2011; July 1, 2012; July 1, 2014; Jan. 1, 2016; Jan. 1, 2017; July 1, 2017.)

Editors’ Notes

ADVISORY COMMITTEE COMMENT

Subdivision (a). This subdivision establishes the standard time for filing a notice of appeal and identifies rules that establish very limited exceptions to this standard time period for cases involving certain postjudgment motions and cross-appeals ([rule 8.108](#)), certain expedited appeals under the California Environmental Quality Act ([rule](#)

8.702), and appeals under [Code of Civil Procedure section 1294.4](#) of an order dismissing or denying a petition to compel arbitration ([rule 8.712](#)).

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

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

Subdivision (b). See [rule 8.25\(b\)\(5\)](#) for provisions concerning the timeliness of documents mailed by inmates and patients from custodial institutions. Subdivision (b) is declarative of the case law, which holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of appeal. ([Hollister Convalescent Hosp., Inc. v. Rico \(1975\) 15 Cal.3d 660, 666-674](#); [Estate of Hanley \(1943\) 23 Cal.2d 120, 122-124.](#))

In criminal cases, the time for filing a notice of appeal is governed by [rule 8.308](#) and by the case law of “constructive filing.” (See, e.g., [In re Benoit \(1973\) 10 Cal.3d 72.](#))

OFFICIAL FORMS

2017 Main Volume

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West’s California Judicial Council Forms Pamphlet.>

[Notes of Decisions \(542\)](#)

Cal. Rules of Court, Rule 8.104, CA ST APPELLATE Rule 8.104

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through December 1, 2020. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through December 1, 2020.

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