

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee  
Hon. Kathryn Doi Todd, Chair  
Heather Anderson, Senior Attorney, 415-865-7691  
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DATE: August 8, 2006

SUBJECT: Appellate Procedure: Writs of Supersedeas and Service of Writ Petitions (amend Cal. Rules of Court, rules 8.112 and 8.490) (Action Required)<sup>1</sup>

Issue Statement

Petitions for writs of supersedeas are governed by rule 8.112. Rule 8.112 currently permits a party to not serve the respondent with a copy of a request for a temporary stay pending a decision on a petition for a writ of supersedeas if that request is filed separately from the petition. Some respondents may therefore not receive notice of such requests.

Rule 8.490 currently contains a provision that duplicates a service requirement already established by rule 8.25.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2007:

1. Amend rule 8.112 to provide that a request for a temporary stay pending a decision on a petition for a writ of supersedeas, if filed separately from the petition, must be served on the respondent; and
2. Amend rule 8.490 to incorporate a reference to the service requirements in rule 8.25.

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<sup>1</sup> At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, the appellate rules that were numbered 1 et seq. have been renumbered as rules 8.1 et seq., and new format conventions have been adopted. Hence, the rule amendments are shown throughout this proposal using the new rule numbers that will become effective January 1, 2007. The rules in this proposal were renumbered as follows: rule 8.112 is former rule 49; and rule 8.490 is former rule 56.

The text of the amended rules is attached at page 4.

### Rationale for Recommendation

#### *Petition for writ of supersedeas*

Rule 8.112 of the California Rules of Court addresses petitions for writs of supersedeas, which are petitions requesting that the Court of Appeal stay the enforcement of a trial court judgment or order pending a decision on appeal. Under this rule, a party may ask the Court of Appeal to issue a temporary stay, pending the court's decision on the petition. In most cases, the request for such a temporary stay is included in the party's petition and, since such petitions must be served, the respondent receives a copy of the request. However, under rule 8.112, a party may also file its request for the temporary stay separately from the petition. When the stay request is separately filed, rule 8.112 provides that the request need not be served on the respondent except in cases involving the custody of a minor.

To ensure that the respondent receives notice of any separately filed request for a stay, this proposal would amend rule 8.112 to require that such requests be served on the respondent. The amendment would also permit the Chief Justice or appellate presiding justice, for good cause, to excuse advance service.

#### *Petitions for writ of mandate, certiorari, or prohibition*

Rule 8.490 of the California Rules of Court generally addresses original proceedings in reviewing courts. This rule currently provides that the proof of service of petitions in these proceedings must name each party represented by each attorney. Rule 8.25, which sets out service and filing requirements applicable in all appellate proceedings, already establishes this same requirement. To eliminate this duplication, this proposal amends rule 8.490, replacing the duplicative requirement with a cross-reference to rule 8.25. In addition, the advisory committee comment to this rule would be amended to include a sentence clarifying that rule 8.25's requirements apply to the writ proceedings covered by this rule.

### Alternative Actions Considered

The committee considered not addressing these suggestions at this time, and waiting until the general rules reorganization and renumbering was completed. The committee concluded, however, that it would be preferable if these clarifying changes were incorporated into the newly reorganized rules when they take effect.

### Comments From Interested Parties

These proposed amendments were circulated for public comment as part of the spring 2006 comment cycle. Ten individuals or organizations submitted comments on this proposal. Eight of the commentators agreed with the proposal and two agreed with the

proposal only if amended. The full text of the comments received and the committee's responses is attached on pages 5–7.

As originally circulated for public comment, this proposal would have deleted the provision relating to service of writ petitions from rule 8.490 and added only an advisory committee comment about the application of rule 8.25. The two commentators who recommended that the proposal be amended—the California Appellate Court Clerks Association and the Appellate Court Committee of the San Diego County Bar Association—both expressed concern about this aspect of the proposal. The clerks association, in particular, expressed concerns that rule users would think that this deletion meant that the service requirement no longer applied and would not be aware of the advisory committee comment at the end of the rule. Based on these comments, the committee has modified its proposal to replace the provision in rule 8.490 with a cross-reference to rule 8.25, rather than deleting this provision.

#### Implementation Requirements and Costs

The clarification of these rules should eliminate uncertainty and thereby reduce costs.

Attachments

Rules 8.112 and 8.490 of the California Rules of Court are amended, effective January 1, 2007, to read:<sup>2</sup>

1 **Rule 8.112. Petition for writ of supersedeas**

2  
3 (a)–(b) \*\*\*

4  
5 (c) **Temporary stay**

6  
7 (1) \*\*\*

8  
9 (2) ~~Except when the custody of a minor is involved, A~~ separately filed request for  
10 a temporary stay ~~need not~~ must be served on the respondent. For good cause,  
11 the Chief Justice or presiding justice may excuse advance service.

12  
13 (d) \*\*\*

14  
15  
16 **Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition**

17  
18 (a)–(e) \*\*\*

19  
20 (f) **Service**

21  
22 (1)–(2) \*\*\*

23  
24 (3) In addition to complying with the requirements of rule 8.25, the proof of  
25 service must give the telephone number of each attorney served and name  
26 each party represented by each attorney.

27  
28 (4)–(6) \*\*\*

29  
30 (g)–(m) \*\*\*

31  
32 **Advisory Committee Comment**

33  
34 Subdivision (a) Rule 8.25, which generally governs service and filing in reviewing courts, also applies to  
35 the original proceedings covered by this rule.

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<sup>2</sup> These recommended amendments have been made to the version of this rule adopted by the Judicial Council at its June 30, 2006, business meeting and reflect the text that will be in effect on January 1, 2007. Any amendments adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2000

**SPR06-07**  
**Appellate Procedure: Writ of Supersedeas**  
**(amend Cal. Rules of Court, rules 8.112 [formerly rule 49] and 8.490 [formerly rule 56])**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Saul Bercovitch State Bar of California Committee on Appellate Courts 180 Howard Street San Francisco, CA 94105-1639	A	Y	No specific comment.	No response needed.
2.	Justice Roger W. Boren Administrative Presiding Justice Court of Appeal, Second Appellate District 300 South Spring Street Los Angeles, CA 90013	A	N	No specific comment.	No response needed.
3.	Ms. Deena Fawcett, President California Appellate Court Clerks Association Court of Appeal, Third Appellate Dist. 900 N Street, Room 400 Sacramento, CA 95814-4869	AM	Y	<p><b>Page 4 – Rule 8.490 (formerly rule 56): Original Proceedings</b></p> <p>(f)(3) While it is true that rule 8.25 (formerly rule 40.1) covers this subject, counsel and pro pers refer to rule 8.490 (formerly rule 56) as the guidelines for the filing of original proceedings. They rely on the information provided in rule 8.490 (formerly rule 56) regarding service. If this requirement is suddenly withdrawn from rule 8.490(f)(3) (formerly rule 56(f)(3)), it is doubtful that many practitioners, and pro pers, will notice the advisory comment until it is pointed out by an appellate court clerk after a defective proof of service has been tendered. We strongly recommend that this statement remain in the rule.</p>	The committee has modified its proposal to include a cross-reference to rule 8.25 (formerly rule 40.1).

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
4.	Ms. Janet Garcia Manager, Planning & Research Unit Los Angeles County Superior Court 111 North Hill Street Los Angeles, CA 90012	A	Y	No specific comment.	No response needed.
5.	Mr. Nelson Lu Deputy Public Defender San Joaquin County Public Defender's Office Stockton	A	N	No specific comment.	No response needed.
6.	Mr. Wayne Maire President California Defense Counsel 925 L Street, Suite 1250 Sacramento, CA 95814	A	Y	No specific comment.	No response needed.
7.	Ms. Julie M. McCoy President, Orange County Bar Ass'n. P.O. Box 17777 Irvine, CA 92623-7777	A	Y	No specific comment.	No response needed.
8.	Ms. Pam Moraida Civil/Small Claims Program Manager Solano County Superior Court 600 Union Avenue Fairfield, CA 94533-5000	A	N	No specific comment.	No response needed.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
9.	Mr. Mike Roddy Executive Officer San Diego County Superior Court 220 West Broadway San Diego, CA 92101	A	Y	No specific comment.	No response needed.
10.	Ms. Carmela F. Simoncini Chair, Appellate Court Committee of the San Diego County Bar Association Appellate Defenders, Inc. 555 West Beech Street, Suite 300 San Diego, CA 92101	AM	Y	<p>This committee generally agrees with the proposed revisions to rules 8.112 (formerly rule 49) and 8.490 (formerly rule 56). However, in rule 8.490 (formerly rule 56) regarding service requirements for original proceedings, we believe it would be helpful to direct the reader to the applicable service rule.</p> <p>Therefore, we suggest the following modification to rule 8.490(f)(3) (formerly rule 56(f)(3)):</p> <p style="padding-left: 40px;">(3) The proof of service must give the telephone number of each attorney service [sic] and otherwise comply with rule 8.25 (formerly rule 40.1).</p>	The committee has modified its proposal to include a cross-reference to rule 8.25 (formerly rule 40.1).