

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
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DATE: September 8, 2009

SUBJECT: Appellate Procedure: Petitions for Writs of Supersedeas (amend Cal. Rules of Court, rules 8.112 and 8.824) (Action Required)

Issue Statement

Petitions for writs of supersedeas are petitions requesting that an appellate court stay the enforcement of a trial court judgment or order pending a decision on an appeal of that judgment or order. Rules 8.112 and 8.824 of the California Rules of Court address petitions for writs of supersedeas in the Courts of Appeal and superior court appellate divisions, respectively. To show the appellate court that issuing a writ of supersedeas is justified, the appellant/petitioner must show, among other things, a probability that he or she will succeed on the merits of the appeal. Sometimes, however, when the record on appeal has not yet been filed, the petition does not include sufficient information for the court to determine whether issuance of the writ is justified.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council amend rules 8.112 and 8.824, effective January 1, 2010, to help ensure that when the record on appeal has not yet been filed, the reviewing court has sufficient information to properly determine whether to issue the writ of supersedeas by requiring the appellant/petitioner to attach to the petition:

1. Either a reporter's transcript of any oral statement by the court supporting its rulings related to the issues that are likely to be raised on appeal or, if the reporter's transcript is unavailable, a declaration summarizing those statements; and
2. Either a reporter's transcript of the proceedings concerning any application for a stay in the trial court or, if the reporter's transcript is unavailable, a declaration summarizing those proceedings.

The text of the amended rules is attached at pages 3–5.

Rationale for Recommendation

If the record on appeal has already been filed when a petition for writ of supersedeas is filed, the court can review that record to help determine whether the appellant/petitioner is likely to succeed on the merits of the appeal. However, petitions for writs of supersedeas are frequently filed before the record on appeal is filed. Under rules 8.112 and 8.824, when the record has not yet been filed, the petition for the writ of supersedeas must include the judgment or order being appealed, the notice of appeal, and a statement of the case that includes a summary of the material facts. Sometimes, however, these documents and the statement provided by the appellant/petitioner do not include sufficient information for the court to determine whether issuance of the writ is justified.

To help ensure that the reviewing court has sufficient information to properly determine whether to issue the writ of supersedeas, this proposal would require that, in addition to attaching copies of the judgment or order being appealed and the notice of appeal, the appellant/petitioner must also attach either a reporter's transcript of any oral statement by the court supporting its rulings related to the issues that are likely to be raised on appeal or, if a reporter's transcript is unavailable, a declaration summarizing those statements. This would replace the current requirement that the petition itself include a summary of any oral statement by the court supporting its rulings related to the issues on appeal. This proposal would also require that, in addition to attaching a copy of any application for a stay in the trial court and any opposition to the application, the appellant/petitioner must attach either a reporter's transcript of the proceedings concerning the request for the stay or, if a reporter's transcript is unavailable, a declaration summarizing those proceedings.

Alternative Actions Considered

The committee considered not recommending any amendments to rules 8.112 and 8.824 at this time but concluded that the proposed amendments would be helpful to the Courts of Appeal and not overly burdensome to petitioners, since some petitioners will already have reporter's transcripts of the relevant proceedings prepared for the underlying appeal.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2009 comment cycle. Nine individuals or organizations submitted comments on this proposal. All nine commentators agreed with the proposal. The full text of the comments received and the committee's responses is attached beginning on page 6.

Implementation Requirements and Costs

These amendments may increase the length of petitions for writs of supersedeas when the record on appeal has not yet been filed, resulting in small increases in preparation costs for petitioners. Clarifying the record that must be filed with these petitions, however, should improve the courts' ability to consider the merits of these petitions.

Attachments

Rules 8.112 and 8.824 of the California Rules of Court are amended, effective January 1, 2010, to read:

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

2
3 **(a) Petition**

4
5 (1)–(3) * * *

6
7 (4) If the record has not been filed in the reviewing court:

8
9 (A) The petition must include a statement of the case sufficient to show that
10 the petitioner will raise substantial issues on appeal, including a fair
11 summary of the material facts, and the issues that are likely to be raised
12 on appeal, and any oral statement by the court supporting its rulings
13 related to these issues.

14
15 (B) The petitioner must file the following documents with the petition:

16
17 (i) The judgment or order, showing its date of entry;

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19 (ii) The notice of appeal, showing its date of filing;

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21 (iii) A reporter’s transcript of any oral statement by the court supporting
22 its rulings related to the issues that are likely to be raised on appeal,
23 or, if a transcript is unavailable, a declaration fairly summarizing
24 any such statements;

25
26 ~~(iii)~~(iv) Any application for a stay filed in the trial court, and any
27 opposition to that application, and a reporter’s transcript of the oral
28 proceedings concerning the stay or, if a transcript is unavailable, a
29 declaration fairly summarizing the proceedings, including the
30 parties’ arguments and any statement by the court supporting its
31 ruling; and

32
33 ~~(iv)~~(v) Any other document from the trial court proceeding that is
34 necessary for proper consideration of the petition.

35
36 (C) * * *

37
38 (5) * * *

39
40 **(b)–(d) * * ***

Advisory Committee Comment

Subdivision (a). If the preparation of a reporter’s transcript has not yet been completed at that time a petition for a writ of supersedeas is filed, that transcript is “unavailable” within the meaning of (a)(4)(B).

Rule 8.824. Writ of supersedeas

(a) Petition

(1)–(3) * * *

(4) If the record has not been filed in the reviewing court:

(A) The petition must include a statement of the case sufficient to show that the petitioner will raise substantial issues on appeal, including a fair summary of the material facts, and the issues that are likely to be raised on appeal, ~~and any oral statement by the court supporting its rulings related to these issues.~~

(B) The petitioner must file the following documents with the petition:

(i) The judgment or order, showing its date of entry;

(ii) The notice of appeal, showing its date of filing;

(iii) A reporter’s transcript of any oral statement by the court supporting its rulings related to the issues that are likely to be raised on appeal, or, if a transcript is unavailable, a declaration fairly summarizing any such statements;

~~(iii)~~(iv) Any application for a stay filed in the trial court, and any opposition to that application, and a reporter’s transcript of the oral proceedings concerning the stay or, if a transcript is unavailable, a declaration fairly summarizing the proceedings, including the parties’ arguments and any statement by the court supporting its ruling; and

~~(iv)~~(v) Any other document from the trial court proceeding that is necessary for proper consideration of the petition.

(C) * * *

(5) * * *

1 (b)–(d) * * *

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Advisory Committee Comment

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5 Subdivision (a). If the preparation of a reporter’s transcript has not yet been completed at that time a
6 petition for a writ of supersedeas is filed, that transcript is “unavailable” within the meaning of (a)(4)(B).

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SPR09-07**Appellate Procedure: Petitions for Writs of Supersedeas** (amend Cal. Rules of Court, rules 8.112 and 8.824)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
1.	Appellate Court Committee San Diego County Bar Association by Matthew C. Mulford Chair	A	We commend the Appellate Advisory Committee's efforts to assist the court and practitioners evaluate writs of supersedeas submitted before the record on appeal has been filed. The proposed changes to rules 8.112 and 8.824 clarify these matters for the bench and the bar and we support the proposal.	No response required.
2.	Committee on Appellate Courts The State Bar of California by Saul Bercovitch Legislative Counsel	A	The Committee supports the proposal.	No response required.
3.	Katherine Lynn Managing Attorney Court of Appeal, Second Appellate District	A	I agree with the proposed changes in the following: SPR09-07	No response required.
4.	Hon. Judith McConnell Presiding Justice Court of Appeal, Fourth District, Division One	A	I agree with the proposed revisions to rule 8.112 requiring that additional materials be included in support of a writ of supesedeas to facilitate review where the writ precedes the filing of the record on appeal.	No response required.
5.	Orange County Bar Association by Michael G. Yoder President	A	No additional comments.	No response required.
6.	Superior Court of San Diego County by Michael M. Roddy	A	No additional comments.	No response required.

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	Commentator	Position	Comment	Proposed Committee Response
	Executive Officer			
7.	Superior Court of Los Angeles County	A	<p>This change will create a delay in filing a writ for the petitioning party while they wait for the transcript to be prepared.</p> <p>Who is paying for transcript on cases where there is court-appointed counsel?</p>	<p>The committee does not believe that the proposed amendments will create delay. The proposed amendments do not require that a petitioner wait for the preparation of a reporter's transcript in order to file a petition for a writ of supersedeas. If the reporter's transcript of the relevant proceedings is unavailable, he or she can provide a summary of those proceedings.</p> <p>This proposal does not affect the current responsibilities regarding payment for reporter's transcripts. These petitions are filed only when an appeal has been filed. If a reporter's transcript is needed in that underlying appeal, it will already have been ordered or prepared for that appeal and the requirements concerning payment for such transcripts will apply.</p>
8.	Superior Court of Kern County by Ms. Laura Rusk Supervisor	A	No additional comments.	No response required.
9.	Superior Court of Ventura County by Julie Camacho Court Program Manager	A	No additional comments.	No response required.