

**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  
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DATE: September 2, 2008

SUBJECT: Appellate Procedure: Proceedings for Writs of Mandate, Certiorari, and Prohibition (amend and renumber Cal. Rules of Court, rule 8.490<sup>1</sup> as rules 8.485, 8.486, 8.487, 8.488, 8.489, 8.491, 8.492, and 8.493; adopt rule 8.490; renumber rule 8.494 as rule 8.495; amend rules 8.112, 8.264, 8.268, 8.312, 8.366, 8.450, 8.454, 8.500, 8.552, 8.931,<sup>2</sup> and 8.1018; and amend the advisory committee comments to rules 8.18, 8.272, and 8.278) (Action Required)

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Issue Statement

*Rule on Writ Proceedings*

Rule 8.490 of the California Rules of Court addresses petitions for writs of mandate, certiorari, and prohibition in the Courts of Appeal and Supreme Court. Currently, this rule is extremely long and has many subparts, which makes it difficult for rule users to locate relevant provisions within the rule. Both rule 8.490 and rule 8.931, which relates to writ proceedings in the superior court appellate division, also contain multiple provisions relating to declarations filed in lieu of required reporter's transcripts in the supporting documents to a writ petition.

*Finality of Court of Appeal Decisions*

Currently, rule 8.264 of the California Rules of Court addresses the finality of Court of Appeal decisions, including decisions in writ proceedings, orders denying bail or a reduction of bail pending appeal in a criminal case, and denials of transfer of a case from the superior court appellate division to the Court of Appeal. However, rule 8.264 is in a chapter of the rules that relates to appeals in civil cases, and there are currently no

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<sup>1</sup> Other proposed amendments to subdivision (i) of rule 8.490 are also being recommended by the committee at this time. Please see the report concerning certificates of interested entities and persons, also on this meeting's agenda.

<sup>2</sup> Rule 8.931 was adopted by the Judicial Council on February 22, 2008, and will take effect on January 1, 2009. It can be accessed at [www.courtinfo.ca.gov/rules/amendments/jan2009.pdf](http://www.courtinfo.ca.gov/rules/amendments/jan2009.pdf).

provisions in the rules on writ proceedings, criminal appeals, or transfer of cases from the superior court appellate division that let rule users know where to look for the relevant finality provisions. Rule users may therefore have difficulty finding the provisions that address finality in these proceedings.

#### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Amend and renumber rule 8.490 to:
  - a. Separate it into several shorter rules numbered 8.485–8.489 and 8.491–8.493;
  - b. Consolidate provisions concerning the content of declarations used in the supporting documents in lieu of a transcript; and
  - c. Make other minor changes;
2. Place the rules created under 1 in a new chapter 7, titled “Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court of Appeal;”
3. Renumber rule 8.494 as rule 8.495 and chapters 7–9 in title 8, division 1, as chapters 8–10 to accommodate the new rules created under 1 and the new chapter created under 2;
4. Amend rule 8.264 to remove the provisions relating to finality of decisions in writ proceedings, orders denying bail or a reduction of bail pending appeal in a criminal case, and denials of the transfer of an appellate division matter;
5. Adopt rule 8.490 and amend rules 8.366 and 8.1018 to incorporate, respectively, the provisions relating to finality of decisions in writ proceedings, orders denying bail or a reduction of bail pending appeal in a criminal case, and denials of the transfer of an appellate division matter that were removed from rule 8.264 under 4;
6. Amend rule 8.931 to consolidate provisions concerning the content of declarations used in the supporting documents in lieu of a transcript or electronic recording; and
7. Amend rules 8.268, 8.312, 8.500, and 8.552 and their advisory committee comments; rules 8.112, 8.450, and 8.454; and the advisory committee comments to rules 8.18, 8.272, and 8.278, to update current references to rules 8.264, 8.490 and 8.499.

The text of the proposed amendments to the rules is attached at pages 6–30.

## Rationale for Recommendation

### *Rules on Writ Proceedings*

Rule 8.490 is currently 10 pages long and has 14 subdivisions with many subparts. Under this proposal, this overly long rule will be broken down into several smaller rules:

- Current 8.490(a) will become new rule 8.485;
- Current 8.490(b)—(f) will become new rule 8.486;
- Current 8.490(g), (h) and (j) will become new rule 8.487;
- Current 8.490(i) will become new rule 8.488;<sup>3</sup>
- Current 8.490(k) will become new rule 8.489;
- Current 8.490(l) will become new rule 8.491;
- Current 8.490(n) will become new rule 8.492; and
- Current 8.490(m) will become new rule 8.493.

Breaking up rule 8.490 into these shorter rules with new titles and subdivision headings to guide rule users will help make relevant provisions easier to find. Placing these new rules relating to writ proceedings in the Court of Appeal and Supreme Court in a new, separate chapter 7 entitled “Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court of Appeal” will also make it easier for rule users to find relevant rules. Consolidating the provisions in rules current 8.490(c) and 8.931 that address the content of declarations used in the supporting documents in lieu of a transcript and making other small changes to these rules should make these provisions easier to understand.

### *Finality of Court of Appeal decisions*

Moving the provisions relating to finality of writ proceedings from rule 8.264 into the proposed new chapter 7 and moving the provisions relating to finality of orders denying bail or a reduction in bail in criminal appeals and denials of the transfer of an appellate division matter to the chapters of the rules relating to these proceedings will make it easier for rule users to find these provisions. Adding new advisory committee comments to rules 8.264 and 8.366 will also help rule users find the provisions concerning finality in these proceedings.

## Alternative Actions Considered

With regard to rule 8.490, the committee did not consider alternatives to breaking this rule into a set of smaller rules, as the committee believes rule 8.490 is currently too long.

With regard to finality, the committee considered leaving the current provisions relating to finality of decisions in writ proceedings, orders denying bail or a reduction in bail in criminal appeals, and denials of the transfer of an appellate division matter in rule 8.264 and adding cross-references to rule 8.264 in the chapters addressing these proceedings.

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<sup>3</sup> As previously noted, other proposed amendments to rule 8.490(i) are also being recommended by the committee at this time. Please see the report concerning certificates of interested entities and persons, also on this meeting’s agenda. To prevent confusion, the text of the amendments to 8.490(i) recommended in that report have also been incorporated into the text of proposed new rule 8.488 on pages 21-22 of this report.

The committee concluded, however, that it would be preferable to move these finality provisions out of rule 8.264 and into the relevant chapters of the rules, as this is more consistent with the approach taken last year with provisions concerning remittitur and with the general approach of trying to make each chapter of the rules more self-contained. The committee also concluded that moving these provisions would better conform the content of rule 8.264 to the scope of chapter 2, in which this rule is located, since chapter 2 covers only civil appeals.

### Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2008 comment cycle. Thirteen individuals or organizations submitted comments on this proposal. Eight commentators agreed with the proposal and five agreed with the proposal if modified. The major substantive comments are discussed below. The full text of all the comments received and the committee's responses is attached at pages 31-47.

### *Rules on Writ Proceedings*

All of the commentators generally supported the proposal to break current rule 8.490 into a set of smaller rules and to place these rules in a new chapter, but several commentators had suggestions about specific provisions in these rules.

Two commentators suggested that, rather than cross-referencing to rule 8.116 concerning the requirements that apply when a stay is requested, the relevant requirements should be incorporated into proposed rule 8.486. The committee agreed with the commentators' view that incorporating these provisions would make rule 8.486 easier to follow and therefore modified its proposal to incorporate these provisions.

These two commentators also suggested that the provision concerning sanctions in writ proceedings should be amended to include a time frame for sanction motions and provisions concerning the content of such motions. Because adding such provisions was not part of the proposal circulated for public comment, the committee will consider this suggestion during the next committee year.

### *Finality of Court of Appeal Decisions*

Several commentators expressed concern about the completeness of the provisions concerning finality of decisions in writ proceedings, orders denying bail or a reduction in bail, and denials of petitions for transfer that would be moved out of rule 8.264 and into rules 8.490, 8.366, and 8.1018 under this proposal. These commentators noted that rule 8.264 contains general provisions addressing finality when the Court of Appeal certifies its opinion for publication which are also applicable in writ proceedings, criminal appeals, and transfer proceedings. They suggested that, for the finality provisions in rules 8.490, 8.366, and 8.1018 to be complete, these general provisions should also be included. The committee agreed with these suggestions, and has modified its proposal to copy this general language from rule 8.264 into rules 8.490 and 8.366. In addition, the committee further modified rules 8.490 and 8.366 to add language from rule 8.264(c)(2) concerning finality following modification of a decision.

The committee is recommending a different approach in rule 8.1018, however. To make it clearer that the general rules concerning finality of Court of Appeal decisions apply if a case is transferred from the superior court appellate division to the Court of Appeal, the committee recommends that rule 8.1018 itself state only that decisions denying transfer are final immediately and that an accompanying advisory committee comment indicate that rules 8.264 and 8.366 generally address the finality of Court of Appeal decisions in civil and criminal cases, respectively. The committee believes that this approach is the most consistent with current rule 8.264, in which the only transfer-specific provision is the one making the denial of a transfer final immediately.

One commentator also pointed out that by moving the content of rule 8.499 concerning remittitur in writ proceedings to proposed new rule 8.490 in new chapter 7, the proposal that was circulated for public comment left chapter 8, which covers certain writs of review, without any provisions addressing remittitur. The commentator suggested that rule 8.499 should remain in chapter 8. The committee agreed with this suggestion and has modified its proposal to retain rule 8.499 in chapter 8 but also to copy the relevant provisions concerning remittitur into proposed new rule 8.490 in chapter 7.

One commentator found proposed new rule 8.490 to be confusing, in part because of the organization of its subdivisions. As circulated for public comment, the first subdivision in this rule stated that except as otherwise provided in the rule, decisions in writ proceedings are final 30 days after they are filed, and the second subdivision provided that summary denials of writ petitions are final immediately. This commentator suggested that the order of these provisions should be reversed, so that the provision applicable to summary denials comes first. Another commentator similarly suggested reversing the order of these subdivisions because summary denials are the type of decision most commonly encountered by parties in writ proceedings. The committee agreed with these suggestions and has modified its proposal to reverse the order of these provisions in proposed new rule 8.490.

One of these commentators also suggested that proposed new rule 8.490 should include provisions specifically addressing both voluntary and involuntary dismissals. Rule 8.264 currently contains provisions addressing such dismissals in civil appeals, but it does not specifically address dismissals in writ proceedings. Because adding provisions concerning dismissals in writ proceedings is a new suggestion that was not part of the proposal circulated for public comment, the committee will consider this suggestion during the next committee year.

#### Implementation Requirements and Costs

The committee does not believe that there will be appreciable costs associated with implementing these amendments. Making it easier for rule users to find and understand relevant provisions of the rules may reduce some costs associated with mistakes made when rule users miss applicable rule requirements.

Attachments



Rule 8.490 of the California Rules of Court is amended and renumbered as rules 8.485, 8.486, 8.487, 8.488, 8.489, 8.491, 8.492, and 8.493; rule 8.490 is adopted; rule 8.494 is renumbered as rule 8.495; rules 8.112, 8.264, 8.312, 8.366, 8.450, 8.454, 8.500, 8.552, 8.931, and 8.1018 are amended; and the advisory committee comments to rules 8.18, 8.272, and 8.278 are amended, effective January 1, 2009, to read:

**Title 8. Appellate Rules**

**Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Chapter 1. General Provisions**

**Article 1. In General**

**Rule 8.18. Documents violating rules not to be filed**

\* \* \*

**Advisory Committee Comment**

The exception in this rule acknowledges that there are different rules that apply to certain nonconforming documents. For example, this rule does not apply to nonconforming or late briefs, which are addressed by rules 8.204 (e) and 8.220(a), respectively, or to nonconforming supporting documents accompanying a writ petition under ~~rule 8.490~~ chapter 7, which are addressed by rule ~~8.490(d)(2)~~ 8.486(c)(2).

**Chapter 2. Civil Appeals**

**Article 1. Taking the Appeal**

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

**(a)–(c)** \* \* \*

**(d) Issuing the writ**

(1)–(2) \* \* \*

(3) The court must notify the superior court, under rule ~~8.490(k)~~ 8.489, of any writ or temporary stay that it issues.

1                                   **Article 4. Hearing and Decision in the Court of Appeal**

2  
3  
4   **Rule 8.264. Filing, finality, and modification of decision**

5  
6   **(a) \* \* \***

7  
8   **(b) Finality of decision**

9  
10       (1) Except as otherwise provided in this rule, a Court of Appeal decision in a civil  
11       appeal, including an order dismissing an appeal involuntarily, is final in that  
12       court 30 days after filing.

13  
14       (2) The following Court of Appeal decisions are final in that court on filing:

15               ~~(A) The denial of a petition for a writ within the court’s original jurisdiction~~  
16               ~~without issuance of an alternative writ or order to show cause;~~

17               ~~(B)~~(A) The denial of a petition for writ of supersedeas; and

18  
19               ~~(C) The denial of an application for bail or to reduce bail pending appeal;~~

20  
21               ~~(D) The denial of a transfer of a case within the appellate jurisdiction of the~~  
22               ~~superior court; and~~

23               ~~(E)~~(B) The dismissal of an appeal on request or stipulation.

24  
25  
26       ~~(3) If necessary to prevent mootness or frustration of the relief granted or to~~  
27       ~~otherwise promote the interests of justice, a Court of Appeal may order early~~  
28       ~~finality in that court of a decision granting a petition for a writ within its~~  
29       ~~original jurisdiction or denying such a petition after issuing an alternative writ~~  
30       ~~or order to show cause. The decision may provide for finality in that court on~~  
31       ~~filing or within a stated period of less than 30 days.~~

32  
33  
34       ~~(4) A Court of Appeal decision denying a petition for writ of habeas corpus~~  
35       ~~without issuing an order to show cause is final in that court on the same day~~  
36       ~~that its decision in a related appeal is final if the two decisions are filed on the~~  
37       ~~same day. If the Court of Appeal orders rehearing of the decision in the appeal,~~  
38       ~~its decision denying the petition for writ of habeas corpus is final when its~~  
39       ~~decision on rehearing is final.~~



1 **Rule 8.272. Remittitur**

2  
3 \* \* \*

4 **Advisory Committee Comment**

5  
6 See rule 8.386 for provisions addressing remittitur in habeas corpus proceedings and rule ~~8.499~~ 8.490 for  
7 provisions addressing remittitur in other writ proceedings.  
8

9  
10 **Rule 8.278. Costs on appeal**

11  
12 \* \* \*

13 **Advisory Committee Comment**

14  
15 This rule is not intended to expand the categories of appeals subject to the award of costs. See rule  
16 ~~8.490(m)~~ 8.493 for provisions addressing costs in writ proceedings.  
17

18 **Subdivision (c).** \* \* \*

19  
20 **Subdivision (d).** \* \* \*

21  
22 **Chapter 3. Criminal Appeals**

23  
24 **Article 1. Taking the Appeal**

25  
26  
27 **Rule 8.312. Stay of execution and release on appeal**

28  
29 **(a)–(c)** \* \* \*

30  
31 **(d) Interim relief**

32  
33 Pending its ruling on the application, the reviewing court may grant the relief  
34 requested. The reviewing court must notify the superior court under rule ~~8.490(k)~~  
35 8.489 of any stay that it grants.  
36

37 **Advisory Committee Comment**

38  
39 **Subdivision (a).** The remedy of an application for bail under (a)(2) is separate from but consistent with  
40 the statutory remedy of a petition for habeas corpus under Penal Code section 1490. (*In re Brumback*  
41 (1956) 46 Cal.2d 810, 815, fn. 3.)  
42

43 An order of the Court of Appeal denying bail or reduction of bail, or for release on other conditions, is  
44 final on filing. (See rule ~~8.264(b)(2)(C)~~ 8.366(b)(2)(A).)  
45

1  
2 **Subdivision (d).** The first sentence of (d) recognizes the case law holding that a reviewing court may  
3 grant bail or reduce bail, or release the defendant on other conditions, pending its ruling on an application  
4 for that relief. (See, e.g., *In re Fishman* (1952) 109 Cal.App.2d 632, 633; *In re Keddy* (1951) 105  
5 Cal.App.2d 215, 217.) The second sentence of the subdivision requires the reviewing court to notify the  
6 superior court under rule ~~8.490(4)~~ 8.489 when it grants either (1) a stay to preserve the status quo pending  
7 its ruling on a stay application or (2) the stay requested by that application.  
8  
9

### 10 **Article 3. Briefs, Hearing, and Decision**

#### 11 **Rule 8.366. Hearing and decision in the Court of Appeal**

##### 12 **(a) General application of rules 8.252–8.272**

13 Except as provided in this rule, rules 8.252 through 8.272 govern the hearing and  
14 decision in the Court of Appeal of an appeal in a criminal case.

##### 15 **(b) Finality**

16  
17 (1) Except as otherwise provided in this rule, a Court of Appeal decision in a  
18 proceeding under this chapter, including an order dismissing an appeal  
19 involuntarily, is final in that court 30 days after filing.

20 (2) The following Court of Appeal decisions are final in that court on filing:

21 (A) The denial of an application for bail or to reduce bail pending appeal; and

22 (B) The dismissal of an appeal on request or stipulation.

23 (3) If a Court of Appeal certifies its opinion for publication or partial publication  
24 after filing its decision and before its decision becomes final in that court, the  
25 finality period runs from the filing date of the order for publication.

26 (4) If an order modifying an opinion changes the appellate judgment, the finality  
27 period runs from the filing date of the modification order.

##### 28 **(c) Sanctions**

29  
30 Except for (a)(1), rule 8.276 ~~also~~ applies in criminal appeals.  
31  
32  
33  
34  
35  
36  
37  
38  
39  
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41  
42

1 Advisory Committee Comment

2  
3 Subdivision (b). As used in subdivision (b)(1), “decision” includes all interlocutory orders of the Court of  
4 Appeal. (See Advisory Committee Comment to rule 8.500(a) and (e).) This provision addresses the  
5 finality of decisions in criminal appeals. See rule 8.264(b) for provisions addressing the finality of  
6 decisions in proceedings under chapter 2, relating to civil appeals, and rule 8.490 for provisions  
7 addressing the finality of proceedings under chapter 7, relating to writs of mandate, certiorari, and  
8 prohibition.  
9

10  
11 **Chapter 5. Juvenile Appeals and Writs**

12  
13  
14 **Rule 8.450. Notice of intent to file writ petition to review order setting hearing**  
15 **under Welfare and Institutions Code section 366.26**

16  
17 **(a) Application**

18  
19 Rules 8.450–8.452 and 5.600 govern writ petitions to review orders setting a  
20 hearing under Welfare and Institutions Code section 366.26. Rules ~~8.490 does~~  
21 8.485–8.493 do not apply to petitions governed by these rules.  
22

23 **(b)–(i) \* \* \***

24  
25 **Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code**  
26 **section 366.28 to review order designating specific placement of a dependent**  
27 **child after termination of parental rights**

28  
29 **(a) Application**

30  
31 Rules 8.454–8.456 govern writ petitions to review placement orders following  
32 termination of parental rights entered on or after January 1, 2005. “Posttermination  
33 placement order” as used in this rule and rule 8.456 refers to orders following  
34 termination of parental rights. Rules ~~8.490 does~~ 8.485–8.493 do not apply to  
35 petitions governed by these rules.  
36

37 **(b)–(j) \* \* \***  
38  
39



- 1 (3) If the petition seeks review of trial court proceedings that are also the subject  
2 of a pending appeal, the notice “Related Appeal Pending” must appear on the  
3 cover of the petition and the first paragraph of the petition must state:  
4  
5 (A) The appeal’s title, trial court docket number, and any reviewing court  
6 docket number; and  
7  
8 (B) If the petition is filed under Penal Code section 1238.5, the date the notice  
9 of appeal was filed.  
10  
11 (4) The petition must be verified.  
12  
13 (5) The petition must be accompanied by a memorandum, which need not repeat  
14 facts alleged in the petition.  
15  
16 (6) Rule 8.204(c) governs the length of the petition and memorandum, but the  
17 tables, the certificate, the verification, and any supporting documents are  
18 excluded from the limits stated in rule 8.204(c)(1) and (2).  
19  
20 (7) If the petition requests a temporary stay, it must comply with ~~rule 8.116 and~~  
21 the following or the reviewing court may decline to consider the request for a  
22 temporary stay:  
23  
24 (A) The petition must explain the urgency.  
25  
26 (B) The cover of the petition must prominently display the notice “STAY  
27 REQUESTED” and identify the nature and date of the proceeding or act  
28 sought to be stayed.  
29  
30 (C) The trial court and department involved and the name and telephone  
31 number of the trial judge whose order the request seeks to stay must  
32 appear either on the cover or at the beginning of the text.  
33

34 **(e)(b) Contents of supporting documents**

- 35  
36 (1) A petition that seeks review of a trial court ruling must be accompanied by an  
37 adequate record, including copies of:  
38  
39 (A) The ruling from which the petition seeks relief;  
40  
41 (B) All documents and exhibits submitted to the trial court supporting and  
42 opposing the petitioner’s position;  
43

1 (C) Any other documents or portions of documents submitted to the trial court  
2 that are necessary for a complete understanding of the case and the ruling  
3 under review; and  
4

5 (D) A reporter's transcript of the oral proceedings that resulted in the ruling  
6 under review.  
7

8 ~~(4)~~(2) In exigent circumstances, the petition may be filed without the documents  
9 required by (1)(A)–(C) if counsel or, if the petitioner is unrepresented, the  
10 petitioner files a declaration that explains the urgency and the circumstances  
11 making the documents unavailable and fairly summarizes their substance.  
12

13 ~~(2)~~(3) If a transcript under (1)(D) is unavailable, the record must include a  
14 declaration by counsel or, if the petitioner is unrepresented, the petitioner:

15  
16 (A) Explaining why the transcript is unavailable and fairly summarizing the  
17 proceedings, including ~~counsel's~~ the petitioner's arguments and any  
18 statement by the court supporting its ruling. This declaration may omit a  
19 full summary of the proceedings if part of the relief sought is an order to  
20 prepare a transcript for use by an indigent criminal defendant in support  
21 of the petition and if the declaration demonstrates the petitioner's need for  
22 and entitlement to the transcript; or  
23

24 (B) Stating that the transcript has been ordered, the date it was ordered, and  
25 the date it is expected to be filed, which must be a date before any action  
26 requested of the reviewing court other than issuance of a temporary stay  
27 supported by other parts of the record.  
28

29 ~~(3)~~—~~A declaration under (2) may omit a full summary of the proceedings if part of~~  
30 ~~the relief sought is an order to prepare a transcript for use by an indigent~~  
31 ~~criminal defendant in support of the petition and if the declaration~~  
32 ~~demonstrates the petitioner's need for and entitlement to the transcript.~~  
33

34 ~~(5)~~(4) If the petitioner does not submit the required record or explanations or does  
35 not present facts sufficient to excuse the failure to submit them, the court may  
36 summarily deny a stay request, the petition, or both.  
37

38 ~~(d)~~**(c) Form of supporting documents**

39  
40 (1) Documents submitted under ~~(e)~~**(b)** must comply with the following  
41 requirements:  
42

- 1 (A) They must be bound together at the end of the petition or in separate  
2 volumes not exceeding 300 pages each. The pages must be consecutively  
3 numbered.  
4
- 5 (B) They must be index-tabbed by number or letter.  
6
- 7 (C) They must begin with a table of contents listing each document by its title  
8 and its index-tab number or letter. If a document has attachments, the  
9 table of contents must give the title of each attachment and a brief  
10 description of its contents.  
11
- 12 (2) The clerk must file any supporting documents not complying with (1), but the  
13 court may notify the petitioner that it may strike or summarily deny the  
14 petition if the documents are not brought into compliance within a stated  
15 reasonable time of not less than 5 days.  
16
- 17 (3) Rule 8.44(a) governs the number of copies of supporting documents to be filed  
18 in the Supreme Court. Rule 8.44(b) governs the number of supporting  
19 documents to be filed in the Court of Appeal.  
20

21 **~~(e)~~(d) Sealed records**  
22

23 Rule 8.160 applies if a party seeks to lodge or file a sealed record or to unseal a  
24 record.  
25

26 **~~(f)~~(e) Service**  
27

- 28 (1) If the respondent is the superior court or a judge of that court, the petition and  
29 one set of supporting documents must be served on any named real party in  
30 interest, but only the petition must be served on the respondent.  
31
- 32 (2) If the respondent is not the superior court or a judge of that court, both the  
33 petition and one set of supporting documents must be served on the respondent  
34 and on any named real party in interest.  
35
- 36 (3) In addition to complying with the requirements of rule 8.25, the proof of  
37 service must give the telephone number of each attorney served.  
38
- 39 (4) The petition must be served on a public officer or agency when required by  
40 statute or rule 8.29.  
41
- 42 (5) The clerk must file the petition even if its proof of service is defective, but if  
43 the petitioner fails to file a corrected proof of service within 5 days after the

1 clerk gives notice of the defect the court may strike the petition or impose a  
2 lesser sanction.

3  
4 (6) The court may allow the petition to be filed without proof of service.  
5

6 ~~(g) Preliminary opposition~~  
7

8 ~~(1) Within 10 days after the petition is filed, the respondent or any real party in~~  
9 ~~interest, separately or jointly, may serve and file a preliminary opposition.~~  
10

11 ~~(2) An opposition must contain a memorandum and a statement of any material~~  
12 ~~fact not included in the petition.~~  
13

14 ~~(3) Within 10 days after an opposition is filed, the petitioner may serve and file a~~  
15 ~~reply.~~  
16

17 ~~(4) Without requesting opposition or waiting for a reply, the court may grant or~~  
18 ~~deny a request for temporary stay, deny the petition, issue an alternative writ~~  
19 ~~or order to show cause, or notify the parties that it is considering issuing a~~  
20 ~~peremptory writ in the first instance.~~  
21

22 ~~(h) Return or opposition; reply~~  
23

24 ~~(1) If the court issues an alternative writ or order to show cause, the respondent or~~  
25 ~~any real party in interest, separately or jointly, may serve and file a return by~~  
26 ~~demurrer, verified answer, or both. If the court notifies the parties that it is~~  
27 ~~considering issuing a peremptory writ in the first instance, the respondent or~~  
28 ~~any real party in interest may serve and file an opposition.~~  
29

30 ~~(2) Unless the court orders otherwise, the return or opposition must be served and~~  
31 ~~filed within 30 days after the court issues the alternative writ or order to show~~  
32 ~~cause or notifies the parties that it is considering issuing a peremptory writ in~~  
33 ~~the first instance.~~  
34

35 ~~(3) Unless the court orders otherwise, the petitioner may serve and file a reply~~  
36 ~~within 15 days after the return or opposition is filed.~~  
37

38 ~~(4) If the return is by demurrer alone and the demurrer is not sustained, the court~~  
39 ~~may issue the peremptory writ without granting leave to answer.~~  
40

1 ~~(i) — Certificate of Interested Entities or Persons~~

2  
3 ~~(1) — This subdivision applies in writ proceedings in civil cases other than family,~~  
4 ~~juvenile, guardianship, and conservatorship cases.~~

5  
6 ~~(2) — Each party must comply with the requirements of rule 8.208 concerning~~  
7 ~~servng and filing a Certificate of Interested Entities or Persons.~~

8  
9 ~~(3) — The petitioner’s certificate must be included in the petition. The certificates of~~  
10 ~~the respondent and real party in interest must be included in their preliminary~~  
11 ~~opposition or, if no such opposition is filed, in their return, if any. The~~  
12 ~~certificate must appear after the cover and before the tables. If the identity of~~  
13 ~~any party has not been publicly disclosed in the proceedings, the party may~~  
14 ~~file an application for permission to file its certificate under seal separately~~  
15 ~~from the petition, preliminary opposition, or return.~~

16  
17 ~~(4) — If a party fails to file a certificate as required under (2) and (3), the clerk must~~  
18 ~~notify the party by mail that the party must file the certificate within 10 days~~  
19 ~~after the clerk’s notice is mailed and that if the party fails to comply, the court~~  
20 ~~may impose one of the following sanctions:~~

21  
22 ~~(A) — If the party is the petitioner, the court may strike the petition; or~~

23  
24 ~~(B) — If the party is the respondent or the real party in interest, the court may~~  
25 ~~strike the document.~~

26  
27 ~~(5) — If the party fails to file the certificate as specified in the notice under (4), the~~  
28 ~~court may impose the sanctions specified in the notice.~~

29  
30 ~~(j) — Attorney General’s amicus curiae brief~~

31  
32 ~~(1) — If the court issues an alternative writ or order to show cause, the Attorney~~  
33 ~~General may file an amicus curiae brief without the permission of the Chief~~  
34 ~~Justice or presiding justice, unless the brief is submitted on behalf of another~~  
35 ~~state officer or agency.~~

36  
37 ~~(2) — The Attorney General must serve and file the brief within 14 days after the~~  
38 ~~return is filed or, if no return is filed, within 14 days after the date it was due.~~

39  
40 ~~(3) — The brief must provide the information required by rule 8.200(c)(2) and~~  
41 ~~comply with rule 8.200(c)(4).~~

42  
43 ~~(4) — Any party may serve and file an answer within 14 days after the brief is filed.~~

1  
2 **(k) — Notice to trial court**  
3

4 (1) — ~~If a writ or order issues directed to any judge, court, board, or other officer,~~  
5 ~~the reviewing court clerk must promptly send a certified copy of the writ or~~  
6 ~~order to the person or entity to whom it is addressed.~~

7  
8 (2) — ~~If the writ or order stays or prohibits proceedings set to occur within 7 days or~~  
9 ~~requires action within 7 days — or in any other urgent situation — the reviewing~~  
10 ~~court clerk must make a reasonable effort to notify the clerk of the respondent~~  
11 ~~court by telephone. The clerk of the respondent court must then notify the~~  
12 ~~judge or officer most directly concerned.~~

13  
14 (3) — ~~The clerk need not give telephonic notice of the summary denial of a writ,~~  
15 ~~whether or not a stay previously issued.~~

16  
17 **(A) — Responsive pleading under Code of Civil Procedure section 418.10**  
18

19 ~~If the Court of Appeal denies a petition for writ of mandate brought under Code of~~  
20 ~~Civil Procedure section 418.10(e) and the Supreme Court denies review of the~~  
21 ~~Court of Appeal’s decision, the time to file a responsive pleading in the trial court is~~  
22 ~~extended until 10 days after the Supreme Court files its order denying review.~~

23  
24 **(m) — Costs**  
25

26 (1) — ~~Except in a criminal or juvenile or other proceeding in which a party is~~  
27 ~~entitled to court appointed counsel:~~

28  
29 (A) — ~~Unless otherwise ordered by the court under (B), the prevailing party in~~  
30 ~~an original proceeding is entitled to costs if the court resolves the~~  
31 ~~proceeding by written opinion after issuing an alternative writ, an order~~  
32 ~~to show cause, or a peremptory writ in the first instance.~~

33  
34 (B) — ~~In the interests of justice, the court may also award or deny costs as it~~  
35 ~~deems proper in the proceedings listed in (A) and in other circumstances.~~

36  
37 (2) — ~~The opinion or order resolving the proceeding must specify the award or~~  
38 ~~denial of costs.~~

39  
40 (3) — ~~Rule 8.278(b) — (d) governs the procedure for recovering costs under this rule.~~  
41

1 ~~(n)~~ **Sanctions**

- 2
- 3 (1) ~~On motion of a party or its own motion, a Court of Appeal may impose~~  
4 ~~sanctions, including the award or denial of costs under (m), on a party or an~~  
5 ~~attorney for:~~
- 6
- 7 (A) ~~Filing a frivolous petition or filing a petition solely to cause delay; or~~  
8
- 9 (B) ~~Committing any other unreasonable violation of these rules.~~
- 10
- 11 (2) ~~The court must give notice in writing if it is considering imposing sanctions.~~
- 12
- 13 (3) ~~Within 10 days after the court sends such notice, a party or attorney may serve~~  
14 ~~and file an opposition, but failure to do so will not be deemed consent. An~~  
15 ~~opposition may not be filed unless the court sends such notice.~~
- 16
- 17 (4) ~~Unless otherwise ordered, oral argument on the issue of sanctions must be~~  
18 ~~combined with any oral argument on the merits of the petition.~~

19

20 **Advisory Committee Comment**

21

22 **Subdivision ~~(b)~~(a).** Because of the importance of the point, rule ~~8.490(b)(6)~~ ~~8.486(a)(6)~~ explicitly states  
23 that the provisions of rule 8.204(c)—and hence the word-count limits imposed by that rule—apply to a  
24 petition for original writ.

25

26 **Subdivision ~~(a)~~(e).** Rule 8.25, which generally governs service and filing in reviewing courts, also  
27 applies to the original proceedings covered by this rule.

28

29 **Subdivision (g).** Consistent with practice, rule 8.490 draws a distinction between a “preliminary  
30 opposition,” which the respondent or a real party in interest may file before the court takes any action on  
31 the petition ~~((g)(1))~~, and a more formal “opposition,” which the respondent or a real party in interest may  
32 file if the court notifies the parties that it is considering issuing a peremptory writ in the first instance  
33 ~~((h)(1))~~.

34

35 Subdivision (g)(1) allows the respondent or any real party in interest to serve and file a preliminary  
36 opposition within 10 days after the petition is filed. The reviewing court retains the power to act in any  
37 case without obtaining an opposition ~~((g)(4))~~.

38

39 Subdivision (g)(3) allows a petitioner to serve and file a reply within 10 days after an opposition is filed.  
40 To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may  
41 act on the petition without waiting for a reply.

42

43 Subdivision (g)(4) recognizes that the reviewing court may “grant or deny a request for temporary stay”  
44 without requesting opposition or waiting for a reply.

1 The several references in rule 8.490 to the power of the court to issue a peremptory writ in the first  
2 instance after notifying the parties that it is considering doing so ((g) (h)) implement the rule of *Palma v.*  
3 *U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

4  
5 ~~**Subdivision (h).** Subdivision (h)(2) requires that the return or opposition be served and filed within 30~~  
6 ~~days after the court issues the alternative writ or order to show cause or notifies the parties that it is~~  
7 ~~considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases,~~  
8 ~~however, the provision recognizes that the reviewing court may order otherwise.~~

9  
10 ~~Subdivision (h)(3) formalizes the common practice of permitting petitioners to file replies to returns and~~  
11 ~~specifies that such a reply must be served and filed within 15 days after the return is filed. To permit~~  
12 ~~prompt action in urgent cases, however, the provision recognizes that the reviewing court may order~~  
13 ~~otherwise.~~

14  
15 ~~**Subdivision (i).** The Judicial Council has adopted an optional form, *Certificate of Interested Entities or*~~  
16 ~~*Persons* (form APP-008), that can be used to file the certificate required by this provision.~~

## 17 18 19 **Rule 8.487. Opposition and Attorney General amicus briefs**

### 20 21 **(a) Preliminary opposition**

- 22  
23 (1) Within 10 days after the petition is filed, the respondent or any real party in  
24 interest, separately or jointly, may serve and file a preliminary opposition.  
25  
26 (2) A preliminary opposition must contain a memorandum and a statement of any  
27 material fact not included in the petition.  
28  
29 (3) Within 10 days after a preliminary opposition is filed, the petitioner may serve  
30 and file a reply.  
31  
32 (4) Without requesting preliminary opposition or waiting for a reply, the court  
33 may grant or deny a request for temporary stay, deny the petition, issue an  
34 alternative writ or order to show cause, or notify the parties that it is  
35 considering issuing a peremptory writ in the first instance.

### 36 37 **(b) Return or opposition; reply**

- 38  
39 (1) If the court issues an alternative writ or order to show cause, the respondent or  
40 any real party in interest, separately or jointly, may serve and file a return by  
41 demurrer, verified answer, or both. If the court notifies the parties that it is  
42 considering issuing a peremptory writ in the first instance, the respondent or  
43 any real party in interest may serve and file an opposition.  
44

- 1 (2) Unless the court orders otherwise, the return or opposition must be served and  
2 filed within 30 days after the court issues the alternative writ or order to show  
3 cause or notifies the parties that it is considering issuing a peremptory writ in  
4 the first instance.  
5  
6 (3) Unless the court orders otherwise, the petitioner may serve and file a reply  
7 within 15 days after the return or opposition is filed.  
8  
9 (4) If the return is by demurrer alone and the demurrer is not sustained, the court  
10 may issue the peremptory writ without granting leave to answer.  
11

12 **(c) Attorney General’s amicus curiae brief**  
13

- 14 (1) If the court issues an alternative writ or order to show cause, the Attorney  
15 General may file an amicus curiae brief without the permission of the Chief  
16 Justice or presiding justice, unless the brief is submitted on behalf of another  
17 state officer or agency.  
18  
19 (2) The Attorney General must serve and file the brief within 14 days after the  
20 return is filed or, if no return is filed, within 14 days after the date it was due.  
21  
22 (3) The brief must provide the information required by rule 8.200(c)(2) and  
23 comply with rule 8.200(c)(4).  
24  
25 (4) Any party may serve and file an answer within 14 days after the brief is filed.  
26

27 **Advisory Committee Comment**  
28

29 **Subdivision (a).** Consistent with practice, rule 8.487 draws a distinction between a “preliminary  
30 opposition,” which the respondent or a real party in interest may file before the court takes any action on  
31 the petition ((a)(1)), and a more formal “opposition,” which the respondent or a real party in interest may  
32 file if the court notifies the parties that it is considering issuing a peremptory writ in the first instance  
33 ((b)(1)).  
34

35 Subdivision (a)(1) allows the respondent or any real party in interest to serve and file a preliminary  
36 opposition within 10 days after the petition is filed. The reviewing court retains the power to act in any  
37 case without obtaining preliminary opposition ((a)(4)).  
38

39 Subdivision (a)(3) allows a petitioner to serve and file a reply within 10 days after a preliminary  
40 opposition is filed. To permit prompt action in urgent cases, however, the provision recognizes that the  
41 reviewing court may act on the petition without waiting for a reply.  
42

43 Subdivision (a)(4) recognizes that the reviewing court may “grant or deny a request for temporary stay”  
44 without requesting preliminary opposition or waiting for a reply.  
45

1 The several references in rule 8.487 to the power of the court to issue a peremptory writ in the first  
2 instance after notifying the parties that it is considering doing so ((a)—(b)) implement the rule of *Palma v.*  
3 *U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

4  
5 **Subdivision (b).** Subdivision (b)(2) requires that the return or opposition be served and filed within 30  
6 days after the court issues the alternative writ or order to show cause or notifies the parties that it is  
7 considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases,  
8 however, the provision recognizes that the reviewing court may order otherwise.

9  
10 Subdivision (b)(3) formalizes the common practice of permitting petitioners to file replies to returns and  
11 specifies that such a reply must be served and filed within 15 days after the return is filed. To permit  
12 prompt action in urgent cases, however, the provision recognizes that the reviewing court may order  
13 otherwise.

## 14 15 16 **Rule 8.488. Certificate of Interested Entities or Persons**

### 17 18 **(a) Application**

19  
20 This rule applies in writ proceedings in criminal cases in which an entity is the  
21 defendant and in civil cases other than family, juvenile, guardianship, and  
22 conservatorship cases.

### 23 24 **(b) Compliance with rule 8.208**

25  
26 Each party must comply with the requirements of rule 8.208 concerning serving and  
27 filing a Certificate of Interested Entities or Persons.

### 28 29 **(c) Placement of certificates**

30  
31 (1) The petitioner’s certificate must be included in the petition.

32  
33 (2) The certificates of the respondent and real party in interest must be included in  
34 their preliminary opposition or, if no such opposition is filed, in their return, if  
35 any.

36  
37 (3) The certificate must appear after the cover and before the tables.

38  
39 (4) If the identity of any party has not been publicly disclosed in the proceedings,  
40 the party may file an application for permission to file its certificate under seal  
41 separately from the petition, preliminary opposition, or return.

1 **(d) Failure to file a certificate**

2  
3 (1) If a party fails to file a certificate as required under (2)(b) and (3)(c), the clerk  
4 must notify the party by mail that the party must file the certificate within 10  
5 days after the clerk’s notice is mailed and that if the party fails to comply, the  
6 court may impose one of the following sanctions:

7  
8 (A) If the party is the petitioner, the court may strike the petition; or

9  
10 (B) If the party is the respondent or the real party in interest, the court may  
11 strike that party’s document.

12  
13 (2) If the party fails to file the certificate as specified in the notice under (4)(1), the  
14 court may impose the sanctions specified in the notice.

15  
16 **Advisory Committee Comment**

17  
18 The Judicial Council has adopted an optional form, *Certificate of Interested Entities or Persons* (form  
19 APP-008), that can be used to file the certificate required by this provision.

20  
21 **Subdivision (a).** Under rule 8.208(c), for purposes of certificates of interested entities or persons, an  
22 “entity” means a corporation, a partnership, a firm, or any other association, but does not include a  
23 governmental entity or its agencies or a natural person.

24  
25  
26 **Rule 8.489. Notice to trial court**

27  
28 **(a) Notice if writ issues**

29  
30 If a writ or order issues directed to any judge, court, board, or other officer, the  
31 reviewing court clerk must promptly send a certified copy of the writ or order to the  
32 person or entity to whom it is addressed.

33  
34 **(b) Notice by telephone**

35  
36 (1) If the writ or order stays or prohibits proceedings set to occur within 7 days or  
37 requires action within 7 days—or in any other urgent situation—the reviewing  
38 court clerk must make a reasonable effort to notify the clerk of the respondent  
39 court by telephone. The clerk of the respondent court must then notify the  
40 judge or officer most directly concerned.

41  
42 (2) The clerk need not give telephonic notice of the summary denial of a writ,  
43 whether or not a stay previously issued.

1  
2 **Rule 8.490. Filing, finality, and modification of decisions; remittitur**

3  
4 **(a) Filing and modification of decisions**

5  
6 Rule 8.264(a) and (c) govern the filing and modification of decisions in writ  
7 proceedings.

8  
9 **(b) Finality of decision**

10  
11 (1) The denial of a petition for a writ within the court’s original jurisdiction  
12 without issuance of an alternative writ or order to show cause is final in that  
13 court when filed.

14  
15 (2) Except as otherwise provided in this rule, a decision in a writ proceeding is  
16 final 30 days after the decision is filed.

17  
18 (3) If necessary to prevent mootness or frustration of the relief granted or to  
19 otherwise promote the interests of justice, the court may order early finality in  
20 that court of a decision granting a petition for a writ within its original  
21 jurisdiction or denying such a petition after issuing an alternative writ or order  
22 to show cause. The decision may provide for finality in that court on filing or  
23 within a stated period of less than 30 days.

24  
25 (4) If a Court of Appeal certifies its opinion for publication or partial publication  
26 after filing its decision and before its decision becomes final in that court, the  
27 finality period runs from the filing date of the order for publication.

28  
29 (5) If an order modifying an opinion changes the appellate judgment, the finality  
30 period runs from the filing date of the modification order.

31  
32 **(c) Remittitur**

33  
34 A Court of Appeal must issue a remittitur in a writ proceeding under this chapter  
35 except when the court denies the petition without issuing an alternative writ or order  
36 to show cause. Rule 8.272(b)–(d) governs issuance of a remittitur by a Court of  
37 Appeal in writ proceedings under this chapter.

38  
39 **Advisory Committee Comment**

40  
41 **Subdivision (b).** This provision addresses the finality of decisions in proceedings relating to writs of  
42 mandate, certiorari, and prohibition. See rule 8.264(b) for provisions addressing the finality of decisions  
43 in proceedings under chapter 2, relating to civil appeals, and rule 8.366 for provisions addressing the  
44 finality of decisions in proceedings under chapter 3, relating to criminal appeals.

1  
2  
3 **Rule 8.491. Responsive pleading under Code of Civil Procedure section 418.10**  
4

5 If the Court of Appeal denies a petition for writ of mandate brought under Code of Civil  
6 Procedure section 418.10(c) and the Supreme Court denies review of the Court of  
7 Appeal’s decision, the time to file a responsive pleading in the trial court is extended until  
8 10 days after the Supreme Court files its order denying review.  
9

10  
11 **Rule 8.492. Sanctions**  
12

13 **(a) Grounds for sanctions**  
14

15 On motion of a party or its own motion, a Court of Appeal may impose sanctions,  
16 including the award or denial of costs under rule 8.493, on a party or an attorney for:  
17

- 18 (1) Filing a frivolous petition or filing a petition solely to cause delay; or  
19  
20 (2) Committing any other unreasonable violation of these rules.  
21

22 **(b) Notice**  
23

24 The court must give notice in writing if it is considering imposing sanctions.  
25

26 **(c) Opposition**  
27

28 Within 10 days after the court sends such notice, a party or attorney may serve and  
29 file an opposition, but failure to do so will not be deemed consent. An opposition  
30 may not be filed unless the court sends such notice.  
31

32 **(d) Oral argument**  
33

34 Unless otherwise ordered, oral argument on the issue of sanctions must be combined  
35 with any oral argument on the merits of the petition.  
36  
37

1 **Rule 8.493. Costs**

2  
3 **(a) Award of costs**

4  
5 (1) Except in a criminal or juvenile or other proceeding in which a party is entitled  
6 to court-appointed counsel:

7  
8 (A) Unless otherwise ordered by the court under (B), the prevailing party in  
9 an original proceeding is entitled to costs if the court resolves the  
10 proceeding by written opinion after issuing an alternative writ, an order to  
11 show cause, or a peremptory writ in the first instance.

12  
13 (B) In the interests of justice, the court may also award or deny costs as it  
14 deems proper in the proceedings listed in (A) and in other circumstances.

15  
16 (2) The opinion or order resolving the proceeding must specify the award or denial  
17 of costs.

18  
19 **(b) Procedures for recovering costs**

20  
21 Rule 8.278(b)–(d) governs the procedure for recovering costs under this rule.

22  
23  
24 **Chapter 7-8. Miscellaneous Writs of Review**

25  
26  
27 **Rule 8.494. 8.495. Review of Workers' Compensation Appeals Board cases**

28  
29 \* \* \*

30  
31 **Chapter 8.9. Proceedings in the Supreme Court**

32  
33  
34 **Rule 8.500. Petition for review**

35  
36 **(a) – (b) \* \* \***

37  
38 **(e) Time to serve and file**

39  
40 (1) A petition for review must be served and filed within 10 days after the Court of  
41 Appeal decision is final in that court ~~under rule 8.264~~. For purposes of this  
42 rule, the date of finality is not extended if it falls on a day on which the clerk's  
43 office is closed.

1 (2) – (5) \* \* \*

2  
3 (f) – (g) \* \* \*

4  
5 **Advisory Committee Comment**

6  
7 **Subdivision (a).** \* \* \*

8  
9 **Subdivision (e).** Subdivision (e)(1) provides that a petition for review must be served and filed within 10  
10 days after the Court of Appeal decision is *final in that court*. Finality in the Court of Appeal is generally  
11 governed by rules 8.264(b) (civil appeals), 8.366(b) (criminal appeals), 8.387(b) (habeas corpus  
12 proceedings), and 8.480 (proceedings for writs of mandate, certiorari, and prohibition). These rules  
13 8.264(b) declares the general rule that a Court of Appeal decision is final in that court 30 days after filing.  
14 They ~~provision~~ then carves out ~~five~~ specific exceptions—decisions that ~~it~~ they declares to be final  
15 immediately on filing (see rules 8.264(b)(2), 8.366(b)(2), and 8.490(b)(1)). The plain implication is that  
16 all other Court of Appeal orders—specifically, interlocutory orders that may be the subject of a petition  
17 for review—are *not* final on filing. This implication is confirmed by current practice, in which parties  
18 may be allowed to apply for—and the Courts of Appeal may grant—reconsideration of such interlocutory  
19 orders; reconsideration, of course, would be impermissible if the orders were in fact final on filing.

20  
21 Contrary to paragraph (2) of subdivision (e), paragraphs (4) and (5) do not prohibit extending the time to  
22 file an answer or reply; because the subdivision thus expressly forbids an extension of time only with  
23 respect to the petition for review, by clear negative implication it permits an application to extend the time  
24 to file an answer or reply under rule 8.50.

25  
26 **Subdivision (f).** \* \* \*

27  
28  
29 **Rule 8.552. Transfer for decision**

30  
31 (a) \* \* \*

32  
33 (b) **When a cause is pending**

34  
35 For purposes of this rule, a cause within the appellate jurisdiction of the superior  
36 court is not pending in the Court of Appeal until that court orders it transferred  
37 under rule 8.1002. Any cause pending in the Court of Appeal remains pending until  
38 the decision of the Court of Appeal is final in that court ~~under rule 8.264~~.

39  
40 (c) - (e) \* \* \*

41  
42 **Advisory Committee Comment**

43  
44 Rule 8.552 applies only to causes that the Supreme Court transfers to itself for the purpose of reaching a  
45 decision on the merits. The rule implements a portion of article VI, section 12(a) of the Constitution. As  
46 used in article VI, section 12(a) and the rule, the term “cause” is broadly construed to include “ ‘all cases,

1 matters, and proceedings of every description' ” adjudicated by the Courts of Appeal and the Supreme  
2 Court. (*In re Rose* (2000) 22 Cal.4th 430, 540, quoting *In re Wells* (1917) 174 Cal. 467, 471.)

3  
4 **Subdivision (b).** For provisions addressing the finality of Court of Appeal decisions, see rules 8.264(b)  
5 (civil appeals), 8.366(b) (criminal appeals), 8.490 (proceedings for writs of mandate, certiorari, and  
6 prohibition), and 8.1018(a) (transfer of appellate division cases).  
7

## 8 9 **Chapter 9-10. Appeals From Judgments of Death**

### 10 11 **Division 2. Rules Relating to the Superior Court Appellate Division** 12 **Chapter 6. Writ Proceedings**

#### 13 14 **Rule 8.931. Petitions filed by persons not represented by an attorney**

15  
16  
17  
18 **(a) \* \* \***

#### 19 20 **(b) Contents of supporting documents**

21  
22 (1) The petition must be accompanied by an adequate record, including copies of:

23  
24 (A) The ruling from which the petition seeks relief;

25  
26 (B) All documents and exhibits submitted to the trial court supporting and  
27 opposing the petitioner’s position;

28  
29 (C) Any other documents or portions of documents submitted to the trial court  
30 that are necessary for a complete understanding of the case and the ruling  
31 under review; and

32  
33 (D) A reporter’s transcript or electronic recording of the oral proceedings that  
34 resulted in the ruling under review.

35  
36 ~~(4)~~(2) In extraordinary circumstances, the petition may be filed without the  
37 documents required by (1)(A)–(C) if ~~counsel or, if the petitioner is~~  
38 ~~unrepresented,~~ the petitioner files a declaration that explains the urgency and  
39 the circumstances making the documents unavailable and fairly summarizes  
40 their substance.

41  
42 ~~(2)~~(3) If a transcript or electronic recording under (1)(D) is unavailable, the record  
43 must include a declaration by ~~counsel or, if the petitioner is unrepresented,~~ by  
44 the petitioner:

1  
2 (A) Explaining why the transcript or electronic recording is unavailable and  
3 fairly summarizing the proceedings, including the petitioner’s arguments  
4 and any statement by the court supporting its ruling. This declaration may  
5 omit a full summary of the proceedings if part of the relief sought is an  
6 order to prepare a transcript for use by an indigent criminal defendant in  
7 support of the petition and if the declaration demonstrates the petitioner’s  
8 need for and entitlement to the transcript; or

9  
10 (B) Stating that the transcript or electronic recording has been ordered, the  
11 date it was ordered, and the date it is expected to be filed, which must be a  
12 date before any action requested of the appellate division other than  
13 issuance of a temporary stay supported by other parts of the record.

14  
15 ~~(3) A declaration under (2) may omit a full summary of the proceedings if part of~~  
16 ~~the relief sought is an order to prepare a transcript for use by an indigent~~  
17 ~~criminal defendant in support of the petition and if the declaration~~  
18 ~~demonstrates the petitioner’s need for and entitlement to the transcript.~~

19  
20 ~~(5)(4)~~ If the petitioner does not submit the required record or explanations or does  
21 not present facts sufficient to excuse the failure to submit them, the court may  
22 summarily deny a stay request, the petition, or both.

23  
24 (c)–(d) \* \* \*

25  
26  
27 **Division 4. Transfer of Appellate Division Cases to the Court of**  
28 **Appeal**

29  
30  
31 **Rule 8.1018. Finality and remittitur**

32  
33 **(a) Finality**

34  
35 The denial of a transfer of a case from the appellate division of the superior court is  
36 final immediately.

37  
38 ~~(a)(b)~~ \* \* \*

39  
40 ~~(b)(c)~~ \* \* \*

41  
42 ~~(e)(d)~~ \* \* \*

**Advisory Committee Comment**

1  
2  
3  
4  
5

**Subdivision (a).** The finality of Court of Appeal decisions in appeals is generally addressed in rules 8.264 (civil appeals) and 8.366 (criminal appeals).



**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Court of Appeal, Second Appellate District, Division Two Katherine Lynn Managing Attorney	AM	See comments on specific provisions below.	
2.	First District Appellate Project Mat Zwerling Executive Director San Francisco	AM	See comments concerning rule 8.1018 below	
3.	Dennis A. Fischer Law Offices of Dennis A. Fischer Santa Monica	A	I heartily approve this effort to clarify and perhaps simplify understanding of the rules governing writ procedure.	No response required.
4.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal Fourth Appellate District, Division One	AM	SPR08-02 proposes to break up current rule 8.490 on writ proceedings in the Court of Appeal and the Supreme Court into a series of smaller rules with new titles and subdivision headings, as well as place all of the rules relating to writ proceedings in a new chapter—organizational changes designed to make relevant provisions easier to find. Additionally, SPR08-02 proposes to move the provisions relating to finality of writ proceedings from current rule 8.264 in the chapter on civil appeals into the new chapter on writ proceedings and similarly moving the provisions on finality in certain other proceedings to the chapters addressing those proceedings. The goal of these changes is laudatory and reasonable; however, some comments and modifications are warranted.  See comments on specific provisions below.	

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
5.	Orange County Bar Association Cathrine Castaldi, President Newport Beach	A	No narrative comments submitted.	No response required.
6.	Leonard Sacks Attorney at Law Granada Hills	A	See comments concerning finality below.	
7.	San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair	AM	SPR08-02's goal of making the rules governing writ petitions more user-friendly is unquestionably sound. We have some comments and observations on a few discrete points.  See comments on specific provisions below.	
8.	State Bar of California, Committee on Appellate Courts Saul Bercovitch San Francisco	A	The Committee supports this proposal, noting its belief in the great importance of the proposal's plan to dedicate Chapter 7 exclusively to rules governing writs in reviewing courts. Practitioners should have access to all rules controlling such writs in one discrete place.	No response required.
9.	Superior Court of Los Angeles County	AM	See comments concerning rule 8.931 below.	
10.	Superior Court of Riverside County David Gutknecht Principal Management Analyst	A	The proposed changes to the rules relating to procedures for writs of mandate, certiorari, and prohibition appear to reorganize the rules so that they are easier to follow. The proposed changes should make the relevant provisions easier to find.	No response required.

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
11.	Superior Court of San Bernardino County, Staff Counsel Services and Self-Help Division Debra Meyers, Director	A	No narrative comments submitted.	No response required.
12.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No narrative comments submitted.	No response required.
13.	Superior Court of Ventura County, Self-Help Legal Access Center Tina Rasnow Senior Attorney/Coordinator	A	These changes will make the rules easier to read and understand, particularly for self-represented litigants who may be filing a writ challenging an administrative finding.	No response required.



**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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**Rules 8.264, 8.366, 8.490, and 8.499 – Finality**

Commentator	Comment	Committee Response
	<p>(formerly Chapter 7), and will renumber the rule for workers compensation writs as rule 8.495 (formerly rule 8.494). This set of amendments will also delete current rule 8.499 on remittitur.</p> <p>The contents of current rule 8.499 have been moved to rule 8.490(b) for Chapter 7 writs (civil writs). However, rule 8.490 will not apply to Chapter 8 writs (see proposed rule 8.485(b)). It does not appear that any cross-reference to rule 8.490(b) has been added to the rules on Chapter 8 writs to cover remittiturs. Rule 8.499 should remain in place under Chapter 8.</p>	<p>proposal to retain these provisions and to copy the relevant language into rule 8.490.</p>
<p>Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth District, Division One</p>	<p>Proposed rule 8.264(b) is fine as revised; however, although SPR08-02 addresses finality of decision to writs of mandate, certiorari, and prohibition in proposed rule 8.490(a) discussed below, SPR08-03 (Habeas Corpus Proceedings) fails to provide any rule governing finality of decision in habeas corpus proceedings. I suggest modifying proposed rule 8.387 to include a subpart (a) governing finality in habeas corpus proceedings. My suggested language appears in my discussion below of SPR08-03.</p> <p>Proposed rule 8.490 governing finality of decision in writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal is confusing as organized and fails to address dismissals. Indeed, the court may dismiss a petition at an early stage for procedural reasons including failure to follow the court’s order as, for example, when the court belatedly discovers that petitioner is on the vexatious litigant list, it directs the petitioner to apply for a pre-filing order, and the petitioner fails to comply. The court may also dismiss a petition later in the proceeding after it has already issued an alternative writ or order to show cause (OSC) if new developments make it inadvisable or unnecessary to proceed. In those cases, the court discharges the alternative writ or OSC as improvidently granted or as moot in light of the parties’ settlement</p>	<p>The committee agrees that rules concerning habeas proceedings should include provisions addressing finality and has modified its proposal concerning these proceedings to incorporate this suggested change (see separate report on the rules concerning habeas corpus proceedings).</p> <p>The committee appreciates the suggestion that this rule address finality in these additional situations. However, adding these provisions would be a substantive change to the rule that was not part of the proposal circulated for public comment. Judicial Council general policy is to seek public comment before substantive changes to the rules are considered for adoption. The committee will therefore consider this suggestion during the next rules cycle.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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**Rules 8.264, 8.366, 8.490, and 8.499 – Finality**

Commentator	Comment	Committee Response
	<p>and dismisses the petition.</p> <p>Proposed rule 8.490 as organized is also confusing to the extent that the denial of a petition without issuance of an alternative writ or OSC is final immediately under (a)(2), but denial of a petition without issuance of an alternative writ or OSC might reasonably be construed to be “a decision in a writ proceeding” under (a)(1) which is final 30 days after it is tiled.</p> <p>Finally, former rule 8.264(b)(5) and proposed rule 8.264(b)(3) providing that a post-filing decision of the Court of Appeal to publish its opinion in whole or in part restarts the 30-day finality period should also be made applicable to writ decisions. I suggest resolving these problems by adding the italicized language and reorganizing the subparts to proposed rule 8.490 as follows:</p> <p>(a) Finality of decision</p> <p>(1) The denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final in that court when filed.</p> <p>(2) <i>The dismissal of a writ at the request of petitioner or by stipulation of the parties is final when filed.</i></p> <p>(3) Except as otherwise provided in this rule, a decision in a writ proceeding, <i>including an order dismissing a writ petition involuntarily</i>, is final 30 days after the decision is filed.</p> <p>(4) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, the court may order early finality in that court of the decision granting a petition for a writ within its original jurisdiction or denying such a</p>	<p>The committee agrees with the suggestion to reverse the order of subdivisions (1) and (2), so that summary denials, which are the most common type of decision in writ proceedings, are addressed first, and has modified its proposal accordingly.</p> <p>The committee agrees that rule 8.490 should include the provision from rule 8.264 concerning the date of finality when an opinion is certified for publication and has modified its proposal to incorporate this suggested change.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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**Rules 8.264, 8.366, 8.490, and 8.499 – Finality**

Commentator	Comment	Committee Response
	<p>petition after issuing an alternative writ or order to show cause. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.</p> <p><i>(5) If a Court of Appeal certifies its opinion for publication or partial publication after filing its decision and before its decision becomes final in that court, the finality period runs from the filing date of the order for publication.</i></p>	
<p>Leonard Sacks Attorney Granada Hills</p>	<p>Except for the criminal appeal changes, as to which I have no expertise sufficient to comment, I agree, although the trap of finality in filing in the C/A would merit (setting?) a separate section listing all orders that are final on filing. In fact, maybe the time for finality should be extended—it is too short to get petition on file.</p>	<p>By placing the provisions concerning finality in the chapters of the rules addressing the applicable case type, the committee believes these proposed amendments will reduce the likelihood that a litigant will miss a relevant finality provision.</p>
<p>San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair</p>	<p>Rule 8.264 would be amended to govern “filing, finality, and modification of decision” in a civil appeal, with finality in writ proceedings addressed elsewhere. Here, we note that the word “decision” as used in the rule is not defined. Is this meant to include any type of “decision” on the merits of the appeal, or is it restricted to summary denials or non-merits decisions? As used in the heading to rule 8.264, the word “decision” is presumably intended to have significance. By way of comparison, other provisions governing finality on appeal do not use the word “decision” in the heading. (Cf. Cal. Rules of Court, proposed rule 8.1018 [finality of decision to transfer “a case” from Superior Court Appellate Division to Court of Appeal].) To avoid uncertainty or confusion on what “decision” means in this context, there may be value in defining the term, especially if it is not intended to have the same meaning in each rule where it appears. Or, to be consistent with other rules of court, the two words “of decision” could be deleted from the heading, so that the heading to revised rule 8.264 would simply say “filing, finality and modification.”</p>	<p>The committee agrees that, for clarity, the headings in rules 8.264 and 8.490 should use similar language. However, rather than defining “decision” or deleting it from the heading to rule 8.264, the committee is recommending adding this phrase to the heading to rule 8.490. The term “decision” is used throughout the text and subheadings in both rules, providing context for its meaning. This term has also appeared in the heading, subheadings, and text of rule 8.264 and its predecessor since the appellate rules were first adopted in 1943, and the committee is not aware that it has been a source of confusion for rule users.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>Rules 8.264, 8.366, 8.490, and 8.499 – Finality</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>The proposed revisions would substantially revise current rule 8.490 to limit its focus to finality and remittitur in writ proceedings. Consistent with our comments above regarding revised rule 8.264, we observe that the term “decision” as used in new rule 8.490 is not defined. Does “decision,” for example, include a dismissal? Alternatively, if the intent is to include a ruling on the merits of the petition, perhaps rule 8.490 should so state.</p> <p>Further, in terms of the logical sequence, we think a more natural and helpful order of the subsections within (a) would be to reverse (a)(1) and (a)(2) of proposed rule 8.490. The first subsection should be the most commonly encountered, summary denial, followed by the next most common, other rulings that are final in 30 days. The exception for early finality, the least common, should remain last at subsection (a)(3).</p>	<p>As indicated in the committee’s response to the Bar Association’s comments concerning rule 8.264, rather than defining “decision” or deleting it from the heading to rule 8.264, the committee is recommending adding this phrase to the heading to rule 8.490.</p> <p>The committee agrees with this suggestion for the reasons stated by the Bar Association and has modified its proposal to incorporate this change.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>Finality – Rule 8.1018</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
Court of Appeal, Second Appellate District, Division Two Katherine Lynn Managing Attorney	A word has been omitted. The rule should read: “The denial of a transfer of a case from the appellate division of the superior court . . . .”	The committee agrees and has corrected this error in its proposal.
First District Appellate Project Mat Zwerling Executive Director San Francisco	To correct a typographical error, in the proposed subdivision (a)(2) of rule 8.1018 the word “division” should be inserted after “appellate.”	The committee agrees and has corrected this error in its proposal.
Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth District, Division One	Proposed rule 8.1018(a) governs finality of a Court of Appeal decision granting transfer (final in the Court of Appeal 30 days after filing) or denying transfer (final immediately) of a case from the Appellate Division of the Superior Court to the Court of Appeal. I question why the rule is necessary when the Court of Appeal is the court of last resort on the denial of transfer. A denial of transfer by the Court of Appeal is not reviewable on a petition for review to the Supreme Court. (Rule 8.500(a)(1).) “[T]he Court of Appeal has final authority to decide <i>whether</i> to order the transfer to itself of an appeal of a case originating the municipal court.” ( <i>Snukal v. Flightways Manufacturing, Inc.</i> (2000) 23 Cal.4th 754. 764 (italics in original).) Moreover, when the Court of Appeal grants transfer, what is the rationale for delaying the Court of Appeal for 30 days from addressing the matter both procedurally and substantively? I suggest deleting proposed rule 8.1018(a). <sup>1</sup>	The committee has revised its proposal so that rule 8.1018(a) contains only the language moved from current rule 8.264 regarding the finality of decisions denying transfer and the advisory committee comment refers readers to rules 8.264 and 8.366 for the general rules on finality of Court of Appeal decisions. Since this provision is in the existing rules, deleting it would be a substantive change to the rules. Judicial Council general policy is to seek public comment before substantive changes to the rules are considered for adoption. The committee will therefore consider this suggestion during the next rules cycle.

<sup>1</sup> Should the decision be made to retain proposed rule 8.1018(a), I suggest that for parallel sentence structure subpart (a)(1) should be rewritten to read “The grant of a transfer . . .” As to subpart (a)(2), the word “division” was inadvertently omitted and should be inserted following the word “appellate.”

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>Finality – Rule 8.1018</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair</p>	<p>Revised rule 8.1018 would add a provision addressing the finality of rulings granting or denying the transfer of a case from the Superior Court Appellate Division to the Court of Appeal. We make two suggestions regarding the language of new subsection (a). The first, in subsection (a)(1) would avoid use of the term “decision”; and the second, in subsection (a)(2) would insert a word inadvertently omitted. These proposed changes are in <i>bold italics</i>:</p> <p><b>Rule 8.1018    <u>Finality and remittitur</u></b></p> <p><b><u>(a)    Finality</u></b></p> <p><b><u>(1)    The grant of a <del>A Court of Appeal decision granting</del> transfer of a case from the appellate division of the superior court to the Court of Appeal is final in the Court of Appeal 30 days after filing.</u></b></p> <p><b><u>(2)    The denial of a transfer of a case from the appellate <i>division</i> of the superior court is final immediately.</u></b></p>	<p>For the reasons articulated in the committee’s response to the Bar Association’s comments concerning rule 8.264, the committee does not believe it is necessary to eliminate the term “decision” from this rule. The committee agrees, however that the word “division” was inadvertently omitted from 8.1018(a)(2) and has corrected this error in its proposal.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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**Rule 8.488 – Certificate of Interested Entities and Persons**

Commentator	Comment	Committee Response
<p>Court of Appeal, Second Appellate District, Division Two Katherine Lynn Managing Attorney</p>	<p>Subdivision (a)(1) adds that this provision applies to “writ proceedings in criminal cases in which an entity is the defendant” as well as in certain civil writ proceedings. A proposed new rule, 8.361 (see SPR08-04), requires that a certificate be filed in criminal appeals in which an entity is the defendant. The latter proposed rule has an Advisory Committee Comment defining “entity” for purposes of certificates of interested entities or persons.</p> <p>It would be useful if the same comment were added to rule 8.488, which adds language similar to that in rule 8.361 with respect to certificates in writ proceedings where an entity is the defendant.</p>	<p>The committee agrees that such an advisory committee comment would be helpful and has revised its proposal to add this comment.</p>
<p>San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair</p>	<p>Proposed rule 8.488 addresses the certificate of interested entities and persons in a writ proceeding. Consistent with existing law, this rule would allow the appellate court to strike a writ petition if the petitioner fails to file the certificate after being given an opportunity to cure a default.</p> <p>This rule also would allow the appellate court to strike a real party in interest’s or respondent’s filing if unaccompanied by a certificate of interested entities and persons. In contrast to the petitioner, however, the real party in interest or respondent may file one or more of several documents: (1) a preliminary opposition; (2) a return; or (3) a <i>Palma</i> opposition, all depending on the circumstances. (See Cal. Rules of Court, rule 8.490(g)-(h).) Accordingly, we have a suggestion, highlighted in <b><i>bold</i></b> and <b><i>italics</i></b> below, that might clarify what type of “document” filed by the real party in interest the appellate court may strike if not accompanied by a certificate of interested entities and persons:</p> <p><b><u>(d) Failure to file a certificate</u></b></p> <p><del>(4)</del>(1)If a party fails to file a certificate as required under <del>(2)</del>(b)and</p>	<p>The committee agrees with this suggestion and has modified its proposal to incorporate the language suggested by the commentator.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>Rule 8.488 – Certificate of Interested Entities and Persons</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>(<del>3</del>)(c), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that if the party fails to comply, the court may impose one of the following sanctions:</p> <p>(A) If the party is the petitioner, the court may strike the petition; or</p> <p>(B) If the party is the respondent or the real party in interest, the court may strike <del>the</del> <i>that party's</i> document.</p>	

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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**Rule 8.492 – Sanctions in Writ Proceedings**

Commentator	Comment	Committee Response
<p>Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal, Fourth District, Division One</p>	<p>Proposed rule 8.492 governs sanctions within the context of petitions for writs of mandate, certiorari, and prohibition. Notably, the proposed rule does not specify when a party seeking sanctions should make its motion or the supporting proof required. Guided by similar language in current rule 8.276(b)(1) governing sanctions in civil appeals, I suggest modifying proposed rule 8.492(b) as follows:</p> <p>(b) Notice</p> <p>The court must give notice in writing if it is considering imposing sanctions. <i>A party making a motion for sanctions must include a declaration supporting the amount of any monetary sanction sought. The motion must be served and filed before the court's ruling on the petition.</i></p>	<p>The committee appreciates the suggestion that this rule address when motions for sanctions should be filed and the supporting proof that is required. However, adding these provisions would be a substantive change to the rule that was not included in the proposal circulated for public comment. Judicial Council general policy is to seek public comment before substantive changes to the rules are considered for adoption. The committee will therefore consider this suggestion during the next rules cycle.</p>
<p>San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair</p>	<p>New rule 8.492 would address sanctions in writ proceedings. In substance there is no change from existing law.</p> <p>The rule provides that sanctions may be imposed either by the Court of Appeal, sua sponte, or on a party's motion. As to the latter, in a comment letter last year, our committee observed that there is no explicit timeframe or deadline for a party's request for sanctions. For example, if the real party in interest submits a preliminary opposition to a writ petition, is the real party obligated to make any sanctions request concurrently with the preliminary opposition? If the petition is summarily denied—as the vast majority are—the Court of Appeal may lack jurisdiction to consider a sanctions request after the summary denial. The Appellate Advisory Committee may want to consider the timing issue in future rule proposals.</p>	<p>Please see response to comments of Administrative Presiding Justice Judith D. McConnell immediately above.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>Other Rules</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
<p>San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair</p>	<p><b>New Rule 8.485</b> Despite the clarifications proposed in this spring comment cycle, many appellate rules continue the practice of cross-referencing other rules. In our view, some of the cross-references could be more complete.</p> <p>Proposed rule 8.485(a), on the contents of a writ petition, would state: “In all respects not provided for in these rules, rule 8.204 applies.” (Emphasis omitted.) In our view, the cross-reference to rule 8.204 here would be more meaningful if this sentence read, for example: “In all respects not otherwise provided for in these rules, rule 8.204, <u>governing the form and content of briefs</u>, applies.” (Emphasis supplied only to highlight proposed change.) This is consistent with proposed rule 8.486(a)(6), which also cross-references rule 8.204 but provides more detail on that rule and why it is being referenced.</p> <p><b>New Rule 8.486</b> On a related note, proposed rule 8.486(a)(7) provides in part: “If the [writ] petition requests a temporary stay, it must comply with rule 8.116 and explain the urgency.” Rule 8.116, in turn, imposes formal but important requirements when seeking a stay; for example, the cover of the document must recite, “STAY REQUESTED.”</p> <p>In our view, the content of rule 8.116 should be set forth in some manner within new rule 8.486, rather than merely cross-referencing rule 8.116. Rule 8.116 is found in a section of the rules governing appeals, not writ petitions. In this instance, the economy of incorporating by reference is outweighed by the importance of the information and the possibility of confusion. Because a petitioner seeking a temporary stay may be facing exigent circumstances, he or she should not need to grapple with multiple rules to ensure that a stay request is in proper form. When the stay requirements are merely cross-referenced, a party seeking writ relief could easily overlook the</p>	<p>The committee agrees in concept with this suggestion and has modified its proposal to provide additional information about the purpose of the cross-reference to rule 8.204. However, the committee has proposed language modeled on rule 8.486(a)(6) that is somewhat different than that suggested by the commentator.</p> <p>The committee agrees with this suggestion and has incorporated the content of rule 8.116 into rule 8.486(a)(7).</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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Other Rules		
Commentator	Comment	Committee Response
	<p>need to recite “STAY REQUESTED” on the cover or to include the trial judge’s contact information. Under rule 8.116(c), failure to comply with these requirements may result in the appellate court’s denial of the stay on procedural grounds. Setting forth the procedural requirements within rule 8.486 itself would appear to reduce the odds of potential injustice when a party seeks immediate appellate intervention and generally would be more user-friendly.</p> <p><b>New Rule 8.931</b> Proposed rule 8.931 addresses writ petitions filed by pro se litigants. This rule, however, carries the potential for confusion by referring to “counsel” in a few places.</p> <p>For example, the following subsections might be clearer if revised as follows (suggested changes in <i>bold italics</i>):</p> <p><b>Rule 8.931. Petitions filed by persons not represented by an attorney</b></p> <p>(a)     * * *</p> <p>(b)     <b>Contents of supporting documents</b></p> <p>(1)     * * *</p> <p><del>(4)</del>(2) In extraordinary circumstances, the petition may be filed without the documents required by (1)(A)-(C) if <i>counsel or, if the unrepresented</i> petitioner <del>is unrepresented, the petitioner</del> files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.</p> <p><del>(2)</del>(3) If a transcript or electronic recording under (1)(D) is unavailable, the record must include a declaration by <i>counsel or, if</i></p>	<p>The committee has incorporated these corrections into its proposal.</p>

**SPR08-02**

**Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

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<b>Other Rules</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Committee Response</b>
	<p><i>the petitioner is</i> unrepresented, by the <i>unrepresented</i> petitioner:</p> <p>(A)–(B) * * *</p>	
<p>Court of Appeal, Second Appellate District, Division Two Katherine Lynn Managing Attorney</p>	<p><b>Rule 8.486(a)(7) (Contents of petition, civil writs)</b> Subsection (a)(7) provides, “If the petition requests a temporary stay, it must comply with rule 8.116 and explain the urgency.” Rule 8.116 provides that the words “STAY REQUESTED” must appear on the cover and that additional information must appear on the cover or at the beginning of the text.</p> <p>Although (a)(7) has not been modified in this cycle, the committee may wish to consider whether to incorporate the language of rule 8.116 into rule 8.486(a)(7) for the convenience of the practitioner and because the sanction for noncompliance with rule 8.116 is that the reviewing court may decline to consider the request for the stay.</p>	<p>The committee agrees with this suggestion and has incorporated the content of rule 8.116 into rule 8.486(a)(7).</p>
<p>Superior Court of Los Angeles County</p>	<p><b>[Rule 8.931]</b> Proposal should be modified to require an electronic recording transcript rather than the electronic recording. It will be unduly burdensome and increase the amount of time to decide writs if courts are required to listen to electronic recordings of trial court proceedings. Alternatively, the proposed changes for clarity should reference rule 8.835(c).</p>	<p>The committee appreciates this suggestion. However, this would be a substantive change to the rule that was not included in the proposal that was circulated for public comment. Judicial Council general policy is to seek public comment before substantive changes to the rules are considered for adoption. The committee will therefore consider this suggestion during the next rules cycle.</p>