

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

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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
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DATE: September 18, 2007

SUBJECT: Appellate Procedure: Remittitur, Costs, and Sanctions in Appeals and Writ Proceedings (adopt Cal. Rules of Court, rules 8.278, 8.386, and 8.499; and amend rules 8.272, 8.276, 8.366, and 8.490) (Action Required)

Issue Statement

Remittitur in Writ Proceedings

Rule 8.272, which addresses remittitur in the Court of Appeal, is located in a chapter of the California Rules of Court that addresses civil appeals (title 8, chapter 2). Currently, subdivision (a)(2) of this rule addresses remittitur in writ proceedings. The rules that generally address writ proceedings in the Court of Appeal, however, are not located in this chapter of the rules; they are located in chapter 4 (writs of habeas corpus) and chapter 7 (extraordinary writs and writs relating to particular state agency decisions).¹ Rule users who read the rules concerning writ proceedings may therefore not find the provisions relating to remittitur in these proceedings.

Costs in Writ Proceedings

Rule 8.490(m) addresses costs in writ proceedings. Subdivision (m)(1) provides that, except in criminal or juvenile or other proceedings in which a party is entitled to court-appointed counsel, “the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.” Subdivision (m)(2), in turn, provides that “[i]n the interests of justice, the court may award or deny costs as it

¹ There are also rules in chapter 5—rules 8.452 and 8.456—that address writs in juvenile proceedings, but rule 8.470 in chapter 5 already addresses remittitur in these writ proceedings by cross-referencing rule 8.272.

deems proper.” Currently, some rule users may be confused about whether subdivision (m)(2) authorizes the court to exercise discretion in awarding costs only in the types of writ proceedings identified in subdivision (m)(1) or if this subdivision is intended to provide a separate and independent basis for awarding costs in writ proceedings.

Costs in Appeals

Rule 8.276 addresses both costs and sanctions in appeals. This rule is currently very long and the accompanying advisory committee comment contains some confusing language. In addition, this rule currently does not list filing fees among recoverable costs even though both Code of Civil Procedure section 1033.5 and Judicial Council form MC-013, *Memorandum of Costs on Appeal*, list filing fees among the costs that are recoverable.

Sanctions in Appeals and Writ Proceedings

Currently, the time frame for filing a motion for sanctions under rule 8.276 after a motion to dismiss the appeal is denied is not clear. In addition, this rule does not address whether sanctions can be imposed for the filing of a frivolous motion. Similarly, rule 8.490, relating to writ proceedings, does not currently address whether the court has authority to impose sanctions for the filing of frivolous writ petitions.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2008:

1. Amend rule 8.272 to delete the provision relating to remittitur in writ proceedings and add an advisory committee comment indicating that remittitur in writ proceedings is addressed in rules 8.386 and 8.499;
2. Amend rule 8.276 to:
 - a. Delete the provisions relating to costs on appeal and move them to new rule 8.278;
 - b. Provide that sanctions can be imposed for filing frivolous motions;
 - c. Clarify the time frame for filing a motion for sanctions under rule 8.276 after a motion to dismiss the appeal is denied; and
 - d. Make other minor, clarifying changes.
3. Adopt rule 8.278, addressing costs in civil appeals, and amend the language relating to costs that was formerly in rule 8.276 and its advisory committee comment to:
 - a. Clarify that costs are available only in civil cases other than juvenile cases;

- b. Clarify that filing fees are among the recoverable costs; and
 - c. Make other minor, clarifying changes.
4. Amend rule 8.356, addressing hearing and decision in criminal appeals, to correct the cross-references to the rules on hearing and decision in civil appeals and clarify that sanctions are not available for filing a frivolous criminal appeal;
5. Adopt rule 8.386, addressing remittitur in habeas corpus proceedings;
6. Amend rule 8.490, relating to petitions for writs of mandate, certiorari, or prohibition, to:
 - a. Clarify the court's authority to award costs in civil writ proceedings; and
 - b. Provide that the court may impose sanctions for frivolous writ petitions; and
7. Adopt rule 8.499, addressing remittitur in mandate, certiorari, prohibition, and the other miscellaneous writ proceedings addressed in chapter 7 of title 8.

The text of the proposed new and amended rules is attached at pages 7–14.

Rationale for Recommendation

Remittitur in Writ Proceedings

To make it easier for rule users to find the provisions relating to remittitur in writ proceedings, the committee recommends adopting new rule 8.386, relating to remittitur in habeas corpus proceedings (located in chapter 4 of title 8), and new rule 8.499, relating to remittitur in other original proceedings (located in chapter 7 of title 8). Rule 8.272's current provision relating to remittitur in writ proceedings would be deleted and a new advisory committee comment would be added to tell rule users where to find the rules covering remittitur in writ proceedings.

Costs in Writ Proceedings

The committee recommends amending rule 8.490 to clarify that under (m)(2), in the interests of justice, the court is authorized to award costs in the types of writ proceedings listed under subdivision (m)(1) and in other circumstances.² This would allow the court to award costs not only when the court resolves the matter by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first

² Under this proposal, 8.490(m)(1) would be renumbered as 8.490(m)(1)(A) and 8.490(m)(2) would be renumbered as 8.490(m)(1)(B).

instance, but also in circumstances such as when a petition has been dismissed as moot because the trial court has elected to comply with an alternative writ issued by the appellate court.

Costs in Appeals

This proposal includes several clarifying changes to rule 8.276 and its accompanying advisory committee comment. First, to shorten the rule and make the provisions relating to costs and sanctions easier to find, this proposal would split rule 8.276's provisions relating to costs and sanctions into two separate rules. The provisions relating to sanctions, current subdivision (e), would remain numbered as rule 8.276, and the current provisions relating to costs on appeal would be moved to new rule 8.278.

Second, the cost-related provisions of current rule 8.276 and the accompanying advisory committee comment that would be moved to new rule 8.278 would be amended to clarify that costs are available only in civil cases other than juvenile cases. Currently, the advisory committee comment to rule 8.276 indicates that this rule applies to costs in "ordinary civil cases." The term "ordinary civil case" is not defined in the rules and therefore may be confusing to rule users. The term "general civil case" is defined in the rules, but the definition excludes many types of cases in which costs are available on appeal, including probate cases (which are specifically mentioned in current 8.276(a)(5)), conservatorship cases, family law cases, unlawful detainer cases, and civil petitions. Under this proposal, new rule 8.278 would clearly state that these cost provisions apply only to civil cases other than juvenile cases.

Finally, this proposal would add filing fees to the list of costs recoverable on appeal. As noted above, both Code of Civil Procedure section 1033.5 and form MC-013, *Memorandum of Costs on Appeal*, list filing fees among the costs that are recoverable, but these fees are not currently included in the list of recoverable costs in rule 8.276.

This proposal would also make an accompanying clarifying change to rule 8.366, relating to hearing and decision in criminal appeals. Currently, rule 8.366 cross-references the rules on hearing and decision in civil appeals, providing that "Rules 8.248 through 8.276 govern the hearing and decision in the Court of Appeal of an appeal in a criminal case." Rule 8.248, however, addresses prehearing conferences in civil appeals and does not appear applicable in criminal appeals. This proposal would therefore delete the reference to rule 8.248. The proposal would also clarify that subdivision (a) of rule 8.276, which, as revised under this proposal, authorizes sanctions for filing frivolous appeals, does not apply in criminal appeals.

Sanctions in Appeals and Writ Proceedings

As noted above, to shorten rule 8.276 and make the provisions relating to sanctions in civil appeals easier to find, this proposal would move the current provisions relating to costs out of rule 8.276 to new rule 8.278. The amended rule 8.276 would address only sanctions. This proposal would also make two other changes to the sanctions-related provisions remaining in rule 8.276.

First, it would amend the provision that addresses the time frame for filing a motion for sanctions after a motion to dismiss the appeal is denied. The proposed amendments are intended to clarify that a party who files a motion for sanctions with a motion to dismiss may file a new motion for sanctions if the motion to dismiss is not granted.

Second, the proposal would add new subdivision (a)(3) to clarify that sanctions can be imposed for the filing of a frivolous motion. This amendment would embody the holding in *Dana Commercial Credit Corp. v. Ferns & Ferns* (2001) 90 Cal.App.4th 142, 147, in which the Court of Appeal ruled that it had inherent power to impose sanctions in a motion proceeding. In footnote 9 of that opinion, the court specifically suggested that the Judicial Council create a rule to make this authority explicit: “As in *Warren v. Schechter*, we suggest that the Judicial Council amend the California Rules of Court to make explicit what is currently only implicit, in this case, to expressly recognize the authority of a reviewing court to impose sanctions for the filing of a frivolous motion on appeal.”

As noted above, rule 8.490, relating to writ proceedings, does not currently address whether the court has authority to impose sanctions for the filing of frivolous writ petitions. In *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 96, the court explained that appellate courts have the authority to impose sanctions in proceedings for writs of review, mandate, and prohibition under Code of Civil Procedure sections 907 and 1109. This proposal would add a new subdivision (n) to rule 8.490 explicitly providing that appellate courts have authority to impose sanctions for filing frivolous writ petitions.

Alternative Actions Considered

Currently, rule 8.272 provides that remittitur must issue after a decision in “[a]n original proceeding, except when the court denies a writ petition without issuing an alternative writ or order to show cause.” The committee considered, and sought public comment on, a proposal to modify this language to provide that remittitur must issue when the court issues a written opinion after having issued an order to show cause, alternative writ, or peremptory writ. Both the public comment on this proposal and the committee’s subsequent discussion suggested, however, that this proposed new language was underinclusive, in that it did not encompass all of the circumstances in which remittitur is currently being issued in writ proceedings. The committee therefore withdrew this amendment from its proposal and will take up the issue of when remittitur should issue in writ proceedings again during the 2008 committee year.

The committee also considered, and sought public comment on, the idea of amending the chapter of the rules relating to felony appeals by replacing the current cross-reference to the rules on hearing and decision in civil appeals with the full text of the rules on hearing and decision. This would make the rules on felony appeals more self-contained and therefore easier to use. While the comments generally favored making such a change, they also suggested other areas in which cross-references might be replaced by the full text of the substantive provisions. The committee ultimately decided that it would be preferable to take a more comprehensive look at the current cross-referencing within the rules before making a recommendation to the council.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2007 comment cycle. Twelve individuals or organizations submitted comments on this proposal. Seven commentators agreed with the proposal, four agreed with the proposal if amended, and one disagreed with the proposal. The full text of the comments received and the committee's responses is attached on pages 15–34.

As circulated for public comment, this proposal would have deleted the provision in rule 8.272 relating to remittitur in writ proceedings without providing any guidance to rule users about where this topic is covered in the rules. Two commentators recommended adding a cross-reference to new rules 8.386 and 8.499 in rule 8.272 to help rule users locate these new provisions. The committee agreed that a cross-reference would be helpful but recommends that this cross-reference be placed in an advisory committee comment to rule 8.272 rather than in the text of the rule.

As circulated for public comment, the advisory committee comment to rule 8.278, rather than the rule, would have specified that costs are available only in civil appeals other than juvenile cases. Administrative Presiding Justice Boren of the Court of Appeal, Second District, suggested that it would be clearer to specify this limitation in the text of rule 8.278. The committee agreed and modified its proposal as suggested by Justice Boren.

Implementation Requirements and Costs

These proposed amendments should make the requirements relating to remittitur in writ proceedings easier for litigants to find and the procedures relating to costs and sanctions easier for litigants to understand and implement. This should reduce burdens on both the trial and reviewing courts associated with errors relating to these procedures.

Attachments

Rules 8.278, 8.386, and 8.499 of the California Rules of Court are adopted, and rules 8.272, 8.276, 8.366, and 8.490 are amended, effective January 1, 2008, to read:

1 **Title 8. Appellate Rules**

2
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4
5 **Chapter 2. Civil Appeals**

6
7 **Rule 8.272. Remittitur**

8
9 **(a) ~~Proceedings requiring~~ Issuance of remittitur**

10
11 A Court of Appeal must issue a remittitur after a decision in:

12
13 ~~(1) an appeal; or~~

14
15 ~~(2) An original proceeding, except when the court denies a writ petition without~~
16 ~~issuing an alternative writ or order to show cause.~~

17
18 **(b)-(d) * * ***

19
20 **Advisory Committee Comment**

21
22 See rule 8.386 for provisions addressing remittitur in habeas corpus proceedings and rule 8.499 for
23 provisions addressing remittitur in other writ proceedings.

24
25
26 **Rule 8.276. ~~Costs and~~ Sanctions**

27
28 **(a) ~~Right to costs~~**

29
30 ~~(1) Except as provided in this rule, the party prevailing in the Court of Appeal in a~~
31 ~~civil case is entitled to costs on appeal.~~

32
33 ~~(2) The prevailing party is the respondent if the Court of Appeal affirms the~~
34 ~~judgment without modification or dismisses the appeal. The prevailing party is~~
35 ~~the appellant if the court reverses the judgment in its entirety.~~

36
37 ~~(3) If the court reverses the judgment in part or modifies it, or if there is more than~~
38 ~~one notice of appeal, the opinion must specify the award or denial of costs.~~

39
40 ~~(4) If the interests of justice require it, the court may award or deny costs as it~~
41 ~~deems proper.~~

1
2 ~~(5) In probate cases, the prevailing party must be awarded costs unless the Court~~
3 ~~of Appeal orders otherwise, but the superior court must decide who will pay~~
4 ~~the award.~~

5
6 ~~(b) Judgment for costs~~

7
8 ~~(1) The Court of Appeal clerk must enter on the record, and insert in the remittitur,~~
9 ~~a judgment awarding costs to the prevailing party under (a)(2) or as directed by~~
10 ~~the court under (a)(3) or (a)(4).~~

11
12 ~~(2) If the clerk fails to enter judgment for costs, the court may recall the remittitur~~
13 ~~for correction on its own motion, or on a party's motion made not later than 30~~
14 ~~days after the remittitur issues.~~

15
16 ~~(c) Recoverable costs~~

17
18 ~~(1) A party may recover only the following costs, if reasonable:~~

19
20 ~~(A) The amount the party paid for any portion of the record, whether an~~
21 ~~original or a copy or both. The cost to copy parts of a prior record under~~
22 ~~rule 8.147(b)(2) is not recoverable unless the Court of Appeal ordered the~~
23 ~~copying;~~

24
25 ~~(B) The cost to produce additional evidence on appeal;~~

26
27 ~~(C) The costs to notarize, serve, mail, and file the record, briefs, and other~~
28 ~~papers;~~

29
30 ~~(D) The cost to print and reproduce any brief, including any petition for~~
31 ~~rehearing or review, answer, or reply; and~~

32
33 ~~(E) The cost to procure a surety bond, including the premium and the cost to~~
34 ~~obtain a letter of credit as collateral, unless the trial court determines the~~
35 ~~bond was unnecessary.~~

36
37 ~~(2) Unless the court orders otherwise, an award of costs neither includes attorney's~~
38 ~~fees on appeal nor precludes a party from seeking them under rule 3.1702.~~
39

1 ~~(d)~~ **Procedure for claiming or opposing costs**

2
3 ~~(1)~~ Within 40 days after the clerk sends notice of issuance of the remittitur, a party
4 claiming costs awarded by a reviewing court must serve and file in the superior
5 court a verified memorandum of costs under rule 3.1700.

6
7 ~~(2)~~ A party may serve and file a motion in the superior court to strike or tax costs
8 claimed under (1) in the manner required by rule 3.1700.

9
10 ~~(3)~~ An award of costs is enforceable as a money judgment.

11
12 ~~(e)~~**(a) Grounds for Sanctions**

13
14 ~~(1)~~ On motion of a party's or its own motion, a Court of Appeal may impose
15 sanctions, including the award or denial of costs under rule 8.278, on a party or an
16 attorney for:

17
18 ~~(A)~~(1) Taking a frivolous appeal or appealing solely to cause delay;

19
20 ~~(B)~~(2) Including in the record any matter not reasonably material to the appeal's
21 determination; ~~or~~

22
23 (3) Filing a frivolous motion; or

24
25 ~~(C)~~(4) Committing any other unreasonable violation of these rules.

26
27 **(b) Motions for sanctions**

28
29 ~~(2)~~(1) A party's motion under ~~(1)~~(a) must include a declaration supporting the
30 amount of any monetary sanction sought and must be served and filed before
31 any order dismissing the appeal but no later than 10 days after the appellant's
32 reply brief is due.

33
34 (2) If a party ~~moves~~ files a motion for sanctions with a motion to dismiss the
35 appeal, ~~with or without a sanctions motion,~~ and the motion to dismiss is not
36 granted, the party may ~~move~~ file a new motion for sanctions within 10 days
37 after the appellant's reply brief is due.

38
39 **(c) Notice**

40
41 ~~(3)~~ The court must give notice in writing if it is considering imposing sanctions.

1 **(d) Opposition**
2

3 Within 10 days after the court sends such notice, a party or attorney may serve and
4 file an opposition, but failure to do so will not be deemed consent. An opposition
5 may not be filed unless the court sends such notice.
6

7 **(e) Oral argument**
8

9 (4) Unless otherwise ordered, oral argument on the issue of sanctions must be
10 combined with oral argument on the merits of the appeal.
11

12 ~~**Advisory Committee Comment**~~
13

14 ~~Rule 8.276 applies only to costs in appeals in ordinary civil cases; it is not intended to expand the~~
15 ~~categories of appeals subject to the award of costs.~~
16

17 ~~**Subdivision (c).** Subdivision (c)(1)(A) is intended to refer not only to a normal record prepared by the~~
18 ~~clerk and the reporter under rules 8.120 and 8.130, but also, for example, to an appendix prepared by a~~
19 ~~party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.~~
20

21 ~~**Subdivision (d).** Subdivision (d)(2) provides the procedure for a party to move in the trial court to strike~~
22 ~~or tax costs that another party has claimed under subdivision (d)(1). It is not intended that the trial court's~~
23 ~~authority to strike or tax unreasonable costs be limited by any failure of the moving party to move for~~
24 ~~sanctions in the Court of Appeal under subdivision (e); a party may seek to strike or tax costs on the~~
25 ~~ground that an opponent included unnecessary materials in the record even if the party did not move the~~
26 ~~Court of Appeal to sanction the opponent under subdivision (e)(1)(B).~~
27
28

29 **Rule 8.278. Costs on Appeal**
30

31 **(a) Award of costs**
32

- 33 (1) Except as provided in this rule, the party prevailing in the Court of Appeal in a
34 civil case other than a juvenile case is entitled to costs on appeal.
35
36 (2) The prevailing party is the respondent if the Court of Appeal affirms the
37 judgment without modification or dismisses the appeal. The prevailing party is
38 the appellant if the court reverses the judgment in its entirety.
39
40 (3) If the Court of Appeal reverses the judgment in part or modifies it, or if there is
41 more than one notice of appeal, the opinion must specify the award or denial of
42 costs.
43

1 (4) In probate cases, the prevailing party must be awarded costs unless the Court
2 of Appeal orders otherwise, but the superior court must decide who will pay
3 the award.

4
5 (5) In the interests of justice, the Court of Appeal may also award or deny costs as
6 it deems proper.

7
8 **(b) Judgment for costs**

9
10 (1) The Court of Appeal clerk must enter on the record, and insert in the remittitur,
11 a judgment awarding costs to the prevailing party under (a)(2) or as directed by
12 the court under (a)(3), (a)(4), or (a)(5).

13
14 (2) If the clerk fails to enter judgment for costs, the court may recall the remittitur
15 for correction on its own motion, or on a party's motion made not later than 30
16 days after the remittitur issues.

17
18 **(c) Procedure for claiming or opposing costs**

19
20 (1) Within 40 days after the clerk sends notice of issuance of the remittitur, a party
21 claiming costs awarded by a reviewing court must serve and file in the superior
22 court a verified memorandum of costs under rule 3.1700.

23
24 (2) A party may serve and file a motion in the superior court to strike or tax costs
25 claimed under (1) in the manner required by rule 3.1700.

26
27 (3) An award of costs is enforceable as a money judgment.

28
29 **(d) Recoverable costs**

30
31 (1) A party may recover only the following costs, if reasonable:

32
33 (A) Filing fees;

34
35 (B) The amount the party paid for any portion of the record, whether an
36 original or a copy or both. The cost to copy parts of a prior record under
37 rule 8.147(b)(2) is not recoverable unless the Court of Appeal ordered the
38 copying;

39
40 (C) The cost to produce additional evidence on appeal;

41

1 **Chapter 4. Habeas Corpus Appeals and Writs**

2
3 **Rule 8.386. Remittitur in habeas corpus proceedings**

4
5 A Court of Appeal must issue a remittitur in a habeas corpus proceeding under this
6 chapter except when the court denies the petition without issuing an order to show cause.
7 Rule 8.272(b)–(d) governs issuance of a remittitur in habeas corpus proceedings.
8
9

10 **Chapter 7. Miscellaneous Writs**

11
12 **Rule 8.490. Petitions for writ of mandate, certiorari, or prohibition**

13
14 **(a)–(l) * * ***

15
16 **(m) Costs**

17
18 (1) Except in a criminal or juvenile or other proceeding in which a party is entitled
19 to court-appointed counsel;

20
21 (A) Unless otherwise ordered by the court under (B), the prevailing party in
22 an original proceeding is entitled to costs if the court resolves the
23 proceeding by written opinion after issuing an alternative writ, an order to
24 show cause, or a peremptory writ in the first instance.

25
26 (2)(B) In the interests of justice, the court may also award or deny costs as it
27 deems proper in the proceedings listed in (A) and in other circumstances.

28
29 (3)(2) The opinion or order resolving the proceeding must specify the award or
30 denial of costs.

31
32 (4)(3) ~~Rule 8.276~~ 8.278(b)–(d) governs the procedure for recovering costs under
33 this rule.

34
35 **(n) Sanctions**

36
37 (1) On motion of a party or its own motion, a Court of Appeal may impose
38 sanctions, including the award or denial of costs under (m), on a party or an
39 attorney for:

40
41 (A) Filing a frivolous petition or filing a petition solely to cause delay; or
42

1 (B) Committing any other unreasonable violation of these rules.

2
3 (2) The court must give notice in writing if it is considering imposing sanctions.

4
5 (3) Within 10 days after the court sends such notice, a party or attorney may serve
6 and file an opposition, but failure to do so will not be deemed consent. An
7 opposition may not be filed unless the court sends such notice.

8
9 (4) Unless otherwise ordered, oral argument on the issue of sanctions must be
10 combined with any oral argument on the merits of the petition.

11
12
13 **Rule 8.499. Remittitur**

14
15 A Court of Appeal must issue a remittitur in a writ proceeding under this chapter except
16 when the court denies the petition without issuing an alternative writ or order to show
17 cause. Rule 8.272(b)–(d) governs issuance of a remittitur in writ proceedings under this
18 chapter.

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Appellate Procedures: Remittitur, Costs, and Sanctions in Appeals and Writ Proceedings
 (adopt Cal. Rules of Court, rules 8.278, 8.386, and 8.499, and amend rules 8.272, 8.276, 8.366, and 8.490)

List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment on behalf of group?	Comment	Committee response
1.	Elaine Alexander Executive Director Appellate Defenders, Inc.	AM	N	The new rules on remittiturs are helpful. They fit the general principal area of the rules self-contained, so that the user going to that area can find, or be guided directly to, relevant provisions. See comments on specific provisions below.	
2.	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	AM	Y	The Appellate Court Committee of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to appellate rules. In general, we agree with the proposed changes, but in our comments below we suggest modifications or further consideration of some of the proposals. See comments on specific provisions below.	
3.	California Appellate Court Clerks' Association Deena C. Fawcett, President	AM	Y	See comments on specific provisions below.	
4.	Mary Carnahan Criminal Division Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.
5.	Court of Appeal,	AM	Y	See comments on specific provisions below.	

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Appellate Procedures: Remittitur, Costs, and Sanctions in Appeals and Writ Proceedings
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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
	Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice				
6.	Ms. Pam Moraida Program Manager Superior Court of Solano County	A	N	No narrative comments submitted.	No response required.
7.	Orange County Bar Association Joseph Chairez, President	N	Y	Most of these changes seem like a solution in search of a problem. The current rules re issuance of remittitur, costs, and sanctions are not confusing and do not need rewriting so soon after their initial adoption. See comments on specific provisions below.	For all the reasons outlined in the report to the Judicial Council, the committee believes that the proposed rule amendments will provide helpful clarifications that make the rules easier to use.
8.	State Bar of California, Committee on Appellate Courts Saul Bercovitch, Staff Attorney	A	Y	See comments on specific provisions below.	
9.	Ms. Sharol Strickland Executive Officer Superior Court of Butte County	A	N	Clarifies processing of motions and rulings for Courts of Appeal; no impact on our court.	No response required.
10.	Superior Court of Los Angeles County (no name provided)	A	Y	See comments on specific provisions below.	No response required.
11.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	A	Y	See comments on specific provisions below.	No response required
12.	Shelly Troop	A	N	No narrative comments submitted.	No response required.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
	Child Custody Mediator/Investigator Superior Court of San Joaquin County				

Appellate Procedures: Remittitur, Costs, and Sanctions in Appeals and Writ Proceedings
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Rule 8.272—Remittitur

Rule/Issue	Commentator	Comment	Committee response
Rule 8.272	Elaine Alexander Executive Director Appellate Defenders, Inc.	<p>Most importantly, I am uncomfortable with eliminating the reference to writs in rule 8.272 entirely. That rule is part of the section on “Hearing and Decision in the Court of Appeal,” which does have several provisions applicable to writs (see first suggestion). A user might go to that section, see rule 8.272 entitled “remittitur,” and logically conclude no remittitur is required in a writ proceeding. To avoid this possible confusion, rule 8.272(a) should reference rules 8.386 and 8.499 explicitly. (See attached draft.) I also have a few minor suggestions to make rule 8.272(b) and (c) more appropriate for application to writs.</p> <p>Rule 8.272 Remittitur</p> <p>(a) Proceedings requiring issuance of remittitur</p> <p>A Court of Appeal must issue a remittitur after a decision in:</p> <p>(1) An appeal; or</p> <p>(2) An original proceeding, <u>if the requirements of rule 8.386 or 8.499 are met.</u></p> <p>(b) Clerk’s duties</p> <p><u>If remittitur is required under (a)</u></p> <p>* * *</p> <p>(c) Immediate issuance, stay, and recall</p> <p>(1) A Court of Appeal may direct immediate issuance of a remittitur only on the parties’ stipulation, on dismissal of the appeal under rule 8.244(c)(2) <u>or 8.216, or on the voluntary withdrawal of a writ petition.</u></p>	<p>The committee agrees in concept that it would be helpful to provide those reading rule 8.272 with some guidance about where to find the provisions that cover remittitur in writ proceedings. Rather than incorporating a reference to writ proceedings into the text of this rule, however, the committee is recommending the addition of an advisory committee comment that refers rule users to rules 8.386 and 8.499 for the provisions.</p>

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Rule/Issue	Commentator	Comment	Committee response
Rule 8.272	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	<p>A. Revised Rule 8.272 SPR07-01 proposes to adopt two new provisions—rules 8.386 and 8.499—addressing issuance of the remittitur in writ proceedings. The goal is to address this subject in the sections of the rules that specifically govern writ proceedings, rather than addressing it, as now, in the more general section titled “Hearing and Decision in the Court of Appeal.”</p> <p>To further this objective, SPR07-01 proposes to amend rule 8.272(a) to delete the existing reference to writ proceedings, and instead simply say: “A Court of Appeal must issue a remittitur after a decision in an appeal.” This makes sense in light of the enactment of rules 8.386 and 8.499, but we believe the possibility of confusion would be reduced if rule 8.272(a) cross-references new rules 8.386 and 8.499. A reader unfamiliar with the appellate rules might see the heading “Remittitur” in rule 8.272 and wrongly assume that rule 8.272 governs issuance of the remittitur in all types of cases.</p> <p>To obviate any uncertainty here, rule 8.272(a) could read: “A Court of Appeal must issue a remittitur after a decision in an appeal. <i>The remittitur in writ proceedings is governed by rules 8.386 and 8.499.</i>”</p>	The committee agrees in concept that it would be helpful to provide those reading rule 8.272 with some guidance about where to find the provisions that cover remittitur in writ proceedings. Rather than incorporating a reference to writ proceedings into the text of this rule, however, the committee is recommending the addition of an advisory committee comment that refers rule users to rules 8.386 and 8.499 for the provisions.
Rule 8.272	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Support separating the provisions governing issuance of remittiturs on appeal from issuance of remittiturs in original proceedings for the sake of clarity of application.	No response required.

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Rule 8.276—Sanctions in Civil Appeals

Rule/Issue	Commentator	Comment	Committee response
Rule 8.276	California Appellate Court Clerks' Association Deena C. Fawcett, President	Support separating the unrelated issues of costs and sanctions. This will make it easier for counsel as well as appellate court clerks to identify the appropriate rules for each of these topics.	No response required.
Rule 8.276	Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	In rule 8.276(a)(2) , the word “or” should be deleted. The provision should read: (2) Including in the record any matter not reasonably material to the appeal’s determination; or	Agree. This change has been incorporated into the amendments recommended by the committee.
Rule 8.276	Orange County Bar Association Joseph Chairez, President	We do support the addition of express authority for a court of appeal to award sanctions for the filing of a frivolous motion or writ petition, but since motions and writ petitions may be summarily denied without a response, any use note should stress that such sanctions should be very rarely imposed, because otherwise collateral litigation may get out of hand.	The committee is not recommending the adoption of an advisory committee comment concerning this provision.

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Rule 8.278—Costs in Civil Appeals

Rule/Issue	Commentator	Comment	Committee response
Rule 8.278	California Appellate Court Clerks' Association Deena C. Fawcett, President	<p>Support the concept of this new rule. We have two recommendations:</p> <p>(1) Title the rule “Costs on Appeal” for clarity, and</p> <p>(2) renumber subdivision (d) as “(c)(3).” Doing so may help eliminate an ongoing problem of cost bills being submitted to the appellate court because counsel think they have read everything on recovering costs when they read subdivision (c).</p>	<p>Agree. This change has been incorporated into the amendments recommended by the committee.</p> <p>The committee agrees with the idea of trying to highlight the procedures that must be followed to claim costs. However, the committee believes that renumbering subdivision (d) as (c)(3) might be counterproductive because it would result in eliminating the title of subdivision (d), which provides helpful guidance. Instead, the committee is recommending renumbering subdivision (d) as subdivision (c), so that it appears earlier in the rule.</p>
Rule 8.278	Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	<p>Rule 8.278, which has been renumbered from rule 8.276(a)–(d), governs costs in a civil appeal. Rule 8.278(a)(1) reads, “Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case is entitled to costs on appeal.” The Advisory Committee Comment states that the rule “applies only to costs in appeals in civil cases other than juvenile cases; it is not intended to expand the categories of appeals subject to the award of costs.”</p> <p>It would clarify matters at the outset if the rule itself stated that it excepted juvenile cases. The provision would read:</p> <p>(a) Award of costs</p>	<p>Agree. This change has been incorporated into the amendments recommended by the committee.</p>

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Rule/Issue	Commentator	Comment	Committee response
		(1) Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case other than a juvenile case is entitled to costs on appeal.	
Rule 8.278	Superior Court of San Diego County Michael M. Roddy Executive Officer	Rule 8.278 should specify that costs cannot be awarded against a court named as a respondent in a writ proceeding challenging the decision of a trial court. Our court has had improper costs awards against it arise at least twice in litigation.	Because this would be an important substantive change, the committee believes public comment should be sought before any such change is considered for adoption. The committee will consider this suggestion during another rules cycle. In addition, to help rule users locate the provisions relating to costs in writ proceedings, the committee is proposing to add an advisory committee comment referring readers to rule 8.490(m) for the provisions relating to costs in writ proceedings.

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Rule 8.366—Sanctions in Felony Appeals

Rule/Issue	Commentator	Comment	Committee response
Rule 8.366	California Appellate Court Clerks' Association Deena C. Fawcett, President	This change seems to take away the right of the Court of Appeal to impose sanctions in a criminal proceeding on its own motion. Was the intent that “the award or denial of costs” would not apply to a criminal case, not that the Court of Appeal could not impose sanctions for certain acts?	This amendment would not take away the right of the Court of Appeal to impose sanctions in a criminal proceeding on its own motion; it would only clarify that in felony appeals sanctions are not available for taking a frivolous appeal or appealing solely to cause delay. The proposed amendment to rule 8.366 provides that except for subdivision (a)(1), rule 8.276, which addresses sanctions, also applies in criminal appeals. Under this proposal, former subdivision (a)(1) of rule 8.276, which generally authorizes the imposition of sanctions on motion of a party or the court’s own motion, would be renumbered as subdivision (a). The new subdivision (a)(1), which would not apply in criminal appeals, specifically provides for sanctions for taking a frivolous appeal or appealing solely to cause delay.
Rule 8.366	Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	Rule 8.366 , which is in the section governing criminal appeals, cross-references the rules governing the hearing and decision of civil appeals as they apply to criminal appeals. The committee asked for comment on whether the full text of the applicable rules should be set forth in the criminal appeals section. It would promote ease of use for criminal practitioners if the rules were set forth in full in the section on criminal appeals.	The committee appreciates this comment and will consider developing a proposal to replace this cross-reference during the next rules cycle.

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Rule/Issue	Commentator	Comment	Committee response
Rule 8.366	Orange County Bar Association Joseph Chairez, President	We oppose providing for the use of sanctions in criminal appeals.	Rule 8.366 currently provides that rule 8.272, which authorizes the imposition of sanctions, applies in criminal appeals. It would therefore be a change in policy to eliminate the authority to impose sanctions in criminal appeals.
Rule 8.366	State Bar of California Committee on Appellate Courts Saul Bercovitch, Staff Attorney	The Committee supports SPR07-01, with one modification. In response to the specific request for comments, the Committee favors amending rule 8.366 to include within the text of that rule the applicable provisions governing hearing and decision in criminal appeals, rather than cross-referencing the rules on hearing and decision in civil appeals.	The committee appreciates this comment and will consider developing a proposal to replace this cross-reference during the next rules cycle.

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Rule 8.386—Remittitur in Habeas Corpus Proceedings

Rule/Issue	Commentator	Comment	Committee response
Rule 8.386	Elaine Alexander Executive Director Appellate Defenders, Inc.	<p>To bring the chapters on “Habeas Corpus Appeals and Writs” and “Miscellaneous Writs” into further conformance with this policy, I would suggest that new rules 8.386 and 8.499 be expanded to refer to additional relevant matters such as oral argument, finality, and rehearing. That could be done through simple references to the applicable rules on hearing and decision in the Court of Appeal and Supreme Court. Rules 8.366, 8.368, 8.470, and 8.472 are examples of such references. (See attached suggested revisions to rules 8.386(a) & (b), 8.499(a) & (b).)</p> <p>The wording of proposed rules 8.386 and 8.499 is rather awkward, with repeated use of “issue” and two adverbial clauses, “after...” and “when...” It also seems substantively incomplete because it implies no Court of Appeal remittitur is necessary even if the Supreme Court has granted review and issued its own decision. I don’t think that is intended. The attached draft rules 8.386(c) and 8.499(c) are a possible solution.</p> <p><u>Rule 8.386 Hearing and Decision</u></p> <p><u>(a) Hearing and decision in the Court of Appeal</u></p> <p><u>Rules 8.256 through 8.268 govern oral argument, finality, and rehearing in a habeas corpus proceeding in the Court of Appeal.</u></p> <p><u>(b) Hearing and decision in the Supreme Court</u></p> <p><u>Except in a capital case, rules 8.524 and 8.532 through 8.540 govern oral argument, finality, and rehearing in a habeas corpus proceeding in the Supreme Court.</u></p>	<p>Because this would be a substantive change to the rules, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.</p> <p>Based on this comment and additional committee discussion, the committee concluded that the proposed language circulated for public comment was underinclusive. The committee has withdrawn this proposed amendment from the proposal and will reconsider this issue during the next committee year.</p>

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Rule/Issue	Commentator	Comment	Committee response
		<p>(c) Remittitur</p> <p><u>(1) A Court of Appeal must issue a remittitur under this chapter if:</u></p> <p><u>(A) It has issued an order to show cause and filed a written opinion; or</u></p> <p><u>(B) The Supreme Court has reviewed the Court of Appeal decision.</u></p> <p><u>(2) If a remittitur is required under (1), rule 8.272, subdivision (b)–(d) governs its issuance.</u></p>	
Rule 8.386	<p>Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair</p>	<p>Our final comments on SPR07-01 concern new rules 8.386 and 8.499. The introductory discussion explains that the goal is “to clarify that a remittitur must be issued only when the court issues a written opinion after having issued an order to show cause, alternative writ, or peremptory writ.”</p> <p>A Court of Appeal remittitur is also necessary, however, when the Court of Appeal summarily denies the petition but the Supreme Court grants review. To cover that situation, we suggest modifying rule 8.386 to provide: “<u>A Court of Appeal must issue a remittitur after it has issued a written opinion in a habeas corpus proceeding under this chapter when the court issues an order to show cause. The Court of Appeal must also issue a remittitur following any Supreme Court review of the Court of Appeal decision.</u>”</p> <p>In addition, proposed rules 8.386 and 8.499 currently refer the reader to rule 8.272(b)–(d), essentially incorporating those subdivisions by reference. To ease the reader’s task, we believe it would make sense to set forth in full the provisions of rule 8.272(b)–(d), amended slightly for the writ context, in rules 8.386</p>	<p>Based on this comment and additional committee discussion, the committee concluded that the proposed language circulated for public comment was underinclusive. The committee has withdrawn this proposed amendment from the proposal and will reconsider this issue next committee year.</p> <p>The committee plans to undertake a comprehensive examination of cross-references in the rules during the next committee year.</p>

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Rule/Issue	Commentator	Comment	Committee response
		<p>and 8.499. Thus, new rule 8.386 could read:</p> <p>Rule 8.386. Remittitur in habeas corpus proceedings</p> <p>(a) Proceedings requiring issuance of remittitur A Court of Appeal must issue a remittitur after it has issued a written opinion in a habeas corpus proceeding under this chapter when the court issues an order to show cause. <i>The Court of Appeal must also issue a remittitur following any Supreme Court review of the Court of Appeal decision.</i></p> <p>(b) Clerk’s duties * * *</p> <p>(c) Immediate issuance, stay, and recall A Court of Appeal may direct immediate issuance of a remittitur only on the parties’ stipulation or <i>on voluntary withdrawal of the petition or similar disposition.</i></p> <p>(2) On a party’s or its own motion or on stipulation, and for good cause, the court may stay a remittitur’s issuance for a reasonable period or order its recall.</p> <p>An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.</p> <p>(d) Notice * * *</p>	
Rule 8.386	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Agree with proposed change.	No response required.
Rule 8.386	Court of Appeal,	We believe that proposed new Rule 8.386 , Remittitur in Habeas	Agree. This change has been incorporated into

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Rule/Issue	Commentator	Comment	Committee response
	Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	Corpus Proceedings, should read: Rule 8.272(b)–(d) governs issuance of a remittitur in these proceedings.	the amendments recommended by the committee.

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Rule 8.490—Costs and Sanctions in Writ Proceedings

Rule/Issue	Commentator	Comment	Committee response
Rule 8.490	Court of Appeal, Second Appellate District Hon. Roger W. Boren Administrative Presiding Justice	<p>The committee proposes that rule 8.490, Petitions for Writ of Mandate, Certiorari, or Prohibition, be amended by adding subdivision (n) to make it clear that the court has authority to impose sanctions for the filing of frivolous writ petitions. As proposed, rule 8.490(n)(1)(B) provides, “Committing any other unreasonable violation of this rule.” To parallel rule 8.276(a)(4), rule 8.490(n)(1)(B) should read:</p> <p>(B) Committing any other unreasonable violation of these rules.</p> <p>(Note: Rule 8.1 states that the rules in title 8 are “the Appellate Rules,” and that all references in this title to “these rules” are to the Appellate Rules.)</p>	Agree. This change has been incorporated into the amendments recommended by the committee.
Rule 8.490	Orange County Bar Association Joseph Chairez, President	We do support the addition of express authority for a court of appeal to award sanctions for the filing of a frivolous motion or writ petition, but since motions and writ petitions may be summarily denied without a response, any use note should stress that such sanctions should be very rarely imposed, because otherwise collateral litigation may get out of hand.	The committee is not recommending the adoption of an advisory committee comment concerning this provision.
Rule 8.490	Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair	<p>Rule 8.490(m) governs costs in writ proceedings. SPR07-01 proposes to amend subdivision (m) in a manner that appears to create, or at least fails to eliminate, an inconsistency on whether a cost award to a prevailing party is mandatory or discretionary.</p> <p>With a distinctly mandatory flavor, proposed subdivision (m)(1)(A) states: “<u>T</u>he prevailing party is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.” By contrast, with a distinctly discretionary flavor, proposed</p>	The committee agrees that the relationship between subdivisions (m)(1), which would be renumbered as (m)(1)(A) under this proposal, and (m)(2), which would be renumbered as (m)(1)(B) under this proposal, should be clarified and has modified subdivision (m)(1), to provide that “unless otherwise ordered by the court under (B),” the prevailing party is entitled to costs.

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Rule/Issue	Commentator	Comment	Committee response
		<p>subdivision (m)(1)(B) states that “[i]n the interests of justice, the court may <u>also</u> award or deny costs as it deems proper <u>in the proceedings listed in (A) and in other circumstances.</u>”</p> <p>We interpret these provisions, taken together, to mean that when an opinion is issued in a writ proceeding, the prevailing party recovers its costs unless the Court of Appeal specifies otherwise. To pinpoint better the discretion the court retains here, subdivision (m)(1)(A) could be modified as follows: <i>“Except as otherwise provided in this rule, the prevailing party is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.”</i></p> <p>Proposed subdivision (n) governs sanctions related to petitions for writ of mandate, certiorari or prohibition. Although providing that sanctions may be imposed in these proceedings, subdivision (n) does not specify when a party seeking sanctions should make its motion, or the supporting proof required. We believe it would be useful to borrow from proposed rule 8.276(b)(1), which governs sanctions in civil appeals. Two sentences could be added to proposed Rule 8.490(n)(2) as follows:</p> <p><i>“(2) <u>The court must give notice in writing if it is considering imposing sanctions.</u> 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 prior to the court’s ruling on the petition.”</i></p>	<p>Because this would be a substantive change to the rules, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.</p>

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Rule/Issue	Commentator	Comment	Committee response
Rule 8.490	California Appellate Court Clerks' Association Deena C. Fawcett, President	We question whether another subsection should be added to this increasingly lengthy rule. Why not follow the pattern just established within this same proposal (breaking current rule 8.276 into separate rules) and have a separate rule for Sanctions in Original Proceedings? There appears to be no good reason for not maintaining consistency by separating disparate topics.	The committee agrees that this rule is very long and will consider whether to propose breaking it into smaller rules during the next rules cycle.

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Rule 8.499—Remittitur in Writ Proceedings

Rule/Issue	Commentator	Comment	Committee response
Rule 8.499	Elaine Alexander Executive Director Appellate Defenders, Inc.	<p>To bring the chapters on “Habeas Corpus Appeals and Writs” and “Miscellaneous Writs” into further conformance with this policy, I would suggest that new rules 8.386 and 8.499 be expanded to refer to additional relevant matters such as oral argument, finality, and rehearing. That could be done through simple references to the applicable rules on hearing and decision in the Court of Appeal and Supreme Court. Rules 8.366, 8.368, 8.470, and 8.472 are examples of such references. (See attached suggested revisions to rules 8.386(a) & (b), 8.499(a) & (b).)</p> <p>The wording of proposed rules 8.386 and 8.499 is rather awkward, with repeated use of “issue” and two adverbial clauses, “after...” and “when...” It also seems substantively incomplete because it implies no Court of Appeal remittitur is necessary even if the Supreme Court has granted review and issued its own decision. I don’t think that is intended. The attached draft rules 8.386(c) and 8.499(c) are a possible solution.</p> <p><u>Rule 8.499 Hearing and Decision</u></p> <p><u>(a) Hearing and decision in the Court of Appeal</u></p> <p><u>Rules 8.256 through 8.268 govern oral argument, finality, and rehearing in writ proceeding in the Court of Appeal.</u></p> <p><u>(b) Hearing and decision in the Supreme Court</u></p> <p><u>Rules 8.524 and 8.532 through 8.540 govern oral argument, finality, and rehearing in a writ proceeding in the Supreme Court.</u></p> <p><u>(c) Remittitur</u></p>	<p>Because this would be a substantive change to the rules, the committee believes public comment should be sought before this change is considered for adoption. The committee will consider this suggestion during the next rules cycle.</p> <p>Based on this comment and additional committee discussion, the committee concluded that the proposed language circulated for public comment was underinclusive. The committee has withdrawn this proposed amendment from the proposal and will reconsider this issue during the next committee year.</p>

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 (adopt Cal. Rules of Court, rules 8.278, 8.386, and 8.499, and amend rules 8.272, 8.276, 8.366, and 8.490)

Rule/Issue	Commentator	Comment	Committee response
		<p><u>(1) A Court of Appeal must issue a remittitur under this chapter if:</u></p> <p><u>(A) It has issued an alternative writ, order to show cause, or peremptory writ in the first instance and filed a written opinion; or</u></p> <p><u>(B) The Supreme Court has reviewed the Court of Appeal decision.</u></p> <p><u>(2) If a remittitur is required under (1), rule 8.272, subdivision (b)—(d) governs its issuance.</u></p>	
Rule 8.499	<p>Appellate Court Committee of the San Diego County Bar Association Lisa W. Cooney, Chair</p>	<p>To like effect, it would make sense to modify rule 8.499 to provide: <u>“A Court of Appeal must issue a remittitur after it has issued a written opinion in a writ proceeding under this chapter when the court issues an alternative writ, order to show cause, or peremptory writ in the first instance. The Court of Appeal must also issue a remittitur following any Supreme Court review of the Court of Appeal decision.”</u></p> <p>Consistent with this framing of rule 8.386, rule 8.499 could be amended to read:</p> <p>Rule 8.499. Remittitur</p> <p>(a) Proceedings requiring issuance of remittitur</p> <p>A Court of Appeal must issue a remittitur after it has issued a written opinion in a writ proceeding under this chapter when the court issues an alternative writ, order to show cause, or peremptory writ in the first instance. <i>The Court of Appeal must also issue a remittitur following any Supreme Court review of the Court of Appeal decision.</i></p>	<p>Based on this comment and additional committee discussion, the committee concluded that the proposed language circulated for public comment was underinclusive. The committee has withdrawn this proposed amendment from the proposal and will reconsider this issue next committee year.</p> <p>The committee also plans to undertake a comprehensive examination of cross-references in the rules during the next committee year.</p>

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 (adopt Cal. Rules of Court, rules 8.278, 8.386, and 8.499, and amend rules 8.272, 8.276, 8.366, and 8.490)

Rule/Issue	Commentator	Comment	Committee response
		<p>(b) Clerk’s duties * * *</p> <p>(c) Immediate issuance, stay, and recall</p> <p>(1) A Court of Appeal may direct immediate issuance of a remittitur only on the parties’ stipulation or <i>on voluntary withdrawal of the petition or similar disposition</i>.</p> <p>(2) On a party’s or its own motion or on stipulation, and for good cause, the court may stay a remittitur’s issuance for a reasonable period or order its recall.</p> <p>(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.</p> <p>(d) Notice * * *</p>	
Rule 8.499	California Appellate Court Clerks’ Association Deena C. Fawcett, President	Agree with proposed new rule.	No response required.