



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2010

Title	Agenda Item Type
Appellate Procedure: Filing, Modification, and Finality of Decisions in Proceedings for Writs of Review of Certain State Agency Decisions	Action Required
	Effective Date
	January 1, 2011
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Cal. Rules of Court, rule 8.499	November 8, 2010
Recommended by	Contact
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule relating to remittitur in proceedings for writs of review of certain state administrative agency decisions to also address the filing, modification, and finality of the courts' decisions in these proceedings. This amendment would fill a gap in the California Rules of Court.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council:

1. Amend rule 8.499 of the California Rules of Court, effective January 1, 2011, to
 - a. Reapply provisions relating to filing, modification, and finality of decisions that previously applied in proceedings for writs of review under rules 8.495, 8.496, and 8.498;
 - b. Add a cross-reference to rule 8.532(a) on filing of decisions in the Supreme Court; and

- c. Replace references in these provisions to issuance of “an alternative writ or order to show cause” with references to issuance of “a writ of review” to more accurately reflect the procedures in these writ proceedings.

2. Circulate these amendments for public comment during the spring 2011 comment cycle.

The text of the proposed amendments to rule 8.499 is attached at page 4.

Previous Council Action

In 2008, on the recommendation of the Appellate Advisory Committee, the council amended rule 8.264 of the California Rules of Court. Rule 8.264 generally addressed the filing, modification, and finality of Court of Appeal decisions, including decisions in writ proceedings. After the reorganization of the appellate rules in 2002, however, rule 8.264 was located in a chapter of the rules that related to appeals in civil cases. Rule 8.264 thus did not appear to be the appropriate location for provisions addressing decisions in other types of cases, such as writ proceedings. Effective January 1, 2009, the council amended rule 8.264 to remove the provisions addressing decisions in writ proceedings and adopted new rules 8.387 and 8.490, which, respectively, incorporated the provisions from rule 8.264 regarding the filing, modification, and finality of decisions in proceedings for writs of habeas corpus and of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal.¹ However, rule 8.264 had also previously covered the filing, modification, and finality of decisions in proceedings for writs of review of decisions from certain state agencies, such as the Workers Compensation Appeals Board and the Public Utility Commission, under rules 8.495, 8.496, and 8.498. When rule 8.264 was amended in 2008 to delete the provisions relating to decisions in writ proceedings, a gap was inadvertently created in the rules of court with respect to decisions in writ proceedings under rules 8.495, 8.496, and 8.498.

Rationale for Recommendation

This proposed amendment to rule 8.499 would fill that gap by reapplying the provisions relating to filing, modification, and finality of decisions in writ proceedings under rules 8.495, 8.496, and 8.498 that applied before rule 8.264 was amended. The proposed amendment uses language from rule 8.490, relating to decisions in proceedings for writs of mandate, certiorari, and prohibition, as a model. However, because writs of review under rules 8.495, 8.496, and 8.498 may be issued not only by the Court of Appeal but also by the Supreme Court in some circumstances, the amendment would also add a cross-reference to rule 8.532(a), which governs the filing of the decisions in the Supreme Court.

¹ The reports to the Judicial Council recommending these changes and other changes to the rules relating to writ proceedings are available at: www.courtinfo.ca.gov/jc/documents/reports/102408itema4.pdf and www.courtinfo.ca.gov/jc/documents/reports/102408itema3.pdf.

In addition, this amendment would replace the references in the language copied from rule 8.490 and in the current language of rule 8.499 to issuance of “an alternative writ or order to show cause” with references to issuance of “a writ of review.” This change is intended to more accurately reflect the procedures followed in proceedings for writs of review. In most writ proceedings, if the court does not summarily deny the petition for the writ, the court will issue either an order to show cause why the court should not issue the writ requested by the petitioner or an alternative writ ordering the lower tribunal to either provide the relief requested by the petitioner or show cause why that relief should not be granted. In proceedings for writs of review, however, the court does not issue such orders to show cause or alternative writs. Instead, if the court does not summarily deny the petition, the court will issue a writ of review that directs the lower tribunal to provide the full record of its proceedings for the court’s review. The language in this proposed amendment would more accurately reflect this procedure.

Comments, Alternatives Considered, and Policy Implications

In order to fill the gap in the rules as soon as possible, the committee is recommending that the council adopt this amendment effective January 1, 2011, without circulating it for public comment, but also that the amended rule be circulated for public comment during the spring 2011 comment cycle. Staff from the Supreme Court and Court of Appeal recommended that filling the gap in the rules as soon as possible because, without clarity concerning the finality of decisions in these writ proceedings, litigants may be confused about the deadlines for seeking modification, rehearing, or review of these decisions. Since this amendment essentially reapplies provisions relating to filing, modification, and finality that applied before January 1, 2009, the committee does not believe this change is likely to be controversial. However, to provide a full opportunity for input, the committee recommends that the amended rule be circulated for comment after it is adopted.

Implementation Requirements, Costs, and Operational Impacts

There should be no appreciable costs or operational impacts associated with implementing this amendment. By clarifying finality of these decisions this amendment should reduce potential confusion and errors relating to deadlines for seeking modification, rehearing, or review of decisions in proceedings under rules 8.495, 8.496, and 8.498.

Attachment

Cal. Rules of Court, rule 8.499, at page 4

Rule 8.499 of the California Rules of Court is amended, effective January 1, 2011, to read:

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Title 8. Appellate Rules

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

Chapter 8. Miscellaneous Writs of Review

Rule 8.499. Filing, modification, and finality of decision; Remittitur

(a) Filing of decisions

Rule 8.264(a) governs the filing of decisions in writ proceedings under this chapter in the Court of Appeal and rule 8.532(a) governs the filing of decisions in the Supreme Court.

(b) Modification of decisions

Rule 8.264(c) governs the modification of decisions in writ proceedings under this chapter.

(c) Finality of decision

(1) A court's denial of a petition for a writ under this chapter without issuance of a writ of review is final in that court when filed.

(2) Except as otherwise provided in this rule, a decision in a writ proceeding under this chapter is final in that court 30 days after the decision is filed.

(3) 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 a decision granting a petition for a writ under this chapter or denying such a petition after issuing a writ of review. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.

(4) 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.

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

(d) Remittitur

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

