



Judicial Council of California

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INVITATION TO COMMENT

SPR23-05

Title

Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition

Action Requested

Review and submit comments by May 12, 2023

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 8.504

Proposed Effective Date

January 1, 2024

Proposed by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

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Executive Summary and Origin

To facilitate review on the merits and streamline procedures, the Appellate Advisory Committee proposes amending the rule governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when petitioner seeks review of a Court of Appeal summary denial of a writ petition. Under the current rule, attachments to petitions for review may not exceed 10 pages. The proposal originated with a suggestion from an advisory committee member.

The Proposal

Rules 8.500–8.552 of the California Rules of Court govern proceedings in the Supreme Court. Rule 8.504 governs the form and contents of petitions for review, answers, and replies, including attachments. If a petition seeks review of a Court of Appeal opinion or order, that opinion or order must be attached. (Rule 8.504(e)(1)(A).)¹ In addition, the rule permits attachment of “exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant” and “copies of relevant local, state, or federal regulations or rules, out-of-state

¹ The rule also provides for attaching an unpublished opinion that is required to be attached under rule 8.1115(c). (Rule 8.504(e)(1)(D).)

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

statutes, or other similar citable materials that are not readily accessible.” (Rule 8.504(e)(1)(B), (C).) The permissible attachments under subdivision (e)(1)(B)–(C) must not exceed a combined total of 10 pages. (Rule 8.504(e)(2).)

Under rule 8.504(a), except as otherwise provided, petitions for review must also comply with format provisions in rule 8.204, the rule addressing the contents and format of briefs in the Court of Appeal. As under rule 8.504, rule 8.204(d) provides that attachments to briefs are limited to 10 pages, but also provides that “on application the presiding justice may permit additional pages of attachments for good cause.”

The Appellate Advisory Committee proposes amending rule 8.504(b) to provide for the attachment of the trial court order, regardless of its length, to a petition for review of a Court of Appeal order summarily denying a writ petition. When a Court of Appeal summarily denies a writ petition, it does not issue an opinion or address the merits of the trial court’s order. Rather, a summary denial is just that—a brief order indicating that the petition is denied. Currently, the rule requires a party seeking Supreme Court review of a summary denial to attach the Court of Appeal order and permits attachment of the trial court’s order only if it does not exceed 10 pages. However, the Supreme Court’s review of the matter would focus on the trial court’s reasoning and decision. Attachment of the complete trial court order would assist the Supreme Court in addressing the merits of the petition for review. It would also assist both the court and parties in expediting the matter, eliminating the need for an application or motion to allow attachment of a trial court order exceeding 10 pages.

Specifically, the committee proposes a new subdivision (b)(6):

If the petition seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying trial court order showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

This language mirrors the provisions of subdivisions (b)(4) and (5) providing for attachment of the Court of Appeal opinion or order that is the subject of the petition.

Alternatives Considered

The committee considered whether the rule should require attachment of the trial court’s order or merely permit it. Based on the benefits of including the complete order, including facilitating the Supreme Court’s review and streamlining procedures for the court and litigants, the committee concluded that requiring attachment was the better option. Requiring attachment of the trial court order is consistent with the rule’s requirement that the opinion or order under review be attached. Typically, that opinion or order contains the lower court’s analysis and reasoning; review of a summary denial instead focuses on the trial court’s order.

The committee also considered taking no action but concluded that there were clear benefits to amending the rule.

Fiscal and Operational Impacts

Other than training for court staff to advise them of the rule change, the committee anticipates no fiscal or operational impacts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should attachment of the trial court's order be permitted rather than required?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 8.504, at page 4-5

Rule 8.504 of the California Rules of Court would be amended, effective January 1, 2024, to read:

1 **Rule 8.504. Form and contents of petition, answer, and reply**

2
3 (a) * * *

4
5 (b) **Contents of a petition**

6
7 (1)–(3) * * *

8
9 (4) If a petition for rehearing could have been filed in the Court of Appeal, the
10 petition for review must state whether it was filed and, if so, how the court
11 ruled.

12
13 (5) If the petition seeks review of a Court of Appeal order, a copy of the order
14 showing the date it was entered must be bound at the back of the original
15 petition and each copy filed in the Supreme Court or, if the petition is not
16 filed in paper form, attached.

17
18 (6) If the petition seeks review of a Court of Appeal order summarily denying a
19 writ petition, a copy of the underlying trial court order showing the date it
20 was entered must be bound at the back of the original petition and each copy
21 filed in the Supreme Court or, if the petition is not filed in paper form,
22 attached.

23
24 ~~(6)~~(7) The title of the case and designation of the parties on the cover of the petition
25 must be identical to the title and designation in the Court of Appeal opinion
26 or order that is the subject of the petition.

27
28 ~~(7)~~(8) Rule 8.508 governs the form and content of a petition for review filed by the
29 defendant in a criminal case for the sole purpose of exhausting state remedies
30 before seeking federal habeas corpus review.

31
32 (c)–(d) * * *

33
34 (e) **Attachments and incorporation by reference**

35
36 (1) No attachments are permitted except:

37
38 (A) An opinion or order required to be attached under (b)~~(4)~~ or ~~(5)~~(4)–(6);

39
40 (B) Exhibits or orders of a trial court or Court of Appeal that the party
41 considers unusually significant;
42

Rule 8.504 of the California Rules of Court would be amended, effective January 1, 2024, to read:

- 1 (C) Copies of relevant local, state, or federal regulations or rules, out-of-
- 2 state statutes, or other similarly citable materials that are not readily
- 3 accessible; and
- 4
- 5 (D) An opinion required to be attached under rule 8.1115(c).
- 6
- 7 (2) The attachments under (1)~~(B)~~ ~~(C)~~(B) and (C) must not exceed a combined
- 8 total of 10 pages.
- 9
- 10 (3) * * *