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INVITATION TO COMMENT

W12-01

Title	Action Requested
Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3	Review and submit comments by Tuesday, January 24, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 8.497 and amend rules 8.485 and 8.499	July 1, 2012
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov
Hon. Kathryn Doi Todd, Chair	

Summary

These proposed rule changes are intended to fulfill the Judicial Council’s obligation under recently enacted legislation to adopt rules implementing an expedited procedure for review in the Court of Appeal of California Environmental Quality Act claims involving certain large development projects.

Discussion

Legislation

On September 27, 2011, the Governor signed into law Assembly Bill 900, the Jobs and Economic Development through Environmental Leadership Act of 2011.¹ This bill added new chapter 6.5, consisting of sections 21178–21189.3, to division 13 of the Public Resources Code—the California Environmental Quality Act (CEQA). This new chapter establishes an expedited procedure for judicial review of certain CEQA claims regarding projects that the Governor has certified as “environmental leadership development projects.” Among other things, this legislation:

¹ Stats. of 2011, ch. 354. You can access this legislation at: www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0851-0900/ab_900_bill_20110927_chaptered.pdf

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

- Requires the lead agency to prepare the administrative record regarding such a leadership project concurrently with the administrative process, to post it on a website, and to certify the final administrative record within five days of its approval of the project;
- Requires that actions or proceedings alleging that a public agency has approved or is undertaking such a leadership project in violation of CEQA be filed in the Court of Appeal with geographic jurisdiction over the project;
- Specifically authorizes the Court of Appeal to appoint a special master to assist the court in managing and processing the case;
- Requires the Court of Appeal to issue its decision in the case within 175 days of the filing of the petition; and
- Requires that, on or before July 1, 2012, the Judicial Council adopt rules of court to implement this new chapter.

Proposed Rule Changes

Proposed new rule 8.497 and the other proposed rule amendments in this invitation to comment are designed to fulfill the Judicial Council's statutory obligation to adopt rules implementing the expedited judicial review procedure established by AB 900. The main provisions of these rule changes are discussed below and the full text is shown in the attachment. In the attachment, each provision is also followed by drafters' notes describing the provision. These notes are intended only to help readers understand the proposal and will not be included in the final version of the rule presented to the Judicial Council for adoption.

Proposed Rule 8.497

The main provisions relating to the new statutory review procedure are set out in proposed new rule 8.497. A few of important notes about this draft rule:

- There are many provisions in CEQA—such as those addressing the time for service of a petition on the respondent public agency and real party in interest, the contents of the administrative record, settlement meetings, and mediation—that were not specifically modified by AB 900. Proposed rule 8.497 is drafted based on the assumption that those general CEQA provisions not altered by AB 900 or limited to superior court proceedings apply;
- An appellate court has the discretion to deny a petition for an extraordinary writ, such as a writ of mandate, summarily—that is, without issuing an alternative writ or order to show cause, without affording the parties an opportunity for oral argument, and without issuing a written opinion. However, when, as under AB 900, an extraordinary writ proceeding is the only avenue of appellate review, the reviewing court's discretion is quite restricted: an appellate court may not deny an apparently meritorious writ petition, timely presented in a

formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113–114; *Dowell v. Superior Court* (1956) 47 Cal.2d 483, 486–487);

- In most CEQA proceedings in the trial court, the petitioner does not currently seek an alternative writ or order to show cause, but seeks a peremptory writ, and, if the petition is not dismissed or denied based on procedural defaults, the court hears the matter without first issuing an alternative writ or order to show cause. Proposed rule 8.497 is drafted based on the assumption that same practice would be followed in the Court of Appeal; and
- In an effort to meet the time for issuance of a decision specified in AB 900, many of the time frames specified in proposed rule 8.497 are extremely short and many deadlines follow closely on one-another. AB 900 does provide for extensions of time “for good cause” and “to promote the interests of justice,” so, depending on the circumstances, in an individual case some of the deadlines specified in proposed rule 8.497 may be extended.

Among other things, proposed rule 8.497 would:

- Specify that a proceeding under AB 900 is instituted by filing a petition for a writ of mandate in the Court of Appeal;
- Require that the petition include any other claims by the petitioner that new Public Resources Code section 21185 requires be concurrently filed;
- Require that the lead agency lodge both an electronic and paper copy of the administrative record with the Court of Appeal and serve the parties an electronic copy within 10 days after the petition is served on that agency. Note that, given the period for service of the petition on the real party in interest under Public Resources Code section 21167.6.5, this provision may result in the real party in interest being served with a copy of the administrative record up to 10 days before being served with the petition;
- Require that requests to augment or otherwise change the content of the administrative record be made by motions filed within 20 days after the record is lodged with the court;
- Require the respondent and any real party in interest to serve and file any response to the petition and any motion challenging the sufficiency of the petition within 25 days after service of the administrative record or as specified by the court;
- Require that the petitioner serve and file its brief within 40 days after the administrative record is served, the respondent and real party in interest serve and file their briefs within 30 days after the petitioner’s brief is filed, and the petitioner serve and file any reply brief within 20 days after the respondent’s brief is filed; and

- Require that these briefs comply with the general requirements concerning contents, form, and length of briefs in civil appeals in the Court of Appeal.

New Public Resources Code section 21183(f), part of AB 900, provides that, for a project to be certified by the Governor as a leadership project, the person or entity applying for certification must agree to pay the costs of the Court of Appeal in hearing and deciding any case “in the form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.” Proposed rule 8.497(h) is intended to implement this statutory provision. It would require that, within 10 days of service of the petition on the real party in interest, the person² who applied to have the project certified as a leadership project must pay a special \$100,000 fee to the Court of Appeal designed to cover court costs associated with the case. This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in AB 900’s expedited review procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:

- 108 hours by the justice assigned to prepare a draft decision;
- 10 hours by each of the other two justices on the panel;
- 230 hours by research attorneys; and
- 31 hours by judicial assistants.

Additional amounts for other staff time, benefits, and overhead were also included. In addition, this provision would also require that person to pay any costs associated with the appointment of a special master or contract personnel used by the Court of Appeal to work on the case, or to prepay estimates of these costs, as ordered by the court.

Specific Comments Requested

The committee welcomes comments on any of the provisions included in this proposal or provisions that commentators think should be added. However, comments on the following would be particularly appreciated:

- Should rule 8.497 require an expedited form of service, such as requiring service to be by hand, by overnight mail, or electronic service;
- Should rule 8.497 include provisions concerning other issues relating to the appointment of special masters under AB 900, such as requests by the parties for special masters;
- Is the proposed \$100,000 fee in rule 8.497(h) appropriate to cover the court’s anticipated costs in hearing and deciding the case; and

² Note that under rule 1.6(14), in the Rules of Court, the term “person” includes a corporation or other legal entity as well as a natural person.

- Should the advisory committee comment accompanying rule 8.497 include any reference to the case law concerning the limits on courts' discretion to summarily deny a petition?

Rule 8.497 of the California Rules of Court would be adopted and rules 8.485 and 8.499 would be amended, effective July 1, 2012, to read:

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Title 8. Appellate Rules

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

Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court of Appeal

Rule 8.485 Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern petitions to the Supreme Court and Court of Appeal for writs of mandate, certiorari, or prohibition, or other writs within the original jurisdiction of these courts. In all respects not provided for in these rules, rule 8.204 governs the form and content of documents in the proceedings governed by this chapter.

(b) Writ proceedings not governed

These rules do not apply to petitions for writs of mandate, certiorari, or prohibition in the appellate division of the superior court under rules 8.930–8.936, petitions for writs of supersedeas under rule 8.116, petitions for writs of habeas corpus except as provided in rule 8.384, or petitions for writs of ~~review~~ under rules 8.495–8.498.

Drafters’ Notes: Rule 8.485 addresses the application of the general rules governing writs of mandate, certiorari, and prohibition in Chapter 7. Subdivision (b) of this rule currently specifies that these general writ rules do not apply to the miscellaneous writs contained in Chapter 8 by exempting “petitions for writs of *review* under rules 8.495–8.498.” Since proposed rule 8.497 would be placed in Chapter 8 and calls for the filing of a petition for a writ of mandate, not a writ of review, to make clear that the rules in Chapter 7 do not apply to petitions for writs of mandate under AB 900, the words “of review” would be stricken from subdivision (b), thus clarifying that the rules in Chapter 7 do not apply to any of writ petitions contained in Chapter 8.

Chapter 8. Miscellaneous Writs ~~of Review~~

Drafters’ Notes: Proposed new rule 8.497 would be placed in the chapter of the Appellate Rules that now includes the rules addressing writ proceedings regarding WCAB, PUC, PERB, and ALRB decisions. The title of the chapter would be modified to reflect that proposed rule 8.497 calls for the filing of a petition for a writ of mandate, not a writ of review. Note that placement of rule 8.497 in this chapter would mean that rule

1 8.499 regarding filing, modification, and finality of decisions and remittitur in
2 proceedings under chapter 8 would apply in proceedings governed by rule 8.497.
3
4

5 **Rule 8.497. Review of California Environmental Quality Act cases under Public Resources**
6 **Code sections 21178–21189.3**
7

8 **(a) Application**
9

10 (1) This rule governs actions or proceedings in the Court of Appeal alleging that a
11 public agency has approved or is undertaking an environmental leadership
12 development project in violation of the California Environmental Quality Act. As
13 used in this rule, an “environmental leadership development project” or “leadership
14 project” means a project certified by the Governor under Public Resources Code
15 sections 21182–21184.
16

17 (2) Except as otherwise provided in Public Resources Code sections 21178–21189.3 and
18 this rule, the provisions of the Public Resources Code and the CEQA Guidelines
19 adopted by the Natural Resources Agency (Cal. Code Regs, tit. 14 §15000 et seq.)
20 governing judicial actions or proceedings to attack, review, set aside, void, or annul
21 acts or decisions of a public agency on the grounds of noncompliance with the
22 California Environmental Quality Act apply in proceedings governed by this rule.
23

24 **Drafters’ Notes:**
25

26 **Subdivision (a)(1)** – This provision specifies the proceedings to which the rule applies.
27 The phrase “alleging that a public agency has approved or is undertaking an
28 environmental leadership development project in violation of” CEQA” is based on
29 language from new Pub. Res. Code § 21185(a), part of AB 900, which requires that
30 “any action or proceeding alleging that a public agency has approved or is
31 undertaking a leadership project certified by the Governor in violation of this division”
32 must comply with the requirements of that section.
33

34 **Subdivision (a)(2)** – This provision is intended to clarify that the general review
35 procedures specified in CEQA and implementing regulations apply unless AB 900 or
36 this rule provides otherwise. The phrase “actions or proceedings to attack, review, set
37 aside, void, or annul acts or decisions of a public agency on the grounds of
38 noncompliance” with CEQA is taken from Pub. Res. Code §21167.
39
40

41 **(b) Petition**
42

43 (1) Service and filing
44

45 A person alleging that a public agency has approved or is undertaking a leadership
46 project in violation of the California Environmental Quality Act must serve and file a

1 petition for a writ of mandate in the Court of Appeal with geographic jurisdiction
2 over the project.

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4
5 (2) Form and contents

6
7 In addition to any other applicable requirements, the petition must:

8
9 (A) State that the project at issue was certified by the Governor as a leadership
10 project under Public Resources Code sections 21182–21184 and is subject to
11 this rule;

12
13 (B) Provide notice that the person or entity who applied for certification of the
14 project as a leadership project must make the payments required by (h);

15
16 (C) Include any other claims required to be concurrently filed by the petitioner
17 under Public Resources Code section 21185; and

18
19 (D) Be verified.

20
21 **Drafters' Notes:**

22
23 **Subdivision (b)(1)** – Consistent with general CEQA review procedures, the first
24 sentence of this provision specifies that a proceeding under AB 900 is instituted by filing
25 a petition for a writ of mandate. The phrase “in the Court of Appeal with geographic
26 jurisdiction over the project” is taken from new Pub. Res. Code § 21185(a)(1), part of
27 AB 900.

28
29 **Subdivision (b)(2)** – This provision addresses the contents of the petition. It would
30 require that the petition: include a statement that the project at issue is a leadership
31 project subject to this rule, provide notice that payments are required under subdivision
32 (h), and include any other claims involving the project that are required by the statute to
33 be concurrently filed. Proposed subdivision (b)(2)(C), regarding claims required to be
34 concurrently filed, is intended to implement new Pub. Res. Code § 21185(a)(2), part of
35 AB 900, which provides that any party bringing an action or proceeding alleging that a
36 public agency has approved or is undertaking a leadership project in violation of CEQA
37 “shall also file concurrently any other claims alleging that a public agency has granted
38 land use approvals for the leadership project in violation of the law.”

39
40
41 **(c) Administrative record**

42
43 (1) Lodging and service

44
45 Within 10 days after the petition is served on the lead public agency, that agency
46 must lodge the certified record of the proceedings with the Court of Appeal and

1 serve on the parties a copy of the certified record and notice that the record has been
2 lodged with the court.

3
4 (2) Form and contents

5
6 (A) Unless otherwise ordered by the Court of Appeal, the lead agency must lodge
7 with the court one copy of the record in electronic format and one copy in
8 paper format and serve on each party one copy of the record in electronic
9 format. The record in electronic format must comply with rules 3.1365 and
10 3.1367. The record in paper format must comply with rules 3.1365 and 3.1368.

11
12 (B) A party may request the record in paper format and pay the reasonable cost or
13 show good cause for a court order requiring the lead agency to serve the
14 requesting party with one copy of the record in paper format.

15
16 (C) The record must include all of the materials specified in Public Resources
17 Code section 21167.6.

18
19 (3) Motions regarding the record

20
21 (A) Any request to augment or otherwise change the contents of the administrative
22 record must be made by motion in the Court of Appeal. The motion must be
23 served and filed within 20 days after the record is lodged in the Court of
24 Appeal.

25
26 (B) Any opposition or other response to the motion must be served and filed
27 within 10 days after the motion is filed.

28
29 (C) The Court of Appeal may appoint a special master to hear and decide any
30 motion regarding the record. The order appointing the special master may
31 specify the time within which the special master is required to file a decision.

32
33 **Drafters' Notes:**

34
35 **Subdivision (c)(1)** – This provision would require that the lead agency lodge the
36 administrative record and serve notice of this lodging on the parties within 10 days after
37 the petition is served on the lead agency. This provision also requires that the parties be
38 served with a copy of the administrative record.

39
40 **Subdivision (c)(2)** – This provision addresses the form and content of the
41 administrative record. It would require that the court receive the record in both electronic
42 and paper format. The parties' copies of the record would be in electronic format unless
43 otherwise ordered by the court. This provision would also require parties to comply with
44 the existing requirements regarding the format of CEQA records in the trial court
45 established by rules 3.1365–3.1368. In addition, this provision would specifically require

1 that the record contain the materials currently required by the CEQA statutes (Pub. Res.
2 Code §§21167.6).

3
4 **Subdivision (c)(3)** – This provision addresses requests to augment or otherwise modify
5 the contents of the administrative record. It would require that these requests be made
6 by way of motions filed within 20 days after the record is lodged with the court. Note
7 that, although this is a very short time after the record is lodged, under new Pub. Res.
8 Code § 21186 (part of AB 900) all the materials in the administrative record will have
9 been posted on and downloadable from a website and the administrative record will
10 have been certified 5 days after the project is approved, which will typically be about 45
11 days before the record is lodged with the court.

12
13 **Subdivision (c)(3)(C)** – This provision would specify that the court can appoint a
14 special master to hear and decide disputes about the administrative record and that the
15 order appointing the special master may (but is not required to) specify a timeframe for
16 issuance of the special master’s decision.

17
18
19 **(d) Meet and confer**

20
21 The petitioner must notify the court within 5 days after the meeting required by Public
22 Resources Code section 21167.8(a) if the case was settled.

23
24 **Drafters’ Notes:**

25 Under current CEQA procedures (Pub. Res. Code §§21167.8), there is a required meet
26 and confer process. This proposed provision would require that the petitioner notify the
27 court within 5 days if the meet and confer results in settlement of the case. There is no
28 provision requiring such notice in the current CEQA statutes.

29
30
31 **(e) Response to petition**

32
33 (1) Within 25 days after service of the administrative record or within the time ordered
34 by the court, the respondent and any real party in interest must serve and file any
35 answer to the petition, any motion challenging the sufficiency of the petition,
36 including any motion to dismiss the petition, and any other response to the petition;

37
38 (2) Any opposition or other response to a motion challenging the sufficiency of the
39 petition must be served and filed within 10 days after the motion is filed.

40
41 **Drafters’ Notes:**

42
43 **Subdivision (e)(1)** – Under current statutes relating to proceedings for writs of
44 mandate, in a trial court proceeding in which no alternative writ is sought and the record
45 is not filed with the petition, the respondent and any real party in interest must file any
46 answer to a petition for writ of mandate within 30 days after receipt of a copy of the

1 record. The current statutes do not address proceedings in the Court of Appeal in which
2 no alternative writ is sought. This proposed provision would fill that gap by requiring that
3 any response to the petition must be served and filed within 25 days after service of the
4 record. In addition, this provision would require that any motion challenging the
5 sufficiency of the petition, including any request to dismiss the petition, be filed during
6 the same time frame as any answer or other response to the petition. This provision
7 would also leave room for a court to order a different time frame for the response if, for
8 example, a party sought an OSC or alternative writ.

9
10 **Subdivision (e)(2)** – This proposed provision would specify the time frame for
11 responding to a motion challenging the sufficiency of the petition.
12

13
14 **(f) Briefs**

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16 **(1) Service and filing**

17
18 Unless otherwise ordered by the court:

19
20 **(A) The petitioner must serve and file its brief within 40 days after the**
21 **administrative record is served.**

22
23 **(B) Within 30 days after the petitioner’s brief is filed, the respondent public agency**
24 **must—and any real party in interest may—serve and file a respondent’s brief.**

25
26 **(C) Within 20 days after the respondent’s brief is filed, the petitioner may serve**
27 **and file a reply brief.**

28
29 **(2) Form and contents**

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31 The briefs must comply as nearly as possible with rule 8.204.
32

33 **Drafters’ Notes:**

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35 **Subdivision (f)(1)** – This proposed provision would set the time frames for serving and
36 filing briefs. The time frames specified are the same as the times set in rule 8.212 for
37 serving and filing briefs in civil appeals. They are also similar to the times set for filing
38 briefs in PERB and ALRB proceedings under rule 8.498.

39
40 **Subdivision (f)(2)** – This proposed provision would establish the requirements for the
41 contents and form of briefs through a cross-reference to the rule establishing the
42 contents and form of briefs in civil appeals in the Court of Appeal. The phrase “must
43 comply as nearly as possible” is taken from rule 8.360(a) which specifies the contents
44 and form of briefs in criminal cases in the Court of Appeal.
45
46

1 **(g) Certificate of Interested Entities or Persons**

- 2
- 3 (1) Each party other than a public agency must comply with the requirements of rule
- 4 8.208 concerning serving and filing a Certificate of Interested Entities or Persons.
- 5
- 6 (2) The petitioner’s certificate must be included in the petition. Other parties must
- 7 include their certificate in their brief or, if the party files an answer or other response
- 8 to the petition, a motion, an application, or an opposition to a motion or application
- 9 in the Court of Appeal before filing its brief, the party must serve and file its
- 10 certificate at the time it files the first answer, response, motion, application, or
- 11 opposition. The certificate must appear after the cover and before any tables.
- 12
- 13 (3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify
- 14 the party by mail that the party must file the certificate within 10 days after the
- 15 clerk’s notice is mailed and that failure to comply will result in one of the following
- 16 sanctions:
- 17
- 18 (A) If the party is the petitioner, the court will strike the petition; or
- 19
- 20 (B) If the party is the real party in interest, the court will strike the document.
- 21
- 22 (4) If the party fails to comply with the notice under (3), the court may impose the
- 23 sanctions specified in the notice.
- 24

25 **Drafters’ Notes:** This provision would require that parties in proceedings under AB 900

26 file Certificates of Interested Entities or Persons to assist Court of Appeal justices in

27 determining whether they are required to disqualify themselves from the proceeding.

28 With the exception of (g)(2), which addresses when the certificate must be filed, the

29 language of this provision is virtually identical to the provisions regarding such

30 certificates in rules 8.495, 8.496, and 8.498 addressing writ proceedings regarding

31 WCAB, PUC, PERB, and ALRB decisions.

32

33

34 **(h) Court costs**

- 35
- 36 (1) In fulfillment of the provision in Public Resources Code section 21183 regarding
- 37 payment of the Court of Appeal’s costs:
- 38
- 39 (A) Within 10 days after service of the petition on the real party in interest, the
- 40 person who applied for certification of the project as a leadership project must
- 41 pay a fee of \$100,000 to the Court of Appeal.
- 42
- 43 (B) If the Court of Appeal incurs any of the following costs, the person who
- 44 applied for certification of the project as a leadership project must also pay,
- 45 within 10 days of being ordered by the court, the following costs or estimated
- 46 costs:

1
2 (i) The costs of any special master appointed by the Court of Appeal in the
3 case; and

4
5 (ii) The costs of any contract personnel retained by the Court of Appeal to
6 work on the case;

7
8 (2) If the fee or costs under (1) are not timely paid, the Court of Appeal may transfer the
9 case to the superior court with geographic jurisdiction over the project and the case
10 will proceed under the procedures applicable to projects that have not been certified
11 as leadership projects.

12
13 **Drafters' Notes:**

14
15 **Subdivision (h)(1)** – This provision is intended to implement new Pub. Res. Code §
16 21183(e), part of AB 900, which provides that applicant for certification of the project as
17 a leadership project “agrees to pay the costs of the Court of Appeal in hearing and
18 deciding any case, including payment of the costs for the appointment of a special
19 master if deemed appropriate by the court, in a form and manner specified by the
20 Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.”
21 Subdivision (1)(A) would require that, within 10 days of service of the petition on the real
22 party in interest, the person who applied to have the project certified by the Governor as
23 a leadership project must pay a fee designed to cover anticipated court costs.
24 Subdivision (1)(B) would also require that person to pay certain costs that the Court of
25 Appeal may incur in hearing and deciding the case. The costs listed in subdivision
26 (1)(B) are those that are readily calculable based on invoices or other currently
27 maintained records.

28
29 **Subdivision (h)(2)** – This provision would specify that if the required fee or costs are
30 not timely paid, the case may be transferred to the trial court and proceed under normal
31 CEQA review procedures.

32
33 **(i) Extensions of time**

34
35 The court may order extensions of time only for good cause and in order to promote the
36 interests of justice.

37
38 **Drafters' Notes:** This provision is based on new Pub. Res. Code §21185(a)(5), part of
39 AB 900.

40
41 **Advisory Committee Comment**

42
43 **Subdivision (b).** Under this provision, a proceeding in the Court of Appeal is initiated by serving and
44 filing a petition for a writ of mandate as provided in rule 8.25, not by filing a complaint and serving a
45 summons and the complaint.

1 **Subdivision (e).** A party other than the petitioner who files an answer, motion, or other response to a
2 petition under (e) may be required to pay a filing fee under Government Code section 68926 if the
3 answer, motion, or other response is the first document filed in the proceeding in the reviewing court by
4 that party. See rule 8.25(c).
5

6 **Subdivision (f).** On application of the parties or on its own motion, the court may set different briefing
7 periods. For example, if a motion to augment or otherwise modify the contents of the record is filed, the
8 court might order that petitioner’s brief be filed within a specified time after that motion is decided.
9

10
11 **Rule 8.499. Filing, modification, and finality of decision; remittitur**
12

13 (a) – (b) * * *

14
15 (c) **Finality of decision**
16

- 17 (1) A court’s denial of a petition for a writ under ~~this chapter~~ rule 8.495, 8.496, or 8.498
18 without issuance of a writ of review is final in that court when filed.
19
20 (2) Except as otherwise provided in this rule, a decision in a writ proceeding under this
21 chapter is final in that court 30 days after the decision is filed.
22
23 (3) If necessary to prevent mootness or frustration of the relief granted or to otherwise
24 promote the interests of justice, the court may order early finality in that court of a
25 decision granting a petition for a writ under this chapter or, except as provided in (1),
26 a decision denying such a petition after issuing a writ of review. The decision may
27 provide for finality in that court on filing or within a stated period of less than 30
28 days.
29
30 (4) If a Court of Appeal certifies its opinion for publication or partial publication after
31 filing its decision and before its decision becomes final in that court, the finality
32 period runs from the filing date of the order for publication.
33
34 (5) If an order modifying an opinion changes the appellate judgment, the finality period
35 runs from the filing date of the modification order.
36

37 (d) **Remittitur**
38

39 A Court of Appeal must issue a remittitur in a writ proceeding under this chapter except
40 when the court denies the petition under rule 8.495, 8.496, or 8.498 without issuing a writ
41 of review. Rule 8.272(b)–(d) governs issuance of a remittitur in writ proceedings under this
42 chapter.
43

44 **Drafters’ Notes:** As noted above, proposed new rule 8.497 would be placed in chapter
45 8 of the Appellate Rules, which would mean that rule 8.499 regarding filing,
46 modification, and finality of decisions and remittitur in proceeding under chapter 8 would
47 apply in proceedings governed by new rule 8.497. However, the language of rule 8.499

1 currently includes references to writs of review that would not apply to the mandate
2 proceedings established by proposed new rule 8.497. The proposed changes to rule
3 8.499 are intended to clarify that the references to writ of review in rule 8.499 do not
4 apply to proceedings under proposed new rule 8.497. Under the proposed language of
5 rule 8.499(c), decisions denying a petition under rule 8.497 would be final 30 days after
6 filing unless the court sets an earlier finality date under rule 8.499(c)(3). In addition,
7 under the proposed language of rule 8.499(d), the Court of Appeal would issue a
8 remittitur following any denial of a petition under proposed new rule 8.497.

Item W12-01 Response Form

Title: **Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3** (adopt Cal. Rules of Court, rule 8.497 and amend rules 8.485 and 8.499)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, January 24, 2012

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.