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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

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| Title | Agenda Item Type |
| Appellate Procedure: Writ Proceedings | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Amend Cal. Rules of Court, rules 8.385, 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935 | January 1, 2014 |
| Recommended by | Date of Report |
| Appellate Advisory Committee | August 2, 2013 |
| Hon. Raymond J. Ikola, Chair | Contact |
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Executive Summary

The Appellate Advisory Committee recommends making a number of clarifying changes to the California Rules of Court relating to writ proceedings in the Supreme Court, Courts of Appeal, and superior court appellate division, including: (1) clarifying when the appellate projects must be served with a return in a habeas corpus proceeding; (2) clarifying that the rules on proceedings for writs of mandate, certiorari, and prohibition do not apply to proceedings for writs under Welfare and Institutions Code sections 366.26 and 366.28 or for writs under rules 8.450–8.456; (3) clarifying the finality of orders dismissing a writ petition and when remittitur must issue; and (4) modifying rule provisions that refer just to attorneys or unnecessarily refer separately to attorneys and self-represented parties.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2014:

1. Amend rule 8.385 to specify who must be served with an informal response to a petition for a writ of habeas corpus;
2. Amend rule 8.386 to:
 - Remove the provisions requiring the return and traverse filed in the reviewing court to comply with the length limit for briefs and to add a provision requiring any memorandum accompanying such a return or traverse to comply with that length limit; and
 - Clarify when the appellate projects must be served with a return in a habeas corpus proceeding.
3. Amend rule 8.387 to:
 - Clarify that a Court of Appeal must issue a remittitur in a habeas proceeding if the Supreme Court issues a remittitur to the Court of Appeal; and
 - Clarify what procedures in rule 8.272 are made applicable by cross-reference to remittitur in habeas proceedings.
4. Amend rule 8.485 to provide that that the rules on proceedings for writs of mandate, certiorari, and prohibition in the Supreme Court and Courts of Appeal do not apply to proceedings for writs to review orders setting a hearing under Welfare and Institutions Code section 366.26, for writs under Welfare and Institutions Code section 366.28 to review orders designating or denying a specific placement of a dependent child after termination of parental rights, or for writs under rules 8.450–8.456, relating to certain California Environmental Quality Act (CEQA) cases and certain agency decisions;
5. Amend rules 8.490 and 8.935 to:
 - Provide that, unless otherwise ordered by the court, orders denying or dismissing a petition for a writ of mandate, certiorari, or prohibition without issuance of an alternative writ, order to show cause, or writ of review or denying or dismissing such a petition as moot after issuance of an alternative writ, order to show cause, or writ of review are final on filing;
 - Provide that a court must issue a remittitur in a proceeding for a writ of mandate, certiorari, or prohibition when the court issues any decision that is not final immediately; and
 - Make other clarifying changes.
6. Further amend rule 8.935, to add provisions relating to filing of decisions parallel to those in rule 8.887 relating to decisions in appeals to the appellate division;

7. Amend the advisory committee comments accompanying rules 8.387, 8.490 and 8.935 to clarify that when remittitur is issued in these writ proceedings, it serves as notice that the proceedings have concluded;
8. Amend rule 8.931 to provide that the record of the oral proceedings accompanying a petition for a writ of mandate, certiorari, and prohibition in the superior court appellate division may be in the form of a transcript of electronic recordings and that the electronic recording itself may only be used if the court has a local rule permitting this; and
9. Further amend rules 8.386, 8.490, and amend 8.486, 8.487, 8.490, 8.931, and 8.933 to eliminate unnecessary references to attorneys or separate references to attorneys and self-represented parties and to make other non-substantive clarifying changes.

The text of the proposed rules is attached at pages 8-16.

Previous Council Action

Rule 8.386, regarding habeas corpus proceedings when the return is filed in the Supreme Court or Courts of Appeal, was adopted by the Judicial Council effective January 1, 2009, as part of a broad set of revisions of the rules relating to habeas corpus proceedings. Rule 8.387, relating to decisions in habeas proceedings, was adopted by the Judicial Council effective January 1, 2008. At that time, the rule addressed only remittitur. Effective January 1, 2009, rule 8.387 was amended to add provisions relating to filing, finality, and rehearing of decisions in habeas corpus proceedings. Neither rule 8.386 nor rule 8.387 has been amended since 2009.

The rule that was the predecessor to rules 8.485–8.493, relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Courts of Appeal, was adopted by the Judicial Council as part of the original Rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. The Judicial Council amended this rule many times between 1928 and 2002. Effective January 1, 2005, the Judicial Council amended this rule, including adding several provisions, as part of the overall revision of the Appellate Rules. Effective January 1, 2009, the Judicial Council broke this rule up into several smaller rules to make it easier for rule users to find relevant provisions, put these rules together in a new chapter of the appellate rules, and moved the provisions relating to finality of writ proceedings from rule 8.264 into a rule in this new chapter. The Judicial Council has made only two minor changes to these rules since 2009.

The Judicial Council adopted rules 8.931–8.936, relating to writ proceedings in the superior court appellate division, effective January 1, 2009, as part of a comprehensive set of new rules and forms for the appellate division. The Judicial Council has made only two minor changes to these rules since 2009.

Rationale for Recommendation

Service of informal response and return in habeas corpus proceedings

California Rules of Court, rules 8.380–8.388 address petitions for writs of habeas corpus and related proceedings. Rule 8.385, part of these rules, addresses proceedings after a petition for a writ of habeas corpus is filed in the Supreme Court or Courts of Appeal, including informal responses to such petitions. Currently, this rule does not address who must be served with such an informal response. This proposal would amend rule 8.385(b) to include a provision specifying who must be served with any informal response to a petition for a writ of habeas corpus filed in the Supreme Court or Courts of Appeal.

Rule 8.386 addresses proceedings if a return in a habeas proceeding is ordered to be filed in the Supreme Court or Courts of Appeal. Currently, rule 8.386(b) requires that a copy of a return in a habeas proceeding be served on the district appellate project (the project that assists the particular Court of Appeal district with the appointment of counsel) whenever a petitioner is not represented by privately retained counsel.

There are some circumstances in which such service on the district appellate project is not appropriate. First, if the return is filed in the Supreme Court, a project assisting a Court of Appeal would not be involved in the case; depending on the circumstances, the California Appellate Project that assists the Supreme Court with appointment of counsel in capital cases might be involved. Second, if either the State Public Defender's Office or Habeas Corpus Resource Center is representing the petitioner, a district appellate project would not be involved in the case. This proposal would amend rule 8.386(b) to recognize these circumstances by requiring that a copy of a return in a habeas proceeding be served on the *applicable* appellate project only when a petitioner is represented by appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center.

Length of return and traverse in habeas corpus proceedings

Rule 8.384 addresses petitions for writs of habeas corpus filed by an attorney. In 2009, this rule was amended to remove a provision requiring the petition to comply with the length limit for briefs and to add a provision requiring any memorandum accompanying such a petition to comply with that length limit. Rule 8.386 addresses proceedings if a return in a habeas proceeding is ordered to be filed in the Supreme Court or Courts of Appeal, including the form of the return and traverse. Rule 8.386 currently applies the length limit for briefs to both the return and traverse. This proposal would amend rule 8.386(c) and (d) to make the length limits for returns and traverses consistent with those for the original habeas corpus petitions by removing the provisions requiring the return and traverse filed in the reviewing court to comply with the length limit for briefs and adding a provision requiring any memorandum accompanying such a return or traverse to comply with that length limit.

Application of rules for writs of mandate, certiorari, and prohibition

Rules 8.485–8.493 address petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Courts of Appeal. Rule 8.485(b) currently provides that these rules generally do not govern certain types of writ proceedings that are governed by separate rules. There are other writ proceedings in juvenile and CEQA cases and writs of review from certain agencies that are also governed by separate rules. This proposal would amend rule 8.485 to clarify that the rules on proceedings for writs of mandate, certiorari, and prohibition in the Supreme Court and Courts of Appeal do not apply to proceedings for writs to review orders setting a hearing under Welfare and Institutions Code section 366.26, for writs under Welfare and Institutions Code section 366.28 to review orders designating or denying a specific placement of a dependent child after termination of parental rights, or for writs under rules 8.450–8.456, relating to certain CEQA cases and certain agency decisions.

Use of electronic recordings as record of oral proceedings in appellate division writ proceedings

Rules 8.930–8.936 address petitions for writs of mandate, certiorari, and prohibition in the superior court appellate division. Rule 8.931(b) addresses the contents of supporting documents accompanying such petitions. Among other things, this subdivision requires that the supporting documents include a reporter’s transcript or electronic recording of the oral proceedings that resulted in the ruling under review. Under the rules on appeals to the appellate division, an electronic recording itself cannot be used as the record of the oral proceedings unless the court has a local rule permitting this; instead, transcripts of electronic recordings are typically prepared and serve as the record of the electronically recorded proceedings. This proposal would amend rule 8.931(b) to similarly provide that the record of the oral proceedings accompanying a petition for a writ of mandate, certiorari, and prohibition in the superior court appellate division may be in the form of a transcript of electronic recordings and that the electronic recording itself may only be used if the court has a local rule permitting this.

Finality and remittitur in writ proceedings

Rules 8.490 and 8.935 address the finality of decisions in proceedings for writs of mandate, certiorari, and prohibition in, respectively, the Supreme Court and Courts of Appeal and the superior court appellate division. Currently, these rules do not address when a decision dismissing a writ petition is final or whether remittitur should issue in such situations. In addition, these rules do not cover situations involving writs of certiorari or review in which the court issues a writ directing the preparation and transmission of the record.

This proposal would amend rules 8.490 and 8.935 to provide that, unless otherwise ordered by the court, orders denying or dismissing a petition for a writ of mandate, certiorari, or prohibition without issuance of an alternative writ, order to show cause, or writ of review, or denying or dismissing such a petition as moot after issuance of an alternative writ, order to show cause, or writ of review are final on filing. In rule 8.935, provisions relating to filing of decisions, parallel to those in rule 8.887 relating to decisions in appeals to the appellate division, would also be added.

This proposal would also:

- Restructure rule 8.490(b) to clarify that the exceptions to the finality period currently described in paragraphs (3)–(5) do not apply when a decision is final immediately, as provided under paragraph (1);
- Amend rules 8.490 and 8.935 to provide that a court must issue a remittitur in a proceeding for a writ of mandate, certiorari, or prohibition when the court issues any decision that is not final immediately;
- Amend rule 8.387 to clarify that a Court of Appeal must issue a remittitur in a habeas proceeding if the Supreme Court issues a remittitur to the Court of Appeal; and
- Add a provision to the advisory committee comments accompanying rules 8.387, 8.490, and 8.935 clarifying that when remittitur is issued in these writ proceedings, it serves as notice that the proceedings have concluded.

Other changes

Several of the rules relating to proceedings for writs of habeas corpus and writs of mandate, certiorari, and prohibition include references to acts that must be performed by attorneys or refer separately to attorneys and self-represented litigants. Under rule 1.6 (15), which establishes the general definitions applicable to all of the California Rules of Court, the term “party” includes the party’s attorney of record. It is therefore generally unnecessary to separately refer to parties and attorneys. This proposal would eliminate these separate references to attorneys and self-represented parties.

This proposal would also make a number of other non-substantive, clarifying changes to the rules relating to writ proceedings.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated for public comment between April 19 and June 19, 2013, as part of the regular spring 2013 comment cycle. Nine individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal, one agreed with the proposal if modified, and four did not state a position on the proposal. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 17–21. The main substantive comments and the committee’s responses are discussed below.

Service of informal response to a petition for a writ of habeas corpus

As circulated for public comment, the proposal did not address service of informal responses to petitions for writs of habeas corpus, but only proposed clarifying changes to the existing provision for service of returns and traverse once a return has been ordered filed in the Supreme Court or Courts of Appeal. One commentator suggested it would be helpful to also address who

must be served with an informal response to a petition. The committee agreed with this suggestion and revised the proposal to include such a provision.

Finality of decisions in proceedings for writs of mandate, certiorari, and prohibition

One commentator suggested that the language of the proposed amendments to rule 8.490(b), relating to finality of decisions in proceedings for writs of mandate, certiorari, and prohibition, were confusing because of unnecessary cross-references to “the finality period” and to paragraph (2) within this provision. The committee agreed that 8.490(b) could be made clearer and revised the proposed amendments to this provision. As revised, the proposed amendments make it clear that the exceptions established by what were paragraphs (3)–(5) only apply in situations in which a decision is not final immediately under paragraph (1) and the “finality period” referenced in what were paragraphs (4)–(5) may be either the 30-day period or a shorter period ordered by the court under what was paragraph (3).

Other alternatives considered

The committee considered not proposing any amendments to these rules at this time. The committee concluded, however, that clarifying amendments would improve the rules on writ proceedings without imposing any significant burden on the courts.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation burdens on either the superior or appellate courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal will further the Judicial Council’s Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

1. Cal. Rules of Court, rules 8.385, 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935 at pages 8–16
2. Comment chart at pages 17–21

Rules 8.385, 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935 are amended, effective January 1, 2014, to read:

Title 8. Appellate Rules

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

Chapter 4. Habeas Corpus Appeals and Writs

Rule 8.385. Proceedings after the petition is filed

(a) * * *

(b) Informal response

- (1) Before ruling on the petition, the court may request an informal written response from the respondent, the real party in interest, or an interested person. The court must send a copy of any request to the petitioner.
- (2) The response must be served and filed within 15 days or as the court specifies. If the petitioner is not represented by counsel in the habeas corpus proceeding, one copy of the informal response and any supporting documents must be served on the petitioner. If the petitioner is represented by counsel in the habeas corpus proceeding, two copies must be served on the petitioner’s counsel. If the petitioner is represented by court-appointed counsel other than the State Public Defender’s Office or Habeas Corpus Resource Center, one copy must also be served on the applicable appellate project.
- (3) If a response is filed, the court must notify the petitioner that a reply may be served and filed within 15 days or as the court specifies. The court may not deny the petition until that time has expired.

(c)–(f) * * *

Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court

(a) * * *

(b) Serving and filing return

- (1) Unless the court orders otherwise, any return must be served and filed within 30 days after the court issues the order to show cause.

1 (2) If the return is filed in the Supreme Court, the attorney respondent must file the
2 number of copies of the return and any supporting documents required by rule
3 8.44(a). If the return is filed in the Court of Appeal, the attorney respondent must file
4 the number of copies of the return and any supporting documents required by rule
5 8.44(b).

6
7 (3) Two copies of the return and any supporting documents must be served on the
8 petitioner's counsel, and if the ~~return is to the Court of Appeal and the~~ petitioner is
9 ~~not represented by privately retained~~ for the habeas corpus proceeding by court-
10 appointed counsel other than the State Public Defender's Office or Habeas Corpus
11 Resource Center, one copy must be served on the ~~district~~ applicable appellate
12 project.

13
14 (c) **Form and content of return**

15
16 (1) The return must be either typewritten or produced on a computer and must comply
17 with Penal Code section 1480 and rules 8.40(b)–(c) and 8.204(a)–(b). Except in
18 habeas corpus proceedings related to sentences of death, any memorandum
19 accompanying a return must also comply with the length limits in rule 8.204(c).

20
21 (2)–(3) * * *

22
23 (d) **Traverse**

24
25 (1) * * *

26
27 (2) Any traverse must be either typewritten or produced on a computer and must comply
28 with Penal Code section 1484 and rules 8.40(b)–(c) and 8.204(a)–(b). Except in
29 habeas corpus proceedings related to sentences of death, any memorandum
30 accompanying a traverse must also comply with the length limits in rule 8.204(c).

31
32 (3) Rule 8.486(c)(1) and (2) govern the form of any supporting documents
33 accompanying the traverse.

34
35 (~~3~~)(4) * * *

36
37 (~~4~~)(5) * * *

38
39 (e)–(g) * * *

40
41
42 **Rule 8.387. Decision in habeas corpus proceedings**

43
44 (a)–(e) * * *

1 (f) **Remittitur**

- 2
- 3 (1) A Court of Appeal must issue a remittitur in a habeas corpus proceeding under this
- 4 chapter except when the court denies the petition without issuing an order to show
- 5 cause or orders the return filed in the superior court.
- 6
- 7 (2) A Court of Appeal must also issue a remittitur if the Supreme Court issues a
- 8 remittitur to the Court of Appeal.
- 9
- 10 (3) Rule 8.272(b)–(d) governs issuance of a remittitur by a Court of Appeal in habeas
- 11 corpus proceedings, including the clerk’s duties; immediate issuance, stay, and recall
- 12 of remittitur; and notice of issuance.
- 13

14 **Advisory Committee Comment**

15

16 A party may seek review of a Court of Appeal decision in a habeas corpus proceeding by way of a

17 petition for review in the Supreme Court under rule 8.500.

18

19 Subdivision (f). Under this rule, a remittitur serves as notice that the habeas corpus proceedings have

20 concluded.

21

22

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

24 **Court of Appeal**

25

26

27 **Rule 8.485. Application**

28

29 (a) * * *

30

31 (b) **Writ proceedings not governed**

32

33 These rules do not apply to ~~petitions~~ proceedings for writs of mandate, certiorari, or

34 prohibition in the appellate division of the superior court under rules 8.930–8.936, ~~petitions~~

35 ~~for~~ writs of supersedeas under rule 8.116, ~~petitions for~~ writs of habeas corpus except as

36 provided in rule 8.384, writs to review orders setting a hearing under Welfare and

37 Institutions Code section 366.26, writs under Welfare and Institutions Code section 366.28

38 to review orders designating or denying a specific placement of a dependent child after

39 termination of parental rights, and writs under rules 8.450–8.456 except as provided in

40 rules 8.452 and 8.456, or ~~petitions for~~ writs under rules 8.495–8.498.

41

42

43 **Rule 8.486. Petitions**

44

45 (a) * * *

46

1 **(b) Contents of supporting documents**
2

- 3 (1) A petition that seeks review of a trial court ruling must be accompanied by an
4 adequate record, including copies of:
5
6 (A) The ruling from which the petition seeks relief;
7
8 (B) All documents and exhibits submitted to the trial court supporting and
9 opposing the petitioner’s position;
10
11 (C) Any other documents or portions of documents submitted to the trial court that
12 are necessary for a complete understanding of the case and the ruling under
13 review; and
14
15 (D) A reporter’s transcript of the oral proceedings that resulted in the ruling under
16 review.
17
18 (2) In exigent circumstances, the petition may be filed without the documents required
19 by (1)(A)–(C) ~~if counsel or, if the petitioner is unrepresented, the petitioner files~~ but
20 must include a declaration that explains the urgency and the circumstances making
21 the documents unavailable and fairly summarizes their substance.
22
23 (3) If a transcript under (1)(D) is unavailable, the record must include a declaration ~~by~~
24 ~~counsel or, if the petitioner is unrepresented, the petitioner:~~
25
26 (A) Explaining why the transcript is unavailable and fairly summarizing the
27 proceedings, including the parties’ arguments and any statement by the court
28 supporting its ruling. This declaration may omit a full summary of the
29 proceedings if part of the relief sought is an order to prepare a transcript for use
30 by an indigent criminal defendant in support of the petition and if the
31 declaration demonstrates the ~~petitioner’s~~ need for and entitlement to the
32 transcript; or
33
34 (B) Stating that the transcript has been ordered, the date it was ordered, and the
35 date it is expected to be filed, which must be a date before any action requested
36 of the reviewing court other than issuance of a temporary stay supported by
37 other parts of the record.
38
39 (4) If the ~~petitioner~~ does not ~~submit~~ include the required record or explanations or does
40 not present facts sufficient to excuse the failure to submit them, the court may
41 summarily deny a stay request, the petition, or both.
42

43 **(c)–(e) * * ***

1
2
3 **Rule 8.487. Opposition and Attorney General amicus briefs**
4

5 (a)–(b) * * *

6
7 **(c) Form of supporting documents**
8

9 Any supporting documents accompanying a preliminary opposition, return or opposition,
10 or reply must comply with rule 8.486(c)–(d).
11

12 ~~(e)(d)~~ * * *

13
14
15 **Rule 8.490. Filing, finality, and modification of decisions; rehearing; remittitur**
16

17 **(a) Filing and modification of decisions**
18

19 Rule 8.264(a) and (c) govern the filing and modification of decisions in writ proceedings.
20

21 **(b) Finality of decision**
22

23 (1) Except as otherwise ordered by the court, the denial of a following decisions
24 regarding petitions for a writ within the court’s original jurisdiction are final in the
25 issuing court when filed:
26

27 (A) An order denying or dismissing such a petition without issuance of an
28 alternative writ, or order to show cause is final in that court when filed, or writ
29 of review; and
30

31 (B) An order denying or dismissing such a petition as moot after issuance of an
32 alternative writ, order to show cause, or writ of review.
33

34 (2) ~~Except as otherwise provided in this rule, a~~ All other decisions in a writ proceeding
35 is are final 30 days after the decision is filed, except as follows:-
36

37 ~~(3)(A)~~ If necessary to prevent mootness or frustration of the relief granted or to
38 otherwise promote the interests of justice, the court may order early finality in
39 that court of a decision granting a petition for a writ within its original
40 jurisdiction or denying such a petition after issuing an alternative writ, or order
41 to show cause, or writ of review. The decision may provide for finality in that
42 court on filing or within a stated period of less than 30 days.
43

44 ~~(4)(B)~~ If a Court of Appeal certifies its opinion for publication or partial publication
45 after filing its a decision and before its the decision becomes final in that court,

1 the 30 days or other finality period ordered under (A) runs from the filing date
2 of the order for publication.

3
4 ~~(5)(C)~~ If an order modifying ~~an opinion~~ a decision changes the appellate judgment,
5 the 30 days or other finality period ordered under (A) runs from the filing date
6 of the modification order.

7
8 **(c) Rehearing**

9
10 **(1) Rule 8.268 governs rehearing in the Courts of Appeal.**

11
12 **(2) Rule 8.536 governs rehearing in the Supreme Court.**

13
14 **(e)(d) Remittitur**

15
16 A Court of Appeal must issue a remittitur in a writ proceeding under this chapter except
17 when the court ~~denies the petition without issuing an alternative writ or order to show~~
18 cause issues one of the orders listed in (b)(1). Rule 8.272(b)–(d) governs issuance of a
19 remittitur by a Court of Appeal in writ proceedings under this chapter.

20
21 **Advisory Committee Comment**

22
23 **Subdivision (b).** This provision addresses the finality of decisions in proceedings relating to writs of
24 mandate, certiorari, and prohibition. See rule 8.264(b) for provisions addressing the finality of decisions
25 in proceedings under chapter 2, relating to civil appeals, and rule 8.366 for provisions addressing the
26 finality of decisions in proceedings under chapter 3, relating to criminal appeals.

27
28 **Subdivision (b)(1).** Examples of situations in which the court may issue an order dismissing a writ
29 petition include when the petitioner fails to comply with an order of the court, when the court recalls the
30 alternative writ, order to show cause, or writ of review as improvidently granted, or when the petition
31 becomes moot.

32
33 **Subdivision (d).** Under this rule, a remittitur serves as notice that the writ proceedings have concluded.

34
35
36 **Division 2. Rules Relating to the Superior Court Appellate Division**

37
38 **Chapter 6. Writ Proceedings**

39
40
41 **Rule 8.931. Petitions filed by persons not represented by an attorney**

42
43 **(a) * * ***

44
45 **(b) Contents of supporting documents**

46
47 **(1)** The petition must be accompanied by an adequate record, including copies of:
48

- 1 (A) The ruling from which the petition seeks relief;
 2
 3 (B) All documents and exhibits submitted to the trial court supporting and
 4 opposing the petitioner’s position;
 5
 6 (C) Any other documents or portions of documents submitted to the trial court that
 7 are necessary for a complete understanding of the case and the ruling under
 8 review; and
 9
 10 (D) A reporter’s transcript, a transcript of an electronic recording or, if the court
 11 has a local rule permitting this, an electronic recording of the oral proceedings
 12 that resulted in the ruling under review.
 13
 14 (2) In extraordinary circumstances, the petition may be filed without the documents
 15 required by (1)(A)–(C) ~~if the petitioner files~~ but must include a declaration that
 16 explains the urgency and the circumstances making the documents unavailable and
 17 fairly summarizes their substance.
 18
 19 (3) If a transcript or electronic recording under (1)(D) is unavailable, the record must
 20 include a declaration ~~by the petitioner:~~
 21
 22 (A) Explaining why the transcript or electronic recording is unavailable and fairly
 23 summarizing the proceedings, including the ~~petitioner’s~~ parties’ arguments and
 24 any statement by the court supporting its ruling. This declaration may omit a
 25 full summary of the proceedings if part of the relief sought is an order to
 26 prepare a transcript for use by an indigent criminal defendant in support of the
 27 petition and if the declaration demonstrates the ~~petitioner’s~~ need for and
 28 entitlement to the transcript; or
 29
 30 (B) Stating that the transcript or electronic recording has been ordered, the date it
 31 was ordered, and the date it is expected to be filed, which must be a date before
 32 any action requested of the appellate division other than issuance of a
 33 temporary stay supported by other parts of the record.
 34
 35 (4) If the ~~petitioner~~ petition does not ~~submit~~ include the required record or explanations
 36 or does not present facts sufficient to excuse the failure to submit them, the court
 37 may summarily deny a stay request, the petition, or both.
 38

39 (c)–(d) * * *

40
 41 **Advisory Committee Comment**
 42

43 **Subdivision (a).** *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) is
 44 available at any courthouse or county law library or online at ~~www.courtinfo.ca.gov/forms~~
 45 www.courts.ca.gov/forms.
 46

1 Subdivision (b). Rule 2.952 addresses the use of electronic recordings and transcripts of such recordings
2 as the official record of proceedings.

3
4 **Subdivision (d). * * ***

5
6
7 **Rule 8.933. Opposition**

8
9 **(a)–(b) * * ***

10
11 **(c) Form of preliminary opposition, return, or opposition**

12
13 Any preliminary opposition, return, or opposition must comply with rule 8.931(c). If it is
14 filed by an attorney, it must also comply with rule 8.932(b)(3)–(7).

15
16
17 **Rule 8.935. Filing, finality, and modification of decisions; rehearing; remittitur**

18
19 **(a) Filing of decision**

20
21 (1) The appellate division clerk must promptly file all opinions and orders of the court
22 and promptly send copies showing the filing date to the parties and, when relevant,
23 to the trial court.

24
25 (2) A decision must identify the participating judges, including the author of any
26 majority opinion and of any concurring or dissenting opinion, or the judges
27 participating in a “by the court” decision.

28
29 **~~(a)~~(b) Finality of decision**

30
31 (1) Except as otherwise ordered by the court, the following appellate division decisions
32 regarding petitions for writs within the court’s original jurisdiction are final in the
33 issuing court when filed:

34
35 (A) An order denying or dismissing such a petition without issuance of an
36 alternative writ, order to show cause, or writ of review; and

37
38 (B) An order denying or dismissing such a petition as moot after issuance of an
39 alternative writ, order to show cause, or writ of review.

40
41 ~~(1)~~(2) Except as otherwise provided in this rule (3), an all other appellate division decisions
42 in a writ proceeding is are final 30 days after the decision is filed.

43
44 ~~(2)~~—The denial of a petition for a writ within the appellate division’s original jurisdiction
45 without issuance of an alternative writ or order to show cause is final in that court
46 when filed.

1 (3) If necessary to prevent mootness or frustration of the relief granted or to otherwise
2 promote the interests of justice, an appellate division may order early finality in that
3 court of a decision granting a petition for a writ within its original jurisdiction or
4 denying such a petition after issuing an alternative writ, ~~or~~ order to show cause, or
5 writ of review. The decision may provide for finality in that court on filing or within
6 a stated period of less than 30 days.

7
8 **(c) Modification of decisions**

9
10 Rule 8.888(b) governs the modification of appellate division decisions in writ proceedings.

11
12 **(d) Rehearing**

13
14 Rule 8.889 governs rehearing in writ proceedings in the appellate division.

15
16 **(b)(e) Remittitur**

17
18 Except as provided in rule 8.1018 for cases transferred to the Courts of Appeal, the
19 appellate division must issue a remittitur after the court issues a decision in a writ
20 proceeding, ~~denies the petition without issuing an alternative writ or order to show cause~~
21 except when the court issues one of the orders listed in (b)(1). Rule 8.890(b)–(d) governs
22 issuance of a remittitur in these proceedings, including the clerk’s duties, immediate
23 issuance, stay, and recall of remittitur, and notice of issuance.

24
25 **Advisory Committee Comment**

26
27 **Subdivision (b).** This provision addresses the finality of decisions in proceedings relating to writs of
28 mandate, certiorari, and prohibition. See rule 8.888(a) for provisions addressing the finality of decisions
29 in appeals.

30
31 **Subdivision (b)(1).** Examples of situations in which the appellate division may issue an order dismissing
32 a writ petition include when the petitioner fails to comply with an order of the court, when the court
33 recalls the alternative writ, order to show cause, or writ of review as improvidently granted, or when the
34 petition becomes moot.

35
36 **Subdivision (d).** Under this rule, a remittitur serves as notice that the writ proceedings have concluded.
37
38

SPR13-10**Appellate Procedure: Writ Proceedings** (Amend Cal. Rules of Court, rules 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935)

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

| | Commentator | Position | Comment | Committee Response |
|----|--|-----------------|---|---|
| 1. | Appellate Court Committee San Diego Bar Association By: Rupa G. Singh, Chair | NI | We have no comment on this proposal. | No response required. |
| 2. | Appellate Defenders, Inc., California Appellate Project - San Francisco, First District Appellate Project, and Sixth District Appellate Program By: Jonathan Soglin, Executive Director, First District Appellate Project San Francisco, California | NI | <p>SPR13-10 Appellate Procedure: Writ Proceedings</p> <p>The revision makes minor technical changes in the language of rule 8.386(b)(2) (to be renumbered (b)(3)) regarding service of any return on the appellate project. The rules should make clear that the Attorney General must also serve any informal response on the relevant appellate project when the petitioner is represented by court-appointed counsel other than the State Public Defender or Habeas Corpus Resource Center. We suggest that a parallel provision be added to rule 8.385(b)(2) on the filing and service of informal oppositions. That rule currently only states the deadline for service, without identifying who should be served. This will ensure the rules will be consistent and clarify that service on the project applies equally to informal responses as well as returns. Accordingly, we recommend that rule 8.385(b)(2) be amended as follows (our addition underlined):</p> <p>(2) The response must be served and filed within 15 days or as the court specifies. <u>Two copies of the response and any supporting documents must be served on the petitioner’s counsel, and if the petitioner is represented for the habeas corpus proceeding by court-</u></p> | The committee agrees that it would be helpful for rule 8.385 to address who must be served with any informal response to a petition for a writ of habeas corpus. However, the committee notes that, at this stage in habeas proceedings, many petitioners are not represented by counsel; rule 8.385(f) only requires the appellate court to appoint counsel after a return is ordered filed in the Supreme Court or Court of Appeal. The committee has therefore revised the proposal to include a modified version of the amendment suggested by the commentator that addresses service both when the petitioner is represented by counsel and when the petitioner is self-represented. |

SPR13-10**Appellate Procedure: Writ Proceedings** (Amend Cal. Rules of Court, rules 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935)

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| | Commentator | Position | Comment | Committee Response |
|----|--|-----------------|--|---|
| | | | <u>appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must be served on the applicable appellate project.</u> | |
| 3. | California Academy of Appellate Lawyers By: Robert A. Olson, President Los Angeles, California | NI | The Academy has no comment on this proposal. | No response required. |
| 4. | California Appellate Court Clerks Association By: Charlene Ynson, President Fresno, California | NI | No Comment. | No response required. |
| 5. | Committee on Appellate Courts State Bar of California By: Kira Klatchko, Acting Chair 2012-2013 San Francisco, California | AM | The Committee supports this proposal except as noted below. The Committee recommends alternative revisions to rule 8.490(b), which concerns the finality of a decision in a writ proceeding. In summary: <ul style="list-style-type: none"> • The Committee agrees with the proposed revisions to paragraphs (1) and (3). • We do not see a need to change paragraph (2). • Regardless of whether paragraph (2) is changed, we believe the proposed changes to paragraphs (4) and (5) would create confusion, and that current language retained by the proposed revisions could be | The committee notes the commentator's support for the other portions of the proposal. |

SPR13-10

Appellate Procedure: Writ Proceedings (Amend Cal. Rules of Court, rules 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935)

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

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|--|---|
| | | | <p>much clearer.</p> <p>Paragraph (2) states that a decision becomes final 30 days after it is filed – except as provided by paragraphs (1), (3), (4), or (5). Paragraph (1), as revised, provides for immediate finality of (a) summary denials and dismissals and (b) denials and dismissals for mootness. Paragraph (4) concerns finality where there is a publication order. Paragraph (5) concerns finality where there is an order modifying the judgment.</p> <p>The proposed revisions to paragraphs (4) and (5) have confusing, circular references by stating that they address situations “covered by (2).” Besides the circularity, the “covered by (2)” language is unnecessary and confusing by improperly suggesting a limitation on situations where there is a publication order or an order modifying the judgment. These situations would not arise where there is a denial or dismissal under paragraph (1).</p> <p>Paragraphs (4) and (5) refer to the dates that start the “finality period,” but they fail to state plainly what we infer—that such a finality period is 30 days.</p> | <p>The committee agrees that the cross-references to paragraph (2) in paragraphs (4) and (5) might be confusing. To make it clearer that the circumstances covered in these paragraphs will not arise when a decision is final immediately, the committee has revised the proposal to restructure 8.490(b) so that paragraph (1) addresses those circumstances in which a decision in a writ proceeding is final immediately and paragraph (2) encompasses all circumstances in which a decision is not final immediately, including the circumstances now addressed in paragraphs (4) and (5).</p> <p>The reference to “finality period” reflects the fact that, under current paragraph (3), a court may order a finality period that is shorter than the usual 30-day period. The committee has revised the proposal to make this clearer.</p> |

SPR13-10

Appellate Procedure: Writ Proceedings (Amend Cal. Rules of Court, rules 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935)

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

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|---|--|
| | | | <p>We recommend that paragraphs (4) and (5) be revised to state:</p> <p>(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 decision then becomes final 30 days <u>after</u> the filing date of the order for publication.</p> <p>(5) If an order modifying an opinion changes the appellate judgment, the finality period runs from decision then becomes final 30 days <u>after</u> the filing date of the modification order.</p> <p>The proposed new Advisory Committee Comment to subdivision (b)(1) refers to the “appellate <i>division</i>.” It appears that the reference should be to the “Court of Appeal” instead.</p> | <p>The committee appreciates the commentator identifying this error and has revised the proposal to eliminate the reference to the appellate division in this comment.</p> |
| 6. | <p>Court of Appeal Fourth District, Division One By: Hon. Judith McConnell, Presiding Justice San Diego, California</p> | A | <p>We support these proposed amendments.</p> | <p>The committee notes the commentator’s support for the proposal.</p> |
| 7. | <p>Office of the County Counsel By: James Owsens, Assistant County Counsel Los Angeles, California</p> | A | <p>No comment on this amendment.</p> | <p>The committee notes the commentator’s support for the proposal.</p> |

SPR13-10**Appellate Procedure: Writ Proceedings** (Amend Cal. Rules of Court, rules 8.386, 8.387, 8.485, 8.486, 8.487, 8.490, 8.931, 8.933, and 8.935)

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

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|-------------------------|---|
| 8. | Orange County Bar Association By: Wayne R. Gross, President Newport Beach, California | A | No additional comments. | The committee notes the commentator's support for the proposal. |
| 9. | Superior Court of San Diego County By: Mike Roddy | A | No additional comments. | The committee notes the commentator's support for the proposal. |