

Invitation to Comment**SPR09-07**

Title	Appellate Procedure: Petitions for Writs of Supersedeas (amend Cal. Rules of Court, rules 8.112 and 8.824)
Summary	<p>This proposal would expand the documents that must be filed with a petition for a writ of supersedeas when the record on appeal has not yet been filed to include: (1) either a reporter's transcript of any oral statement by the court supporting its rulings relating to the issues that are likely to be raised on appeal or a declaration summarizing those statements; and (2) either a reporter's transcript of the proceedings concerning any request for a stay filed in the trial court or a declaration summarizing those proceedings.</p>
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rules 8.112 and 8.824 of the California Rules of Court address petitions for writs of supersedeas in the Courts of Appeal and superior court appellate divisions, respectively. Petitions for writs of supersedeas are petitions requesting that the reviewing court stay the enforcement of a trial court judgment or order pending a decision on an appeal of that judgment or order. To show the court that issuing a writ of supersedeas is justified, the appellant/petitioner must show, among other things, a probability that he or she will succeed on the merits of the appeal.</p> <p>When the record on appeal has already been filed, the court can review that record to help determine the probability that the appellant/petitioner will succeed on the merits of the appeal. Petitions for writs of supersedeas are frequently filed before the record on appeal is filed, however. Under rules 8.112 and 8.824, when the record has not yet been filed, the petition for the writ of supersedeas must include the judgment or order being appealed, the notice of appeal, and a statement of the case that includes a summary of the material facts. Sometimes, however, these documents and the statement provided by the appellant/petitioner do not include sufficient information for the court to determine whether issuance of the writ is justified.</p> <p>Last year, rule 8.112 was amended to clarify the information that must be filed with a petition for a writ of supersedeas and rule 8.824 was adopted with the same language as amended rule 8.112. When those</p>

proposed amendments were circulated for public comment, the committee received comments suggesting that additional information about the trial court proceedings should be attached to these petitions.

This proposal would require that, in addition to attaching copies of the judgment or order being appealed and the notice of appeal, the appellant/petitioner must also attach either a reporter's transcript of any oral statement by the court supporting its rulings relating to the issues that are likely to be raised on appeal or a declaration summarizing those statements. This would replace the current requirement that the petition itself include a summary of any oral statement by the court supporting its rulings related to the issues on appeal. This proposal would also require that, in addition to attaching a copy of any application for a stay in the trial court and any opposition to such an application, the appellant/petitioner must also attach either a reporter's transcript of the proceedings concerning the request for the stay or a declaration summarizing those proceedings. These requirements are intended to help ensure that the reviewing court has sufficient information to properly determine whether to issue the writ of supersedeas.

Attachment

Rules 8.112 and 8.824 of the California Rules of Court would be amended, effective January 1, 2010, to read:

1 **Rule 8.112. Petition for writ of supersedeas**

2
3 **(a) Petition**

4
5 (1)–(3) * * *

6
7 (4) If the record has not been filed in the reviewing court:

8
9 (A) The petition must include a statement of the case sufficient to
10 show that the petitioner will raise substantial issues on appeal,
11 including a fair summary of the material facts; and the issues that
12 are likely to be raised on appeal, and any oral statement by the
13 court supporting its rulings related to these issues.

14
15 (B) The petitioner must file the following documents with the
16 petition:

17
18 (i) The judgment or order, showing its date of entry;

19
20 (ii) The notice of appeal, showing its date of filing;

21
22 (iii) A reporter's transcript of any oral statement by the court
23 supporting its rulings related to the issues that are likely to
24 be raised on appeal. If a transcript is unavailable, the
25 documents must include a declaration fairly summarizing
26 any such statements.

27
28 ~~(iii)~~(iv) Any application for a stay filed in the trial court, and any
29 opposition to that application, and a reporter's transcript of
30 the oral proceedings concerning the stay or, if a transcript is
31 unavailable, a declaration fairly summarizing the
32 proceedings, including the parties' arguments and any
33 statement by the court supporting its ruling; and

34
35 ~~(iv)~~(v) Any other document from the trial court proceeding that is
36 necessary for proper consideration of the petition.

37
38 (C) * * *

39
40 (5) * * *

41
42 **(b)–(d) * * ***

1 **Rule 8.824. Writ of supersedeas**

2
3 **(a) Petition**

4
5 (1)–(3) * * *

6
7 (4) If the record has not been filed in the reviewing court:

8
9 (A) The petition must include a statement of the case sufficient to
10 show that the petitioner will raise substantial issues on appeal,
11 including a fair summary of the material facts, and the issues that
12 are likely to be raised on appeal, ~~and any oral statement by the~~
13 ~~court supporting its rulings related to these issues.~~

14
15 (B) The petitioner must file the following documents with the
16 petition:

17
18 (i) The judgment or order, showing its date of entry;

19
20 (ii) The notice of appeal, showing its date of filing;

21
22 (iii) A reporter’s transcript of any oral statement by the court
23 supporting its rulings related to the issues that are likely to
24 be raised on appeal. If a transcript is unavailable, the
25 documents must include a declaration fairly summarizing
26 any such statements.

27
28 ~~(iii)~~(iv) Any application for a stay filed in the trial court, and any
29 opposition to that application, and a reporter’s transcript of
30 the oral proceedings concerning the stay or, if a transcript is
31 unavailable, a declaration fairly summarizing the
32 proceedings, including the parties’ arguments and any
33 statement by the court supporting its ruling; and

34
35 ~~(iv)~~(v) Any other document from the trial court proceeding that is
36 necessary for proper consideration of the petition.

37
38 (C) * * *

39
40 (5) * * *

41
42 **(b)–(d) * * ***

Item SPR09-07 Response Form

Title: **Appellate Procedure: Petitions for Writs of Supersedeas** (amend Cal. Rules of Court, rules 8.112 and 8.824)

- 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: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

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DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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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.