

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR19-08

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<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Service Copy of a Petition for Review	Review and submit comments by June 10, 2019
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 8.500	January 1, 2020
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Kristi Morioka 916-643-7056 kristi.morioka@jud.ca.gov
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair Hon. Louis R. Mauro, Vice-Chair	

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### Executive Summary and Origin

To update court procedures and provide clarity, the Appellate Advisory Committee and the Information Technology Advisory Committee propose amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal, and there is no need for a petitioner to serve the Court of Appeal with another copy as required by the rules. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. This proposal originated from a suggestion submitted by an appellate court administrator.

### Background

Rule 8.500 governs petitions for review in the Supreme Court. Subdivision (f)(1) of this rule provides that “[t]he petition must also be served on the superior court clerk and the

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 It is circulated for comment purposes only.*

clerk/executive officer of the Court of Appeal.”<sup>1</sup> This requirement has existed in the rule since it was adopted as rule 28 on January 1, 2003.<sup>2</sup> However, under rule 8.71 of the California Rules of Court and rules 3 and 4 of the Supreme Court Rules Regarding Electronic Filing, electronic filing in the Supreme Court is now mandatory for parties represented by counsel and voluntary for self-represented litigants and trial courts. As a result, a large majority of petitions for rehearing are now filed electronically.

Notably, the Supreme Court has recognized the redundancy of requiring separate service on the Court of Appeal of an electronically filed petition. On its webpage, the Supreme Court provides this advisement:

Notwithstanding the requirements set forth in California Rules of Court, Rule 8.500(f)(1), submission of a petition for review through TrueFiling that is accepted for filing by the Supreme Court constitutes service of the petition on the Court of Appeal.

## **The Proposal**

This proposal would clarify that when a petition for review is filed electronically, the filer does not need to serve a separate copy on the Court of Appeal. When a petition for review is filed in paper, however, the clerk/executive officer of the Court of Appeal must still be served.

This proposal is intended to eliminate duplicative and unnecessary effort by counsel, self-represented litigants, and appellate court staff. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the rules require the filer to serve the clerk/executive officer of the Court of Appeal. This causes additional effort and expense for the filer, and additional workload for the clerk/executive officer of the Court of Appeal.

The committee proposes amending rule 8.500(f)(1) as follows:

The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

## **Alternatives Considered**

The committee considered maintaining the current requirements that parties serve the Courts of Appeal separately. The committee concluded that these rule changes are appropriate because they eliminate unnecessary and duplicative effort and expense.

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<sup>1</sup> An advisory committee comment clarifies that the service requirement applies only to the petition, not to an answer or a reply.

<sup>2</sup> Rule 28 was renumbered as rule 8.500 in 2007.

## **Fiscal and Operational Impacts**

This proposal should not have appreciable implementation costs, and should save court resources by eliminating duplicate electronic filings.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The committees also seek 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 three 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 8.500, at page 4

Rule 8.500 of the California Rules of Court would be amended, effective January 1, 2020, to read:

**Title 8. Appellate Rules**

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

**Chapter 9. Proceedings in the Supreme Court**

**Rule 8.500. Petition for review**

**(a)–(e) \* \* \***

**(f) Additional requirements**

(1) The petition must also be served on the superior court clerk and, if filed in paper format, the clerk/executive officer of the Court of Appeal. Electronic filing of a petition constitutes service of the petition on the clerk/executive officer of the Court of Appeal.

(2)–(3) \* \* \*

**(g) \* \* \***