

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR11-14

Title	Action Requested
Appellate Procedure: Filing, Modification, and Finality of Decisions in Proceedings for Writs of Review of Certain State Agency Decisions	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 8.499	Proposed Effective Date January 1, 2011
Proposed by Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	Contact Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov

Summary

In 2010, the Judicial Council approved amendments to rule 8.499 of the California Rules of Court to fill a gap that had inadvertently been created in the rules. Because adoption of these amendments was urgent, they were not circulated for public comment before being adopted. Public comments are now being sought on these amendments, which took effect on January 1, 2011.

Discussion

Before 2009, rule 8.264 generally addressed the filing, modification, and finality of Court of Appeal decisions, including decisions in writ proceedings. However, rule 8.264 is located in a chapter of the rules that relates to appeals in civil cases and therefore did not appear to be the appropriate location for provisions addressing decisions in other types of cases, such as writ proceedings. Effective January 1, 2009, the Judicial Council therefore amended rule 8.264 to remove the provisions addressing decisions in writ proceedings and adopted new rules 8.387 and 8.490, which, respectively, address the filing, modification, and finality of decisions in proceedings for writs of habeas corpus and of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal.¹

¹ The reports to the Judicial Council recommending these and other changes to the rules relating to writ proceedings are available at www.courtinfo.ca.gov/jc/documents/reports/102408itema4.pdf and www.courtinfo.ca.gov/jc/documents/reports/102408itema3.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 These proposals are circulated for comment purposes only.

However, rule 8.264 had also previously covered the filing, modification, and finality of decisions in proceedings for writs of review of decisions from certain state agencies, such as the Workers' Compensation Appeals Board and the Public Utility Commission, under rules 8.495, 8.496, and 8.498. When rule 8.264 was amended effective January 1, 2009, to delete the provisions relating to decisions in writ proceedings, a gap was inadvertently created in the Rules of Court with respect to decisions in writ proceedings under rules 8.495, 8.496, and 8.498.

The amendments to rule 8.499 adopted by the council effective January 1, 2011, filled this gap by reapplying the provisions relating to filing, modification, and finality of decisions in writ proceedings under rules 8.495, 8.496, and 8.498 that applied before rule 8.264 was amended. These amendments used language from rule 8.490, relating to decisions in proceedings for writs of mandate, certiorari, and prohibition, as a model. However, because writs of review under rules 8.495, 8.496, and 8.498 may be issued not only by the Court of Appeal but also by the Supreme Court, the amendments added a cross-reference to rule 8.532(a), which governs the filing of the decisions in the Supreme Court. In addition, this amendment replaced the references to issuance of "an alternative writ or order to show cause" with references to issuance of "a writ of review." In proceedings for writs of review, the court does not issue orders to show cause or alternative writs. Instead, if the court does not summarily deny the petition, the court will issue a writ of review that directs the lower tribunal to provide the full record of its proceedings for the court's review. The language in amended rule 8.499 more accurately reflects this procedure.

Although the amendments to rule 8.499 were adopted by the council effective January 1, 2011, to make it easier to see the changes made, the attached copy of rule 8.499 shows these amendments using underlining and strikeouts.

Rule 8.499 of the California Rules of Court was amended, effective January 1, 2011, to read:

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Title 8. Appellate Rules
Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 8. Miscellaneous Writs of Review

Rule 8.499. Filing, modification, and finality of decision; Remittitur

(a) Filing of decisions

Rule 8.264(a) governs the filing of decisions in writ proceedings under this chapter in the Court of Appeal, and rule 8.532(a) governs the filing of decisions in the Supreme Court.

(b) Modification of decisions

Rule 8.264(c) governs the modification of decisions in writ proceedings under this chapter.

(c) Finality of decision

- (1) A court's denial of a petition for a writ under this chapter without issuance of a writ of review is final in that court when filed.
- (2) Except as otherwise provided in this rule, a decision in a writ proceeding under this chapter is final in that court 30 days after the decision is filed.
- (3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, the court may order early finality in that court of a decision granting a petition for a writ under this chapter or denying such a petition after issuing a writ of review. The decision may provide for finality in that court on filing or within a stated period of less than 30 days.
- (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 the filing date of the order for publication.
- (5) If an order modifying an opinion changes the appellate judgment, the finality period runs from the filing date of the modification order.

(d) Remittitur

A Court of Appeal must issue a remittitur in a writ proceeding under this chapter except when the court denies the petition without issuing ~~an alternative~~ a writ or

1 ~~order to show cause of review~~. Rule 8.272(b)–(d) governs issuance of a remittitur in
2 writ proceedings under this chapter.
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Item SPR11-14 Response Form

Title: **Appellate Procedure: Filing, Modification, and Finality of Decisions in Proceedings for Writs of Review of Certain State Agency Decisions** (amend Cal. Rules of Court, rule 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.

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Email: invitations@jud.ca.gov

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

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.