

Invitation to Comment

Title	Appellate Procedure: Petitions for Writs of Supersedeas (amend Cal. Rules of Court, rule 8.112)
Summary	This proposal would clarify the record that must be filed with a petition for a writ of supersedeas when the record on appeal has not yet been filed, including: (1) expanding the documents that must be filed with a petition; and (2) expanding the description of the statement of the case that must be included in the petition.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 8.112 addresses petitions for writs of supersedeas, which are petitions requesting that the Court of Appeal stay the enforcement of a trial court judgment or order pending a decision on an appeal of the judgment or order. In 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 rule 8.112, 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>This proposal is intended to help ensure that the reviewing court receives sufficient information with a petition for a writ of supersedeas to properly determine whether to issue the writ. The proposed amendments would require that, in addition to attaching copies of the judgment or order being appealed and the notice of appeal, the appellant/petitioner also attach to the petition copies of any application for a stay in the trial court and any opposition to such an application and any other document necessary for proper consideration of the petition. The proposed amendments would also clarify that the</p>

statement of the case provided by the petitioner/appellant must be sufficient to show that the petitioner will raise substantial issues on appeal. In addition, similar to the requirements for other writ petitions under rule 8.490 when a reporter's transcript is not available, this proposal would require that the petition include a fair summary not only of the facts, but also of the issues likely to be raised on appeal and any statement by the trial court concerning its rulings relating to these issues.

The committee would also appreciate commentator's views about whether the term "petition for writ of supersedeas" should be replaced with the term "request for a stay."

Attachment

Rule 8.112 of the California Rules of Court would be amended, effective January 1, 2008, 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, the petitioner must
8 ~~include~~:

9
10 (A) Attach to the petition:

11
12 (i) The judgment or order, showing its date of entry;

13
14 ~~(B)~~(ii) The notice of appeal, showing its date of filing; ~~and~~

15
16 (iii) Any application for a stay filed in the trial court and any opposition
17 to that application; and

18
19 (iv) Any other document from the trial court proceeding that is necessary
20 for proper consideration of the petition.

21
22 ~~(C)~~(B) Include in the petition a statement of the case sufficient to show that the
23 petitioner will raise substantial issues on appeal, including a fair summary
24 of the material facts, the issues that are likely to be raised on appeal, and
25 any oral statement by the court supporting its rulings related to these
26 issues.

27
28 (5) * * *

29
30 **(b)–(d) * * ***

Item SPR07-04 Response Form

Title: Appellate Procedure: Petitions for Writs of Supersedeas (amend Cal. Rules of Court, rule 8.112)

- 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: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

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