

Invitation to Comment

Title	Appellate Procedure: Petitions for Review (amend Cal. Rules of Court, rules 8.504 and 8.520)
Summary	<p>This proposal would make several changes to the rules relating to petitions for review in the California Supreme Court, including:</p> <p>(1) clarifying that if a petition is seeking review of a Court of Appeal order, a copy of that order must be attached to the petition and that copies of such orders or opinions that must be attached to the petition do not count toward the 10-page limit on attachments to petitions for review; and (2) increasing the maximum length of a reply brief on the merits to 8,400 words or 30 pages.</p>
Source	<p>Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair</p>
Staff	<p>Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov</p>
Discussion	<p><u>Attachments to Petitions for Review</u> Rule 8.504 currently requires that if a petition for review is seeking review of an opinion of the Court of Appeal, a copy of that opinion must be attached to the petition. In practice, if the petition is seeking review of an order of the Court of Appeal, a copy of that order is also attached to the petition. This proposal would add a new provision reflecting that practice.</p> <p>Rule 8.504 also limits the materials that can be attached to a petition for review and requires that these attachments generally not exceed 10 pages. In many cases, however, the opinion or order that is the subject of the petition and that must be attached to the petition exceeds 10 pages. This proposal would clarify that such an opinion or order does not count toward the 10-page limit on attachments to a petition for review.</p> <p><u>Reply Briefs on the Merits</u> Rule 8.520 addresses the briefs that are filed after the Supreme Court has ordered review in a case. Currently, rule 8.520(c) provides that the petitioner’s brief on the merits and the opposing party’s answer brief on the merits may be up to 14,000 words or 50 pages in length, but that the petitioner’s reply brief on the merits may be only 4,200 words or 15 pages. It is very difficult for petitioners to reply to 50 pages of argument by the opposing party in only 15 pages. In contrast, under</p>

rules 8.204(c) and 8.320, which, respectively, address briefs in civil and felony appeals in the Court of Appeal, the limit on the length of the appellant's reply brief is the same as for the appellant's opening and respondent's briefs.

This proposal would increase the limit on the length of reply briefs on the merits in the Supreme Court to 8,400 words or 30 pages. Particularly at this stage in the proceedings, after the court has ordered review in a case, giving the petitioner additional space to more fully articulate his or her argument is likely to assist the court in its consideration of the case. It is also likely to reduce petitioners' need to make requests to the court to file over-length reply briefs.

Attachment

Rules 8.504 and 8.520 of California Rules of Court would be amended, effective January 1, 2009, to read:

1 **Rule 8.504. Form and contents of petition, answer, and reply**

2
3 (a) * * *

4
5 (b) **Contents of a petition**

6
7 (1)–(3) * * *

8
9 (4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion
10 showing its filing date and a copy of any order modifying the opinion or
11 directing its publication must be bound at the back of the original petition and
12 each copy filed in the Supreme Court.

13
14 (5) If the petition seeks review of a Court of Appeal order, a copy of the order
15 showing the date it was entered must be bound at the back of the original
16 petition and each copy filed in the Supreme Court.

17
18 ~~(5)(6)~~ * * *

19
20 ~~(6)(7)~~ * * *

21
22 (c)–(d) * * *

23
24 (e) **Attachments and incorporation by reference**

25
26 (1) No attachments are permitted except:

27
28 (A) An opinion or order ~~from which the party seeks relief~~ required to be
29 attached under (b)(4) or (5);

30
31 (B) Exhibits or orders of a trial court or Court of Appeal that the party
32 considers unusually significant;

33
34 (C) Copies of relevant local, state, or federal regulations or rules, out-of-state
35 statutes, or other similar citable materials that are not readily accessible;
36 and

37
38 (D) An opinion required to be attached under rule 8.1115(c).

39
40 (2) The attachments under (1)~~(A)(B)~~–(C) must not exceed a combined total of 10
41 pages.

- 1
2 (3) No incorporation by reference is permitted except a reference to a petition, an
3 answer, or a reply filed by another party in the same case or filed in a case that
4 raises the same or similar issues and in which a petition for review is pending
5 or has been granted.
6
7

8 **Rule 8.520. Briefs by parties and amici curiae; judicial notice**
9

10 **(a)–(b) * * ***
11

12 **(c) Length**
13

- 14 (1) If produced on a computer, an opening or answering brief on the merits must
15 not exceed 14,000 words, including footnotes, and a reply brief on the merits
16 must not exceed ~~4,200~~ 8,400 words, including footnotes. Each brief must
17 include a certificate by appellate counsel or an unrepresented party stating the
18 number of words in the brief. The person certifying may rely on the word
19 count of the computer program used to prepare the brief.
20
21 (2) If typewritten, an opening or answering brief on the merits must not exceed 50
22 pages and a reply brief on the merits must not exceed ~~45~~ 30 pages.
23
24 (3) The tables, a certificate under (1), any attachment under (h), and any quotation
25 of issues required by (b)(2) are excluded from the limits stated in (1) and (2).
26
27 (4) On application and for good cause, the Chief Justice may permit a longer brief.
28

29 **(d)–(h) * * ***
30

Item SPR08-01 Response Form

Title: **Appellate Procedure: Petitions for Review** (amend Cal. Rules of Court, rules 8.504 and 8.520)

- 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 written on this form, prepared in a letter format, or submitted online. 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.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*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.*