

**Invitation to Comment**

Title	Appellate Procedure: Proceedings for Writs of Mandate, Certiorari, and Prohibition (renumber Cal. Rules of Court, rule 8.494; amend and renumber 8.490 and 8.499; and amend rules 8.264, 8.366, 8.931 <sup>1</sup> , and 8.1018)
Summary	This proposal would make several changes to the rules relating to proceedings for writs of mandate, certiorari, and prohibition in the Supreme Court, Court of Appeal, and superior court appellate divisions. These changes include: (1) separating the current overly-long rule on these writs in the Supreme Court and Court of Appeal into several shorter, easier to follow rules and placing these rules in a new, separate chapter; and (2) moving the provisions relating to finality of writ proceedings from rule 8.264 in the chapter on civil appeals into the new chapter on writ proceedings and moving the provisions on finality of certain other proceedings to the chapters addressing these proceedings.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p><u>Breaking Up Rule 8.490 on Writ Proceedings in the Courts of Appeal and Supreme Court</u></p> <p>Rule 8.490 addresses petitions for writs of mandate, certiorari, and prohibition in the Courts of Appeal and Supreme Court. Currently, this rule is extremely long and has many subparts, which makes it difficult for rule users to locate relevant provisions within the rule.</p> <p>This proposal would break this overly-long rule up into several smaller rules with new titles and subdivision headings to guide rule users. In addition, this proposal would place all of the rules relating to these writ proceedings in a new chapter. These organizational changes should help make relevant provisions easier to find.</p> <p><u>Finality</u></p> <p>Currently, rule 8.264 addresses the finality of Court of Appeal decisions, including decisions in writ proceedings. However, rule 8.264 is in a chapter of the rules that relates to appeals in civil cases,</p>

<sup>1</sup> Rule 8.931 was adopted by the Judicial Council on February 22, 2008, and will take effect on January 1, 2009. A copy of this rule can be accessed at: <http://www.courtinfo.ca.gov/rules/amendments/jan2009.pdf>

not writ proceedings, and there is currently no provision in the rule on writ proceedings that lets rule users know where to look for the rule on finality. Rule users may therefore have difficulty finding the provisions that address finality of writ proceedings.

This proposal would move the provisions relating to finality of writ proceedings from rule 8.264 into the proposed new chapter of rules relating to writ proceedings. It would similarly move provisions relating to finality of certain orders in criminal appeals and denials of the transfer of an appellate division matter to the chapters of the rules relating to these proceedings. A new advisory committee comment would provide rule users with information about where to find the provisions concerning finality in these proceedings.

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Attachment

Cal. Rules of Court, rule 8.494 would be renumbered; rules 8.490 and 8.499 would be amended and renumbered; and rules 8.264, 8.366, 8.931, and 8.1018 would be amended, effective January 1, 2009, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 2. Civil Appeals**

6  
7 **Article 4. Hearing and Decision in the Court of Appeal**

8  
9  
10 **Rule 8.264. Filing, finality, and modification of decision**

11  
12 **(a) \* \* \***

13  
14 **(b) Finality of decision**

15  
16 (1) Except as otherwise provided in this rule, a Court of Appeal decision in a civil  
17 appeal, including an order dismissing an appeal involuntarily, is final in that  
18 court 30 days after filing.

19  
20 (2) The following Court of Appeal decisions are final in that court on filing:

21  
22 ~~(A) The denial of a petition for a writ within the court's original jurisdiction~~  
23 ~~without issuance of an alternative writ or order to show cause;~~

24  
25 ~~(B)~~(A) The denial of a petition for writ of supersedeas; and

26  
27 ~~(C) The denial of an application for bail or to reduce bail pending appeal;~~

28  
29 ~~(D) The denial of a transfer of a case within the appellate jurisdiction of the~~  
30 ~~superior court; and~~

31  
32 ~~(E)~~(B) The dismissal of an appeal on request or stipulation.

33  
34 ~~(3) If necessary to prevent mootness or frustration of the relief granted or to~~  
35 ~~otherwise promote the interests of justice, a Court of Appeal may order early~~  
36 ~~finality in that court of a decision granting a petition for a writ within its~~  
37 ~~original jurisdiction or denying such a petition after issuing an alternative writ~~  
38 ~~or order to show cause. The decision may provide for finality in that court on~~  
39 ~~filing or within a stated period of less than 30 days.~~

1 ~~(4) A Court of Appeal decision denying a petition for writ of habeas corpus~~  
2 ~~without issuing an order to show cause is final in that court on the same day~~  
3 ~~that its decision in a related appeal is final if the two decisions are filed on the~~  
4 ~~same day. If the Court of Appeal orders rehearing of the decision in the appeal,~~  
5 ~~its decision denying the petition for writ of habeas corpus is final when its~~  
6 ~~decision on rehearing is final.~~

7  
8 ~~(5)~~(3) If a Court of Appeal certifies its opinion for publication or partial publication  
9 after filing its decision and before its decision becomes final in that court, the  
10 finality period runs from the filing date of the order for publication.  
11

12 (c)–(d) \* \* \*

### 13 Advisory Committee Comment

14  
15 **Subdivision (b).** As used in subdivision (b)(1), “decision” includes all interlocutory orders of the Court  
16 of Appeal. (See Advisory Committee Comment to rule 8.500(a) and (e).) This provision addresses the  
17 finality of civil appeals. See rule 8.366 for provisions addressing the finality of proceedings under chapter  
18 3, relating to criminal appeals, and rule 8.490 for provisions addressing the finality of proceedings under  
19 chapter 7, relating to writs of mandate, certiorari, and prohibition.  
20

21  
22 Subdivision (b)~~(5)~~(3) provides that a postfiling decision of the Court of Appeal to publish its opinion in  
23 whole under rule 8.1105(c) or in part under rule 8.1100(a) restarts the 30-day finality period. This  
24 provision is based on rule 40-2 of the United States Circuit Rules (9th Cir.). It is intended to allow parties  
25 sufficient time to petition the Court of Appeal for rehearing and/or the Supreme Court for review—and to  
26 allow potential amici curiae sufficient time to express their views—when the Court of Appeal changes the  
27 publication status of an opinion. The rule thus recognizes that the publication status of an opinion may  
28 affect a party’s decision whether to file a petition for rehearing and/or a petition for review.  
29

## 30 Chapter 3. Criminal Appeals

### 31 Article 3. Briefs, Hearing, and Decision

#### 32 Rule 8.366. Hearing and decision in the Court of Appeal

##### 33 (a) General application of rules 8.252 through 8.272

34  
35  
36 Except as provided in this rule, rules 8.252 through 8.272 govern the hearing and  
37 decision in the Court of Appeal of an appeal in a criminal case.  
38  
39  
40  
41  
42

1 **(b) Finality**

2  
3 (1) Except as otherwise provided in this rule, a Court of Appeal decision in a  
4 proceeding under this chapter, including an order dismissing an appeal  
5 involuntarily, is final in that court 30 days after filing.

6  
7 (2) The following Court of Appeal decisions are final in that court on filing:

8  
9 (A) The denial of an application for bail or to reduce bail pending appeal.

10  
11 (B) The dismissal of an appeal on request or stipulation.

12  
13 **(c) Sanctions**

14  
15 Except for (a)(1), rule 8.276 also applies in criminal appeals.

16  
17  
18 **Chapter 7. Writs of mandate, certiorari, and prohibition in the**  
19 **Supreme Court and Court of Appeal**

20  
21  
22 **Rule 8.490. 8.485 Petitions for writ of mandate, certiorari, or prohibition**  
23 **Application**

24  
25 **(a) Application Writ proceedings governed**

26  
27 (1)—~~Except as provided in (2)(b), the rules in this rule chapter governs~~ petitions to  
28 ~~the reviewing court~~ Supreme Court and Court of Appeal for writs of mandate,  
29 certiorari, or prohibition, or other writs within ~~its the~~ original jurisdiction of these  
30 courts. In all respects not provided for in ~~this these~~ rules, rule 8.204 applies.

31  
32 **(b) Writ proceedings not governed**

33  
34 (2)—~~This~~ These rules does not apply to petitions for writs of mandate, certiorari, or  
35 prohibition in the appellate division of the superior court under rules 8.930–8.936,  
36 petitions for writs of supersedeas under rule 8.116, to petitions for writs of habeas  
37 corpus except as provided in rule 8.384, or to petitions for writs of review under  
38 rules 8.494 8.495–8.498.

1 **Rule ~~8.490.~~ 8.486. Petitions**

2  
3 **~~(b)~~(a) Contents of petition**

- 4  
5 (1) If the petition could have been filed first in a lower court, it must explain why  
6 the reviewing court should issue the writ as an original matter.  
7  
8 (2) If the petition names as respondent a judge, court, board, or other officer acting  
9 in a public capacity, it must disclose the name of any real party in interest.  
10  
11 (3) If the petition seeks review of trial court proceedings that are also the subject  
12 of a pending appeal, the notice “Related Appeal Pending” must appear on the  
13 cover of the petition and the first paragraph of the petition must state:  
14  
15 (A) The appeal’s title, trial court docket number, and any reviewing court  
16 docket number; and  
17  
18 (B) If the petition is filed under Penal Code section 1238.5, the date the notice  
19 of appeal was filed.  
20  
21 (4) The petition must be verified.  
22  
23 (5) The petition must be accompanied by a memorandum, which need not repeat  
24 facts alleged in the petition.  
25  
26 (6) Rule 8.204(c) governs the length of the petition and memorandum, but the  
27 tables, the certificate, the verification, and any supporting documents are  
28 excluded from the limits stated in rule 8.204(c)(1) and (2).  
29  
30 (7) If the petition requests a temporary stay, it must comply with rule 8.116 and  
31 explain the urgency.  
32

33 **~~(e)~~(b) Contents of supporting documents**

- 34  
35 (1) A petition that seeks review of a trial court ruling must be accompanied by an  
36 adequate record, including copies of:  
37  
38 (A) The ruling from which the petition seeks relief;  
39  
40 (B) All documents and exhibits submitted to the trial court supporting and  
41 opposing the petitioner’s position;  
42

1 (C) Any other documents or portions of documents submitted to the trial  
2 court that are necessary for a complete understanding of the case and the  
3 ruling under review; and  
4

5 (D) A reporter's transcript of the oral proceedings that resulted in the ruling  
6 under review.  
7

8 ~~(4)~~(2) In exigent circumstances, the petition may be filed without the documents  
9 required by (1)(A)–(C) if counsel files a declaration that explains the urgency  
10 and the circumstances making the documents unavailable and fairly  
11 summarizes their substance.  
12

13 ~~(2)~~(3) If a transcript under (1)(D) is unavailable, the record must include a  
14 declaration by counsel:  
15

16 (A) Explaining why the transcript is unavailable and fairly summarizing the  
17 proceedings, including counsel's arguments and any statement by the  
18 court supporting its ruling. This declaration may omit a full summary of  
19 the proceedings if part of the relief sought is an order to prepare a  
20 transcript for use by an indigent criminal defendant in support of the  
21 petition and if the declaration demonstrates the petitioner's need for and  
22 entitlement to the transcript; or  
23

24 (B) Stating that the transcript has been ordered, the date it was ordered, and  
25 the date it is expected to be filed, which must be a date before any action  
26 requested of the reviewing court other than issuance of a temporary stay  
27 supported by other parts of the record.  
28

29 ~~(3)~~—A declaration under ~~(2)~~ may omit a full summary of the proceedings if part of  
30 the relief sought is an order to prepare a transcript for use by an indigent  
31 criminal defendant in support of the petition and if the declaration  
32 demonstrates the petitioner's need for and entitlement to the transcript.  
33

34 ~~(5)~~(4) If the petitioner does not submit the required record or explanations or does  
35 not present facts sufficient to excuse the failure to submit them, the court may  
36 summarily deny a stay request, the petition, or both.  
37

38 ~~(d)~~(c) **Form of supporting documents**  
39

40 (1) Documents submitted under ~~(e)~~(b) must comply with the following  
41 requirements:  
42

- 1 (A) They must be bound together at the end of the petition or in separate  
2 volumes not exceeding 300 pages each. The pages must be consecutively  
3 numbered.
- 4
- 5 (B) They must be index-tabbed by number or letter.
- 6
- 7 (C) They must begin with a table of contents listing each document by its title  
8 and its index-tab number or letter. If a document has attachments, the  
9 table of contents must give the title of each attachment and a brief  
10 description of its contents.
- 11
- 12 (2) The clerk must file any supporting documents not complying with (1), but the  
13 court may notify the petitioner that it may strike or summarily deny the  
14 petition if the documents are not brought into compliance within a stated  
15 reasonable time of not less than 5 days.
- 16
- 17 (3) Rule 8.44(a) governs the number of copies of supporting documents to be filed  
18 in the Supreme Court. Rule 8.44(b) governs the number of supporting  
19 documents to be filed in the Court of Appeal.

20

21 ~~(e)~~**(d) Sealed records**

22

23 Rule 8.160 applies if a party seeks to lodge or file a sealed record or to unseal a  
24 record.

25

26 ~~(f)~~**(e) Service**

- 27
- 28 (1) If the respondent is the superior court or a judge of that court, the petition and  
29 one set of supporting documents must be served on any named real party in  
30 interest, but only the petition must be served on the respondent.
- 31
- 32 (2) If the respondent is not the superior court or a judge of that court, both the  
33 petition and one set of supporting documents must be served on the respondent  
34 and on any named real party in interest.
- 35
- 36 (3) In addition to complying with the requirements of rule 8.25, the proof of  
37 service must give the telephone number of each attorney served.
- 38
- 39 (4) The petition must be served on a public officer or agency when required by  
40 statute or rule 8.29.
- 41



1 (5) The clerk must file the petition even if its proof of service is defective, but if  
2 the petitioner fails to file a corrected proof of service within 5 days after the  
3 clerk gives notice of the defect the court may strike the petition or impose a  
4 lesser sanction.

5  
6 (6) The court may allow the petition to be filed without proof of service.  
7

8 **Advisory Committee Comment**  
9

10 **Subdivision ~~(b)~~(a).** Because of the importance of the point, rule ~~8.490(b)(6)~~ 8.486(a)(6) explicitly states  
11 that the provisions of rule 8.204(c)—and hence the word-count limits imposed by that rule—apply to a  
12 petition for original writ.

13  
14 **Subdivision ~~(a)~~(e).** Rule 8.25, which generally governs service and filing in reviewing courts, also  
15 applies to the original proceedings covered by this rule.  
16

17  
18 **Rule ~~8.490~~, 8.487. Opposition and Attorney General amicus briefs**  
19

20 **~~(g)~~(a) Preliminary opposition**  
21

22 (1) Within 10 days after the petition is filed, the respondent or any real party in  
23 interest, separately or jointly, may serve and file a preliminary opposition.  
24

25 (2) An opposition must contain a memorandum and a statement of any material  
26 fact not included in the petition.  
27

28 (3) Within 10 days after an opposition is filed, the petitioner may serve and file a  
29 reply.  
30

31 (4) Without requesting opposition or waiting for a reply, the court may grant or  
32 deny a request for temporary stay, deny the petition, issue an alternative writ or  
33 order to show cause, or notify the parties that it is considering issuing a  
34 peremptory writ in the first instance.  
35

36 **~~(h)~~(b) Return or opposition; reply**  
37

38 (1) If the court issues an alternative writ or order to show cause, the respondent or  
39 any real party in interest, separately or jointly, may serve and file a return by  
40 demurrer, verified answer, or both. If the court notifies the parties that it is  
41 considering issuing a peremptory writ in the first instance, the respondent or  
42 any real party in interest may serve and file an opposition.  
43

- 1 (2) Unless the court orders otherwise, the return or opposition must be served and  
2 filed within 30 days after the court issues the alternative writ or order to show  
3 cause or notifies the parties that it is considering issuing a peremptory writ in  
4 the first instance.  
5  
6 (3) Unless the court orders otherwise, the petitioner may serve and file a reply  
7 within 15 days after the return or opposition is filed.  
8  
9 (4) If the return is by demurrer alone and the demurrer is not sustained, the court  
10 may issue the peremptory writ without granting leave to answer.  
11

12 **(j)(c) Attorney General’s amicus curiae brief**

- 13  
14 (1) If the court issues an alternative writ or order to show cause, the Attorney  
15 General may file an amicus curiae brief without the permission of the Chief  
16 Justice or presiding justice, unless the brief is submitted on behalf of another  
17 state officer or agency.  
18  
19 (2) The Attorney General must serve and file the brief within 14 days after the  
20 return is filed or, if no return is filed, within 14 days after the date it was due.  
21  
22 (3) The brief must provide the information required by rule 8.200(c)(2) and  
23 comply with rule 8.200(c)(4).  
24  
25 (4) Any party may serve and file an answer within 14 days after the brief is filed.  
26

27 **Advisory Committee Comment**

28  
29 **Subdivision ~~(g)~~(a).** Consistent with practice, rule ~~8.490~~ 8.487 draws a distinction between a “preliminary  
30 opposition,” which the respondent or a real party in interest may file before the court takes any action on  
31 the petition (~~(g)~~(a)(1)), and a more formal “opposition,” which the respondent or a real party in interest  
32 may file if the court notifies the parties that it is considering issuing a peremptory writ in the first instance  
33 (~~(h)~~(b)(1)).  
34

35 Subdivision ~~(g)~~(a)(1) allows the respondent or any real party in interest to serve and file a preliminary  
36 opposition within 10 days after the petition is filed. The reviewing court retains the power to act in any  
37 case without obtaining an opposition (~~(g)~~(a)(4)).  
38

39 Subdivision ~~(g)~~(a)(3) allows a petitioner to serve and file a reply within 10 days after an opposition is  
40 filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court  
41 may act on the petition without waiting for a reply.  
42

43 Subdivision ~~(g)~~(a)(4) recognizes that the reviewing court may “grant or deny a request for temporary  
44 stay” without requesting opposition or waiting for a reply.

1  
2 The several references in rule ~~8.490~~ 8.487 to the power of the court to issue a peremptory writ in the first  
3 instance after notifying the parties that it is considering doing so (~~(g)(a)~~–~~(h)(b)~~) implement the rule of  
4 *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

5  
6 **Subdivision ~~(h)(b)~~.** Subdivision ~~(h)(b)~~(2) requires that the return or opposition be served and filed within  
7 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is  
8 considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases,  
9 however, the provision recognizes that the reviewing court may order otherwise.

10  
11 Subdivision ~~(h)(b)~~(3) formalizes the common practice of permitting petitioners to file replies to returns  
12 and specifies that such a reply must be served and filed within 15 days after the return is filed. To permit  
13 prompt action in urgent cases, however, the provision recognizes that the reviewing court may order  
14 otherwise.

15  
16  
17 **Rule ~~8.490~~–~~(i)~~ 8.488. Certificate of Interested Entities or Persons**

18  
19 **~~(1)~~(a) Application**

20  
21 This ~~subdivision~~ rule applies in writ proceedings in criminal cases in which an  
22 entity is the defendant<sup>2</sup> and in civil cases other than family, juvenile, guardianship,  
23 and conservatorship cases.

24  
25 **~~(2)~~(b) Compliance with rule 8.208**

26  
27 Each party must comply with the requirements of rule 8.208 concerning serving and  
28 filing a Certificate of Interested Entities or Persons.

29  
30 **~~(c)~~ Placement of certificates**

31  
32 ~~(3)~~(1) The petitioner’s certificate must be included in the petition.

33  
34 (2) The certificates of the respondent and real party in interest must be included in  
35 their preliminary opposition or, if no such opposition is filed, in their return, if  
36 any.

37  
38 (3) The certificate must appear after the cover and before the tables.

39  

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<sup>2</sup> The addition of “criminal cases in which an entity is the defendant” is being circulated for comment as part of a separate proposal. Please see SPR08-4.

1 (4) If the identity of any party has not been publicly disclosed in the proceedings,  
2 the party may file an application for permission to file its certificate under seal  
3 separately from the petition, preliminary opposition, or return.  
4

5 **(d) Failure to file a certificate**  
6

7 ~~(4)~~(1) If a party fails to file a certificate as required under ~~(2)~~(b) and ~~(3)~~(c), the clerk  
8 must notify the party by mail that the party must file the certificate within 10  
9 days after the clerk's notice is mailed and that if the party fails to comply, the  
10 court may impose one of the following sanctions:  
11

12 (A) If the party is the petitioner, the court may strike the petition; or  
13

14 (B) If the party is the respondent or the real party in interest, the court may  
15 strike the document.  
16

17 ~~(5)~~(2) If the party fails to file the certificate as specified in the notice under ~~(4)~~(1),  
18 the court may impose the sanctions specified in the notice.  
19

20 **Advisory Committee Comment**  
21

22 ~~Subdivision (i).~~ The Judicial Council has adopted an optional form, *Certificate of Interested Entities or*  
23 *Persons* (form APP-008), that can be used to file the certificate required by this provision.  
24  
25

26 **Rule 8.490. ~~(k)~~ 8.489. Notice to trial court**  
27

28 **(a) Notice if writ issues**  
29

30 (1)—If a writ or order issues directed to any judge, court, board, or other officer, the  
31 reviewing court clerk must promptly send a certified copy of the writ or order to the  
32 person or entity to whom it is addressed.  
33

34 **(b) Notice by telephone**  
35

36 ~~(2)~~(1) If the writ or order stays or prohibits proceedings set to occur within 7 days or  
37 requires action within 7 days—or in any other urgent situation—the reviewing  
38 court clerk must make a reasonable effort to notify the clerk of the respondent  
39 court by telephone. The clerk of the respondent court must then notify the  
40 judge or officer most directly concerned.  
41

42 ~~(3)~~(2) The clerk need not give telephonic notice of the summary denial of a writ,  
43 whether or not a stay previously issued.

1  
2  
3 **Rule ~~8.499.~~ 8.490. Finality and remittitur**  
4

5 **(a) Finality of decision**  
6

- 7 (1) Except as otherwise provided in this rule, a decision in a writ proceeding is  
8 final 30 days after the decision is filed.  
9  
10 (2) The denial of a petition for a writ within the court’s original jurisdiction  
11 without issuance of an alternative writ or order to show cause is final in that  
12 court when filed.  
13  
14 (3) If necessary to prevent mootness or frustration of the relief granted or to  
15 otherwise promote the interests of justice, the court may order early finality in  
16 that court of a decision granting a petition for a writ within its original  
17 jurisdiction or denying such a petition after issuing an alternative writ or order  
18 to show cause. The decision may provide for finality in that court on filing or  
19 within a stated period of less than 30 days.  
20

21 **(b) Remittitur**  
22

23 A ~~Court of Appeal~~ court must issue a remittitur in a writ proceeding under this  
24 chapter except when the court denies the petition without issuing an alternative writ  
25 or order to show cause. Rule 8.272(b)–(d) governs issuance of a remittitur in writ  
26 proceedings under this chapter.  
27  
28

29 **Rule ~~8.490.~~ (A) 8.491. Responsive pleading under Code of Civil Procedure section**  
30 **418.10**  
31

32 If the Court of Appeal denies a petition for writ of mandate brought under Code of Civil  
33 Procedure section 418.10(c) and the Supreme Court denies review of the Court of  
34 Appeal’s decision, the time to file a responsive pleading in the trial court is extended  
35 until 10 days after the Supreme Court files its order denying review.  
36  
37

1 **Rule 8.490. ~~(n)~~ 8.492. Sanctions**

2  
3 **~~(1)~~(a) Grounds for sanctions**

4  
5 On motion of a party or its own motion, a Court of Appeal may impose sanctions,  
6 including the award or denial of costs under ~~(m)~~ rule 8.493, on a party or an attorney  
7 for:

8  
9 ~~(A)~~(1) Filing a frivolous petition or filing a petition solely to cause delay; or

10  
11 ~~(B)~~(2) Committing any other unreasonable violation of these rules.

12  
13 **~~(2)~~ (b) Notice**

14  
15 The court must give notice in writing if it is considering imposing sanctions.

16  
17 **~~(3)~~ (c) Opposition**

18  
19 Within 10 days after the court sends such notice, a party or attorney may serve and  
20 file an opposition, but failure to do so will not be deemed consent. An opposition  
21 may not be filed unless the court sends such notice.

22  
23 **~~(4)~~ (d) Oral Argument**

24  
25 Unless otherwise ordered, oral argument on the issue of sanctions must be  
26 combined with any oral argument on the merits of the petition.

27  
28  
29 **Rule 8.490. ~~(m)~~ 8.493. Costs**

30  
31 **(a) Award of costs**

32  
33 (1) Except in a criminal or juvenile or other proceeding in which a party is entitled  
34 to court-appointed counsel:

35  
36 (A) Unless otherwise ordered by the court under (B), the prevailing party in  
37 an original proceeding is entitled to costs if the court resolves the  
38 proceeding by written opinion after issuing an alternative writ, an order to  
39 show cause, or a peremptory writ in the first instance.

40  
41 (B) In the interests of justice, the court may also award or deny costs as it  
42 deems proper in the proceedings listed in (A) and in other circumstances.

1  
2 (2) The opinion or order resolving the proceeding must specify the award or denial  
3 of costs.  
4

5 ~~(3)~~**(b) Procedures for recovering costs**  
6

7 Rule 8.278(b)–(d) governs the procedure for recovering costs under this rule.  
8  
9

10 **Chapter ~~7~~8. Miscellaneous Writs of Review**  
11

12 **Rule ~~8.494~~, 8.495. Review of Workers' Compensation Appeals Board cases**

13 **Rule 8.496. Review of Public Utilities Commission cases**

14 **Rule 8.498. Review of Agricultural Labor Relations Board and Public**  
15 **Employment Relations Board cases**

16 **Rule ~~8.499~~. Remittitur**  
17

18  
19 **Rule ~~8.494~~, 8.495. Review of Workers' Compensation Appeals Board cases**  
20

21 \* \* \*

22  
23 **Chapter ~~8~~9. Proceedings in the Supreme Court**  
24

25  
26 **Chapter ~~9~~10. Appeals from Judgments of Death**  
27

28  
29  
30 **Division 2. Rules Relating to the Superior Court Appellate Division**  
31

32 **Chapter 6. Writ Proceedings**  
33  
34

35 **Rule 8.931. Petitions filed by persons not represented by an attorney**  
36

37 **(a) \* \* \***  
38

39 **(b) Contents of supporting documents**  
40

41 (1) The petition must be accompanied by an adequate record, including copies of:  
42

- 1 (A) The ruling from which the petition seeks relief;  
2  
3 (B) All documents and exhibits submitted to the trial court supporting and  
4 opposing the petitioner's position;  
5  
6 (C) Any other documents or portions of documents submitted to the trial  
7 court that are necessary for a complete understanding of the case and the  
8 ruling under review; and  
9  
10 (D) A reporter's transcript or electronic recording of the oral proceedings that  
11 resulted in the ruling under review.  
12

13 ~~(4)~~(2) In extraordinary circumstances, the petition may be filed without the  
14 documents required by (1)(A)–(C) if counsel or, if the petitioner is  
15 unrepresented, the petitioner files a declaration that explains the urgency and  
16 the circumstances making the documents unavailable and fairly summarizes  
17 their substance.  
18

19 ~~(2)~~(3) If a transcript or electronic recording under (1)(D) is unavailable, the record  
20 must include a declaration by counsel or, if the petitioner is unrepresented, by  
21 the petitioner:  
22

23 (A) Explaining why the transcript or electronic recording is unavailable and  
24 fairly summarizing the proceedings, including the petitioner's arguments  
25 and any statement by the court supporting its ruling. This declaration may  
26 omit a full summary of the proceedings if part of the relief sought is an  
27 order to prepare a transcript for use by an indigent criminal defendant in  
28 support of the petition and if the declaration demonstrates the petitioner's  
29 need for and entitlement to the transcript; or  
30

31 (B) Stating that the transcript or electronic recording has been ordered, the  
32 date it was ordered, and the date it is expected to be filed, which must be  
33 a date before any action requested of the appellate division other than  
34 issuance of a temporary stay supported by other parts of the record.  
35

36 ~~(3)~~—A declaration under ~~(2)~~ may omit a full summary of the proceedings if part of  
37 the relief sought is an order to prepare a transcript for use by an indigent  
38 criminal defendant in support of the petition and if the declaration  
39 demonstrates the petitioner's need for and entitlement to the transcript.  
40



1           ~~(5)~~(4) If the petitioner does not submit the required record or explanations or does  
2           not present facts sufficient to excuse the failure to submit them, the court may  
3           summarily deny a stay request, the petition, or both.

4  
5   ~~(c)~~–~~(d)~~ \* \* \*

6  
7  
8           **Division 4. Transfer of Appellate Division Cases to the Court of**  
9           **Appeal**

10  
11  
12   **Rule 8.1018. Finality and remittitur**

13  
14   **(a) Finality**

15  
16           (1) A Court of Appeal decision granting transfer of a case from the appellate  
17           division of the superior court to the Court of Appeal is final in the Court of  
18           Appeal 30 days after filing.

19  
20           (2) The denial of a transfer of a case from the appellate of the superior court is  
21           final immediately.

22  
23   ~~(a)~~(b) \* \* \*

24  
25   ~~(b)~~(c) \* \* \*

26  
27   ~~(e)~~(d) \* \* \*

## Item SPR08-02 Response Form

**Title:** **Appellate Procedure: Proceedings for Writ of Mandate, Certiorari, and Prohibition** (renumber Cal. Rules of Court, rule 8.494; adopt rules 8.485-8.493; amend rules 8.264, 8.366, 8.490, and 8.931)

- 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](http://www.courtinfo.ca.gov/invitationstocomment)

**Email:** [invitations@jud.ca.gov](mailto: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

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008</b>
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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.*