JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102

Report Summary

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Justice Joyce L. Kennard, Chair
Appellate Rules Project Task Force
Peter J. Belton, Chair
Heather Anderson, Committee Counsel, 415-865-7691

DATE: October 3, 2002

SUBJECT: Revision of Appellate Rules: Second Installment—Rules 19–29.9 (repeal Cal. Rules of Court, rules 19–29.9; adopt revised rules 19–29.9, new rules 36.1, 36.2, and 47.1, and related Advisory Committee Comments; amend rules 5, 13, and 40) (Action Required)

Issue Statement
This is the second installment of the Appellate Advisory Committee's multiyear project to revise the appellate rules of the California Rules of Court. It addresses the rules governing the hearing and decision of civil appeals in the Court of Appeal and the Supreme Court. The revision is necessary because many provisions of the rules have become unduly complex, difficult to understand, or inconsistent with current law and practice.

Recommendation
The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2003, repeal existing rules 19–29.9 of the California Rules of Court, adopt revised rules 19–29.9, new rules 36.1, 36.2, and 47.1, and related Advisory Committee Comments, and amend rules 5, 13, and 40, to clarify the meanings of the rules and facilitate their use by practitioners, parties, and court personnel.

The text of the revised, new, and amended rules and the related Advisory Committee Comments is attached at pages 13–66.[1]

[1] Because the revisions to existing rules 19–29.9 were so extensive, it was impracticable to prepare the usual struck-through and underlined rule text showing each specific addition and deletion. Instead, the Appellate Advisory Committee recommends that existing rules 19–29.9 be repealed in their entirety and replaced by revised rules 19–29.9 as presented in this proposal. The full text of existing rules 19–29.9, with strikethrough marks indicating their repeal, is attached at pages 67–103.

Rationale for Recommendation

Existing rules 19–29.9 suffer from a variety of stylistic and organizational deficiencies that have accumulated in the appellate rules since they were first adopted almost six decades ago. The revision undertakes to cure these deficiencies by simplifying the wording of the rules and restructuring them to clarify their meanings and facilitate their use. Most of the changes are stylistic only, but selected substantive changes are necessary to fill unintended gaps and conform older rules to current law; each substantive change is identified and explained in the Advisory Committee Comment to the rule. The principal changes in rules 19–29.9 are discussed in the following report.

To implement the revision of rules 19–29.9, it is also necessary to relocate certain provisions of the existing rules by adopting new rules 36.1, 36.2, and 47.1, and by amending rules 5 and 13. (The amendment of rule 40 is a technical correction.) Each of the new rules and amendments is discussed in the following report.

Alternative Actions Considered

No alternative to the project as a whole was considered, because nothing short of a complete revision of the appellate rules would have been adequate to the task of curing their many accumulated deficiencies.

Comments From Interested Parties

After review of the revised rules and related Advisory Committee Comments, the Rules and Projects Committee authorized their circulation for a 60-day public comment period. A large number of comments were received from reviewing court clerks, judicial staff attorneys, bar associations, and appellate practitioners; in response, the Appellate Advisory Committee further revised many of the rules in the proposal. The principal comments and the committee's responses to each are discussed in the accompanying report, and a chart of all the comments and responses is attached at page 104.

Implementation Requirements and Costs

The clerks' offices of the Supreme Court and the appellate districts will need to review the rules when they are adopted and make necessary adjustments in certain filing, calendaring, and notification procedures. Costs to the Supreme Court, the Courts of Appeal, and the superior courts should otherwise be minimal.

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Recommendation
The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2003, repeal existing rules 19–29.9 of the California Rules of Court; adopt revised rules 19–29.9, new rules 36.1, 36.2, and 47.1, and related Advisory Committee Comments; and amend rules 5, 13, and 40, to clarify the meanings of the rules and facilitate their use by practitioners, parties, and court personnel.

Rationale for Recommendation to Adopt Revised Rules 19–29.9
Existing rules 19–29.9 suffer in varying degrees from the same deficiencies of language and structure as former rules 1–18 (revised in the first installment of this project), i.e., obscure and ambiguous wording, redundant and obsolete provisions, long and complex sentences and paragraphs, and inconsistencies of style and

[2] The primary revision is of rules 19–29.9. To implement this revision, however, it is also necessary to relocate certain provisions of the existing rules by adopting new rules 36.1, 36.2, and 47.1, and by amending rules 5 and 13. The amendment of rule 40 is a technical correction.

terminology. To cure these deficiencies, the revision simplifies the wording and clarifies the meaning of each provision; restructures individual rules into subdivisions to promote readability and understanding; and rearranges the order of subdivisions or the rules themselves when logic or clarity dictates. The vast majority of the changes are stylistic only; but when necessary and appropriate, the revision also makes selected substantive changes for limited purposes, i.e., to resolve ambiguities; to fill unintended gaps in rule coverage; to conform older rules to current law, practice, and technology; and to otherwise improve the appellate process. Whenever the revision results in a substantive change, the Advisory Committee Comment to the rule identifies and explains the change.

Significant Changes in Revised Rules 19–29.9

The most significant changes in revised rules 19–29.9 are summarized and explained as follows:

1. Separate rules for the Court of Appeal and the Supreme Court: Existing Part IV of the appellate rules (Hearing and Determination of Appeal) contains certain rules that apply only to the Court of Appeal, others that apply only to the Supreme Court, and several important rules (rules 24–27) that apply to both courts, either expressly or impliedly. This structure can lead to confusion and uncertainty. To clarify their applicability, the revision reorganizes these rules into two distinct and self-contained sets, one applying to each court: thus new Part IV contains all the rules governing hearing and decision in the Court of Appeal (revised rules 19–27), and new Part V contains all the rules governing hearing and decision in the Supreme Court (revised rules 28–29.9). Each part is complete in itself; to avoid undue repetition, however, certain provisions of the Supreme Court rules (e.g., revised rules 29.4(c) and 29.5(a)–(c)) cross-refer to corresponding provisions of the Court of Appeal rules.

2. Judicial notice and findings or evidence on appeal: In order to treat related topics in a single rule, the procedures governing motions in a reviewing court to take judicial notice (existing rule 41.5) and to make findings or take evidence (existing rule 23(a)) are combined in the provisions of revised rule 22.

3. Notice of oral argument: Existing rule 21(c) requires the Court of Appeal clerk to give the parties written notice of the time and place of oral argument "[w]hen an appeal is set for hearing." Revised rule 23(b) requires instead that the clerk send the notice at least 20 days before the argument date. This is a substantive change intended (1) to enhance the benefit of oral argument to the reviewing court by ensuring that the parties have adequate time to prepare, (2) to reduce the number of counsel's calendar conflicts with other courts, and (3) to promote consistency between Courts of Appeal and districts on this important step in the appellate process. Because even 20 days' notice may be impractical or impossible in certain circumstances, the revised rule also authorizes the presiding justice to shorten the

period for good cause, with immediate notice to the parties. Revised rule 29.2(c) imposes the same duty on the Supreme Court clerk.

4. Finality of decision after postfiling order for publication: Revised rule 24(b)(5) provides that a postfiling decision of the Court of Appeal to publish its opinion in whole or in part restarts the 30-day finality period. This substantive change is based on rule 40–2 of the United States Circuit Rules (9th Cir.). It is intended to allow parties sufficient time to petition the Court of Appeal for rehearing and the Supreme Court for review—and to allow potential amici curiae sufficient time to express their views—when the Court of Appeal changes the publication status of an opinion. The rule thus recognizes that the publication status of an opinion may affect a party's decision whether to file a petition for rehearing or a petition for review.

5. Finality of decision after consent to increase or decrease in amount of money judgment: Existing rule 24(e) is silent on the question whether the finality period is affected when a party files a consent in the Court of Appeal to an increase or decrease in the amount of a money judgment that results in its affirmance. Revised rule 24(d) fills that gap by providing that the filing of the consent restarts the finality period. This substantive change is intended to allow the opposing parties sufficient time to petition for rehearing and/or review when it becomes clear that the judgment will be affirmed.

6. No specification of costs when judgment reversed in its entirety: Existing rule 26(a)(3) requires the Court of Appeal to specify the award or denial of costs in its opinion if there was more than one notice of appeal or if the judgment was modified or reversed in part *or in its entirety*; revised rule 27(a)(3) no longer requires the court's opinion to specify costs if the judgment is reversed in its entirety. This is a substantive change intended to relieve the court of the burden of specifying costs in those cases—full affirmance or full reversal—in which it is usually clear who is the prevailing party; that party is entitled to costs under the general provisions of revised rule 27(a)(1) and (2), and should not have to bear the risk of the court's failure to specify such costs. In a case in which a different award may be proper, the Court of Appeal has the discretion to so specify under revised rule 27(a)(4).

7. Reorganization of rules governing review in the Supreme Court: Revised rule 28 and new rules 28.1 and 28.2 reorganize and group in logical sequence all the provisions on the subject of ordering review in the Supreme Court (existing rules 28 and 29), but make few substantive changes. Thus revised rule 28 collects in one rule the basic procedural requirements for filing a petition for review, answer, or reply, i.e., who may file and what may be reviewed, the grounds and limits of review, when to serve and file, additional service, and amicus curiae letters. New rule 28.1 collects the provisions of existing rule 28 governing the form and content of a petition for review, answer, and reply. And new rule 28.2 collects the provisions of existing rules 28 and 29.2 governing the transmittal of the record on petition for review, the

time within which the Supreme Court may grant or deny review, "grant and hold" orders, and review on the court's own motion.

8. Recognition of additional ground of review in Supreme Court: Existing rule 29(a) states three grounds of review in the Supreme Court, and paragraphs (1)–(3) of revised rule 28(b) reiterate those grounds. But paragraph (4) of the revised subdivision adds a fourth ground: the Supreme Court may order review "for the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order." This is not a substantive change; rather, it fills a gap by recognizing the court's longstanding practice of ordering review, in appropriate cases, not to decide the case itself but for the purpose of transferring the case to the Court of Appeal with instructions to conduct certain further proceedings (e.g., with instructions to issue an alternative writ or order to show cause returnable before the Court of Appeal or the superior court).

9. Length of petition for review, answer, or reply: Revised rule 28.1(e) states the maximum permissible length of a petition for review, answer, or reply produced on a computer in terms of word count (calculated at 280 words per page) rather than page count. This substantive change tracks an identical provision in rule 14(c) governing Court of Appeal briefs, itself derived from rule 32(a)(7) of the Federal Rules of Appellate Procedure (28 U.S.C.).

10. Time for filing briefs on the merits in Supreme Court: Existing rule 29.3(a) prescribes two different time limits for filing briefs in the Supreme Court: 30 days if a party chooses to file a new brief on the merits, but only 15 days if a party chooses instead to rely on the brief it previously filed in the Court of Appeal. Although it presumably requires more time to prepare a new brief on the merits than to copy a Court of Appeal brief and attach a notice of intent to rely on it, this justification for the discrepancy is insufficient to outweigh the resulting complication of the clerk's duties in administering the important matter of filing deadlines. Accordingly, in a substantive change intended to simplify the briefing process and the clerk's duties, revised rule 29.1(a)(1) and (2) provides a single time limit—30 days—for filing all mandatory briefs in the Supreme Court.

11. Length of brief on the merits: As in the case of petitions for review (see item 9 above), the maximum permissible length of a Supreme Court brief produced on a computer is specified by revised rule 29.1(c) and (d) in terms of word count rather than page count.

12. Dismissal of review as "improvidently granted": Existing rule 29.4(c) purports to limit Supreme Court dismissals of review to cases in which the court "improvidently" granted review. In practice, however, the court may dismiss review for a variety of other reasons. For example, after the court decides a "lead" case, its current practice is to dismiss review in any pending companion case (i.e., a "grant

and hold" matter under revised rule 28.2(c)) that appears correctly decided in light of the lead case and presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal. The Supreme Court may also dismiss review when a supervening event renders the case moot for any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or when the Legislature repeals a statute that the court intended to construe. Reflecting this practice, the Supreme Court now dismisses review—even in the rare case in which the grant of review was arguably "improvident"—by an order that states simply that review is dismissed. Revised rule 29.3(b) follows this practice by deleting as misleading the former reference to "improvident" grants of review.

13. "Remand" rather than "transfer" for decision: Existing rule 29.4(b) authorizes the Supreme Court, after ordering review, to *transfer* the cause to the Court of Appeal for decision on any remaining issues in the appeal. In practice, however, the Supreme Court does not file a separate order "transferring" the cause to the Court of Appeal in such cases; instead, as part of its appellate judgment at the end of its opinion the court simply orders the cause *remanded* to the Court of Appeal for disposition of the remaining issues. (See, e.g., *People v. Willis* (2002) 27 Cal.4th 811, 825.) Consistently with this practice, revised rule 29.3(c) provides that the Supreme Court may "remand" such a cause to the Court of Appeal for decision on any remaining issues.

14. Supreme Court decisions final on filing: Existing rule 24(a) provides that the denial of a petition for review is final on filing. While reiterating that provision, revised rule 29.4(b)(2) fills a gap by recognizing several other Supreme Court decisions that also are final on filing: one of these (dismissal of review) is declared final on filing by existing rule 29.4(c); the others are treated as final on filing by settled Supreme Court practice (i.e., transfer or retransfer of a cause to the Court of Appeal; denial of a petition for writ of supersedeas; and denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause).

15. Supreme Court decision on request of court of another jurisdiction: Existing rule 29.5 provides a procedure by which the Supreme Court may decide a question of California law in response to a request from a court of another jurisdiction. The rule has been rewritten and renumbered as rule 29.8, but few of the changes are substantive. The revision serves three main purposes: first, to integrate the rule more fully into the California Rules of Court by deleting provisions that duplicate other revised rules; second, to simplify and update the rule by deleting provisions based on similar laws of other states that have not become part of Supreme Court practice under this rule; and third, to clarify and facilitate use of the rule by recasting certain of its provisions in terms parallel to those of the longstanding and better-known rules governing petitions for review.

Rationale for Recommendation to Adopt New Rules 36.1, 36.2, and 47.1

New rule 36.1
Effective January 1, 2002, former rule 10(d)—providing for the transmission of exhibits to the reviewing court in all types of appeals—was superseded by revised rule 18. Rule 18, however, is intended to apply only to civil appeals. Rules 33 and 34 provide for the transmission of exhibits to the reviewing court in *noncapital* criminal appeals, but no rule currently provides for the transmission of exhibits to the Supreme Court in death penalty appeals. (Existing rule 35(e) states that such exhibits are to be transmitted "as provided in [former] rule 10," but former rule 10 has been repealed.)

New rule 36.1 cures this oversight by providing that in death penalty appeals no party may designate exhibits to be transmitted to the Supreme Court until the Supreme Court clerk sends the parties the notice of oral argument. The rule was not circulated for public comment, but it restates without change the first clause of former rule 10(d) insofar as it applies to death penalty appeals, and in so doing it reflects settled Supreme Court practice.

New rule 36.2
Existing rule 22 includes certain provisions governing the conduct of oral argument in death penalty appeals. Because the Appellate Advisory Committee intends to reorganize the death penalty rules into a distinct and self-contained set of rules applying only to such appeals, the provisions of existing rule 22 relating to the death penalty have been moved without change to new rule 36.2, which will be part of the death penalty rules when they are revised in the next installment of this project.

New rule 47.1
Existing rule 20 deals with only two matters: the authority of the Supreme Court to transfer causes to and from a Court of Appeal and between Courts of Appeal, and the authority of a Court of Appeal administrative presiding judge to transfer causes between divisions of a Court of Appeal. The rule has been moved without substantive change to new rule 47.1, where it appears among similar administrative rules.

Rationale for Recommendation to Amend Rules 5, 13, and 40

Rule 5
Existing rule 19(a) provides in part that if an appellant abandons the appeal before the record is filed in the reviewing court, "the appellant shall be entitled to the return of that portion of *any deposit* in excess of the actual cost of preparation of the record on appeal up to that time" (italics added). In most cases governed by rules 4 and 5, the appellant makes both a deposit for preparation of the *clerk's* transcript (rule 5(c))

and a deposit for preparation of the *reporter's* transcript (rule 4(b)). When rule 4 was revised in the first installment of this project, a provision was included requiring refund of any unused portion of the latter deposit (rule 4(f)(3)), but no similar provision was included in rule 5 to require refund of any unused portion of the deposit for the clerk's transcript. The recommended amendment cures the oversight by moving the provision for such a refund from existing rule 19(a) to new subdivision (d)(2) of rule 5.

Rule 13

Existing rule 29.4 is primarily devoted to discussing the various dispositional options available to the Supreme Court in addition to affirmance or reversal of the judgment. But the rule includes a provision (subd. (f)) on a wholly different topic: the procedure for filing new briefs in the *Court of Appeal* if the Supreme Court transfers the case to that court for further proceedings. The recommended amendment moves the provision to the more appropriate rule 13 (briefs in the Court of Appeal), where it appears as new subdivision (b) (supplemental briefs after transfer). The amendment also changes the present single 30-day period for concurrent briefing into two consecutive 15-day periods for responsive briefing, a process deemed more useful to the Court of Appeal.

Rule 40

A technical amendment to rule 40(k) is necessary to correct an erroneous cross-reference.

Alternative Actions Considered

No alternative to the project as a whole was considered, because nothing short of a complete revision of the appellate rules would have been adequate to the task of removing the many inconsistent, ambiguous, obsolete, and superfluous provisions that have accumulated in the rules since they were first adopted almost six decades ago. Nevertheless, a broad range of alternatives was considered for the structure and wording of each rule, and the committee formulated its proposals only after extensive input from the commentators.

Comments From Interested Parties

After reviewing the revised rules and their related Advisory Committee Comments, the Rules and Projects Committee authorized their circulation for a 60-day public comment period. In response, 168 comments were received from clerks of the Supreme Court, Courts of Appeal, superior courts, and their associations; judicial staff attorneys; statewide and local bar associations; and numerous appellate specialists and other practitioners.

A number of the comments expressed strong approval of the reorganization proposed in this installment. Other comments raised concerns about the wording of certain individual rules, and the Appellate Advisory Committee carefully considered such

concerns. It is noteworthy that although this installment governs hearing and decision in the Courts of Appeal and in the Supreme Court, no concerns were voiced by appellate court justices.

Nevertheless, the proposal was revised in numerous respects in response to the public comments. Summaries of the most significant of those comments and the committee's responses follow.[3]

1. The State Bar Appellate Courts Committee, while approving of the reorganization of the rules into separate provisions for the Court of Appeal and the Supreme Court, called attention to the omission of a provision for refund of the unused portion of the deposit for preparation of the clerk's transcript if the appeal is abandoned. The committee agreed, and the above-described amendment to rule 5 cures the oversight.

2. Hannah Inouye, Court Manager of the Los Angeles Superior Court, and several other commentators urged that revised rule 19 be changed to provide that an appellant filing a notice of settlement must also promptly file an abandonment in order to prevent unnecessary preparation of the record. The committee disagreed, reasoning that an appellant may be ready to give notice of settlement before being ready to abandon the appeal, e.g., because the settlement agreement may require the payment of money or other act before abandonment. Record preparation should therefore continue until the appellant files an abandonment; the superior court clerk will then "promptly" notify the reporter under rule 4(d)(4).

3. Robert S. Wolfe, Supervising Attorney, Court of Appeal, Fourth Appellate District, proposed that revised rule 21(a)(1) be changed to allow the presiding judge to order all parties—not just the appellant—to file a prehearing conference statement. The commentator noted that the respondent's input can be as useful as the appellant's, if not more so. The committee agreed and changed the provision to allow the presiding judge to order "one or more parties" to file the statement.

4. The State Bar Appellate Courts Committee and other commentators approved of the new provisions requiring reviewing court clerks to send the parties notice of oral argument at least 20 days before the argument date (revised rules 23(b), 29.2(c)), but recommended that the committee consider extending the period to 30 days. The committee considered prescribing a 30-day period, but concluded that a 20-day period strikes the proper balance between appellate counsel's need to prepare for oral argument and the reviewing court's need to manage its calendar efficiently. The committee also noted that because the rule states that the clerk must give "at least" 20 days' notice, it does not preclude a notice of more than 20 days, and it is the practice of the Supreme Court clerk to give at least 30 days' notice of argument.

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[3] A chart of all the comments received and the committee's responses is attached at page 104.

5. Los Angeles County Public Defender Michael P. Judge and other commentators urged clarification of whether the provision for requesting "calendar preference" applies only to preference in scheduling a case for oral argument or more broadly to preference in the entire decision-making process; the latter has been the practice of the reviewing courts under existing rule 19.3. The committee agreed: to clarify that the preference provision applies to the entire decision-making process, the provision has been assigned to a rule of its own at the outset of Part IV (revised rule 19).

6. Public Defender Michael P. Judge and other commentators also urged that revised rule 19 not require a *motion* for preference when the preference is provided by statute. The committee disagreed: in this respect the revised rule tracks existing rule 19.3, which draws no distinction between statutory and nonstatutory preferences but requires a motion in all cases. A motion relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. Neither the existing rule nor the revised rule, however, states that the reviewing court cannot order preference without a motion or purports to authorize the court to ignore a statutory preference, and the Advisory Committee Comment to the rule has been revised to avoid a contrary implication.

7. Joseph Lane, Clerk/Administrator of the Court of Appeal, Second Appellate District, urged reconsideration of revised rule 24(b)(5), which provides that if a Court of Appeal certifies its decision for publication after filing its decision and before the decision is final in that court, the finality period runs from the filing date of the order of publication. The commentator objected to the provision as a substantive change beyond the purview of the rules revision project, and further disagreed with it on the merits. The committee declined to reconsider the point: the provisions of revised rule 24(b)(5) on restarting the finality period after a postfiling order of publication are essentially the same as those previously circulated for public comment as a separate substantive proposal, and after reviewing the comments responding to that proposal the committee voted to recommend to the Judicial Council that the proposal be adopted.

8. The Los Angeles County Bar Association Appellate Courts Committee suggested that revised rule 25(b)(2) be changed to provide that an answer to a petition for rehearing cannot be filed unless the Court of Appeal requests an answer but the court will not grant a petition for rehearing without requesting an answer. The commentators argued that any finality problem can be solved by changing revised rule 24(b) to provide that if the court requests an answer the finality period runs from the date of the request; and because most petitions for rehearing are denied, these changes would save the parties time and expense and save the Court of Appeal time and effort. The committee declined to adopt the proposal, however, believing it deserves consideration but is beyond the purview of the present rules revision project.

9. Dennis A. Fischer, an appellate specialist, strongly approved of the revision as a whole but suggested that the grounds for review (revised rule 28(b)) should be expanded to reflect the Supreme Court practice of granting review for the purpose of transferring the case back to the Court of Appeal with instructions. The committee agreed, and the above-described revision of rule 28(b) makes the rule consistent with that practice.

10. Public Defender Michael P. Judge urged that the prohibition against Supreme Court review of a decision to deny transfer of a case within the appellate jurisdiction of the superior court (revised rule 28(a)(1)) should be lifted; rather, review should be allowed of *any* decision of the Appellate Division, particularly those that are published or certified to the Court of Appeal. The committee disagreed, noting that the provision is longstanding and recognized in the case law (see, e.g., *Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 517, fn.5) and that removing the prohibition is therefore beyond the purview of the present rules revision project.

11. The State Bar Appellate Courts Committee suggested that revised rule 29.3(b)(3) be changed to provide that, after an order dismissing review, a previously published Court of Appeal opinion would be either automatically republished or republished on request. The committee disagreed, reasoning that the proposed change would require a major amendment of rule 976(d) and of settled Supreme Court practice on the topic. That practice—sanctioned by both existing rule 29.4(c) and the revised rule—is to allow the court to use its discretion to order republication of the Court of Appeal opinion in appropriate cases. A proposal for automatic republication or republication on request is beyond the purview of the present rules revision project.

12. The First District Appellate Project and the federal public defenders of the four California districts of the U.S. District Court urged deletion of revised rule 29.4(b)(2)(C), which states that a Supreme Court denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final on filing. The commentators asserted that, at least in the case of petitions for habeas corpus, the practice of the Supreme Court is to treat such denials as final 30 days after filing, as a federal appellate court declared in *Bunney v. Mitchell* (9th Cir. 2001) 262 F.3d 973, 974. In the alternative, the commentators urged that the Advisory Committee Comment to the rule should state that the provision is a substantive change and should cite *Bunney*. The committee disagreed, noting that although the provision is new to the rules, it reflects the practice of the Supreme Court, since at least 1989, of declining to file petitions for rehearing after orders denying habeas corpus petitions without opinion. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989.)

Implementation Requirements and Costs

The clerks' offices of the Supreme Court and each of the appellate districts will need to review the body of appellate rules when they are adopted and make necessary adjustments in certain filing and calendaring procedures. Various standard operating procedures and forms used to notify the parties of the steps required to process the appeal will also need to be revised to conform to the new provisions. Costs to the Supreme Court, the Courts of Appeal, and the superior courts should otherwise be minimal.

Rules 19–29.9 are repealed; revised rules 19–28, 28.1, 28.2, 29, and 29.1–29.9, and new rules 36.1, 36.2, and 47.1 are adopted; and rules 5, 13, and 40 are amended, effective January 1, 2003, to read:

PART IV. Hearing and Decision in the Court of Appeal

Rule 19. Calendar preference

A party claiming calendar preference must promptly serve and file a motion for preference in the reviewing court.

Advisory Committee Comment

Revised rule 19 is former rule 19.3. Like the former rule, the revised rule requires a party claiming preference to file a motion for preference in the reviewing court. The revised rule fills a gap by requiring the motion to be served on the opposing party.

The motion requirement relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395).

Like the former rule, the revised rule is broad in scope: it includes motions for preference on the grounds (1) that a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official]), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., *id.*, §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198–1199); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).

The former rule required the motion to be filed "no later than the last day for filing the appellant's reply brief." In a substantive change, the revised rule deletes this provision because it is unduly restrictive: valid grounds for preference could arise after the filing of the reply brief, e.g., a diagnosis of terminal illness. Instead, the revised rule requires the motion to be filed "promptly," i.e., as soon as the ground for preference arises.

The former rule provided that "[f]ailure to comply with this rule may be deemed a waiver" of the preference claim. To the extent the quoted provision referred to a failure to comply with the former specific time limit for filing the motion, it is no longer relevant; and to the extent the provision referred more broadly to the reviewing court's authority to deny the motion on any appropriate ground, it is unnecessary. The provision is therefore deleted from the revised rule.

Rule 20. Settlement, abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

(1) If a civil case settles after a notice of appeal has been filed, the appellant must immediately serve and file a notice of settlement in the Court of

Appeal. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the appellant must also immediately serve a copy of the notice on the superior court clerk.

(2) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeal of the settlement by telephone or other expeditious method.

(b) Abandonment

(1) Before the record is filed in the Court of Appeal, the appellant may serve and file in superior court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) The superior court clerk must promptly notify the Court of Appeal and the parties of the abandonment or stipulation.

(c) Request to dismiss

(1) After the record is filed in the Court of Appeal, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.

(2) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

(d) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the Court of Appeal may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the minor's or the conservatee's best interests and to report its findings.

Advisory Committee Comment

Revised rule 20 is composed of former rules 19 and 19.5(e).

Subdivision (a). Revised rule 20(a)(1) fills a gap by requiring the appellant to *serve* any notice of settlement that it files. The change is intended to ensure that all parties agree that a settlement has in fact been reached.

The former rule provided that if the record had not been "completed and transmitted to the reviewing court" when the case settles, the appellant was required to (1) give a separate notice of settlement—i.e., in addition to the notice to the reviewing court—to the superior court clerk and (2)

"include proof thereof with the notice to the reviewing court." The second sentence of revised rule 20(a)(1) makes two substantive changes. First, the revised rule makes the date on which the requirement ends more precise by fixing it as the date on which the record is *filed* in the reviewing court. Second, the revised rule simplifies the process by requiring the appellant only to *serve a copy* of the notice to the reviewing court on the superior court clerk; that service accomplishes the same notification purpose as the former dual notice procedure. The same sentence fills a gap by recognizing that when the parties have not designated a clerk's or reporter's transcript (e.g., when they are proceeding by appendix under rule 5.1), there is no record for the superior court to prepare and hence no purpose in notifying that court of the settlement.

Former rule 19.5(e) required the appellant to give the reviewing court "telephone or other oral notice" if a prehearing conference or an oral argument was "imminent" at the time of settlement. The former rule thus neither provided for expeditious methods of giving notice other than orally nor did it define the relative term "imminent." Revised rule 20(a)(2) fills these gaps: the appellant may notify the reviewing court by telephone or "other expeditious method" of communication and must do so if the case settles "after the appellant receives a notice setting oral argument or a prehearing conference." The changes are substantive. In addition, by requiring that the appellant "also" give such expedited notice when appropriate, the revised rule intends the expedited notice to be not a substitute for but an addition to the normal written notice of settlement that the appellant must serve and file under revised subdivision (a)(1).

Subdivision (b). Revised rule 20(b) is former rule 19(a). Consistent with current practice, the revised rule distinguishes between an *abandonment* of the appeal effectuated by the parties before the record is filed in the reviewing court (revised subd. (b)) and a *dismissal* of the appeal ordered by the reviewing court after the record is filed (revised subd. (c)).

Former rule 19(c) placed on the superior court clerk the duty of notifying the respondent that the appellant had filed an abandonment. In a substantive change, revised rule 20(b) simplifies the process by relieving the clerk of that duty and instead requiring the appellant to *serve* any abandonment that it files.

Subdivision (c). Revised rule 20(c) is former rule 19(b). Revised subdivision (c)(1) provides that after the record is filed in the reviewing court an appellant wanting to terminate the appeal must either serve and file in that court a *request to dismiss* the appeal or file in that court a *stipulation* to dismiss signed by all parties to the appeal. The requirement that the appellant *serve* a request to dismiss is a substantive change intended to ensure that the respondent is promptly made aware that the appellant has asked the reviewing court to dismiss the appeal.

Revised subdivision (c)(2) confirms that the decision whether to dismiss the appeal after the record is filed is discretionary with the reviewing court.

Former subdivision (c). Former rule 19(c) required the appropriate clerk to notify the respondent of the filing of either a notice of abandonment or an order of dismissal. The first is now addressed in revised subdivision (b)(2), which requires the superior court clerk to notify all parties of an abandonment, and the second duplicates the requirement of revised rule 24(a)(1) that the Court of Appeal clerk send copies of all orders to the parties. The revised rule therefore deletes the provision as unnecessary.

Subdivision (d). Revised rule 20(d) is former rule 19(d) rewritten in contemporary language but without substantive change.

Rule 21. Prehearing conference

(a) Statement and conference

After the notice of appeal is filed in a civil case, the presiding justice may:

(1) order one or more parties to serve and file a concise statement describing the nature of the case and the issues presented; and

(2) order all necessary persons to attend a conference to consider a narrowing of the issues, settlement, and other relevant matters.

(b) Agreement

An agreement reached in a conference must be signed by the parties and filed. Unless the Court of Appeal orders otherwise, the agreement governs the appeal.

(c) Proceedings after conference

(1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or discussed in a conference under (a)(2) may be considered in any subsequent proceeding in the appeal other than in another conference.

(2) Neither the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal.

(d) Time to file brief

The time to file a party's brief under rule 15(a) is tolled from the date the Court of Appeal mails notice of the conference until the date it mails notice that the conference is concluded.

Advisory Committee Comment

Revised rule 21 is composed of subdivisions (a) through (d) of former rule 19.5.

Subdivision (a). Former rule 19.5(a) authorized the presiding justice only to order the *appellant* to file a statement describing the case and the issues for the prehearing conference. Because the respondent's input may be no less useful than the appellant's, revised rule 21(a)(1) authorizes the presiding justice more broadly to order "one or more parties" to file the statement in question. This is a substantive change.

Revised rule 21(a)(1) fills a gap by requiring each party to *serve* any statement it files. (Cf. rule 222(d) [pretrial settlement conference statement must be served on each party].) The change is

intended to promote the purpose of the conference by informing each party as soon as possible of parties' views of the case. The service requirement is not intended to prohibit the presiding justice from ordering the parties to submit additional, confidential material in appropriate cases.

Former rule 19.5(a)(2) specified that a justice of the reviewing court would preside at the conference. Revised rule 21(a) deletes that specification in order to conform to current practice, which allows nonjudicial personnel such as attorney volunteers also to preside.

Subdivision (b). Former rule 19.5(a) required agreements reached in a conference to be reduced to writing but did not permit them to be filed or to govern the appeal unless they were also "executed as a stipulation and approved by the conference judge." In a substantive change, revised rule 21(b) simplifies the process in two ways. First, it requires that the agreement be signed by the parties; this means the agreement must also be put in writing, and makes it the functional equivalent of an executed stipulation. Second, the revised rule deletes the requirement of approval by the conference judge (or other presiding officer) as not germane to the purpose of the rule, which is to encourage *the parties* to agree on settling the case or at least on simplifying the issues.

Subdivision (d). Former rule 19.5(d) provided that if a conference was to be held before the due date of the appellant's opening brief, the time to file that brief was extended for 30 days after the conference date. Revised rule 21(d) makes several substantive changes in this provision.

First, the provision is not limited to the time to file an *appellant's* opening brief but applies to the time to file *any* party's brief under rule 15(a).

Second, the time is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the revised rule simply *suspends* the running of that period; when the period resumes, the party will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Third, under former rule 19.5(d) the extension period began on the conference date. Under revised rule 21(d) the tolling period begins instead on the date the Court of Appeal *mails notice* to the parties that it has ordered the conference. This change is intended to promote the purpose of the subdivision, which is to suspend briefing as soon as the conference is ordered because of the possibility that it will result in settlement or simplification of issues.

Fourth, under the revised subdivision the tolling period continues "until the date [the Court of Appeal] mails notice that the conference is *concluded*" (italics added). This change is intended to accommodate the possibility that the conference may not conclude on the date it begins.

Fifth, whether or not the conference concludes on the date it begins, the revised subdivision requires the Court of Appeal clerk to mail the parties a notice that the conference is concluded. This change is intended to facilitate the calculation of the new briefing due dates.

Rule 22. Judicial notice; findings and evidence on appeal

(a) Judicial notice

(1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.

(2) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

(b) Findings on appeal

A party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion must include proposed findings.

(c) Evidence on appeal

(1) A party may move that the reviewing court take evidence.

(2) An order granting the motion must:

(A) state the issues on which evidence will be taken;

(B) specify whether the court, a justice, or a special master or referee will take the evidence; and

(C) give notice of the time and place for taking the evidence.

(3) For documentary evidence, a party may offer the original, a certified copy, or a photocopy. The court may admit the document in evidence without a hearing.

Advisory Committee Comment

Subdivision (a). Revised rule 22(a) is former rule 41.5.

Subdivision (b). Revised rule 22(b) is former rule 23(a). The former rule permitted counsel to present a request for appellate findings either by application or in a brief. Although such findings are rare, when they are made they can be dispositive of the appeal. For this reason, revised rule 22(b) requires any request for such findings to be presented by the more formal process of serving and filing a motion, with the consequent right of the adverse party to serve and file an opposition. (See rule 41.) The change is substantive.

The reference in revised rule 22(b) to Code of Civil Procedure section 909 is not a substantive change, because that statute also governed former rule 23(a) even though the former rule did not expressly refer to it.

Subdivision (c). Revised rule 22(c) is former rule 23(b). The former rule provided that if a party filed an application "in accordance with rule 41"—i.e., a motion—to present evidence in the appeal, the Court of Appeal had discretion to "grant or deny the [motion] in whole or in part, and subject to such conditions as it may deem proper." Because the court has that discretion in any event, revised rule 22(c) deletes the provision as unnecessary.

Revised rule 22(c)(3) resolves an ambiguity in the former rule by expressly providing that the court may admit a document into evidence "without a hearing."

Rule 23. Oral argument and submission of the cause

(a) Frequency and location of argument

(1) Each Court of Appeal and division must hold a session at least once each quarter.

(2) A Court of Appeal may hold sessions at places in its district other than the court's permanent location.

(3) Subject to approval by the Chair of the Judicial Council, a Court of Appeal may hold a session in another district to hear a cause transferred to it from that district.

(b) Notice of argument

The Court of Appeal clerk must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(c) Conduct of argument

Unless the court provides otherwise by local rule or order:

(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.

(2) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae—on written request—is granted permission to argue, the court may apportion or expand the time.

(3) Only one counsel may argue for each separately represented party.

(d) When the cause is submitted

(1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(2) If the Supreme Court transfers a cause to the Court of Appeal and supplemental briefs may be filed under rule 13(b), the cause is submitted when the last such brief is or could be timely filed. The Court of Appeal may order the cause submitted at an earlier time if the parties so stipulate.

(e) Vacating submission

(1) Except as provided in (2), the court may vacate submission only by an order stating its reasons and setting a timetable for resubmission.

(2) If a cause is submitted under (d)(2), an order setting oral argument vacates submission, and the cause is resubmitted when the court has heard oral argument or approved its waiver.

Advisory Committee Comment

Revised rule 23 combines provisions relating to oral argument and submission of the cause in the Courts of Appeal that appeared in former rules 21, 21.5, 22.1, and 22.5.

Subdivision (a). Former rule 21.5 directed each Court of Appeal to "adopt a written policy and procedure" for holding special sessions in places other than the court's permanent location. The former rule also imposed certain minimum conditions on the holding of special sessions. In a substantive change, revised rule 23(a)(2) simplifies the process by giving each Court of Appeal discretion to determine whether, when, and where to hold such special sessions and the conditions under which they will be held.

Former rule 21(a) provided that a motion filed in the Court of Appeal would be decided without oral argument but could be placed on calendar by the presiding justice. The revised rule deletes this provision because the topic is covered in the general rule on motions in the reviewing court. (See rule 41.)

Subdivision (b). Former rule 21(c) required the reviewing court clerk to give the parties written notice of the time and place of oral argument "[w]hen an appeal is set for hearing." Revised rule 23(b) requires instead that the clerk must send the notice at least 20 days before the argument date. This is a substantive change intended (1) to enhance the benefit of oral argument to the reviewing court by ensuring that the parties have adequate time to prepare, (2) to reduce the number of counsel's calendar conflicts with other courts, and (3) to promote consistency between Courts of Appeal and districts on this important step in the appellate process. Because even 20 days' notice may be impractical or impossible in certain circumstances, the revised rule also authorizes the presiding justice to shorten the period for good cause, with immediate notice to the parties.

Former rule 21(c) imposed on the reviewing court clerk the duty to include in the notice of hearing a reminder that the parties must file a notice designating exhibits to be transmitted to the reviewing court (see former rule 10(d)). The revised rule relieves the clerk of this duty because the reminder is no longer necessary: under revised rule 18(a), the time for the parties to file a notice in the superior court designating exhibits to be transmitted expires 10 days after the last respondent's or cross-respondent's brief is filed or due, and that event ordinarily occurs before the reviewing court clerk sends the notice setting oral argument.

Subdivision (c). Revised rule 23(c) is former rule 22.1, rearranged and clarified; no substantive change is intended.

Subdivisions (d) and (e). Revised rule 23(d) and (e) are former rule 22.5.

Revised subdivision (d)(2) is former rule 22.5(c). The former provision declared that if a cause that a Court of Appeal had previously decided by opinion was transferred to it by the Supreme Court, the cause was deemed submitted on one of three dates set forth in three successive provisions. Each of these provisions, however, presented problems of interpretation or application.

The first submission date under the former rule was 60 days after the last supplemental brief was timely filed. (Former rule 22.5(c)(i).) But the parties have up to 40 days in which to file such briefs (revised rule 13(a)(4)), and the Court of Appeal then has 90 days after submission in which to file its opinion (Cal. Const., art. VI, § 19), making a total of 190 allowable days between the order of transfer and the resulting opinion. A delay of that length can cause hardship to the parties. By definition, all appeals governed by revised subdivision (d)(2) have spent time not only in the Court of Appeal but also in the Supreme Court, and therefore have been pending longer than other cases in the Court of Appeal. They should therefore be given expedited treatment if possible. Moreover, the delay is particularly unjustifiable in view of the nature of the cases involved: the majority are either "grant and hold" cases (see revised rule 28.2(c)) that the Supreme Court transfers to the Court of Appeal for it to apply the Supreme Court's decision in a lead case on the same issue (see revised rule 29.3(d)) or cases in which the Supreme Court decides the issue on which review was granted and directs the Court of Appeal to resolve one or more undecided, usually secondary, issues (see revised rule 29.3(c)). In either event the case is unlikely to be complicated; if it is complicated, the Court of Appeal may vacate submission by order (revised subd. (e)(1)) or by setting the case for oral argument (revised subd. (e)(2)).

The second submission date under the former rule was "60 days after receipt [by the Court of Appeal] of the record and of the Supreme Court's transfer order," in cases in which no timely supplemental briefs were filed. (Former rule 22.5(c)(ii).) The quoted language was ambiguous because there is ordinarily no single date when the Court of Appeal receives both the transfer order and the record. Rather, in the vast majority of cases it is the practice of the Supreme Court to send the transfer order immediately after it is filed but to send the record a few days later.

The former rule could have been read to mean that the submission date was 60 days after the later of receipt of the record or receipt of the transfer order; or the reference to the transfer order could have been read out of the rule as superfluous, because such orders are always received before the record. But neither solution would have eliminated an unintended consequence of the former rule—i.e., that it had the effect of backdating the submission and arbitrarily shortening the time available to the Court of Appeal to decide the matter. It had this effect because the provision applied only if no timely supplemental briefs were filed, and the Court of Appeal would probably not know whether such briefs would be filed until the end of the first 20-day period following the Supreme Court transfer order. If no brief was filed, the submission date was 60 days after receipt of the record and transfer order. But in most cases those triggering events had taken place within a few days—5, for example—after the start of the first 20-day briefing period. Accordingly, in such cases the submission date was not in fact a total of 80 days after the transfer order but—in the same example—15 days less.

The third submission date under the former rule was the same as the date provided by subdivision (a) of the former rule and applied in cases in which "oral argument is scheduled within either of the preceding times." (Former rule 22.5(c)(iii).) The quoted language was ambiguous

insofar as it could mean either that oral argument was set or that it was held within one of the 60-day periods.

In a substantive change intended to avoid the foregoing problems and simplify the process generally, revised rule 23(d)(2) deletes the cited provisions and provides instead that if the Supreme Court transfers to the Court of Appeal a cause in which "supplemental briefs may be filed under rule 13(b)"—i.e., a cause that the Court of Appeal has previously decided by opinion—the cause is submitted when the last supplemental brief is, or could be, timely filed under rule 13(b).

Former rule 22.5(c) also granted the Court of Appeal discretion to submit the cause sooner than the rule provided, but subjected the exercise of that discretion to a condition, i.e., early submission was required to be "consistent with rule 29.4 and with any instructions of the Supreme Court." The revised rule deletes the condition as unnecessary because the Court of Appeal is required in any event to comply with other rules of court and with any Supreme Court instructions. Instead, the revised rule recognizes that the parties may want to expedite the final resolution of an appeal that has already spent time in both the Court of Appeal and the Supreme Court; for that reason, revised subdivision (d)(2) grants the Court of Appeal discretion to submit such a cause at an earlier time if the parties so stipulate. The change is substantive.

Revised subdivision (e)(1) is former rule 22.5(b). The requirement that an order vacating submission set a timetable for resubmission is implied in the former rule and is consistent with Supreme Court practice.

Revised subdivision (e)(2) is a substantive change intended to supplement the operation of revised subdivision (d)(2).

Rule 24. Filing, finality, and modification of decision

(a) Filing the decision

(1) The Court of Appeal clerk must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(2) A decision by opinion must identify the participating justices, including the author of the majority opinion and of any concurring or dissenting opinion, or the justices participating in a "by the court" opinion.

(b) Finality of decision

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

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

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

(B) the denial of a petition for writ of supersedeas;

(C) the denial of an application for bail or to reduce bail pending appeal;

(D) the denial of a transfer of a case within the appellate jurisdiction of the superior court; and

(E) the dismissal of an appeal on request or stipulation.

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

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

(5) 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.

(c) Modification of decision

(1) A reviewing court may modify a decision until the decision is final in that court. If the clerk's office is closed on the date of finality, the court may modify the decision on the next day the clerk's office is open.

(2) An order modifying an opinion must state whether it changes the appellate judgment. A modification that does not change the appellate judgment does not extend the finality date of the decision. If a modification changes the appellate judgment, the finality period runs from the filing date of the modification order.

(d) Consent to increase or decrease in amount of judgment

If a Court of Appeal decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (b), the party serves and files two copies of a consent in the Court of Appeal. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one file-stamped copy of the consent to the superior court with the remittitur.

Advisory Committee Comment

Subdivision (a). Revised rule 24(a)(2) is former rule 23.5.

Subdivision (b). As used in revised rule 24(b)(1), "decision" includes all interlocutory orders of the Court of Appeal. (See Advisory Committee Comment to revised rule 28(d).)

The first sentence of revised subdivision (b)(4) restates a provision of former rule 24(a); the second sentence is new and implements the purpose of the first.

Revised subdivision (b)(5) is new: it provides that a postfiling decision of the Court of Appeal to publish its opinion in whole under rule 976(c) or in part under rule 976.1(a) restarts the 30-day finality period. This substantive change is based on rule 40-2 of the United States Circuit Rules (9th Cir.). It is intended to allow parties sufficient time to petition the Court of Appeal for rehearing and/or the Supreme Court for review—and to allow potential amici curiae sufficient time to express their views—when the Court of Appeal changes the publication status of an opinion. The rule thus recognizes that the publication status of an opinion may affect a party's decision whether to file a petition for rehearing and/or a petition for review.

Subdivision (d). Former rule 24(c) was silent on the question whether the finality period is affected when a party files a consent to an increase or decrease in the amount of the judgment that results in affirmance. Revised subdivision (d) fills that gap by providing that the filing of the consent restarts the finality period. This substantive change is intended to allow the opposing parties sufficient time to petition for rehearing and/or review when it becomes clear that the judgment will be affirmed. The provision is consistent with revised subdivisions (b)(5) (finality runs from filing date of belated publication order) and (c)(2) (finality runs from filing date of modification order changing the appellate judgment).

Rule 25. Rehearing

(a) Power to order rehearing

(1) On petition of a party or on its own motion, a reviewing court may order rehearing of any decision that is not final in that court on filing.

(2) An order for rehearing must be filed before the decision is final. If the clerk's office is closed on the date of finality, the court may file the order on the next day the clerk's office is open.

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after:

(A) the filing of the decision;

(B) a publication order restarting the finality period under rule 24(b)(5), if the party has not already filed a petition for rehearing;

(C) a modification order changing the appellate judgment under rule 24(c)(2); or

(D) the filing of a consent under rule 24(d).

(2) Any answer to the petition must be served and filed within 8 days after the petition is filed.

(3) The petition and answer must comply with the relevant provisions of rule 14.

(4) Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.

(c) No extension of time

The time for granting or denying a petition for rehearing in the Court of Appeal may not be extended. If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(d) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Court of Appeal.

Advisory Committee Comment

Revised rule 25 is derived from former rule 27.

Subdivision (a). Former rule 27(a) purported to list the types of cases in which the Court of Appeal could not order rehearing, but the list was incomplete. It listed only a Court of Appeal's

denial of a writ petition without issuing an alternative writ or order to show cause and a Court of Appeal's denial of a transfer of a case from a municipal court. What these two have in common is that they exemplify decisions that are final in the Court of Appeal on filing, and if a decision is final on filing there is no opportunity to file a petition for rehearing. But there are three more types of cases that are final in the Court of Appeal on filing—denial of supersedeas, denial of bail, and dismissal on request (see revised rule 24(b)(2)(B), (C), (E))—and in each the court likewise declines to entertain a petition for rehearing.

To fill these gaps, revised rule 25(a)(1) provides simply that a Court of Appeal may order rehearing of any decision that is not final in that court on filing, i.e., under revised rule 24. The change is not a substantive.

The second sentence of revised subdivision (a)(2) is derived from former rule 24(a).

Subdivision (b). The provisions of revised rule 25(b)(1), (2), and (3) are derived from subdivisions (b), (c), and (d), respectively, of former rule 27.

Former rule 27(b) provided only that a petition for rehearing could be filed within 15 days after the filing of the decision. In a substantive change, revised rule 25(b)(1) provides that a petition for rehearing may also be filed within 15 days after a postfiling order of the Court of Appeal publishing its opinion, a modification order changing the appellate judgment, or the filing of a consent to an increase or decrease in the amount of a money judgment; all are events that restart the 30-day finality period under revised rule 24. However, a party that has already filed a petition for rehearing may not file a second petition for rehearing after a publication order. (Revised subd. (b)(1)(B).)

Revised subdivision (b)(2) changes the time for filing an answer to a petition for rehearing from 23 days after the *decision* is filed to 8 days after the *petition* is filed. It is not intended to be a substantive change: in the common situation in which the petition is filed on the 15th day after the decision is filed, the time to file the answer will be the same under both the former and revised rules. The change achieves a uniform rule governing the time to file an answer, whether the petition for rehearing is filed within 15 days after the decision or at a later time, e.g., after a modification of the appellate judgment or a postfiling publication order.

Revised subdivision (b)(4) restates a provision of rule 45(c).

Subdivision (c). The first sentence of revised rule 25(c) restates a provision appearing in rule 45(c). The second sentence restates a provision of former rule 27(e); in doing so, the revised subdivision deletes as superfluous the directive to the clerk to "enter a notation in the register" that a petition for rehearing is deemed denied because it was not ruled on before finality. It is assumed that in the rare case in which the situation may arise the clerk will routinely enter such a notation. The change is not substantive.

Subdivision (d). For purposes of completeness, revised rule 25(d) states the case law on the effect of ordering rehearing. It is not a substantive change.

Rule 26. Remittitur

(a) Proceedings requiring issuance of remittitur

A Court of Appeal must issue a remittitur after a decision in:

(1) an appeal; or

(2) an original proceeding, except when the court denies a writ petition without issuing an alternative writ or order to show cause.

(b) Clerk's duties

(1) If a Court of Appeal decision is not reviewed by the Supreme Court:

(A) the Court of Appeal clerk must issue a remittitur immediately after the Supreme Court denies review, or the period for granting review expires, or the court dismisses review under rule 29.3(b); and

(B) the clerk must send the lower court or tribunal the Court of Appeal remittitur and a file-stamped copy of the opinion or order.

(2) After Supreme Court review of a Court of Appeal decision:

(A) on receiving the Supreme Court remittitur, the Court of Appeal clerk must issue a remittitur immediately if there will be no further proceedings in the Court of Appeal; and

(B) the clerk must send the lower court or tribunal the Court of Appeal remittitur, a copy of the Supreme Court remittitur, and a file-stamped copy of the Supreme Court opinion or order.

(c) Immediate issuance, stay, and recall

(1) A Court of Appeal may direct immediate issuance of a remittitur only on the parties' stipulation or on dismissal of the appeal under rule 20(c)(2).

(2) On a party's or its own motion or on stipulation, and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

(d) Notice

(1) The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

(2) If, without requiring further proceedings in the trial court, the decision changes the length of a state prison sentence, applicable credits, or the maximum permissible confinement to the Youth Authority, the clerk must send a copy of the remittitur and opinion or order to the Department of Corrections or the Youth Authority.

Advisory Committee Comment

Revised rule 26 is derived from former rule 25.

Subdivision (a). In specifying the cases that require issuance of a remittitur, former rule 25(a) provided as follows with regard to original proceedings in the reviewing court: "(3) any original proceeding in which an alternative writ or order to show cause has been issued addressed to a lower court, board or tribunal; or (4) any original proceeding determining on the merits the validity of the decision of a lower court, board or tribunal without issuance of an order to show cause or alternative writ. A remittitur shall not be issued when an original petition is summarily denied." This provision meant, in effect, that there had to be a remittitur in an original proceeding in which the court issued an alternative writ or order to show cause and in an original proceeding in which the court summarily granted writ relief, but not in an original proceeding in which the court summarily denied writ relief. Revised rule 26(a)(2) restates that provision in simpler terms; it is not intended to be a substantive change.

Subdivision (b). Revised rule 26(b)(1)(A) fills a gap by directing the Court of Appeal clerk to issue a remittitur when the Supreme Court denies review. The provision states current Court of Appeal practice; it is not a substantive change.

Former rule 25(a) provided that after Supreme Court review of a Court of Appeal decision, the Court of Appeal was required to issue its remittitur either (1) immediately, if the result was an unqualified affirmance or reversal, or (2) after the finality of "such further proceedings as are mandated by the Supreme Court." The latter wording caused uncertainty when the Supreme Court did not expressly mandate further proceedings but additional issues remained for the Court of Appeal to resolve on remand. Revised rule 26(b)(2)(A) clarifies that if the Court of Appeal conducts postreview proceedings—whether or not expressly mandated by the Supreme Court—the Court of Appeal will issue a new remittitur either (1) under revised subdivision (b)(2)(A) if the decision is subsequently reviewed by the Supreme Court or (2) under revised subdivision (b)(1)(A) if it is not.

Former rule 25(a) directed the Court of Appeal clerk to send the remittitur and "a certified copy" of the court's opinion to the lower court. It was the practice of most of the Courts of Appeal to comply with this directive by issuing a remittitur in which the clerk declared that he or she "certified" that the opinion attached to the remittitur was a copy of the original opinion; the remittitur was signed by the clerk and stamped with the court's seal, but the attached opinion was not

stamped with that seal. Although the revised rule does not use the word "certified" because of its possible ambiguity, the rule is not intended to change this practice.

Revised rule 26(b)(1) requires the Court of Appeal clerk to file-stamp the copy of the opinion attached to the remittitur. Although the former rule did not expressly require this step, it is not a substantive change: file-stamping such opinions is the general practice in the Courts of Appeal.

Subdivision (c). Former rule 25(c) was silent on the question whether a party wanting the court to stay the issuance of its remittitur was required to serve and file a motion for that relief. Revised rule 26(c)(2), which combines the provisions for both staying and recalling a remittitur, makes it clear that such a motion is necessary. No substantive change is intended.

Former rule 25(d) did not expressly require good cause for a reviewing court to recall a remittitur on a party's or its own motion. In accord with the case law, revised rule 26(c)(2) states this requirement expressly; it is not a substantive change. Also in accord with the case law, "good cause" as used in revised subdivision (c)(2) has substantially different meanings depending on whether it is applied to a stay or to a recall of a remittitur. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 735–741, pp. 764–771.)

For purposes of completeness, revised subdivision (c)(3) states the case law on the effect of the recall of a remittitur. It is not a substantive change.

Subdivision (d). Revised rule 26(d)(1) requires the reviewing court clerk, in sending the parties notice of issuance of the remittitur, to show the date the remittitur was entered. Although the former rule did not expressly require that showing, it is current practice to do so; the change is therefore not substantive.

Rule 27. Costs and sanctions

(a) Right to costs

(1) Except as provided in this rule, the party prevailing in the Court of Appeal in a civil case is entitled to costs on appeal.

(2) The prevailing party is the respondent if the Court of Appeal affirms the judgment without modification or dismisses the appeal. The prevailing party is the appellant if the court reverses the judgment in its entirety.

(3) If the court reverses the judgment in part or modifies it, or if there is more than one notice of appeal, the opinion must specify the award or denial of costs.

(4) If the interests of justice require it, the court may award or deny costs as it deems proper.

(5) In probate cases, the prevailing party must be awarded costs unless the Court of Appeal orders otherwise, but the superior court must decide who will pay the award.

(b) Judgment for costs

(1) The Court of Appeal clerk must enter on the record, and insert in the remittitur, a judgment awarding costs to the prevailing party under (a)(2) or as directed by the court under (a)(3) or (a)(4).

(2) If the clerk fails to enter judgment for costs, the court may recall the remittitur for correction on its own motion, or on a party's motion made not later than 30 days after the remittitur issues.

(c) Recoverable costs

(1) A party may recover only the following costs, if reasonable:

(A) the amount the party paid for any portion of the record, whether an original or a copy or both. The cost to copy parts of a prior record under rule 10(b)(2) is not recoverable unless the Court of Appeal ordered the copying;

(B) the cost to produce additional evidence on appeal;

(C) the costs to notarize, serve, mail, and file the record, briefs, and other papers;

(D) the cost to print and reproduce any brief, including any petition for rehearing or review, answer, or reply; and

(E) the cost to procure a surety bond, including the premium and the cost to obtain a letter of credit as collateral, unless the trial court determines the bond was unnecessary.

(2) Unless the court orders otherwise, an award of costs neither includes attorney fees on appeal nor precludes a party from seeking them under rule 870.2.

(d) Procedure for claiming or opposing costs

(1) Within 40 days after the clerk sends notice of issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 870.

(2) A party may serve and file a motion in the superior court to strike or tax costs claimed under (1) in the manner required by rule 870.

(3) An award of costs is enforceable as a money judgment.

(e) Sanctions

(1) On a party's or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs, on a party or an attorney for:

(A) taking a frivolous appeal or appealing solely to cause delay;

(B) including in the record any matter not reasonably material to the appeal's determination; or

(C) committing any other unreasonable violation of these rules.

(2) A party's motion under (1) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due. If a party moves to dismiss the appeal, with or without a sanctions motion, and the motion to dismiss is not granted, the party may move for sanctions within 10 days after the appellant's reply brief is due.

(3) The court must give notice in writing if it is considering imposing sanctions. Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

(4) Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

Advisory Committee Comment

Revised rule 27 is derived from former rule 26. Like the former rule, the revised rule applies only to costs in appeals in ordinary civil cases; it is not intended to expand the categories of appeals subject to the award of costs.

Subdivision (a). Former rule 26(a)(3) required the Court of Appeal to specify the award or denial of costs in its opinion if there was more than one notice of appeal or if the judgment was modified or reversed in part *or in its entirety*; revised rule 27(a)(3) no longer requires the court's opinion to specify costs if the judgment is reversed in its entirety. This is a substantive change

intended to relieve the court of the burden of specifying costs in those cases—full affirmance or full reversal—in which it is usually clear who is the prevailing party. That party is entitled to costs under the general rule of revised subdivision (a)(1) and (2), and should not have to bear the risk of a failure to specify such costs. In a case in which a different award may be proper, the Court of Appeal has the discretion to so specify under revised subdivision (a)(4).

Subdivision (c). Former rule 26(c) permitted recovery of certain listed costs if they were "reasonable," but did not expressly require other listed costs to be "reasonable" in order to be recoverable. The failure to require this appears to be an oversight, which revised rule 27(c)(1) rectifies by requiring *all* recoverable costs to be reasonable. No substantive change is intended.

Former rule 26(c)(1) limited the recoverable cost of record preparation to the cost of "an original and one copy . . . if the party is the appellant, or one copy of the record if the party is the respondent." The provision failed to authorize a respondent to recover the costs it incurred for portions of the original record, e.g., the respondent's appendix under revised rule 5.1 or transcripts of additional oral proceedings designated under revised rule 4(a)(2). In a substantive change intended to fill this gap, revised rule 27(c)(1)(A) provides more generally that any party entitled to costs may recover the amount it actually paid for any portion of the record, whether an original or a copy or both. Like the former rule, the revised subdivision is intended to refer not only to a normal record prepared by the reporter and the clerk under rules 4 and 5 but also, for example, to an appendix prepared by a party under rule 5.1 and to a superior court file to which the parties stipulate under rule 5.2.

Former rule 5(b) required a respondent to pay the cost of copying into the record any exhibits it designated for that purpose, and former rule 26(c)(1) barred recovery of that cost. Because revised rule 5 no longer imposes that cost on a respondent, revised rule 27(c)(1)(A) deletes the latter provision of former rule 26 as obsolete.

Former rule 26(c)(1) barred recovery of the cost of any method of record preparation in excess of the cost of preparation "in typewriting" unless the parties stipulated otherwise. Revised rule 27(c)(1)(A) deletes this limitation as obsolete in light of current methods of record preparation.

Subdivision (d). Revised rule 27(d)(2), like former rule 26(d), provides the procedure for a party to move in the trial court to strike or tax costs that another party has claimed under revised subdivision (d)(1). It is not intended that the trial court's authority to strike or tax unreasonable costs be limited by any failure of the moving party to move for sanctions in the Court of Appeal under revised subdivision (e): a party may seek to strike or tax costs on the ground that an opponent included unnecessary materials in the record even if the party did not move the Court of Appeal to sanction the opponent under revised subdivision (e)(1)(B). No substantive change is intended.

Subdivision (e). Former rule 26(e) omitted to authorize the Court of Appeal to impose sanctions on its own motion. Consistent with current practice, revised rule 27(e)(1) expressly recognizes the court's authority to do so. No substantive change is intended.

Former rule 26(e) required that a party's motion for monetary sanctions be served and filed concurrently with any motion by the same party to dismiss the appeal, but in no event later than 10 days after the appellant's reply brief is due. The former rule, however, failed to prescribe the time limit for a respondent to serve and file a sanctions motion when the appellant requested that the appeal be voluntarily dismissed under what is now revised rule 20(c). Revised rule 27(e)(2) fills this gap by providing more generally that any party's sanctions motion must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due.

PART V. Hearing and Decision in the Supreme Court

Rule 28. Petition for review

(a) Right to file a petition, answer, or reply

(1) A party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, except the denial of a transfer of a case within the appellate jurisdiction of the superior court.

(2) A party may file an answer responding to the issues raised in the petition. In the answer, the party may ask the court to address additional issues if it grants review.

(3) The petitioner may file a reply only if the answer raises additional issues for review.

(b) Grounds for review

The Supreme Court may order review of a Court of Appeal decision:

(1) when necessary to secure uniformity of decision or to settle an important question of law;

(2) when the Court of Appeal lacked jurisdiction;

(3) when the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or

(4) for the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

(c) Limits of review

(1) As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal.

(2) A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing.

(d) Petitions in nonconsolidated proceedings

If the Court of Appeal decides an appeal and denies a related petition for writ of habeas corpus without issuing an order to show cause and without formally consolidating the two proceedings, a party seeking review of both decisions must file a separate petition for review in each proceeding.

(e) Time to serve and file

(1) A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court under rule 24. For purposes of this rule, the date of finality is not extended if it falls on a day on which the clerk's office is closed.

(2) The time to file a petition for review may not be extended, but the Chief Justice may relieve a party from a failure to file a timely petition for review if the time for the court to order review on its own motion has not expired.

(3) If a petition for review is presented for filing before the Court of Appeal decision is final in that court, the Supreme Court clerk must accept it and file it on the day after finality.

(4) Any answer to the petition must be served and filed within 20 days after the petition is filed.

(5) Any reply to the answer must be served and filed within 10 days after the answer is filed.

(f) Additional requirements

(1) The proof of service must name each party represented by each attorney served.

(2) The petition must also be served on the superior court clerk and the Court of Appeal clerk.

(3) In an unfair competition proceeding to which Business and Professions Code section 17209 applies, the petition must also be served as required by rule 15(e)(2).

(4) The Supreme Court clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service

within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(g) Amicus curiae letters

(1) Any person or entity wanting to support or oppose a petition for review or for an original writ must serve on all parties and send to the Supreme Court an amicus curiae letter rather than a brief.

(2) The letter must describe the interest of the amicus curiae. Any matter attached to the letter or incorporated by reference must comply with rule 28.1(f).

(3) Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under rule 29.1(f).

Advisory Committee Comment

Revised rule 28 and new rules 28.1 and 28.2 group in logical sequence all the provisions on the subject of ordering review in the Supreme Court (former rules 28 and 29), but make few substantive changes.

Revised rule 28 collects in one rule the basic procedural requirements for filing a petition for review, answer, or reply, i.e., who may file and what may be reviewed, the grounds and limits of review, when to serve and file, additional service, and amicus curiae letters. The requirements of form and content are collected in new rule 28.1.

Subdivision (a). Former rule 28(a) began by providing for an event that occurs only infrequently—an order of review on the Supreme Court's own motion. To focus the rules on the far more common practice of granting review on petition of a party, revised rule 28 is limited to that subject; review on the court's own motion is addressed in revised rule 28.2(d).

Although subdivision (a) of the former rule authorized the Supreme Court to review only "decisions" of the Court of Appeal, the Advisory Committee Comment to the 1985 revision of the rule explained that under the rule "[t]he Supreme Court may review Court of Appeal interlocutory orders and orders summarily denying writs within their original jurisdiction, as well as decision[s] on the merits resolving the ultimate outcome of the cause." Under revised rule 24(b)(2)(A), a summary denial of a writ petition is a "decision" of the Court of Appeal; but no rule tells litigants that for purposes of this rule an interlocutory order of the Court of Appeal—such as an order denying an application to appoint counsel, to augment the record, or to allow oral argument—is also a "decision" that may be challenged by petition for review. To make this point clear, revised subdivision (a)(1) expressly states that a party may file a petition to review interlocutory orders of the Court of Appeal. It is not a substantive change.

Subdivision (b). Revised subdivision (b)(1)–(3) restates without substantive change the provisions of former rule 29(a). Revised subdivision (b)(4) fills a gap by recognizing the Supreme Court's longstanding practice of ordering review, in appropriate cases, *not* to decide the case itself but for the purpose of transferring the case to the Court of Appeal with instructions to conduct

certain further proceedings (e.g., with instructions to issue an alternative writ or order to show cause returnable before the Court of Appeal or the superior court).

Subdivision (c). Revised subdivision (c) restates without substantive change the provisions of former rule 29(b).

Subdivision (d). Revised subdivision (d) fills a gap by recognizing the Supreme Court's practice of requiring separate petitions for review when a party seeks review of both a decision in an appeal and a decision denying a related petition for habeas corpus without an order to show cause *if the Court of Appeal did not formally consolidate the two proceedings.* If the Court of Appeal did formally consolidate the proceedings, a single petition for review must be filed.

Subdivision (e). Revised subdivision (e)(1) provides that a petition for review must be served and filed within 10 days after the Court of Appeal decision is *final in that court.* Finality is governed by revised rule 24. Revised rule 24(b), like former rule 24(a), declares the general rule that a Court of Appeal decision is final in that court 30 days after filing. The provision then carves out five specific exceptions—decisions that it declares to be final immediately on filing (see revised rule 24(b)(2)). The plain implication is that all other Court of Appeal orders—specifically, interlocutory orders that may be the subject of a petition for review—are *not* final on filing. This implication is confirmed by current practice, in which parties may be allowed to apply for—and the Courts of Appeal may grant—reconsideration of such interlocutory orders; reconsideration, of course, would be impermissible if the orders were in fact final on filing. Nevertheless, the 1985 Appellate Advisory Committee Comment to rule 28 suggested that for purposes of determining when the 10-day period for petitioning for review begins, interlocutory Court of Appeal orders "may also be deemed final forthwith." Revised rule 28 does not adopt that suggestion, because to do so would create a trap for the unwary: by the time a party had applied for reconsideration of an interlocutory order and the Court of Appeal had denied relief, the 10-day period for petitioning for review could well have expired. Accordingly, under revised rule 28(e)(1) the time of finality of all Court of Appeal decisions, including interlocutory orders, is to be determined by reference to revised rule 24, the general rule on the subject.

Paragraph (2) of revised subdivision (e) provides that the time to file a petition for review may not be extended, but the Chief Justice may relieve a party from a failure to file a timely petition under certain circumstances. These provisions are derived from rule 45(c) and have been moved to revised rule 28 to inform litigants as soon as possible of the consequences of failing to file a timely petition for review. Under settled Supreme Court practice, an order either granting or denying relief from failure to file a timely petition for review may be signed by the Chief Justice alone.

Contrary to paragraph (2) of revised subdivision (e), paragraphs (4) and (5) do not prohibit extending the time to file an answer or reply; rule 45(c) expressly forbids an extension of time only with respect to the petition for review, and hence by clear negative implication permits an application to extend the time to file an answer or reply under rule 43.

Subdivision (f). Revised subdivision (f)(2), like former subdivision (b), requires that the petition (but not an answer or reply) be served on the Court of Appeal clerk. To assist litigants, the revised subdivision also states explicitly what is impliedly required by rule 15(c), i.e., that the petition must also be served on the superior court clerk (for delivery to the trial judge).

Subdivision (g). Former subdivision (f) purported to require the Supreme Court clerk to *lodge* amicus curiae letters and to authorize the court in its discretion to *file* such letters. Revised subdivision (g) deletes these terms to reflect current Supreme Court practice, in which amicus curiae letters are neither lodged nor filed but simply marked "received."

Former subdivision (f) provided that the Supreme Court "may, in its discretion, elect to consider the letter . . . ." Because the court has that discretion in any event, the revised subdivision deletes the provision as unnecessary.

Former subdivision (e). The last two sentences of former subdivision (e)(2) provided in effect that the Supreme Court need consider only the issues raised in a petition or answer or fairly included in them. The point is now addressed in revised rule 29, which deals with issues on review.

Former subdivision (g). Former subdivision (g) purported to list the causes in which the Supreme Court would or would not hear oral argument after granting review. A portion of the list, however, was inconsistent with Supreme Court practice, and the remainder was superfluous. It is therefore deleted from the revised rule; no substantive change is intended.

Footnote 1 to former rule 28. As noted in footnote 1 to former rule 28, for purposes of this rule a "decision" of the Court of Appeal does not include an order denying a petition for rehearing, unless in the same order the Court of Appeal modifies its filed decision so as to change its appellate judgment. (See revised rule 24(c)(2).)

Rule 28.1. Form and contents of petition, answer, and reply

(a) In general

Except as provided in this rule, a petition for review, answer, and reply must comply with the relevant provisions of rule 14.

(b) Contents of a petition

(1) The body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail.

(2) The petition must explain how the case presents a ground for review under rule 28(b).

(3) If a petition for rehearing could have been filed in the Court of Appeal, the petition for review must state whether it was filed and, if so, how the court ruled.

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

(5) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

(c) Contents of an answer

An answer that raises additional issues for review must contain a concise, nonargumentative statement of those issues, framing them in terms of the facts of the case but without unnecessary detail.

(d) Contents of a reply

A reply, if any, must be limited to addressing additional issues for review raised in an answer.

(e) Length

(1) If produced on a computer, a petition or answer must not exceed 8,400 words and a reply must not exceed 4,200 words. Such a petition, answer, or reply must include a certificate by appellate counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(2) If typewritten, a petition or answer must not exceed 30 pages and a reply must not exceed 15 pages.

(3) The tables, the Court of Appeal opinion, a certificate under (1), and any attachment under (f)(1) are excluded from the limits stated in (1) and (2).

(4) On application and for good cause, the Chief Justice may permit a longer petition, answer, reply, or attachment.

(f) Attachments and incorporation by reference

(1) No attachments are permitted except an opinion or order from which the party seeks relief and exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant and do not exceed a total of 10 pages.

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

Advisory Committee Comment

New rule 28.1 collects in one rule the provisions of former rule 28 governing the form and content of a petition for review, answer, and reply.

Subdivision (b). Subdivision (b)(3) makes uniform a common practice that provides the court with information needed to administer the provisions of revised rule 28(c).

Subdivision (b)(4) restates the requirement of former rule 28(e)(4) that a copy of the Court of Appeal opinion be bound with the petition for review, and adds that a copy of any Court of Appeal order modifying that opinion or directing its publication must also be bound with the petition. This substantive change is intended to assist the Supreme Court in two respects. First, if the Court of Appeal issues an order modifying its opinion so as to change the appellate judgment or directing its publication, the finality period runs anew from the date of the order. (Rule 24(b)(5), (c)(2).) Second, whether or not a modification order changes the appellate judgment, binding that order with the petition furnishes the Supreme Court with the final text of the opinion for its review.

Subdivision (b)(5) fills a gap by recognizing the Supreme Court's practice of requiring that the title of the case and designation of the parties on the cover of the petition be identical to the title and designation in the Court of Appeal opinion. The requirement assists the court in tracking the case.

Subdivision (e). Subdivision (e) states in terms of word count rather than page count the maximum permissible length of a petition for review, answer, or reply produced on a computer. This substantive change tracks an identical provision in revised rule 14(c) governing Court of Appeal briefs and is explained in the Advisory Committee Comment to that provision.

Subdivision (f). Paragraphs (1) and (2) of subdivision (f) restate and simplify portions of, respectively, the second paragraph of former rule 28(e)(6) and the third paragraph of former rule 28(e)(5). No substantive change is intended.

The first and third paragraphs of former rule 28(e)(5) in effect required parties to include their points, authorities, and arguments in the bodies of their petitions, answers, and replies. New rule 28.1(f) deletes these provisions as superfluous: the same requirements are imposed by rule 14(a)(1), which is made applicable to petitions, answers, and replies by new rule 28.1(a).

The third paragraph of former rule 28(e)(5) authorized a party to incorporate by reference portions of a petition, answer, and reply filed by another party in the same case or filed by any party in "a connected case" in which a petition for review was pending or had been filed. New rule 28.1(f)(2) deletes as ambiguous the term "a connected case" and substitutes the more descriptive phrase, "a case that raises the same or similar issues," i.e., irrespective of the identity of the parties. The change is not substantive.

Rule 28.2. Ordering review

(a) Transmittal of record

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the Court of Appeal clerk must promptly send the record to

the Supreme Court. If the petition is denied, the Supreme Court clerk must promptly return the record to the Court of Appeal.

(b) Determination of petition

(1) The court may order review within 60 days after the last petition for review is filed. Before the 60-day period or any extension expires, the court may order one or more extensions to a date not later than 90 days after the last petition is filed.

(2) An order granting review must be signed by at least four justices; an order denying review may be signed by the Chief Justice alone.

(3) If the court does not rule on the petition within the time allowed by (1), the petition is deemed denied.

(c) Grant and hold

On or after granting review, the court may order action in the matter deferred until the court disposes of another matter or pending further order of the court.

(d) Review on the court's own motion

In any case, the Supreme Court may, on its own motion, order review of a Court of Appeal decision within 30 days after the decision is final in that court. Before the 30-day period or any extension expires, the Supreme Court may order one or more extensions to a date not later than 90 days after the decision is final in the Court of Appeal. If any such period ends on a day on which the clerk's office is closed, the court may order review on its own motion on the next day the clerk's office is open.

Advisory Committee Comment

New rule 28.2 collects in one rule provisions of former rules 28 and 29.2 governing the transmittal of the record on petition for review, the time within which the Supreme Court may grant or deny review, "grant and hold" orders, and ordering review on the court's own motion.

Subdivision (a). Subdivision (a) of new rule 28.2 simplifies a provision of former rule 28(b) by directing the Court of Appeal clerk to send "the record" to the Supreme Court; further specification is unnecessary. The subdivision also deletes as unnecessary micromanagement the former directive to the Supreme Court clerk to retain and renumber that record if review is granted.

Subdivision (b). Former rule 28(a)(2) authorized the Supreme Court to grant review within 60 days after the filing of the last "timely" petition for review, but the word "timely" was both ambiguous and superfluous. The Supreme Court deems the 60-day period to begin on the filing date of the last petition for review that either (1) is timely in the sense that it is filed within the rule time

for such petitions (i.e., 10 days after finality of the Court of Appeal decision) or (2) is *treated* as timely—although presented for filing after expiration of the rule time—in the sense that it is filed with permission of the Chief Justice on a showing of good cause for relief from default (former rule 45(c), now revised rule 28(e)(2)). In each circumstance it is the *filing* of the petition that triggers the 60-day period. New rule 28.2(b) therefore deletes the word "timely"; no substantive change is intended.

Subdivision (c). Subdivision (c) of new rule 28.2 is former rule 29.2(c). Its wording has been conformed to current Supreme Court practice; no substantive change is intended.

Subdivision (d). Subdivision (d) of new rule 28.2 is former rule 28(a)(1), authorizing orders of review on the Supreme Court's own motion. The former provision, however, apparently assumed the court would exercise this authority only in cases in which "no petition for review is filed." The assumption was not prima facie unreasonable, but in practice the court may occasionally wish to order review on its own motion even when a party has petitioned for review—for example, in a case in which the party seeks review only on an issue that the court deems unworthy of review and fails to seek review on an issue that the court does wish to reach. To fill this gap, subdivision (d) simply authorizes the court to order review on its own motion in "any case."

Rule 29. Issues on review

(a) Issues to be briefed and argued

(1) On or after ordering review, the Supreme Court may specify the issues to be briefed and argued. Unless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included in them.

(2) Notwithstanding an order specifying issues under (1), the court may, on reasonable notice, order oral argument on fewer or additional issues or on the entire cause.

(b) Issues to be decided

(1) The Supreme Court may decide any issues that are raised or fairly included in the petition or answer.

(2) The court may decide an issue that is neither raised nor fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it.

(3) The court need not decide every issue the parties raise or the court specifies.

Advisory Committee Comment

Subdivision (a). Revised rule 29(a) is former rule 29.2(b).

Subdivision (b). Revised rule 29(b)(1) is former rule 29.2(a). Revised subdivision (b)(2) and (3) reflects current Supreme Court practice; no substantive change is intended.

Rule 29.1. Briefs by parties and amici curiae; judicial notice

(a) Parties' briefs; time to file

(1) Within 30 days after the Supreme Court files the order of review, the petitioner must serve and file in that court either an opening brief on the merits or the brief it filed in the Court of Appeal.

(2) Within 30 days after the petitioner files its brief or the time to do so expires, the opposing party must serve and file either an answer brief on the merits or the brief it filed in the Court of Appeal.

(3) The petitioner may file a reply brief on the merits or the reply brief it filed in the Court of Appeal. A reply brief must be served and filed within 20 days after the opposing party files its brief.

(4) A party filing a brief it filed in the Court of Appeal must attach to the cover a notice of its intent to rely on the brief in the Supreme Court.

(5) The time to serve and file a brief may not be extended by stipulation but only by order of the Chief Justice under rule 45.

(6) The court may designate which party is deemed the petitioner or otherwise direct the sequence in which the parties must file their briefs.

(b) Form and content

(1) Briefs filed under this rule must comply with the relevant provisions of rule 14.

(2) The body of the petitioner's brief on the merits must begin by quoting either:

(A) any order specifying the issues to be briefed or, if none,

(B) the statement of issues in the petition for review and, if any, in the answer.

(3) Unless the court orders otherwise, briefs on the merits must be limited to the issues stated in (2) and any issues fairly included in them.

(c) Length

(1) If produced on a computer, a brief on the merits must not exceed 14,000 words and a reply brief on the merits must not exceed 4,200 words. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.

(2) If typewritten, a brief on the merits must not exceed 50 pages and a reply brief must not exceed 15 pages.

(3) The tables, a certificate under (1), and any quotation of issues required by (b)(2) are excluded from the limits stated in (1) and (2).

(4) On application and for good cause, the Chief Justice may permit a longer brief.

(d) Supplemental briefs

(1) A party may file a supplemental brief limited to new authorities, new legislation, or other matters that were not available in time to be included in the party's brief on the merits.

(2) A supplemental brief must not exceed 2,800 words if produced on a computer or 10 pages if typewritten, and must be served and filed no later than 10 days before oral argument.

(e) Briefs on the court's request

The court may request additional briefs on any or all issues, whether or not the parties have filed briefs on the merits.

(f) Amicus curiae briefs

(1) After the court orders review, any person or entity may serve and file an application for permission of the Chief Justice to file an amicus curiae brief.

(2) The application must be filed no later than 30 days after all briefs that the parties may file under this rule—other than supplemental briefs—have been filed or were required to be filed. The Chief Justice may allow later filing if the applicant shows specific and compelling reasons for the delay.

(3) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(4) The proposed brief must be served. It must accompany the application and may be combined with it.

(5) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(6) If the court grants the application, any party may file an answer within 20 days after the amicus curiae brief is filed. It must be served on all parties and the amicus curiae.

(7) The Attorney General may file an amicus curiae brief without the Chief Justice's permission unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within the time specified in (2) and must provide the information required by (3) and comply with (5). Any answer must comply with (6).

(g) Judicial notice

To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 22(a).

Advisory Committee Comment

Revised rule 29.1 is principally derived from former rule 29.3.

Subdivision (a). Former rule 29.3 prescribed two different time limits for filing mandatory briefs in the Supreme Court: 30 days if a party chose to file a new brief on the merits but only 15 days if a party chose instead to rely on the brief it previously filed in the Court of Appeal. Although it presumably requires more time to prepare a new brief on the merits than to copy a Court of Appeal brief and attach a notice of intent to rely on it, this justification for the discrepancy is insufficient to outweigh the resulting complication of the clerk's duties in administering the important matter of filing deadlines. Accordingly, in a substantive change intended to simplify the briefing process, revised rule 29.1(a)(1) and (2) provides a single time limit—30 days—for filing all mandatory briefs in the Supreme Court.

Revised subdivision (a)(3) fills a gap by giving the petitioner the option of relying on the reply brief it filed in the Court of Appeal.

Subdivisions (c) and (d). Revised rule 29.1(c) and (d) state in terms of word count rather than page count the maximum permissible lengths of Supreme Court briefs produced on a computer. This substantive change tracks an identical provision in revised rule 14(c) governing Court of Appeal briefs and is explained in the Advisory Committee Comment to that provision.

Rule 29.2. Oral argument and submission of the cause

(a) Application

This rule governs oral argument in the Supreme Court unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(b) Place of argument

The Supreme Court holds regular sessions in San Francisco, Los Angeles, and Sacramento on a schedule fixed by the court, and may hold special sessions elsewhere.

(c) Notice of argument

The Supreme Court clerk must send notice of the time and place of oral argument to all parties at least 20 days before the argument date. The Chief Justice may shorten the notice period for good cause; in that event, the clerk must immediately notify the parties by telephone or other expeditious method.

(d) Sequence of argument

The petitioner for Supreme Court relief has the right to open and close. If there are two or more petitioners—or none—the court must set the sequence of argument.

(e) Time for argument

Each side is allowed 30 minutes for argument.

(f) Number of counsel

(1) Only one counsel on each side may argue—regardless of the number of parties on the side—unless the court orders otherwise on request.

(2) Requests to divide oral argument among multiple counsel must be filed within 10 days after the date of the order setting the case for argument.

(3) Multiple counsel must not divide their argument into segments of less than 10 minutes per person, except that one counsel for the opening side—or more, if authorized by the Chief Justice on request—may reserve any portion of that counsel's time for rebuttal.

(g) Argument by amicus curiae

An amicus curiae is not entitled to argument time but may ask a party for permission to use a portion or all of the party's time, subject to the 10-minute minimum prescribed in (f)(3). If permission is granted, counsel must file a request under (f)(2).

(h) Submission of the cause

(1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.

(2) The court may vacate submission only by an order stating the court's reasons and setting a timetable for resubmission.

Advisory Committee Comment

Revised rule 29.2 is principally derived from former rule 22.

Subdivision (b). Revised subdivision (b) is the first sentence of former rule 21(a). The former rule also provided that a motion filed in the Supreme Court would be decided without oral argument but could be placed on calendar by the Chief Justice. The revised rule deletes this provision because the topic is covered in the general rule on motions in the reviewing court. (See rule 41.)

Subdivision (c). Revised subdivision (c) fills a gap. It is based on revised rule 23(b) and is discussed in the Advisory Committee Comment to that rule. The practice of the Supreme Court is to give the parties at least 30 days' notice of the oral argument date.

Subdivision (d). Revised subdivision (d) is former rule 22(c). "The petitioner for Supreme Court relief" can be a petitioner for review, a petitioner for transfer (revised rule 29.9), a petitioner in an original proceeding in the Supreme Court, or a party designated as petitioner in a proceeding on request of a court of another jurisdiction (revised rule 29.8(b)(1)).

The number of petitioners is "none" when the court grants review on its own motion or transfers a cause to itself on its own motion.

Subdivision (e). The time allowed for argument in death penalty appeals is prescribed in new rule 36.2.

Subdivision (f). The number of counsel allowed to argue on each side in death penalty appeals is prescribed in new rule 36.2.

Revised subdivision (f)(3) is based on section V of the court's Internal Operating Practices and Procedures.

Subdivision (g). Revised subdivision (g) fills a gap by specifying how amici curiae may seek argument time. It states the Supreme Court practice on the topic.

Subdivision (h). Revised subdivision (h) is based on section VII of the court's Internal Operating Practices and Procedures.

Rule 29.3. Disposition of causes

(a) Normal disposition

After review, the Supreme Court normally will affirm, reverse, or modify the judgment of the Court of Appeal, but may order another disposition.

(b) Dismissal of review

(1) The Supreme Court may dismiss review. The Supreme Court clerk must promptly send an order dismissing review to all parties and the Court of Appeal.

(2) When the Court of Appeal receives an order dismissing review, the decision of that court is final and its clerk must promptly issue a remittitur or take other appropriate action.

(3) After an order dismissing review, the Court of Appeal opinion remains unpublished unless the Supreme Court orders otherwise.

(c) Remand for decision on remaining issues

If it decides fewer than all the issues presented by the case, the Supreme Court may remand the cause to a Court of Appeal for decision on any remaining issues.

(d) Transfer without decision

After ordering review, the Supreme Court may transfer the cause to a Court of Appeal without decision but with instructions to conduct such proceedings as the Supreme Court orders.

(e) Retransfer without decision

After transferring to itself, before decision, a cause pending in the Court of Appeal, the Supreme Court may retransfer the cause to a Court of Appeal without decision.

(f) Court of Appeal briefs after remand or transfer

Any supplemental briefing in the Court of Appeal after remand or transfer from the Supreme Court is governed by rule 13(b).

Advisory Committee Comment

Revised rule 29.3 is former rule 29.4.

Subdivision (a). Like former rule 29.4(a), revised rule 29.3(a) serves two purposes. First, it declares that the Supreme Court's normal disposition of a cause after completing its review is to affirm, reverse, or modify *the judgment of the Court of Appeal*. Second, the subdivision recognizes that, when necessary, the Supreme Court may order "another disposition" appropriate to the circumstances. Like former rule 29.4(b)–(e), revised rule 29.3(b)–(e) provide examples of such "other dispositions," but the list is not intended to be exclusive.

As used in former and revised subdivisions (a), "the judgment of the Court of Appeal" includes a decision of that court denying a petition for original writ without issuing an alternative writ or order to show cause. (See former rule 24(a) and revised rule 24(b)(2)(A).) The Supreme Court's method of disposition after reviewing such a decision, however, has recently evolved. In earlier cases the Supreme Court itself denied or granted the requested writ, in effect treating the matter as if it were an original proceeding in the Supreme Court. (E.g., *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 58 ["The alternative writ of mandate is discharged and the petition for a peremptory writ of mandate is denied."].) By contrast, current Supreme Court practice is to affirm or reverse the judgment of the Court of Appeal summarily denying the writ petition. (E.g., *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 742–743 ["The judgment of the Court of Appeal is reversed with directions to vacate its order denying the petition, and to issue a writ of mandate . . . ."]; *State Comp. Ins. Fund v. Superior Court* (2001) 24 Cal.4th 930, 944 ["The judgment of the Court of Appeal summarily denying the petition for writ of mandate is affirmed and the order to show cause . . . is discharged."].) As the cited cases illustrate, if the Supreme Court affirms such a judgment it will normally discharge any alternative writ or order to show cause it issued when granting review; if the court reverses the judgment it will normally include a direction to the Court of Appeal, e.g., to issue the requested writ or to reconsider the petition.

Subdivision (b). Revised subdivision (b) is former rule 29.4(c). The former rule purported to limit Supreme Court *dismissals of review* to cases in which the court had "improvidently" granted review. In practice, however, the court may dismiss review for a variety of other reasons. For example, after the court decides a "lead" case, its current practice is to dismiss review in any pending companion case (i.e., a "grant and hold" matter under revised rule 28.2(c)) that appears correctly decided in light of the lead case and presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal. The Supreme Court may also dismiss review when a supervening event renders the case moot for any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or when the court orders review to construe a statute that is then repealed before the court can act. Reflecting this practice, the Supreme Court now dismisses

review—even in the rare case in which the grant of review was arguably "improvident"—by an order that says simply, "Pursuant to rule 29.4(c) [now 29.3(b)], California Rules of Court, the above-entitled review is DISMISSED . . . ." Revised subdivision (b) follows this practice by deleting as misleading the former reference to "improvident" grants of review. It is not a substantive change.

Former rule 29.4(c) also directed the Supreme Court, after dismissing review, to "remand the cause to the Court of Appeal." In effect, however, the directive was superfluous. In the rule authorizing the court to *order* review (former rule 28(a), revised rule 28.2(b)) there is no parallel provision directing the court to *transfer* the case to itself after ordering review, and the reason is evident: an order of review ipso facto transfers jurisdiction of the cause to the Supreme Court. By the same token, an order dismissing review ipso facto retransfers jurisdiction to the Court of Appeal. The Court of Appeal has no discretion to exercise after the Supreme Court dismisses review: under both former rule 29.4(c) and revised rule 29.3(b), the Supreme Court clerk must promptly send the dismissal order to the Court of Appeal; when the Court of Appeal clerk files that order, the Court of Appeal decision immediately becomes final and the Court of Appeal clerk must promptly issue the remittitur. Revised subdivision (b)(1) therefore deletes as superfluous the directive to the Supreme Court to "remand the cause to the Court of Appeal" upon dismissal of review, because that consequence follows automatically from the order dismissing review. It is not a substantive change.

Former rule 29.4(c) provided that the Court of Appeal decision was final when the Supreme Court dismissal order was *filed* in the Court of Appeal. It is the practice of Court of Appeal clerks, however, not to *file* such orders—which have already been filed in the Supreme Court (see revised subd. (b)(1))—but simply to mark them *received* and make the appropriate docket entry. To reflect that practice, revised rule 29.3(b)(2) provides that the Court of Appeal decision is final when that court "receives" the order dismissing review.

If the decision of the Court of Appeal made final by subdivision (b)(2) requires issuance of a remittitur under revised rule 26(a), the clerk must issue the remittitur; if the decision does not require issuance of a remittitur—e.g., if the decision is an interlocutory order (see revised rule 28(a)(1))—the clerk must take whatever action is appropriate in the circumstances.

Subdivision (c). Revised subdivision (c) is former rule 29.4(b). The former rule applied when the Supreme Court decided "one or more"—implying fewer than all—issues in the case; revised subdivision (c) applies when the Supreme Court decides "fewer than all the issues presented by the case," i.e., fewer than (i) the issues "raised in the petition or answer or fairly included in those issues" (revised rule 29(b)(1)) and (ii) any other issue raised on the court's own motion (*id.*, subd. (b)(2)). The purpose is to clarify the scope of the former rule; no substantive change is intended.

Former rule 29.4(b) authorized the Supreme Court to *transfer* the cause to the Court of Appeal for decision on any remaining issues in the appeal. In practice, however, the Supreme Court does not file a separate order "transferring" the cause to the Court of Appeal in such cases; instead, as part of its appellate judgment at the end of its opinion the court simply orders the cause *remanded* to the Court of Appeal for disposition of the remaining issues. (See, e.g., *People v. Willis* (2002) 27 Cal.4th 811, 825.) Consistently with this practice, revised rule 29.3(c) provides that the Supreme Court may "remand" such a cause to the Court of Appeal for decision on any remaining issues. The change is not substantive.

Subdivision (d). Revised subdivision (d) is former rule 29.4(e). Like the former rule, it is intended to apply primarily to two types of cases: (i) those in which the court granted review "for the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order" (revised rule 28(b)(4)) and (ii) those in which the court, after deciding a "lead case," determines that a companion "grant and hold" case (revised rule 28.2(c)) should be reconsidered by

the Court of Appeal in light of the lead case or presents an additional issue or issues that require resolution by the Court of Appeal.

Subdivision (e). Revised subdivision (e) is former rule 29.4(d). Like the former rule, it is intended to apply to cases in which the Supreme Court, after *transferring* to itself before decision a cause pending in the Court of Appeal, *retransfers* the matter to that court without decision and with or without instructions. The former rule, however, purported to limit such retransfers to cases in which the Supreme Court had "improvidently" transferred the cause to itself in the first instance. For reasons similar to those discussed under Subdivision (b) of this Comment, revised subdivision (e) deletes as misleading the former reference to "improvident" transfers. It is not a substantive change.

Subdivision (f). Former subdivision (f), relating to supplemental briefs in the Court of Appeal after a cause is transferred from the Supreme Court, has been moved to new subdivision (b) of rule 13. Revised subdivision (f) provides the cross-reference.

Rule 29.4. Filing, finality, and modification of decision

(a) Filing the decision

The Supreme Court clerk must promptly file all opinions and orders issued by the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(b) Finality of decision

(1) Except as provided in (2), a Supreme Court decision is final 30 days after filing unless:

(A) the court orders a shorter period, or

(B) before the 30-day period or any extension expires the court orders one or more extensions, not to exceed a total of 60 additional days.

(2) The following Supreme Court decisions are final on filing:

(A) the denial of a petition for review of a Court of Appeal decision;

(B) a disposition ordered under rule 29.3(b), (d), or (e);

(C) the denial of a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause; and

(D) the denial of a petition for writ of supersedeas.

(c) Modification of decision

The Supreme Court may modify a decision as provided in rule 24(c).

Advisory Committee Comment

Revised rule 29.4 is principally derived from former rule 24.

Subdivision (b). Filling gaps in the rule consistently with Supreme Court practice, revised rule 29.4(b)(2)(B)–(D) recognizes several additional types of Supreme Court decisions that are final on filing. Thus revised subdivision (b)(2)(B) recognizes that a *dismissal*, a *transfer*, and a *retransfer* under subdivisions (b), (d), and (e), respectively, of revised rule 29.3 are decisions final on filing. A *remand* under subdivision (c) of revised rule 29.3 is not a decision final on filing because it is not a separately filed order; rather, as part of its appellate judgment at the end of its opinion in such cases the Supreme Court simply orders the cause remanded to the Court of Appeal for disposition of the remaining issues in the appeal. (See Advisory Committee Comment to revised rule 29.3(c).)

Revised subdivision (b)(2)(C) recognizes that an order denying a petition for a writ within the court's original jurisdiction without issuance of an alternative writ or order to show cause is final on filing. The provision reflects the settled Supreme Court practice, since at least 1989, of declining to file petitions for rehearing in such matters. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989 ["The motion to vacate this court's order of May 18, 1989 [denying a petition for habeas corpus without opinion] is denied. Because the California Rules of Court do not authorize the filing of a petition for rehearing of such an order, the alternate request to consider the matter as a petition for rehearing is denied."].)

Finally, revised subdivision (b)(2)(D) recognizes that an order denying a petition for writ of supersedeas is final on filing.

Rule 29.5. Rehearing

(a) Power to order rehearing

The Supreme Court may order rehearing as provided in rule 25(a).

(b) Petition and answer

A petition for rehearing and any answer must comply with rule 25(b)(1), (2), and (3). Before the Supreme Court decision is final and for good cause, the Chief Justice may relieve a party from a failure to file a timely petition or answer.

(c) Extension of time

The time for granting or denying a petition for rehearing in the Supreme Court may be extended under rule 29.4(b)(1)(B). If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(d) Determination of petition

An order granting a rehearing must be signed by at least four justices; an order denying rehearing may be signed by the Chief Justice alone.

(e) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Supreme Court.

Advisory Committee Comment

Revised rule 29.5 is derived from former rule 27.

Subdivision (a). Former rule 27(a) listed certain cases in which the Court of Appeal could not order rehearing, but the provision omitted Supreme Court practice entirely: the Supreme Court also declines to entertain petitions for rehearing in several types of cases that are final in that court on filing: i.e., denial of review; dispositions under revised rule 29.3(b), (d), or (e); denial of a writ petition without issuing an alternative writ or order to show cause; and denial of supersedeas. (See revised rule 29.4(b)(2).) To fill this gap, revised rule 29.5(a) declares simply that the Supreme Court may order rehearing as provided in revised rule 25(a), i.e., it may order rehearing of any decision that is not final on filing (under revised rule 29.4). It is not a substantive change.

Subdivision (b). Revised rule 29.5(b) incorporates by reference portions of revised rule 25(b), which make a number of substantive changes explained in the Advisory Committee Comment to that rule. Revised rule 25(b)(1)(C), referring to the effect of a *publication order* on finality, is inapplicable to Supreme Court practice; all Supreme Court opinions are published.

Subdivision (c). The first sentence of revised subdivision (c) restates a provision appearing in rule 45(c). The second sentence restates a provision of former rule 27(e); in doing so, the revised subdivision deletes as superfluous the directive to the clerk to "enter a notation in the register" that a petition for rehearing is deemed denied because it was not ruled on before finality. It is assumed that in the rare case in which the situation may arise the clerk will routinely enter such a notation. The change is not substantive.

Subdivision (e). For purposes of completeness, revised subdivision (e) states the case law on the effect of ordering rehearing. It is not a substantive change.

Rule 29.6. Remittitur

(a) Proceedings requiring issuance of remittitur

The Supreme Court must issue a remittitur after a decision in:

(1) a review of a Court of Appeal decision;

(2) an appeal from a judgment of death or in a cause transferred to the court under rule 29.9; or

(3) an original proceeding, except when the court denies a writ petition without issuing an alternative writ or order to show cause.

(b) Clerk's duties

(1) The clerk must issue a remittitur when a decision of the court is final. The remittitur is deemed issued when the clerk enters it in the record.

(2) After review of a Court of Appeal decision, the Supreme Court clerk must address the remittitur to the Court of Appeal and send that court two copies of the remittitur and two file-stamped copies of the Supreme Court opinion or order.

(3) After a decision in an appeal from a judgment of death, in an original proceeding in the Supreme Court, or in a cause transferred to the court under rule 29.9, the clerk must send the remittitur and a file-stamped copy of the Supreme Court opinion or order to the lower court or tribunal.

(4) The clerk must comply with the requirements of rule 26(d).

(c) Immediate issuance, stay, and recall

(1) The Supreme Court may direct immediate issuance of a remittitur on the parties' stipulation or for good cause.

(2) On a party's or its own motion and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall.

(3) An order recalling a remittitur issued after a decision by opinion does not supersede the opinion or affect its publication status.

Advisory Committee Comment

Revised rule 29.6 is derived from former rule 25.

Subdivision (a). The wording of revised rule 29.6(a)(3) tracks that of revised rule 26(a)(2) and is explained in the Advisory Committee Comment to that rule.

Subdivision (b). In a substantive change, revised subdivision (b)(2)–(3) deletes the requirement of former rule 25(a) that the Supreme Court clerk "certify" the copies of that court's opinion that accompany its remittitur. To the extent the provision has been read to require the clerk

to stamp the attached opinion with the seal of the court, it is obsolete. That practice presumably served the purpose of ensuring that the opinion that the clerk sent to the lower court or tribunal was in fact the opinion filed by the court. The concern is no longer valid: in current practice, by the time the remittitur issues—30 days after the opinion is filed—the opinion has already been published both on the California Courts Web site and in the official advance sheets, where its text can be compared in case of any doubt. But to the extent the provision has also been read to require the clerk to declare in the remittitur that he or she "certifies" that the attached opinion is a copy of the original opinion, it is not obsolete. Although the revised rule does not use the word "certified" because of its possible ambiguity, the rule is not intended to change the latter practice.

Revised subdivision (b)(2)–(3) requires the Supreme Court clerk to file-stamp the copies of the opinion that accompany the remittitur. Although the former rule did not expressly so provide, it is not a substantive change: file-stamping such opinions is the current practice of the Supreme Court clerk.

Revised subdivision (b)(3) fills a gap by stating the current Supreme Court practice in death penalty cases, in original writ cases in that court, and in causes that the Supreme Court transfers to itself before decision in the Court of Appeal (revised rule 29.9). It is not a substantive change.

Subdivision (c). Former rule 25(c) was silent on the question of whether a party wanting the Supreme Court to stay the issuance of its remittitur was required to serve and file a motion for that relief. Revised rule 29.6(c)(2), which combines the provisions for both staying and recalling a remittitur, makes it clear that such a motion is necessary. No substantive change is intended.

Former rule 25(d) provided that a reviewing court could recall a remittitur "on stipulation setting forth facts which would justify the granting of a motion" to recall. Revised rule 29.6(c)(2) deletes the quoted provision as redundant: if the parties are able to stipulate to facts that would justify granting a motion to recall, they need only file such a motion and attach the stipulation. No substantive change is intended.

Former rule 25(d) did not expressly require good cause for a reviewing court to recall a remittitur on a party's or its own motion. In accord with the case law, revised rule 29.6(c)(2) states this requirement expressly; it is not a substantive change. Also in accord with the case law, "good cause" as used in revised subdivision (c)(2) has substantially different meanings depending on whether it is applied to a stay or to a recall of a remittitur. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 735–741, pp. 764–771.)

For purposes of completeness, revised subdivision (c)(3) states the case law on the effect of the recall of a remittitur. It is not a substantive change.

Former rule 29.6. Former rule 29.6, a transitional provision, is repealed, having served its purpose.

Rule 29.7. Costs and sanctions

In a civil case, the Supreme Court may direct the Court of Appeal to award costs, if any; or may order the parties to bear their own costs; or may make any other award of costs the Supreme Court deems proper. The Supreme Court may impose sanctions on a party or an attorney under rule 27(e) for committing any unreasonable violation of these rules.

Advisory Committee Comment

Revised rule 29.7 is new; it states current Supreme Court practice with respect to costs and sanctions, and is therefore not a substantive change.

If the Supreme Court makes an award of costs, the party claiming such costs must proceed under revised rule 27(d).

Rule 29.8. Decision on request of a court of another jurisdiction

(a) Request for decision

On request of the United States Supreme Court, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth, the Supreme Court may decide a question of California law if:

(1) the decision could determine the outcome of a matter pending in the requesting court, and

(2) there is no controlling precedent.

(b) Form and contents of request

The request must take the form of an order of the requesting court containing:

(1) the title and number of the case, the names and addresses of counsel and any unrepresented party, and a designation of the party to be deemed the petitioner if the request is granted;

(2) the question to be decided, with a statement that the requesting court will accept the decision;

(3) a statement of the relevant facts prepared by the requesting court or by the parties and approved by the court; and

(4) an explanation of how the request satisfies the requirements of (a).

(c) Supporting materials

Copies of all relevant briefs must accompany the request. At any time, the Supreme Court may ask the requesting court to furnish additional record materials, including transcripts and exhibits.

(d) Serving and filing the request

The requesting court clerk must file an original and 10 copies of the request in the Supreme Court with a certificate of service on the parties.

(e) Letters in support or opposition

(1) Within 20 days after the request is filed, any party or other person or entity wanting to support or oppose the request must send a letter to the Supreme Court, with service on the parties and on the requesting court.

(2) Within 10 days after service of a letter under (1), any party may send a reply letter to the Supreme Court, with service on the other parties and the requesting court.

(3) A letter or reply asking the court to restate the question under (f)(5) must propose new wording.

(f) Proceedings in Supreme Court

(1) In exercising its discretion to grant or deny the request, the Supreme Court may consider whether resolution of the question is necessary to secure uniformity of decision or to settle an important question of law, and any other factor the court deems appropriate.

(2) An order granting the request must be signed by at least four justices; an order denying the request may be signed by the Chief Justice alone.

(3) If the court grants the request, the rules on review and decision in the Supreme Court govern further proceedings in that court.

(4) If, after granting the request, the court determines that a decision on the question may require an interpretation of the California Constitution or a decision on the validity or meaning of a California law affecting the public interest, the court must direct the clerk to send to the Attorney General—unless the Attorney General represents a party to the litigation—a copy of the request and the order granting it.

(5) At any time, the Supreme Court may restate the question or ask the requesting court to clarify the question.

(6) After filing the opinion, the clerk must promptly send file-stamped copies to the requesting court and the parties and must notify that court and the parties when the decision is final.

(7) Supreme Court decisions pursuant to this rule are published in the Official Reports and have the same precedential effect as the court's other decisions.

Advisory Committee Comment

Revised rule 29.8 is former rule 29.5. The revision serves three main purposes: (1) to integrate the rule more fully into the California Rules of Court by deleting provisions that duplicated other revised rules; (2) to simplify and update the rule by deleting provisions based on similar laws of other states that have not become part of Supreme Court practice under this rule; and (3) to clarify and facilitate use of the rule by recasting certain of its provisions in terms parallel to those of the longstanding and better-known rules governing petitions for review (revised rules 28–28.2). Few of the changes, however, are substantive.

To emphasize that the rule is not intended to authorize the Supreme Court to issue an improper advisory opinion in a case brought under its provisions, revised rule 29.8 no longer describes the Supreme Court's action on a request to settle a point of California law as merely an *answer* to a question, but as a *decision* on that point of law.

Under the former rule, a court of another jurisdiction that requested the Supreme Court to decide a question of California law was also required to "certify" its question to the Supreme Court. (E.g., former rule 29.5(d).) Revised rule 29.8 deletes this requirement as an unnecessary formalism. The "certification" requirement apparently served the purpose of guaranteeing that the request was authentic. But the same purpose is served equally well by the more fundamental requirement—imposed by both the former and revised rules—that the request must be presented to the Supreme Court by a formal *order* of the requesting court. (Revised rule 29.8(b).) Such an order is manifestly a sufficient guarantee of authenticity. The change is more one of terminology than of substance.

Subdivision (a). Former rule 29.5(a) stated three prerequisites for Supreme Court action on a certified question. The first was that "the certifying court requests the answer." Revised rule 29.8 deletes this requirement as redundant: because the rule does not contemplate the Supreme Court's taking the highly improbable step of acting on its own motion to provide a court of another jurisdiction with a decision on a question of California law that that court has not asked for, *every* such decision of the Supreme Court will necessarily come in response to a request by a court of another jurisdiction.

Former rule 29.5(a) described an additional prerequisite as follows: "the *decisions of the California appellate courts* provide no controlling precedent concerning the certified question." (Italics added.) Revised rule 29.8 deletes the italicized language as redundant: in all cases, only decisions of the California Supreme Court and published decisions of the California Court of Appeal are precedents in California case law.

Subdivision (b). Former rule 29.5(b)(4) included, among the required contents of a request, a statement "demonstrating that the question certified is contested," presumably meaning contested *by the parties*. Revised rule 29.8(b) deletes this "demonstration" as unnecessary and inappropriate. Former rule 29.5(a) did not include this requirement among its prerequisites for Supreme Court

provided that the Supreme Court "may permit" the Attorney General "to file briefs on the issue." The revised rule deletes this provision as unecessary: the Attorney General has the right to file amicus curiae briefs without permission under revised rule 29.1(f)(7).

Although no remittitur issues when a Supreme Court decision under this rule is final, it is the practice of the Supreme Court clerk to give notice of that finality to the requesting court and the parties. Revised 29.8(f)(6) fills a gap by providing for such notice; it is not a substantive change.

Former subdivision (*l*). Revised rule 29.8 deletes as superfluous former rule 29.5(*l*), which authorized the Supreme Court or the Judicial Council to adopt procedures implementing this rule. Those bodies have general authority to adopt such procedures.

Rule 29.9. Transfer for decision

(a) Time of transfer

On a party's petition or its own motion, the Supreme Court may transfer to itself, for decision, a cause pending in a Court of Appeal.

(b) When a cause is pending

For purposes of this rule, a cause within the appellate jurisdiction of the superior court is not pending in the Court of Appeal until that court orders it transferred under rule 62. Any cause pending in the Court of Appeal remains pending until the decision of the Court of Appeal is final in that court under rule 24.

(c) Grounds

The Supreme Court will not order transfer under this rule unless the cause presents an issue of great public importance that the Supreme Court must promptly resolve.

(d) Petition and answer

A party seeking transfer under this rule must promptly serve and file in the Supreme Court a petition explaining how the cause satisfies the requirements of (c). Within 20 days after the petition is filed, any party may serve and file an answer. The petition and any answer must conform to the relevant provisions of rule 28.1.

(e) Order

Transfer under this rule requires a Supreme Court order signed by at least four justices; an order denying transfer may be signed by the Chief Justice alone.

Subdivision (f). Revised rule 29.8(f) collects in one subdivision the provisions of the former rule governing proceedings in the Supreme Court after a request is presented (former rule 29.5(f)–(*l*)).

Former rule 29.5(f) declared that the Supreme Court may *accept* or deny a request of this nature; revised 29.8(f)(1) provides instead that the court may *grant* or deny such a request. This minor change in terminology is intended to make the rule consistent with the rules authorizing the court to grant or deny *review* (see, e.g., revised rule 28.2(b)(2)). No reason appears to use a different term in proceedings under the present rule.

Revised rule 29.8(f)(1) also restates and simplifies the factors that the Supreme Court may consider in deciding whether to grant or deny the request. Consistently with current Supreme Court practice, the revised subdivision focuses on the factors that the court considers in deciding whether to grant or deny review (revised rule 28(b)(1)) and states those factors explicitly to promote clarity. Because those factors are, in practice, the court's primary concern in deciding whether to grant or deny a request under this rule, and because the court has absolute discretion to grant or deny such a request for any reason, the revised subdivision places all other possible factors into the category of "any other factor the court deems appropriate" (see also former rule 29.5(f)(4)). The change is not substantive.

Former rule 29.5(h) required the Supreme Court to "*announce* [its decision to grant a request] in the manner that it *announces* the acceptance of cases for review [italics added]." Revised rule 29.8 deletes this requirement as superfluous if it refers to a true public "announcement" of the court's action: the court's practice is to file all orders granting review, then enter them in its minutes, and then "announce," in a summary form in a weekly press release, the cases in which it granted review. In the alternative, the requirement is ambiguous if it refers to the *content* of the order by which the court grants or denies review: to clarify any such ambiguity, revised rule 29.8(f)(2) uses the same language as revised rule 28.2(b)(2), i.e., that an order granting review—or a request under revised rule 29.8—must be signed by at least four justices, but an order denying review—or such a request—may be signed by the Chief Justice alone.

Former rule 29.5(h)(2) provided elaborate directives on awarding "fees and costs" in cases heard under this rule. Revised rule 29.8(f) deletes those directives as inappropriate because the Supreme Court imposes no filing—or any other—*fees* in such cases, and as unnecessary because the subject of *costs* in such cases is dealt with by the general rule (revised subd. (f)(3)) that all proceedings occurring after a grant of a request are governed by the relevant rules on review and decision in the Supreme Court, including therefore revised rule 29.7 (costs and sanctions in the Supreme Court).

Former rule 29.5(h)(3) purported to give the Supreme Court discretion to "assign a certified question . . . priority on its docket." Revised rule 29.8(f) deletes this authorization as unnecessary: the Supreme Court does not need the permission of a rule to determine and redetermine the order of cases on its calendar.

Former rule 29.5(i) directed the Supreme Court clerk to notify the Attorney General if the question to be answered concerned the "interpretation of a California statute." Revised rule 29.8(f)(4) refocuses the problem more precisely. On the one hand, the revised provision is broader in that it also includes an interpretation of the California Constitution and a decision on the validity of any California law, including a regulation or an ordinance. On the other hand, the revised provision is narrower in that it limits the latter to laws "affecting the public interest"; it may be assumed the Attorney General is not concerned with laws that do not affect that interest. The former rule also

(b) Time to file notice of designation

No party may file a notice designating exhibits under rule 18(a) until the Supreme Court clerk notifies the parties of the time and place of oral argument.

Advisory Committee Comment

New rule 36.1(b) restates without change the first clause of former rule 10(d) insofar as it applies to death penalty appeals.

Rule 36.2. Oral argument and submission of the cause in death penalty appeals

(a) Application

Except as provided in this rule, rule 29.2 governs oral argument and submission of the cause in the Supreme Court in death penalty appeals unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(b) Procedure

(1) The appellant has the right to open and close.

(2) Each side is allowed 45 minutes for argument.

(3) Two counsel may argue on each side if, not later than 10 days before the date of the argument, they notify the court that the case requires it.

Advisory Committee Comment

New rule 36.2(b) restates without change former rule 22 insofar as it applies to death penalty appeals.

Rule 47.1 Transfer of causes

(a) Transfer by Supreme Court

(1) The Supreme Court may transfer a cause:

(A) to itself from a Court of Appeal;

(B) from itself to a Court of Appeal;

(C) between Courts of Appeal; or

(D) between divisions of a Court of Appeal.

(2) The clerk of the transferee court must promptly send each party a copy of the transfer order with the new case number, if any.

(b) Transfer by a Court of Appeal administrative presiding justice

(1) A Court of Appeal administrative presiding justice may transfer causes between divisions of that court as follows:

(A) If multiple appeals or writ petitions arise from the same trial court action or proceeding, the presiding justice may transfer the later appeals or petitions to the division assigned the first appeal or petition.

(B) If, because of recusals, a division does not have three justices qualified to decide a cause, the presiding justice may transfer it to a division randomly selected by the clerk.

(2) The clerk must promptly notify the parties of the division to which the cause was transferred.

Advisory Committee Comment

New rule 47.1 is former rule 20.

Subdivision (a). Like former rule 20(a), rule 47.1(a)(1) implements article VI, section 12(a) of the Constitution. As used in article VI, section 12(a), and in the rule, the term "cause" is broadly construed to include " 'all cases, matters, and proceedings of every description' " adjudicated by the Courts of Appeal and the Supreme Court. (*In re Rose* (2000) 22 Cal.4th 430, 540, quoting *In re Wells* (1917) 174 Cal. 467, 471.)

Rule 47.1(a)(1)(A) authorizes the Supreme Court to transfer a cause to itself from the Court of Appeal before that court decides the matter. Like former rule 20, it is intended to apply primarily to two types of cases: (i) those in which the Supreme Court transfers a cause to itself for the purpose of reaching a decision on the merits (revised rule 29.9) and (ii) those in which the Supreme Court transfers a cause to itself for the purpose of retransferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order (compare revised rule 28(b)(4) [ordering review for same purpose]).

Former rule 20(a) required the clerk of a court from which a case was transferred to immediately send the record, with any briefs and exhibits, to the transferee court. Because it may be assumed that the clerk of the transferring court will promptly send the record to the transferee court

in any event, rule 47.1(a) deletes this directive as unnecessary micromanagement of the clerk's office. It is not a substantive change.

Government Code section 68915 provides that an appeal taken to the wrong court must not be dismissed but must be transferred to the proper court. Under rule 47.1(a)(1), as under former rule 20(a), only the Supreme Court may transfer causes between Courts of Appeal. Accordingly, if an appellant files an appeal in the wrong appellate district, that Court of Appeal will request the Supreme Court to order the cause transferred to the proper district. However, former rule 20(a) further provided that the transfer order "may direct the appellant to pay the clerk of the court to which the cause is transferred the fee required by law for the filing of the record in the first instance" and authorized the sanction of dismissal if that fee was not paid within a specified time period. Rule 47.1 deletes these provisions as unnecessary micromanagement of the clerk's offices of both the transferring and transferee courts. The statute requires only that the cause be transferred "upon such terms as to costs or otherwise as may be just" (Gov. Code, § 68915). The rules governing payment of record preparation costs (e.g., rules 4 and 5) and governing sanctions for failure to do so (e.g., rule 8) are adequate to deal with the rare event in which an appeal is taken to the wrong court.

Subdivision (b). New rule 47.1(b) is former rule 20(b), with two nonsubstantive changes.

First, subdivision (b)(1)(A) clarifies its scope by substituting "multiple appeals or writ petitions" for "causes."

Second, subdivision (b)(1)(B) provides only that if, because of recusals, a division does not have three justices qualified to decide a case, the presiding justice may transfer the case to a division "randomly selected by the clerk." Former rule 20(b) added two further requirements: the clerk was required to notify the parties of "the method used in selecting" the new division, and that method was required to be "fair" and could not "permit the transfer to be used to affect the decision of the cause." Rule 47.1 deletes these requirements as unnecessary in a truly random selection process.

Rule 5. Clerk's transcript

(a)–(c) ***

(d) Preparation of transcript

(1) Within 30 days after the appellant deposits the estimated cost of the transcript or the court files an order waiving that cost, the clerk must:

~~(1)~~ (A) prepare an original and one copy of the transcript, and certify the original; and

~~(2)~~ (B) prepare additional copies for which the parties have made deposits.

(2) If the appeal is abandoned or dismissed before the clerk has completed preparation of the transcript, the clerk must refund any portion of the deposit under (c) exceeding the preparation cost actually incurred.

Advisory Committee Comment (2002)

New subdivision (d)(2) is derived from former rule 19(a).

Rule 13. Briefs by parties and amici curiae

(a) Parties' briefs

(1)–(3) ***

(4) No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b)~~(6)~~ or (c)(6) ~~under rule 29.4(f) after the Supreme Court transfers a cause to a Court of Appeal~~.

(5) ***

(b) Supplemental briefs after remand or transfer from Supreme Court

(1) Within 15 days after finality of a Supreme Court decision remanding or order transferring a cause to a Court of Appeal for further proceedings, any party may serve and file a supplemental opening brief in the Court of Appeal. Within 15 days after such a brief is filed, any opposing party may serve and file a supplemental responding brief.

(2) Supplemental briefs must be limited to matters arising after the previous Court of Appeal decision in the cause, unless the presiding justice permits briefing on other matters.

(3) Supplemental briefs may not be filed if the previous decision of the Court of Appeal was a denial of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause.

~~(b)~~(c) ***

Advisory Committee Comment (2002)

New subdivision (b) is derived from former rule 29.4(f).

After the Supreme Court remands or transfers a cause to the Court of Appeal for further proceedings (i.e., under revised rule 29.3(c)–(e), or rule 47.1(a)(1)(B)), the parties are permitted to file supplemental briefs. Former rule 29.4(f) authorized the parties to file only simultaneous supplemental briefs within a single 30-day period. In a substantive change intended to improve the usefulness of such briefing to the Court of Appeal, revised rule 13(b) authorizes instead two consecutive briefing periods of 15 days each. The revised rule makes clear that the first 15-day

briefing period begins on the day of *finality* (under revised rule 29.4) of the Supreme Court decision remanding or order transferring the cause to the Court of Appeal. Moreover, the revised rule specifies that "any party" may file a supplemental opening brief, and if such a brief is filed, "any opposing party" may file a supplemental responding brief. In this context the phrase "any party" is intended to mean any *or all* parties. Under the revised rule, therefore, such a decision or order of transfer to the Court of Appeal triggers, first, a 15-day period in which any or all parties may file supplemental opening briefs and, second—if any party files such a brief—an additional 15-day period in which any opposing party may file a supplemental responding brief.

Advisory Committee Comment (2001)

Revised rule 13 governs briefs—of the parties or amici curiae—in the Court of Appeal only; rule 29.3 governs briefs in the Supreme Court.

Subdivision (a) ***

Subdivision ~~(b)~~(c). Revised subdivision ~~(b)~~(c) is former rule 14(c). Revised subdivision ~~(b)~~(c)(2) states the showing required of a prospective amicus curiae in terms somewhat different from those of former rule 14(c), but no substantive change is intended.

Revised subdivision ~~(b)~~(c)(3) conforms amicus curiae practice in the Court of Appeal with amicus curiae practice in the Supreme Court by requiring that the application for permission to file an amicus curiae brief be accompanied by the proposed brief. The change is substantive, and is intended to expedite the briefing process.

***

Rule 40. Definitions

(a)–(j) ***

(k) "Date of filing" of a brief (as defined in subdivision (i)~~(k)~~) is the date of delivery to the clerk's office during normal business hours. The brief is timely, however, if the time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(l) ***

PART IV. Hearing and Determination of Appeal

Rule 19. Voluntary abandonment and dismissal

(a) **[Before record filed]** At any time before the filing of the record in the reviewing court, the appellant may file in the office of the clerk of the superior court a written abandonment of the appeal; or the parties may file in that office a stipulation for abandonment. The filing of either document shall operate to dismiss the appeal and to restore the jurisdiction of the superior court. Upon such a dismissal, the appellant shall be entitled to the return of that portion of any deposit in excess of the actual cost of preparation of the record on appeal up to that time. The clerk of the superior court shall promptly send a copy or other notice of the abandonment to the clerk of the reviewing court.

(Subd (a) amended effective January 1, 1986.)

(b) **[After record filed]** If the record has been filed in the reviewing court, an abandonment or a stipulation of the parties to dismiss the appeal shall be filed in that court, which may order the dismissal and immediate issuance of the remittitur.

(Subd (b) amended effective January 1, 1994.)

(c) **[Notification by clerk]** The clerk of the court in which the abandonment or dismissal is filed shall immediately notify the adverse party of the filing of the abandonment or the order of dismissal.

(d) **[Approval of compromise]** Whenever the guardian of a minor or of an insane or incompetent person seeks approval of a proposed compromise of a case pending on appeal, the reviewing court may, by order, refer the matter to the trial court with instructions to hear the same and determine whether the proposed compromise is for the best interests of the ward, and to report its findings. On receipt of the report, the reviewing court shall make its order approving or disapproving the compromise.

Rule 19 amended effective January 1, 1994; adopted effective January 1, 1951; previously amended effective January 1, 1986.

Drafter's Notes

1985 Rule 19(a) has been amended to require the trial court clerk to send the reviewing court a copy or other notice of an abandonment or dismissal of an appeal filed in the trial court. Abandonments are filed in the trial court if the record has not yet been filed in the reviewing court; after the record is filed, they are filed in the reviewing court.

1994 – Rule 19 is amended to make voluntary dismissals of civil appeals effective and final forthwith.

Rule 19.3. Motion for calendar preference

A motion for preference on the calendar, supported by points and authorities, shall be filed no later than the last day for filing the appellant's reply brief. Failure to comply with this rule may be deemed a waiver of the claim of preference.

Rule 19.3 adopted effective July 1, 1984.

Drafter's Notes

1984 – New rule 19.3 is adopted to establish a procedure for claiming calendar preference in a civil appeal. Failure to file a timely motion for calendar preference may be deemed a waiver of the claim of preference.

Rule 19.5. Prehearing conferences in civil cases; settlements

(a) – At any time after the notice of appeal is filed, the Presiding Justice may:

(1) – order the appellant to file a short statement of the nature of the case and the issues on appeal;

(2) – order counsel for the parties, and any other persons he deems necessary, to appear before a judge of the court for a prehearing conference to consider the simplification of the issues on appeal, the possibility of settlement, and any other matters the designated conference judge determines may aid in the disposition of the appeal. Matters agreed upon shall be reduced to writing and, when executed as a stipulation and approved by the conference judge, shall be filed with the clerk and shall control the subsequent course of the appeal, unless modified to prevent manifest injustice.

(b) – The conference judge and any court attaché who attends the conference shall not participate in or do anything to influence the consideration or decision of the appeal on its merits.

(c) – The statement of the nature of the case and the issues and any matters occurring or said at a prehearing conference, unless stipulated to, approved and filed as provided in subdivision (a), shall not be referred to in any subsequent proceedings in the appeal, except a further prehearing conference or other settlement negotiations.

~~**(d) If a prehearing conference is ordered prior to the date appellant's opening brief is due to be filed, the period for filing the brief is extended to a date 30 days after the conference date specified in the order.**~~

~~**(e) [Notice of settlement]** If a civil case is settled after a notice of appeal is filed, the appellant shall immediately give the reviewing court written notice; and shall give telephone or other oral notice if a hearing or conference is imminent. If the record on appeal has not been completed and transmitted to the reviewing court at the time of the settlement, the appellant shall also give written notice to the clerk of the superior court, and include proof thereof with the notice to the reviewing court.~~

~~*(Subd (e) adopted effective July 1, 1996.)*~~

~~*Rule 19.5 adopted effective July 1, 1996; previously amended effective January 1, 1977.*~~

~~**Drafter's Notes**~~

~~**1996** This rule was amended to require the appellant to give notice to the reviewing court of a settlement.~~

~~Rule 20. Transfer of causes~~

~~**(a) [By Supreme Court]** Except as provided in (b), causes may be transferred from the Supreme Court to a Court of Appeal, or from a Court of Appeal to the Supreme Court, or from one Court of Appeal to another, or from one division to another, only on order of the Supreme Court. The clerk of the court from which the cause is transferred shall immediately transmit to the other court the original record, briefs and all original papers and exhibits on file in the cause. If the transfer is made because the appeal is taken to the wrong court, the order may direct the appellant to pay the clerk of the court to which the cause is transferred the fee required by law for the filing of the record in the first instance. If it is so ordered and the appellant fails to pay the fee within 20 days after the mailing of the notice by the clerk that the record has been transmitted and that the filing fee must be paid, the appeal may be dismissed.~~

~~The clerk of the court to which the cause is transferred shall promptly send each party a copy of the order of transfer showing the new case number.~~

~~*(Subd (a) amended effective January 1, 1992; previously amended effective November 11, 1966, and July 1, 1984.)*~~

(b) [By administrative presiding justice] The administrative presiding justice of a Court of Appeal having more than one division may transfer causes between divisions of the court, as follows:

(1) When two or more causes arise out of the same trial court proceedings, to the division to which the first of the causes to be filed was assigned.

(2) When, because of recusals, the division to which the cause was originally assigned does not have three judges qualified to hear the cause, to another division selected at random by the clerk.

The clerk shall notify the parties of the division to which the cause is transferred, and of the method used in selecting that division. The method used by the administrative presiding justice and the clerk in selecting the division shall be fair, and shall not permit the transfer to be used to affect the decision of the cause.

This subdivision (b) shall be operative only when it has been approved by the Supreme Court.

(Subd (b) adopted effective January 1, 1992.)

Rule 20 amended effective January 1, 1992; previously amended effective November 11, 1966, and July 1, 1984.

Drafter's Notes

1984 Rule 20 is amended to require the clerk of the Court of Appeal receiving a transferred case to give notice of the transfer of a cause.

1992 Rule 20 (transfer of causes) was amended to permit the administrative presiding justice of a multidivision Court of Appeal to transfer cases between divisions of that court (1) to put in the same division cases that arose out of the same trial court proceedings; and (2) when the original division to which a case was assigned lacks three qualified judges, because of recusals. Other transfers between divisions, and all transfers between different Courts of Appeal, will continue to be made only on order of the Supreme Court.

Rule 21. Sessions

(a) [Time and place of sessions] At the times specified by the court, the Supreme Court shall hold regular sessions in San Francisco, Los Angeles, and Sacramento and may hold special sessions elsewhere. Each Court of Appeal and each division thereof shall hold regular sessions at least once in each quarter at times specified by the court. Motions will ordinarily be

decided without argument, but may be placed on the calendar for any session by order of the court or the presiding justice or Chief Justice.

(Subd (a) amended effective July 1, 1989; previously amended effective November 11, 1966, and July 1, 1968.)

(b) [Special sessions] A Court of Appeal, or division thereof, may hold special sessions in another appellate district when:

(1) the causes scheduled for hearing during a special session have been transferred to the court by the Supreme Court from the appellate district in which the special session is to be held, and

(2) the session has been approved by the Chief Justice of California, as Chairman of the Judicial Council.

(Subd (b) adopted effective July 1, 1968.)

(c) [Notice of calendar hearing] When an appeal is set for hearing the clerk of the reviewing court shall give written notice to the parties of the time and place of said hearing. This notice may be in such form as the clerk may prescribe, but it shall notify each party that he must file with the clerk of the superior court a further notice specifying such of the designated original exhibits and affidavits as he deems necessary to have transmitted to the reviewing court.

(Subd (b) renumbered subd (c) effective July 1, 1968; previously amended effective January 1, 1951.)

Rule 21 amended effective July 1, 1989.

Drafter's Notes

1989 Rule 21 was amended to delete the obsolete reference to "noticed motions" in reviewing courts and make it clear that motions will normally be decided without argument but may be calendared for argument on the court's order.

Rule 21.5. "Circuit-riding" sessions

Each Court of Appeal shall adopt a written policy and procedure, not inconsistent with this rule, to facilitate sessions being held, for the convenience of the parties and counsel, at places within the district other than the court's permanent locations. Sessions may be held at any place where it appears that suitable facilities are available and a sufficient number of cases may be set for at least one day of hearings.

Rule 21.5 adopted effective July 1, 1981.

Drafter's Notes

Rule 21.5 is designed to encourage Courts of Appeal with sufficient cases originating in counties other than the one where the court normally sits to adopt experimental procedures for holding oral argument sessions in additional locations. It is hoped that these experiments will provide data on the feasibility and need of holding such sessions regularly, in the areas where the appellate cases originate.

Rule 22. Oral argument in the Supreme Court

(a) **[Application]** This rule governs oral argument in the Supreme Court unless the court provides otherwise by order or in its Practices and Procedures.

(b) **[Time for argument]** Counsel for each side is allowed 45 minutes for oral argument in a death penalty appeal and 30 minutes for oral argument in all other cases.

(c) **[Order of argument]** The petitioner or appellant has the right to open and close. If two or more parties petition for review, the court will indicate the order of argument.

(d) **[Number of counsel]** In a death penalty appeal, two counsel may argue on each side under Penal Code section 1254 if they notify the court not later than 10 days before the date of the argument that they require argument by two counsel. In other cases, no more than one counsel may be heard on each side — even if there is more than one party on each side — unless the court orders otherwise. A request to divide oral argument among two or more counsel shall be filed not later than 10 days after the date of the order setting the case for oral argument.

Rule 22 repealed and adopted effective January 1, 1998.

Drafter's Notes

1998 Former rule 22 was repealed and new rules 22 and 22.1 were adopted to establish the time limits, order, and number of counsel in oral argument in the Supreme Court and the Court of Appeal. Consistent with the Supreme Court's recently adopted policy, rule 22 provides that only one attorney may argue for each side in the Supreme Court, except in capital appeals or with the permission of the court.

Rule 22.1. Oral argument in the Court of Appeal

(a) **[Application]** This rule governs oral argument in the Court of Appeal unless the court provides otherwise by order or local rule.

~~(b) [Time for argument] Counsel for each side is allowed 30 minutes for oral argument. If multiple parties who are represented by separate counsel or counsel for amicus curiae request argument, the court may apportion or expand the time according to the respective parties' interests.~~

~~(c) [Order of argument] The appellant or moving party has the right to open and close. If two or more parties file a notice of appeal, the court will indicate the order of argument.~~

~~(d) [Number of counsel] No more than one counsel may argue for each party who appeared separately in the court below, unless the court orders otherwise.~~

~~(e) [Amicus] Upon written request, the court may grant or deny any amicus curiae the opportunity to argue.~~

~~*Rule 22.1 adopted effective January 1, 1998.*~~

~~**Drafter's Notes**~~

~~**1998** Former rule 22 was repealed and new rules 22 and 22.1 were adopted to establish the time limits, order, and number of counsel in oral argument in the Supreme Court and the Court of Appeal. Consistent with the Supreme Court's recently adopted policy, rule 22 provides that only one attorney may argue for each side in the Supreme Court, except in capital appeals or with the permission of the court.~~

~~Rule 22.5. Time of submission of cause in Court of Appeal~~

~~(a) A cause pending in a Court of Appeal is submitted when the court has heard oral argument, or has approved a waiver of oral argument, and the time has passed for filing all briefs and papers, including any supplementary brief permitted by the court.~~

~~(b) Submission may be vacated only by an order stating the reasons therefor. The order shall provide for resubmission of the cause.~~

~~(c) [After transfer from Supreme Court] If a cause previously decided by opinion by a Court of Appeal is transferred to it by the Supreme Court, the cause is submitted on the latest of~~

~~(i) 60 days after filing of the last timely supplemental brief,~~

~~(ii) 60 days after receipt of the record and of the Supreme Court's transfer order if no timely supplemental briefs are filed, or~~

(iii) the time provided in subdivision (a), if oral argument is scheduled within either of the preceding times.

The Court of Appeal may order the case submitted at an earlier time if doing so is consistent with rule 29.4 and with any instructions of the Supreme Court.

(Subd (c) adopted effective July 1, 1991.)

Rule 22.5 amended effective July 1, 1991; previously adopted effective September 1, 1978; applicable to all cases in which oral argument is held, or a waiver of oral argument is approved, after August 31, 1978.

Drafter's Notes

1991—The council amended rule 22.5 by adding a new subdivision (c) on determining the date of submission of a case retransferred from the Supreme Court.

Rule 23. Findings and additional evidence on appeal

(a) **[Request for findings]** A request that the reviewing court make findings of fact shall contain a draft of the proposed findings, and may be made in a brief, or a separate application may be served and filed. If opposing counsel has not had an opportunity in his brief to object to the request, he may serve and file written opposition thereto.

(b) **[Application to produce evidence]** Proceedings for the production of additional evidence on appeal shall be in accordance with rule 41. The court may grant or deny the application in whole or in part, and subject to such conditions as it may deem proper. If the application is granted, the court, by appropriate order, shall direct that the evidence be taken before the court or a department or a justice thereof, or before a referee appointed for the purpose. The court shall also prescribe reasonable notice of the time and place for the taking of the evidence and shall indicate the issues on which the evidence is to be taken. Where documentary evidence is offered, either party may submit the original or a certified or photostatic copy thereof and the court may admit the document in evidence and add it to the record on appeal.

Rule 23 amended effective January 1, 1967.

Rule 23.5. Form of opinion

The opinion of a Court of Appeal shall identify the judges participating in the decision, including the author of the majority opinion and of any concurring or

~~dissenting opinion, or the three judges participating when the opinion is designated "by the court."~~

~~*Rule 23.5 adopted effective January 1, 1982.*~~

~~**Drafter's Notes**~~

~~**1982**—As recommended by the Chief Justice's Special Committee on Practice and Procedure in the First Appellate District, this new rule codifies present practice by requiring that Court of Appeal opinions identify the judges participating in the decision, including "by the court" opinions.~~

~~Rule 24. Decision of reviewing court~~

~~(a) **[When decisions become final]** All decisions of the reviewing courts shall be filed with the clerk, who shall forthwith transmit a copy of the opinion to the lower court or tribunal and to the parties.~~

~~A decision of the Supreme Court becomes final 30 days after filing unless the court orders a shorter time or, prior to the expiration of the 30-day period or any extension, orders one or more additional periods not to exceed a total of 60 additional days. An order of the Supreme Court denying a petition for review of a decision of a Court of Appeal becomes final when it is filed.~~

~~A decision of a Court of Appeal becomes final as to that court 30 days after filing. An order dismissing an appeal involuntarily is a decision for purposes of the preceding sentence. The decision becomes final as to that court immediately after filing upon the denial of a petition for a writ within its original jurisdiction or a writ of supersedeas, without issuance of an alternative writ or order to show cause, or the denial of an application for bail or to reduce bail pending appeal, or the denial of a transfer to a Court of Appeal in a case within the original jurisdiction of a municipal or justice court, or an order of dismissal of an appeal pursuant to a written request of the appellant or a stipulation of the parties. The denial of a petition for a writ of habeas corpus that is filed on the same day as the decision in a related appeal becomes final as to the Court of Appeal at the same time as the related appeal.~~

~~When a decision of a reviewing court is final as to that court, it is not thereafter subject to modification or rehearing by that court, except that when the date of finality falls on a holiday or other day the clerk's office is closed, the decision may be modified or rehearing granted or denied until the close of business on the next day the clerk's office is open. If an opinion is modified without change in the judgment, during the time allowed for rehearing, the modification shall not postpone the time that the~~

~~decision becomes final as provided above; but if the judgment is modified during that time, the period specified herein begins to run anew, as of the date of modification.~~

~~*(Subd (a) amended effective January 1, 1994; previously amended effective January 1, 1957, January 1, 1959, January 1, 1961, January 2, 1962, July 1, 1963, November 11, 1966, January 1, 1968, July 1, 1972, July 1, 1973, July 1, 1984, July 1, 1986, July 1, 1989, January 1, 1991, January 1, 1993.)*~~

~~**(b) [Whether judgment is modified]** An order modifying an opinion shall specify whether it effects a change in the judgment.~~

~~*(Subd (b) adopted effective July 1, 1986.)*~~

~~**(c) [Filing consent to modification]** If the reviewing court orders that a judgment be reversed and a new trial granted or that, in the alternative, the judgment be affirmed on condition that the party in whose favor judgment has been rendered consent to a remission of a portion thereof, or on condition that the party against whom the judgment has been rendered consent to an addition thereto, then, unless otherwise ordered, the judgment of reversal and granting of a new trial shall become final unless within 30 days after the filing of the decision two copies of a written consent by such party to the remission or addition shall be filed in the reviewing court. One of the copies shall be transmitted with the remittitur to the superior court.~~

~~*(Subd (c) relettered effective July 1, 1986.)*~~

~~**(d) [Discretionary early finality]** Notwithstanding subdivision (a), a Court of Appeal may order that a decision granting a writ — or denying a writ after issuance of an alternative writ or an order to show cause — within its original jurisdiction shall become final as to that court~~

~~(1) Within a stated period less than 30 days or~~

~~(2) Immediately, if early finality is necessary to prevent mootness or frustration of the relief granted or is otherwise necessary in the interest of justice.~~

~~*(Subd (d) amended effective July 1, 2000; relettered effective July 1, 1986; adopted effective July 1, 1983, as subd (c).)*~~

~~*Rule 24 amended effective July 1, 2000; previously amended effective January 1, 1957, January 1, 1959, January 1, 1961, January 2, 1962, July 1, 1963, November 11, 1966, January 1, 1968, July 1, 1972, July 1, 1973, July 1, 1983, July 1, 1984, July 1, 1986, July 1, 1989, January 1, 1991, January 1, 1993, and January 1, 1994.*~~

Drafter's Notes

1983 A new subdivision (c) is added to rule 24 to provide that a Court of Appeal issuing an order granting a peremptory writ may make the order final forthwith, if necessary to prevent mootness or frustration of the relief granted. This amendment evolved from comments received expressing concern over the delayed finality of orders in urgent matters.

1984 Rules 24, 27, 28, and 62 are amended to make it clear that the rules governing finality of a decision not to transfer a published appellate department case to the Court of Appeal are the same as those for a case certified to the Court of Appeal.

1989 Rule 24(a) was amended to insert the words "or denied" in describing the Court of Appeal's power to rule on rehearing on the first day the court is open after a holiday on which the decision became final.

1993 Rule 24 is amended to make it clear that an involuntary dismissal is final as to the Court of Appeal 30 days after filing of the decision. This amendment was made to clarify existing law.

1994 Rule 24 is amended to make voluntary dismissals of civil appeals effective and final forthwith.

2000 Rules 24(d) and 56(a), (d) (Appellate Writs). These rules were amended to facilitate writ proceedings:

- Amended rule 24(d) allows a Court of Appeal discretion to order early finality when a writ petition is denied after issuance of an alternative writ or an order to show cause.

- Amended rule 56 requires writ petitions to comply with rule 15, insofar as it is practicable to do so, unless the rules specifically provide otherwise. Volumes of supporting documents are limited to 300 pages each, and exhibits in multiple volumes must be paginated consecutively.

Rule 25. Remittitur

(a) [Issuance and transmission] A remittitur shall issue after the final *determination* of

(1) Supreme Court review of a decision of a Court of Appeal;

(2) any appeal;

(3) any original proceeding in which an alternative writ or order to show cause has been issued addressed to a lower court, board or tribunal; or

~~(4) any original proceeding determining on the merits the validity of the decision of a lower court, board or tribunal without issuance of an order to show cause or alternative writ.~~

~~A remittitur shall not be issued when an original petition is summarily denied.~~

~~Unless otherwise ordered, the Clerk of the Supreme Court shall issue the remittitur when a judgment of that court becomes final, and the clerk of a Court of Appeal shall issue the remittitur~~

~~(1) upon the expiration of the period during which review in the Supreme Court may be determined, including any extension of the period granted in the particular cause or~~

~~(2) as provided in this subdivision or rule 29.4(c).~~

~~The remittitur shall be deemed issued on the clerk's entry in the record of the case, and shall be transmitted immediately, with a certified copy of the opinion or order, to the lower court, board or tribunal. On Supreme Court review of a decision of a Court of Appeal the remittitur shall, unless otherwise ordered, be addressed to the Court of Appeal, accompanied by a second certified copy of the remittitur and by two certified copies of the opinion or order; and the Court of Appeal shall issue its remittitur forthwith after an unqualified affirmance or reversal of its judgment by the Supreme Court, or after finality of such further proceedings as are mandated by the Supreme Court.~~

~~Whenever the judgment of the reviewing court changes the length of a sentence to state prison or changes the applicable credits, or changes the maximum permissible period of confinement of a person committed to the custody of the Youth Authority, without requiring further hearing in the trial court, the clerk of the reviewing court shall also transmit a copy of the remittitur and the opinion to the Department of Corrections or to the Youth Authority.~~

~~*(Subd (a) amended effective May 6, 1985; previously amended effective January 1, 1957, January 1, 1961, November 11, 1966, July 1, 1980, and July 1, 1984.)*~~

~~**(b) [Issuance forthwith]** For good cause shown, or on stipulation of the parties, the Supreme Court may direct the immediate issuance of a remittitur. The Court of Appeal may direct the immediate issuance of a remittitur on stipulation of the parties.~~

~~*(Subd (b) amended effective November 11, 1966.)*~~

~~**(c) [Stay of issuance]** A reviewing court, for good cause, may stay the issuance of a remittitur for a reasonable period.~~

(d) [Recall of remittitur] A remittitur may be recalled by order of the reviewing court on its own motion, on motion or petition after notice supported by affidavits, or on stipulation setting forth facts which would justify the granting of a motion.

(Subd (d) amended effective January 1, 1951.)

(e) [Notice to parties] Forthwith upon issuance of the remittitur, the clerk of the reviewing court shall mail notice to the parties that it has been issued.

(Subd (e) adopted effective January 1, 1980.)

Rule 25 amended effective May 6, 1985; previously amended effective July 1, 1984.

Drafter's Notes

1980 Rule 12 was amended to require the clerk of the reviewing court to send to the parties copies of any order augmenting the record. This primarily affects augmentation on the court's own motion, where the parties might otherwise not have known of the action. An amendment to rule 25 requires the clerk of the reviewing court to mail notice to the parties of the issuance of a remittitur. Both of these changes were originally suggested by the Academy of Appellate Lawyers. An amendment to rule 28(f) clarifies that a cause need not be calendared for oral argument in the Supreme Court if that court transfers it to a Court of Appeal.

1984 Rule 25 is amended to require issuance of a remittitur upon finality of decision in a writ matter decided on the merits. Remittiturs are not required when an original petition is summarily denied.

Rule 26. Costs on appeal

(a) [Right to costs]

(1) Except as provided in this rule, the prevailing party shall be entitled to costs on appeal under subdivision (c) as an incident to the judgment on appeal. In the case of a general and unqualified affirmance of the judgment, or the dismissal of an appeal, the respondent shall be deemed the prevailing party; in the case of a reversal, in whole or in part, or of a modification of the judgment, the appellant shall be deemed the prevailing party. In any case in which the interests of justice require it, the reviewing court may make any award or apportionment of costs it deems proper. In probate cases, in the absence of an express direction for costs by the reviewing court, costs on appeal shall be awarded to the prevailing party, but the superior court shall decide against whom the award shall be made. The foregoing provisions do not apply in criminal cases.

~~(2) If the appeal is frivolous or taken solely for the purpose of delay or if any party has required in the typewritten or printed record on appeal the inclusion of any matter not reasonably material to the determination of the appeal, or has been guilty of any other unreasonable infraction of the rules governing appeals, the reviewing court may impose upon offending attorneys or parties such penalties, including the withholding or imposing of costs, as the circumstances of the case and the discouragement of like conduct in the future may require.~~

~~(3) If there is more than one notice of appeal or if the judgment of the trial court is reversed in whole or in part, or modified, the opinion shall specify the award or denial of costs.~~

~~(4) Unless otherwise ordered by the reviewing court, (i) an order or judgment regarding costs on appeal neither includes attorney fees on appeal nor precludes any party from seeking attorney fees on appeal; and (ii) the issue of entitlement to attorney fees on appeal shall be determined by motion made in the trial court under rule 870.2.~~

~~*(Subd (a) amended effective January 1, 1999; previously amended effective January 1, 1959, and July 1, 1986.)*~~

~~**(b) [Entry of judgment for costs]** In any case in which the reviewing court directs the manner in which costs shall be awarded or denied, the clerk shall enter on the record and insert in the remittitur a judgment in accordance with such directions. In the absence of such directions by the reviewing court the clerk shall enter on the record and insert in the remittitur a judgment for costs as follows:~~

~~(1) in the case of a general and unqualified affirmance of the judgment, for the respondent;~~

~~(2) in the case of a dismissal of the appeal, for the respondent.~~

~~If the clerk fails to enter judgment for costs as provided in this subdivision, the reviewing court, on motion made not later than 30 days after issuance of the remittitur or on its own motion, may recall the remittitur for correction.~~

~~*(Subd (b) amended effective July 1, 1989.)*~~

~~**(c) [Items recoverable as costs]** The party to whom costs are awarded may recover only the following, when actually incurred:~~

~~(1) the cost of preparation of an original and one copy of any type of record on appeal authorized by these rules if the party is the appellant, or one copy of the record if the party is the respondent, subject to reduction by order of the reviewing court pursuant to subdivision (a) of this rule; provided, however, that the expense of any method of preparation in excess of the cost of preparing the record in typewriting shall not be recoverable as costs, unless the parties so stipulate, and provided, further, that the expense of copying exhibits and affidavits under rule 5(b), or of copying parts of a prior record that could be incorporated by reference under rule 11(b), shall not be recoverable as costs unless the copying is ordered by the reviewing court;~~

~~(2) the reasonable cost of printing or reproduction of briefs by other process of duplication;~~

~~(3) the cost of production of additional evidence;~~

~~(4) filing and notary fees and the expense of service, transmission, and filing of the record, briefs, and other papers;~~

~~(5) the premium on any surety bond procured by the party recovering costs, unless the court to which the remittitur is transmitted determines that the bond was unnecessary; and~~

~~(6) other expense reasonably necessary to procure the surety bond, such as the expense of acquiring a letter of credit required as collateral for the bond.~~

~~*(Subd (c) amended effective January 1, 1994; previously amended effective January 1, 1951, January 1, 1959, and July 1, 1968.)*~~

~~**(d) [Procedure for claiming costs]** A party who claims costs awarded by a reviewing court shall, within 40 days after the clerk of the reviewing court mails that party notice of the issuance of the remittitur, serve and file in the trial court a memorandum of costs verified as prescribed by rule 870(a)(1).~~

~~A party may move to have costs taxed in the same manner and within a like time after service of a copy of the memorandum of costs, as prescribed by rule 870(b). After the costs have been taxed, or after the time for taxing the costs has expired, the award of costs may be enforced in the same manner as a money judgment.~~

~~*(Subd (d) amended effective July 1, 1989; adopted effective January 1, 1987.)*~~

~~(c) **[Procedure for requesting sanctions]** A party seeking monetary sanctions on the ground the appeal is frivolous or taken solely for purposes of delay, or for an unreasonable infraction of the rules governing appeals, shall serve and file a motion under rule 41 no later than 10 days after the time when the appellant's reply brief is due or at the time of filing a motion to dismiss the appeal; a party who filed a motion to dismiss the appeal before filing a brief may make or renew the motion for sanctions up to 10 days after the time when the appellant's reply brief is due. The motion shall include a declaration supporting the amount of sanctions being sought. The court shall notify a party or attorney if it is considering imposing sanctions on its own motion or on motion of a party. The party or attorney against whom sanctions are sought may serve and file a written opposition within 10 days after notice from the court that it is considering imposing sanctions; failure to do so shall not be deemed consent to the award of sanctions. An opposition should not ordinarily be filed unless the court has sent notice that it is considering imposing sanctions or requests the party's or attorney's views.~~

~~Unless otherwise ordered, the issue of sanctions and their amount will be argued at the time of oral argument on the merits of the appeal.~~

~~*(Subd (c) as adopted effective January 1, 1995.)*~~

~~*Rule 26 amended effective January 1, 1999; previously amended effective January 1, 1987, July 1, 1989, January 1, 1994, and January 1, 1995.*~~

~~**Drafter's Notes**~~

~~**1987** Rules 26 and 135 are amended to recite the procedures for claiming costs on appeal.~~

~~**1989** Rule 26(b) was amended to delete obsolete guides to the clerk in awarding costs in the absence of a specific order. Rule 26(d) was amended to make the time for claiming costs 40 days from the mailing of notice of issuance of the remittitur, instead of the present 30 days from the filing of the remittitur in the trial court.~~

~~**1994** Rule 26 is amended to add to the list of recoverable costs, the expense of a letter of credit required in order to obtain the appeal bond.~~

~~**1995** On recommendation of the Appellate Standing Advisory Committee, the council: . . . (2) amended rule 26 to specify the procedure on requests for sanctions; . . .~~

~~**1999** Amended rule 26(a) provides that, unless the reviewing court orders otherwise, (1) entitlement to recover costs on appeal does not include entitlement to attorney fees on appeal; and (2) entitlement to recover attorney fees on appeal should be decided by motion made in the trial court after the appeal under rule 870.2.~~

Rule 27. Rehearing in court rendering decision

(a) [Power to grant rehearing] The Supreme Court or a Court of Appeal may grant a rehearing after its own decision in any cause except the denial by a Court of Appeal of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause or the denial of a transfer to a Court of Appeal in a case within the original jurisdiction of a municipal or justice court. A rehearing may be granted on petition, as provided in subdivision (b), or on the court's own motion, before the decision becomes final.

(Subd (a) amended effective July 1, 1984; previously amended effective January 1, 1957, January 1, 1959, January 2, 1962, and November 11, 1966.)

(b) [Time for filing petition] A party seeking a rehearing either in the Court of Appeal or in the Supreme Court must serve and file a petition therefor within 15 days after the filing of the decision.

(Subd (b) amended effective November 11, 1966; previously amended effective January 1, 1957, and January 2, 1962.)

(c) [Time for filing answer] An answer may be served and filed within 23 days after the filing of the decision.

(Subd (c) amended effective January 1, 1957.)

(d) [Form of petition and answer] Insofar as practicable, the petition and answer shall conform to the provisions of rule 15.

(e) [Determination of petition] An order of the Supreme Court granting a rehearing shall be signed by at least four judges assenting thereto, and filed with the clerk. If no order is made before the decision becomes final as provided in subdivision (a) of rule 24, the petition shall be deemed denied, and the clerk shall enter a notation in the register to that effect.

(Subd (e) amended effective November 11, 1966; previously amended effective January 1, 1961.)

Rule 27 amended effective July 1, 1984.

Drafter's Notes

1984 See note following rule 24.

~~**Rule 27.5. Transfer before decision**~~

~~**(a) [Transfer]** On its own motion or on petition of a party, the Supreme Court may order a cause pending in a Court of Appeal transferred to itself. For purposes of this rule, a cause is pending until the decision of the Court of Appeal is final as to that court; a cause decided by the appellate department of a superior court is not pending in a Court of Appeal until it is ordered transferred pursuant to rule 62.~~

~~**(b) [Grounds]** Transfer before decision will not be ordered unless the cause presents issues of imperative public importance requiring prompt resolution by the Supreme Court, and justifying a departure from normal appellate processes.~~

~~**(c) [Procedure]** A party seeking transfer shall serve and file in the Supreme Court a petition setting forth the nature of the cause, the issues presented and how they arose, and why those issues warrant a transfer of the cause.~~

~~An answer to the petition may be served and filed within 20 days after the service of the petition.~~

~~**(d) [Form of petition and answer]** The petition and any answer shall conform as nearly as practicable to the requirements of rule 28(e).~~

~~**(e) [Determination of petition]** Transfer is granted by an order of the Supreme Court made on the affirmative votes of at least four judges.~~

~~*Rule 27.5 adopted May 6, 1985.*~~

~~**Advisory Committee Comment**~~

~~Transfer of a cause from a Court of Appeal to itself before decision has been a power of the Supreme Court under the current and predecessor language of the California Constitution. A recent case, under the version of article VI, section 12, in effect prior to May 6, 1985, is *Brosnahan v. Brown* (1982) 32 Cal.3d 236.~~

~~Rule 20 also applies to these transfers, and is cited in *Brosnahan*. However, rule 20 furnishes neither a procedure for seeking transfer before decision nor an indication of the criteria for determination of when a transfer is appropriate. This new rule, which is called for by article VI, section 12, as amended effective May 6, 1985, supplements rule 20 by providing the procedure and criteria.~~

~~Subdivision (b) is drawn from rule 18 of the United States Supreme Court Rules, applicable to petitions for certiorari prior to decision by a lower federal court. The language is chosen to emphasize the extraordinary nature of this procedure, and the fact that the Supreme Court will entertain a petition only under the most compelling circumstances.~~

~~**Rule 28. Review by the Supreme Court**~~

~~(a) **[Time within which court may order review]**~~

~~(1) *(On own motion)* If no petition for review is filed, within 30 days after a decision of a Court of Appeal becomes final as to that court the Supreme Court, on its own motion, may order review of the Court of Appeal decision. Within the original 30-day period or any extension of it, the Supreme Court may for good cause extend the time for one or more additional periods amounting to not more than an additional 60 days in the aggregate. The total time, including extensions, shall not exceed 90 days after the decision becomes final as to the Court of Appeal.~~

~~If any period in this subdivision ends on a day the clerk's office is closed, the Supreme Court may on its own motion order review of the Court of Appeal decision on the next day the clerk's office is open.~~

~~(2) *(On petition)* Within 60 days after the filing, as provided in subdivision (b), of the last timely petition for review, the Supreme Court may order review of a Court of Appeal decision. Within the original 60-day period or any extension of it the Supreme Court may, for good cause, extend the time for one or more additional periods amounting to not more than an additional 30 days in the aggregate. The total time, including extensions, shall not exceed 90 days after the filing of the last timely petition for review.~~

~~*(Subd (a) amended effective July 1, 1989; previously amended effective January 1, 1957, January 1, 1959, January 1, 1961, January 2, 1962, November 11, 1966, January 1, 1968, and May 6, 1985.)*~~

~~**(b) [Time for filing petition]** A party seeking review must serve and file a petition within 10 days after the decision of the Court of Appeal becomes final as to that court, but a petition may not be filed after denial of a transfer to a Court of Appeal in a case within the original jurisdiction of a *municipal court. For purposes of this rule, the time when the decision* becomes final as to the Court of Appeal is not extended if the 30th day after the decision was filed is a Saturday, Sunday, holiday, or other day the clerk's office is closed. Proof shall be filed of the delivery or mailing of one copy of the petition to the clerk of the Court of Appeal which rendered the decision. The clerk of that court shall transmit to the Clerk of the Supreme Court the original record, briefs, and all original papers and exhibits on file in the cause forthwith on receipt of a copy of the petition or on request by the Clerk of the Supreme Court, whichever is earlier. If the~~

petition is denied, the Clerk of the Supreme Court shall return them to the clerk of the proper Court of Appeal. If the petition is granted, they shall be retained and properly numbered by the Clerk of the Supreme Court.

A petition for review submitted for filing prior to the finality of the Court of Appeal decision as to that court shall be received by the clerk and shall be deemed to have been filed on the day after the decision becomes final as to the Court of Appeal.

(Subd (b) amended effective January 1, 1996; previously amended effective January 1, 1957, January 1, 1959, January 2, 1962, November 11, 1966, January 1, 1972, July 1, 1984, May 6, 1985, and July 1, 1986.)

(c) [Time for filing answer] An answer may be served and filed within 20 days after the filing of the petition.

(Subd (c) amended effective May 6, 1985; previously amended January 1, 1957, January 1, 1959, and November 11, 1966.)

(d) [Reply] If the answer presents additional issues for review, the petitioner may serve and file a reply limited to those additional issues within 10 days after the filing of the answer.

(Subd (d) adopted effective May 6, 1985.)

(e) [Form of petition, answer, and reply]

(1) Except as provided in this rule, the petition, answer and reply shall, insofar as practicable, conform to the provisions of rule 14.

(2) At the beginning of the body of the petition, the petition shall state the issues presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement should be short and concise and should not be argumentative or repetitious. The statement of an issue will be deemed to comprise every subsidiary issue fairly included in it. Only the issues set forth in the petition and answer or fairly included in them need be considered by the court.

(3) The petition shall be as concise as possible, and shall address, in particular, why the cause is appropriate for review under the criteria stated in rule 29.

~~(4) The original petition and each copy filed in the Supreme Court shall contain or be accompanied by a copy of the opinion of the Court of Appeal, showing the date of filing.~~

~~(5) The petition shall be a single document including a brief in support of the request for review. All contentions in support of the petition shall be included, including all legal authorities and argument. If a party files an answer to the petition, it shall be a single document which includes all contentions in opposition to the petition.~~

~~The answer of a party opposing review may request the court to consider additional issues if review is granted as to any or all issues raised in the petition. An answer stating additional issues shall conform to the requirements of paragraph (2).~~

~~No authorities or argument may be incorporated by reference from another document into the petition, answer or reply, but the petition, answer or reply may incorporate by reference specified portions of a petition for review, answer or reply filed in the Supreme Court by another party in the same case, or filed in the Supreme Court in a connected case wherein a petition for review is also pending or has been granted. No discussion of authorities or argument, however denominated, may be annexed to or filed with the petition, answer or reply, unless the annexed material is page-numbered consecutively with the body of the petition, answer or reply and the total length, including the annexed material, does not exceed the limit established in paragraph (6).~~

~~(6) A petition or answer shall not exceed 30 pages, exclusive of the Court of Appeal opinion, index of contents and table of authorities, and any other indices. A reply shall not exceed 15 pages, exclusive of index of contents and table of authorities.~~

~~There shall be no exhibits or appendices, however denominated, annexed to or filed with a petition, answer, or reply other than~~

~~(i) the opinion of the Court of Appeal;~~

~~(ii) any trial court order as to which relief is sought;~~

~~(iii) any annexed material permitted by subdivision (5); and~~

~~(iv) any evidentiary exhibit or order of a trial court that counsel considers of unusual significance and that does not exceed 10 pages.~~

~~In all other instances, reference to evidentiary matters and trial court orders shall be by appropriate reference to the record transmitted from the Court of Appeal to the Supreme Court. The Chief Justice may permit petitions, answers, or replies of greater length, or the inclusion of more annexed material, upon written application.~~

~~(7) Proof of service of the petition shall name each party represented by each attorney served. A petition accompanied by a defective proof of service shall be filed, but if a proper proof of service is not filed within five days, the court may strike the petition or impose a lesser sanction. Service in unfair competition cases under Business and Professions Code section 17200 et seq. must also comply with rule 16(d).~~

~~*(Subd (e) amended effective January 1, 2002; previously amended effective January 1, 1983, July 1, 1988, July 1, 1989, July 1, 1996, July 1, 1997, and July 1, 2000; amended and relettered effective May 6, 1985.)*~~

~~(f) **[Amicus curiae letters]** An individual or entity desiring to support or oppose the granting of a petition for review or original writ in the Supreme Court shall lodge a letter in the Supreme Court in lieu of a brief of amicus curiae. The letter shall state the nature of the applicant's interest and conform to the requirements of subdivision (e) regarding incorporation of documents by reference and annexed material. The letter shall be accompanied by proof of service on each party to the action or proceeding. The court may, in its discretion, elect to consider the letter and may, in its discretion, cause the letter to be filed in the action or proceeding. Lodging a letter on the question of granting the petition does not constitute leave to file an amicus curiae brief on the merits if the petition is granted; all persons seeking to file an amicus curiae brief on the merits shall comply as nearly as possible with the requirements of rule 29.3(c) and (d).~~

~~*(Subd (f) adopted effective January 1, 2002.)*~~

~~(g) **[Determination of petition]** Review by the Supreme Court of a decision of a Court of Appeal may be granted by an order, signed by at least four judges, and filed with the clerk. The denial of review may be evidenced by an order signed by the Chief Justice and filed with the clerk. If no order is made within the time specified in subdivision (a) of this rule, the petition shall be deemed denied and the clerk shall enter a notation in the register to that effect.~~

(Subd (g) relettered effective January 1, 2002; as subd (f) previously amended and relettered effective May 6, 1985.)

(h) [Oral argument] When review is granted, the cause shall be placed on the calendar for oral argument unless oral argument is waived, or the court transfers the cause to a Court of Appeal, dismisses review as improvidently granted, orders the cause held pending decision of another cause, or issues a peremptory writ.

(Subd (h) relettered effective January 1, 2002; as subd (g) previously amended and relettered effective May 6, 1985.)

Rule 28 amended effective January 1, 2002; previously amended effective January 1, 1957, January 1, 1959, January 1, 1961, January 2, 1962, November 11, 1966, January 1, 1968, January 1, 1972, January 1, 1983, July 1, 1984, May 6, 1985, July 1, 1986, July 1, 1988, July 1, 1989, January 1, 1996, July 1, 1996, July 1, 1997, and July 1, 2000.

Advisory Committee Comment (2002)

New subdivision (f) is derived from the first paragraph of former rule 14(b).

Advisory Committee Comment

As amended effective May 6, 1985, this rule makes substantial changes in the prior procedure for petitions for "hearing." The time limits are changed. In particular, the time within which the Supreme Court has jurisdiction to order review is now measured from the date of filing of the petition for review, and not from the date of finality of the Court of Appeal decision.

The following table compares the time schedule for handling a petition for hearing under prior practice with the schedule set out in amended rule 28 for a petition for review, using as an example a case in which each document is filed and served on the last permissible day:

	Under former rule	Under amended rule	
		On petition	On own motion
Finality in Court of Appeal	Day 0	Day 0	Day 0
Petition filed	Day 10	Day 10	—
Answer filed	Day 20	Day 30	—
Reply filed*	—	Day 40	—
Time for court to act w/o extension	Day 30	Day 70	Day 30
Time for court to act with maximum extension	Day 90	Day 100	Day 90

*Allowed only if the answer presents additional issues; limited to those issues.

Several new provisions are adapted from United States Supreme Court practice on petition for writ of certiorari. Subdivision (e)(2) is adapted from United States Supreme Court rule 21.1, and requires a succinct statement of the issues presented for review.

~~Under subdivision (e)(5), the answer to the petition may present additional issues that the answering party wants reviewed only if the petition is granted. For example, a civil defendant who was unsuccessful on a statute of limitations defense but successful on the merits might include in its answer to the petition for review a request that if review is granted, the Supreme Court also consider the statute of limitations issue. The answer may not be used as a substitute for an independent petition for review on issues the answering party wishes the Supreme Court to review regardless of its action on the original petition.~~

~~Subdivision (e)(2) also provides that "[o]nly the issues set forth in the petition and answer or fairly included in them need be considered by the court." The statement of issues is, therefore, far more than a means of persuading the Supreme Court to grant review: the statement also defines the scope of the issues to be considered on the merits if review is granted, unless the Supreme Court determines otherwise. The committee expects the Supreme Court to follow the practice of the United States Supreme Court under its rule 21.1, and decline (in most cases) to consider the merits of questions that were not set out in the petition for review or answer. However, the rule does not limit the Supreme Court's power to make exceptions.~~

~~The 1985 amendment limits petitions for reviews to a shorter length than was permitted for petitions for hearing. This is because a new brief on the merits is now expected (see new rule 29.3). A reply is now permitted, but only if the answer stated additional issues for review.~~

~~It has long been established in California law that a denial of hearing is not an expression of the Supreme Court on the merits of the cause. (E.g., *People v. Davis* (1905) 147 Cal. 346, 350; *People v. Triggs* (1973) 8 Cal.3d 884, 890–91.) Adoption of the new "review" procedure does not affect this legal doctrine, and denial of review will not be an expression of the opinion of the Supreme Court on the correctness of the judgment of the Court of Appeal or on the correctness of any discussion in the Court of Appeal opinion. A specification of issues to be argued, in connection with a grant of review, will not be an expression of the opinion of the Supreme Court on the correctness of the resolution of other issues by the Court of Appeal or on the correctness of any discussion of them in the Court of Appeal opinion.~~

~~The Supreme Court may review the Court of Appeal interlocutory orders and orders summarily denying writs within their original jurisdiction, as well as decision on the merits resolving the ultimate outcome of the cause. Summary denials of writ petitions are, under rule 24, final immediately upon filing, allowing immediate filing of a petition in the Supreme Court; interlocutory orders of Courts of Appeal may also be deemed final forthwith.~~

~~**Drafter's Notes**~~

~~See rule 24(a). The "decision" referred to in rule 28 is the opinion or judgment of the court, not a subsequent ruling denying a rehearing, unless that ruling constitutes a modification of the judgment under rule 24(a).~~

~~**1980** Rule 12 was amended to require the clerk of the reviewing court to send to the parties copies of any order augmenting the record. This primarily affects augmentation on the court's own motion, where the parties might otherwise not have known of the action. An amendment to rule 25 requires the clerk of the reviewing court to mail notice to the parties of the issuance of a remittitur. Both of these changes were originally suggested by the Academy of Appellate Lawyers. An amendment to rule 28(f) clarifies that a cause need not be calendared for oral argument in the Supreme Court if that court transfers it to a Court of Appeal.~~

~~**1983** – See note following rule 15.~~

~~**1984** – See note following rule 24.~~

~~**1988** – The council amended rule 28 to clarify that counsel filing a petition for review is to determine whether the significance of an exhibit is sufficiently unusual to merit annexation to the petition for review. The rule was also amended to permit the attachment of a trial court order whose review is sought.~~

~~**1989** – Rule 28(a) was amended to give the Supreme Court power to grant review on its own motion on the next court day after a holiday on which its time to act would otherwise have expired; and by virtue of the cross-reference in rule 45(c), give the Chief Justice the power, within the same time, to grant relief from default from a failure to file a timely petition for review.~~

~~The council amended rule 28(e) to require proof of service of a petition for review to name the parties represented by each attorney served.~~

~~**January 1996** – The Judicial Council amended this rule to clarify that the 10 days for filing a petition for review of a case in the California Supreme Court begins to run from the 30th day following the Court of Appeal decision, regardless of the day of the week on which the 30th day falls.~~

~~**July 1996** – Rules 15, 28(e)(6), 29.3(a), (c), 37, 40, and 44(a) . . . These rules were amended concerning typography and length of briefs and accompanying explanatory matter, and page limits adjustments.~~

~~**July 2000** – See note following rule 15.~~

~~**2002** – See note following rule 1.~~

~~Rule 29. Grounds for review in Supreme Court~~

~~(a) **[Grounds]** Review by the Supreme Court of a decision of a Court of Appeal will be ordered~~

~~(1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law;~~

~~(2) where the Court of Appeal was without jurisdiction of the cause; or~~

~~(3) where, because of disqualification or other reason, the decision of the Court of Appeal lacks the concurrence of the required majority of qualified judges.~~

~~*(Subd (a) amended effective May 6, 1985; previously amended effective November 11, 1966.)*~~

~~**(b) [Limitations]** As a matter of policy, on petition for review the Supreme Court normally will not consider:~~

~~(1) any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal;~~

~~(2) any issue or any material fact that was omitted from or misstated in the opinion of the Court of Appeal, unless the omission or misstatement was called to the attention of the Court of Appeal in a petition for rehearing.~~

~~All other issues and facts may be presented in the petition for review without the necessity of filing a petition for rehearing.~~

~~*(Subd (b) amended effective May 6, 1985; previously amended January 1, 1983.)*~~

~~*Rule 29 amended effective May 6, 1985; previously amended effective January 1, 1983.*~~

~~Rule 29.2. Issues on review; grant and hold~~

~~**(a) [Decision on limited issues]** On review of the decision of a Court of Appeal, the Supreme Court may review and decide any or all issues in the cause.~~

~~**(b) [Specification of issues]** After granting review of a decision of a Court of Appeal, the Supreme Court may specify the issues to be argued. Unless otherwise ordered, briefs on the merits and oral argument shall be confined to the specified issues and issues fairly included in them.~~

~~Notwithstanding its specification of issues, the Supreme Court may order argument on fewer or additional issues, or on the entire cause. The court shall give the parties reasonable notice of any specification of the issues to be argued and of any change in its specification of issues.~~

~~**(c) [Grant and hold]** After granting review of a decision of a Court of Appeal, the Supreme Court may order action on the cause deferred until disposition of another cause pending before the court.~~

~~*Rule 29.2 adopted effective May 6, 1985.*~~

~~**Advisory Committee Comment**~~

~~Under subdivision (a) the Supreme Court may determine – either immediately after granting review or at any time before completion of its opinion – that only one or a limited number of issues~~

~~in the cause require decision by the Supreme Court. Unless the court wishes to limit argument by an order issued under subdivision (b), no prior notice of the court's intention to decide the cause on less than all issues is required. The parties are not prejudiced as they have *not* been told to omit argument on any issue. If the Supreme Court decides only limited issues, other issues in the cause will be disposed of by the Court of Appeal as the Supreme Court directs. If the Court of Appeal is not directed to take further action, the original Court of Appeal resolution of the other issues stands as between the parties. See rule 977 on the precedential value of the Court of Appeal opinion pending Supreme Court review and after decision by the Supreme Court.~~

~~Subdivision (b) may be used by the Supreme Court when its grant of review is intended to permit clarification of specified issues of importance, and permits the court to focus argument on these questions. The court is not limited by its preliminary specification of issues, however.~~

~~Rule 29.3. Briefs on the merits in the Supreme Court~~

~~(a) [**As matter of right**] After the filing of an order granting review, the petitioner shall serve and file in the Supreme Court the number of copies required by rule 44(b)(1)(ii) of either~~

~~(1) the brief filed in the Court of Appeal and a notice of intention to rely on that brief, within 15 days after the filing of the order; or~~

~~(2) a new brief on the merits, within 30 days after the filing of the order.~~

~~After the filing of the petitioner's notice of intention to rely on the brief filed in the Court of Appeal or new brief on the merits, or the expiration of time for filing a new brief, the opposing party shall serve and file in the Supreme Court the number of copies required by rule 44(b)(1)(ii) of either (1) the brief filed in the Court of Appeal and a notice of intention to rely on that brief, within 15 days after the filing of the petitioner's notice or brief, or expiration of the time for it; or (2) a new brief on the merits, within 30 days after the filing of the petitioner's notice or brief, or expiration of the time for it.~~

~~Within 20 days after the filing of an opposing party's brief, the petitioner may file a reply brief.~~

~~The Supreme Court may, by order, designate which party is deemed to be the petitioner or otherwise direct the order in which briefs are to be filed.~~

~~When a party desires to present new authorities, newly enacted legislation, or other intervening matters, not available in time to have been included in the party's brief on the merits, the party may serve and file a supplemental brief no later than 10 days before oral argument. A supplemental brief shall be confined to the new matter and shall not exceed 10 pages.~~

The times stated in this rule may be extended only by order of the Chief Justice under rule 45, and not by stipulation.

(Subd (a) amended effective July 1, 1996; adopted effective May 6, 1985; previously amended effective January 1, 1992.)

(b) [On request] The Supreme Court may request additional briefs on all or any issues, whether or not the parties have filed new briefs.

(c) [Amicus curiae briefs] A brief of amicus curiae in the Supreme Court on the merits of an action or proceeding may be filed on permission first obtained from the Chief Justice. To obtain permission, the applicant shall file with the clerk of the Supreme Court a signed request, accompanied by the proposed brief, stating the nature of the applicant's interest and setting forth facts or questions of law that have not adequately been presented by the parties and their relevancy to the disposition of the case. The request and proposed brief must be received by the court no later than 30 days after all briefs, other than supplemental briefs, that the parties are entitled to file pursuant to this rule either have been filed or can no longer be filed within the time limits prescribed by subdivision (a). The Chief Justice may grant leave for later filing if the applicant presents specific and compelling reasons for the delay.

The Attorney General may file an amicus curiae brief without obtaining the Chief Justice's permission, unless the Attorney General is presenting the brief on behalf of another state officer or agency. The Attorney General shall file the brief within the time provided above for receipt of a request for permission to file an amicus curiae brief. The brief shall contain the information required in a request for permission to file an amicus curiae brief.

Before any amicus curiae brief is filed, it shall be served on all parties. The cover of the brief shall identify the party – if any – the brief supports.

Any party may file an answer within 20 days after an amicus curiae brief is filed. Before any answer is filed, it shall be served on all parties and the amicus curiae.

(Subd (c) adopted effective January 1, 2002.)

(d) [Form and content] The briefs provided for in this rule shall conform, as nearly as possible, to the requirements of rule 14. Unless otherwise ordered, the petitioner's and opposing party's briefs on the merits shall not exceed 50 pages, and a petitioner's reply brief shall not exceed 15 pages, excluding tables, indices, and the quotation of issues required by this rule.

The petitioner's brief on the merits, at the beginning of the body, shall quote any order of the Supreme Court specifying the issues or, in the absence of an order specifying the issues, quote the statement of issues included in the petition for review and any additional issues stated in the answer to the petition. Unless otherwise ordered, briefs on the merits shall be confined to those issues, and issues fairly included in them.

(Subd (d) relettered and amended effective January 1, 2002; adopted as subd (c) effective May 6, 1985; previously amended July 1, 1996.)

Rule 29 amended effective January 1, 2002; adopted effective May 6, 1985; previously amended effective January 1, 1992, and July 1, 1996.

Advisory Committee Comment (2002)

New subdivision (c) is derived from the second through fifth paragraphs of former rule 14(b).

Advisory Committee Comment

This rule is adapted from United States Supreme Court rule 34.1(a) (statement of issues) and rule 35 (timing of briefs).

Drafter's Notes

1992—See note following rule 5.

1996—Rules 15, 28(e)(6), 29.3(a), (c), 37, 40, and 44(a) . . . These rules were amended concerning typography and length of briefs and accompanying explanatory matter, and page limits adjustments.

2002—See note following rule 1.

Rule 29.4. Disposition of causes

(a) **[Decision of cause on review]** On review of a Court of Appeal decision, unless another disposition is ordered, the judgment of the Supreme Court shall be that the judgment of the Court of Appeal is affirmed, reversed, or *modified as the Supreme Court may order*.

(b) **[Decision of limited issues and transfer for decision of others]** In any cause, the Supreme Court may decide one or more issues and transfer the cause to a Court of Appeal for decision of any remaining issues in the cause.

(c) **[Dismissal of review]** The Supreme Court may dismiss review of a cause as improvidently granted and remand the cause to the Court of Appeal.

The order of dismissal and remand is final forthwith and shall be sent by the clerk to all parties and to the Court of Appeal. On filing of the order in the Court of Appeal, the decision of the Court of Appeal shall become final and the clerk of the Court of Appeal shall issue a remittitur forthwith. The opinion of the Court of Appeal remains unpublished, under rule 976(d), unless the Supreme Court expressly orders otherwise.

(Subd (c) amended effective January 1, 1994.)

(d) [Retransfer of cause not decided] After transferring to itself, before decision, a cause pending in a Court of Appeal, the Supreme Court may retransfer the cause to a Court of Appeal upon deciding that transfer was improvidently ordered.

(e) [Transfer with instructions] After granting review of a decision of a Court of Appeal, the Supreme Court may transfer the cause to a Court of Appeal with instructions to conduct such further proceedings as the Supreme Court deems necessary.

(f) [New briefs after transfer] If a cause is transferred from the Supreme Court to the Court of Appeal for further proceedings, a party may, within 30 days after the Supreme Court's order, serve and file in the Court of Appeal a supplemental brief. Supplemental briefs shall be limited to matters arising after the previous decision of the Court of Appeal unless the presiding justice permits briefing on other matters.

This subdivision does not apply if the previous decision of the Court of Appeal was a denial of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause.

(Subd (f) adopted effective July 1, 1989.)

Rule 29.4 amended effective January 1, 1994; adopted effective May 6, 1985; previously amended effective July 1, 1989.

Advisory Committee Comment

Subdivision (a) emphasizes the major change effected by the recent amendment of Constitution article VI, section 12: the usual judgment of the Supreme Court on review will be that the Court of Appeal judgment is affirmed, reversed or modified. (Under prior practice, the *Court of Appeal* judgment having been vacated and nullified by the grant of hearing, it was the *trial* court judgment that the Supreme Court affirmed, reversed or modified upon its decision of an appeal.)

Subdivision (b) clarifies the power of the Supreme Court to decide only those issues that it deems of major importance, and then transfer the cause to a Court of Appeal for final resolution. This is, in effect, a special form of transfer with instructions. The application of this procedure to a cause transferred to the Supreme Court before decision is obvious, where the Supreme Court

resolves a key question of law, but the outcome of the cause may depend on a review of factual questions in the record. On review of a Court of Appeal decision, this procedure is most likely to be used when the original Court of Appeal opinion did not reach issues because it reversed on an overriding ground (e.g., statute of limitations) that the Supreme Court determines to be erroneous.

If the Supreme Court dismisses review as improvidently granted under subdivision (c), the cause is restored to the posture it had before the Supreme Court granted review: the decision of the Court of Appeal is final. If the Supreme Court wishes to reconfer jurisdiction on the Court of Appeal, it will do so by transfer under subdivision (b), (d), or (e).

Drafter's Notes

1989 Rule 29.4 was amended to authorize, in causes transferred from the Supreme Court to a Court of Appeal, supplemental briefing limited to matters that arose after the date of the original Court of Appeal decision, unless the presiding justice permits briefing on other matters.

1994 Rule 29.4 is amended to state explicitly, that when review is dismissed, a Court of Appeal decision is *not* restored to a "published" status unless the Supreme Court expressly so orders, and that the dismissal order is final forthwith.

Rule 29.5. Questions of state law certified by federal appellate courts and other courts

(a) [Requirements for certified questions] The California Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth, provided that:

(1) the certifying court requests the answer;

(2) the questions may be determinative of a cause pending in the certifying court; and

(3) the decisions of the California appellate courts provide no controlling precedent concerning the certified question.

(b) [Contents of certification request] Only a court specified in subdivision (a) may certify a question. The request shall be by an order that sets forth:

(1) the caption of the case, including names and addresses of counsel and of parties appearing pro se, and a designation of the party to be deemed the petitioner on the certified question if the request to answer is granted;

(2) the questions of law to be answered;

~~(3) a statement (by stipulation of the parties subject to approval by the certifying court, or by the court itself) of all facts relevant to the certified question, and showing fully the nature of the controversy and the circumstances in which the question arose;~~

~~(4) statements (i) demonstrating that the question certified is contested and that there is no controlling precedent in the case law of the California appellate courts; (ii) explaining how an authoritative answer to the certified question may be determinative of a cause pending in the certifying court; and (iii) indicating that the answer provided by the California Supreme Court will be followed by the certifying court; and~~

~~(5) such additional information as the certifying court may deem relevant and useful.~~

~~(c) **[Briefs and other materials]** The certifying court shall furnish legible copies of all relevant briefs to the California Supreme Court with the request for an answer to the certified question. The California Supreme Court may request that the certifying court furnish additional material, such as exhibits or all or a portion of the record that, in the opinion of the court, may be useful in answering the certified question.~~

~~(d) **[Request procedure]** The judge or justice presiding at the certification hearing (if any) or the presiding judge or justice of the court or panel certifying the question shall sign the request for an answer to the certified question. The clerk of the certifying court shall forward the request under its official seal to the California Supreme Court with a certificate that the clerk has served the request on the parties.~~

~~*(Subd (d) amended effective January 1, 2000.)*~~

~~(e) **[Supporting or opposing the request]**~~

~~(1) Within 20 days after the request for an answer to a certified question is filed in the California Supreme Court, a party may file a brief supporting or opposing the request.~~

~~(2) The brief may request that the California Supreme Court restate the certified question under subdivision (g). If a brief makes that request, it shall state a proposed restatement of the question at the beginning of the body of the brief.~~

~~(3) The brief shall state on its cover whether the brief supports or opposes the request and whether it requests restatement of the question.~~

~~(4) A party may reply to another party's brief within 10 days after the brief is filed.~~

~~(5) A brief or reply shall be served on each party and on the requesting court.~~

~~(6) Any other person or entity wanting to support or oppose a request for an answer to a certified question shall lodge a letter in the Supreme Court instead of a brief of amicus curiae. The letter shall comply with rule 28(f).~~

~~*(Subd (e) amended effective January 1, 2002; adopted effective January 1, 2000.)*~~

~~**(f) [Factors that may be considered]** The California Supreme Court shall have discretion to accept or deny the request for an answer to the certified question of law. In exercising its discretion the court may consider:~~

~~(1) factors that it ordinarily considers in deciding whether to grant review of a decision of a California Court of Appeal or to issue an alternative writ or other order in an original matter;~~

~~(2) comity, and whether answering the question will facilitate the certifying court's functioning or help terminate existing litigation;~~

~~(3) the extent to which an answer would turn on questions of fact; and~~

~~(4) any other factors the court may deem appropriate.~~

~~*(Subd (f) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (e).)*~~

~~**(g) [Clarification of question]** At any time, the California Supreme Court may restate the certified question or may ask the certifying court to restate or clarify the certified question.~~

~~*(Subd (g) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (f).)*~~

~~**(h) [Order denying or accepting request]** The California Supreme Court shall issue an order accepting or denying the request for an answer to the certified question. If the court accepts the request, it shall announce that~~

~~determination in the manner that it announces the acceptance of cases for review, and thereafter:~~

~~(1) the California Rules of Court for briefing, argument, and conduct of appeals shall govern further proceedings on any certified question unless the court or the Judicial Council otherwise provides;~~

~~(2) fees and costs shall be the same as in appeals docketed before the California Supreme Court and, in civil matters, shall be equally divided between or among the parties unless the certifying court in its request for an answer to the certified question provides for a different allocation, or the California Supreme Court provides otherwise; and~~

~~(3) the California Supreme Court may in its discretion assign a certified question such priority on its docket as considerations of fairness, exigency, and comity may require.~~

~~*(Subd (h) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (g).)*~~

~~**(i) [Notice to California Attorney General]** If the certified question concerns the proper interpretation of a California statute, in litigation in which the State of California or an officer, agency, or employee of the state is not a party, the clerk of the California Supreme Court shall notify the California Attorney General and the California Supreme Court may permit him or her to file briefs on the issue.~~

~~*(Subd (i) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (h).)*~~

~~**(j) [Transmission of opinion]** The clerk shall forward the California Supreme Court's written opinion stating the law governing the certified question to the certifying court, under the seal of the Supreme Court, and also shall forward copies of the opinion to counsel of record.~~

~~*(Subd (j) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (i).)*~~

~~**(k) [Publication and precedential effect]** The California Supreme Court's answer to a certified question shall have the same authoritative and precedential force as any other decision of the court, and shall be published in the Official Reports.~~

~~*(Subd (k) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (j).)*~~

~~*(l)* **[Procedural rules]** The California Supreme Court or the Judicial Council may adopt procedures governing practice under this rule.~~

~~*(Subd (l) relettered effective January 1, 2000; adopted effective January 1, 1998, as subd (k).)*~~

~~*Rule 29.5 amended effective January 1, 2002; adopted effective January 1, 1998; previously amended effective January 1, 2000.*~~

~~**Advisory Committee Comment (2002)**~~

~~New subdivision (e)(6) is derived from the first paragraph of former rule 14(b).~~

~~**Drafter's Notes**~~

~~**1998** This rule establishes a procedure for the California Supreme Court to answer questions of state law certified to it by the Supreme Court of the United States, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth. Federal courts may certify questions of state law to the highest court for a definitive answer in more than 40 states. With the adoption of this rule all states in the Ninth Circuit now have a procedure for answering questions of state law from federal courts or courts of other states.~~

~~**2000** Amended rules 14 and 29.5 will provide a procedure for parties and amici curiae to submit briefs in support or opposition on whether the Supreme Court should accept a request to answer a question of law certified to it by a federal or sister-state court.~~

~~**2002** See note following rule 1.~~

~~Rule 29.6. Errors in terminology to be disregarded; rule of construction~~

~~(a) **[Errors in terminology]** A petition to the Supreme Court for transfer, hearing or review shall be liberally construed as a request for the appropriate relief.~~

~~(b) **[Construction of "hearing"]** A reference in the statutes or rules of this state to "hearing" in the Supreme Court includes review by the Supreme Court of a Court of Appeal decision unless the context or circumstances indicate a contrary intent.~~

~~*Rule 29.6 adopted effective May 6, 1985.*~~

~~**Advisory Committee Comment**~~

~~Subdivision (a) of this rule follows the general policy of liberal construction for the purpose of granting or denying relief on the basis of the circumstances well pleaded rather than the technical form or prayer of the petition. It is added because of the anticipation that mistakes in terminology will occur before the new constitutional procedure is fully understood.~~

~~**Rule 29.9. Transitional provisions**~~

~~Unless otherwise ordered by the Supreme Court:~~

~~(a) **[Remittitur]** If hearing is granted before May 6, 1985, the remittitur shall issue as provided in rule 25 as it existed before that date. If review is granted on or after May 6, 1985, the remittitur shall issue as provided in rule 25 as amended effective that date.~~

~~(b) **[Transfer before decision]** New rule 27.5 applies to all causes pending in the Courts of Appeal on and after May 6, 1985.~~

~~(c) **[Whether hearing or review granted]** If the Supreme Court grants hearing before May 6, 1985, the cause is before the Supreme Court on hearing for all purposes until its final disposition by the Supreme Court, unless otherwise provided in this rule, or by order of the Supreme Court.~~

~~Any timely petition for hearing pending on May 6, 1985, is deemed a petition for review without further action by the petitioner, and is subject to the rules and amendments adopted effective May 6, 1985. The court may direct a petitioner or opposing party to file a statement of issues conforming to rule 28(e)(2).~~

~~(d) **[Time for ordering review]** The Supreme Court may, within the time provided in rule 28 as amended effective May 6, 1985, order review of the decision of a Court of Appeal in any cause decided by a Court of Appeal before or after that date.~~

~~If this subdivision has the effect of expanding the time within which the court may order review, no order is needed to effectuate that expansion of time.~~

~~This subdivision shall not reduce the amount of time to a period less than the time within which the court could have granted a hearing under rule 28 as it existed prior to May 6, 1985, and shall not shorten the time allowed under any valid extension of time ordered before that date.~~

~~(e) **[Time for filing petition and answer]** If the time for filing a petition for hearing expires before May 6, 1985, the Chief Justice may relieve a party from a default for failure to file a timely petition and extend the time, to allow the petition for review to be filed no more than 30 days after the decision of the Court of Appeal becomes final as to that court.~~

~~**(f) [Form of petition and answer]** Until August 1, 1985, any petition for review or answer that does not conform to rule 28(e) as added effective May 6, 1985, but that conforms to rule 28(d) as it existed before that date, shall be accepted for filing as a matter of course. The court may direct a petitioner or opposing party to file a statement of issues conforming to rule 28(e)(2).~~

~~**(g) [Briefs on the merits]** New rule 29.3 is applicable to all causes in which review is ordered on or after May 6, 1985. If proceedings in the Supreme Court were initiated by a petition for hearing, a party may serve and file notice of intention to rely on the petition for hearing or answer in lieu of a~~

~~*Rule 29.9 adopted effective May 6, 1985.*~~

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
1.	Gen'l	Holly R. Paul Appellate Courts Com. Los Angeles County Bar Assn.	Y	Approves of organization of revised rules.	No response necessary.
2.	Gen'l	Maurice H. Oppenheim Attorney at Law	N	1. When a Supreme Court rule incorporates a Court of Appeal rule by reference, the Committee Comment to the latter should state that the rule also applies to the Supreme Court. 2. The revised rules should be renumbered to avoid numbers using decimals. 3. The Committee Comments should be shortened, e.g., by omitting the legislative history of each revised rule. 4. Rules should not state what a court "will normally" do.	1. Agree. The Advisory Committee Comments have been revised to so state. 2. Agree in part. The committee intends to renumber the revised rules without "decimal numbers," but cannot do so until it has revised all the appellate rules because higher numbers are currently taken by appellate rules not yet revised. 3. Agree in part. Legislative history can be useful to courts and researchers. It is expected, however, that the Comments to Parts IV et seq. of the revised rules will be briefer than the Comments to Parts I to III, which required substantial revisions. 4. Disagree. The quoted phrase recognizes that the court may take different action in appropriate cases. It was so used in the former rules (e.g., rule 29(b)).

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				5. The revised rules should define their usage of the words "promptly," "immediately," and "expeditious." The commentator also questions why it is necessary to have three different words to express the same idea.	5. Disagree. The revised rules simply substitute the more contemporary word "promptly" for the older word "forthwith" used in the former rules; the other two words were also used in the former rules, and those rules did not define any of the three. The words are not synonyms, but bear different connotations in common usage.
3.	Gen'l	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	Move the publication rules (rule 976 et seq., Tit. III, Div. III) into the appellate rules (Tit. I).	Disagree. The publication rules are adopted by the Supreme Court, and in any event are more general in application than the appellate rules.
4.	Gen'l	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	When the criminal and juvenile appellate rules are revised, they should be "self-contained" in the same way as the revised Court of Appeal and Supreme Court rules.	Agree. That is the committee's present intent.
5.	Gen'l	Appellate Courts Com. State Bar of California	Y	Approves of reorganization of revised rules.	No response necessary.
6.	19	Appellate Courts Com. State Bar of California	Y	1. Revised rule 19 omits the provision of former rule 19(a) that when an appeal is abandoned (i.e., before the record is filed in the Court of Appeal), "the appellant shall be entitled to the return of that portion of any deposit in excess of the actual cost of preparation of the record on appeal up to that time." Revised rule 4(f)(3) so provides for the reporter's transcript, and a similar provision should be added to	1. Agree. The omission was an oversight and will be corrected by an amendment to rule 5(d).

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				rule 5 for the clerk's transcript. 2. Subdivision (a)(1) of revised rule 19 requires the appellant to "serve and file" a notice of settlement; if argument has been scheduled, subdivision (a)(2) requires the appellant to "also immediately notify" the Court of Appeal by telephone or other expeditious method. The Committee Comment states that in addition to the normal written notice required by subdivision (a)(1), subdivision (a)(2) requires the appellant to "'also' *serve*" the expedited notice (italics added). The rule, however, does not require that the expedited notice be served. 3. The Committee Comment states that former rule 19(c)'s requirement that the Court of Appeal clerk notify the respondent of an appeal's dismissal was deleted as unnecessary because it "duplicates the normal practice of reviewing court clerks to notify all parties to an appeal when the appeal is dismissed by order of the court." This is not just "normal practice," but is required by revised rule 24(a)(1) ["The Court of Appeal clerk must promptly file all opinions or *orders* of the court and promptly send copies showing the filing date to the lower court or tribunal and *to the parties*"].	2. Agree. The Comment to the revised rule (now rule 20(a)) has been revised to delete any implication that an expedited notice must be served. 3. Agree. The Comment to the revised rule (now rule 20(c)) has been revised to delete the quoted clause and to cross-refer instead to revised rule 24(a)(1).
7.	19	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	1. Subdivision (a)(2) of the revised rule requires telephonic notice of settlement if the case settles after a prehearing conference or an oral argument has been set. That notice should be required earlier, e.g., if the case settles after the respondent's brief has been	1. Disagree. The revised rule (now rule 20(a)(1)) requires the appellant to "immediately" file a notice of settlement *whenever* the case settles pending appeal. The extraordinary

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				filed, because in some instances the court may begin work on the case at that point.	requirement that the appellant also *telephone* the court should be reserved, as in the former rule, for cases in which a conference or argument is imminent.
				2. The duty to give telephonic notice should arise when a prehearing conference is *set* rather than when the Court of Appeal *mails a notice setting* the conference, because the volunteer attorneys who may serve as settlement officers may set conferences by e-mail or telephone.	2. Agree in part. Subdivision (a)(2) of the revised rule (now rule 20(a)(2)) has been revised to provide that telephonic notice is required "the case settles after *the appellant receives a notice setting* . . . a prehearing conference" (italics added). This wording encompasses all forms of notice.
				3. The requirement of former rule 19(c) that the clerk notify the parties of an abandonment should be restored.	3. Agree. The requirement has been restored (now rule 20(b)(2)).
				4. The Committee Comment states that the duty to give the superior court notice of settlement ends on the date on which "notice is sent" that the record has been filed in the reviewing court, but the rule provides instead that the notice must be served if the record "has not been filed" in the reviewing court. The wording of the Comment should conform to the rule.	4. Agree. The wording of the Comment to the revised rule (now rule 20(a)) has been conformed to the rule.
8.	19	Hannah Inouye Court Manager Los Angeles Superior Ct.	Y	1. The revised rule should be amended to provide that an appellant filing a notice of settlement must also promptly file an abandonment in order to prevent unnecessary preparation of the record.	1. Disagree. An appellant may be ready to give notice of a settlement before being ready to abandon the appeal, e.g., because the settlement

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					agreement may require the payment of money or other act before abandonment. Record preparation should continue until the appellant files an abandonment. The superior court clerk will then "promptly" notify the reporter under rule 4(d)(4).
				2. The requirement of former rule 19(c) that the clerk notify all parties of an abandonment should be restored.	2. Agree. The requirement has been restored (now rule 20(b)(2)).
9.	19	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	The revised rule should be amended to provide that an appellant filing a notice of settlement must also promptly file an abandonment in order to prevent unnecessary preparation of the record.	Disagree. See response to comment 8.1.
10.	19	Maurice H. Oppenheim Attorney at Law	N	1. The wording of former rule 19(c)—i.e., if the case settles "after a notice of appeal is filed"—is clearer than the revised wording—i.e., if the case settles "pending appeal."	1. Agree. The wording of the former rule has been restored (now rule 20(a)(1)).
				2. For consistency, the word "a" should be inserted in revised rule 19(a)(2).	2. Agree. The word has been inserted (now rule 20(a)(2)).
				3. For clarity, the word "also" should be deleted from revised rule 19(a)(2). and that paragraph should be rewritten accordingly.	3. Disagree. The meaning of the word "also" is clear when subdivision (a) of the revised rule (now rule 20) is read as a whole.
				4. In subdivision (b)(2) of the revised rule, substitute the word "the" for the word "such."	4. Agree. The substitution has been made (now rule 20(b)(2)).

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
11.	19	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. The second sentence of subdivision (a)(1) of the revised rule—requiring service of notice on the superior court when a case settles before the record is filed in the reviewing court—should be set out in a separate subdivision, so as to treat that notice equally with the other two types of notice required by the revised rule.	1. Disagree. The other two notices are different: in each, the appellant is required to notify the Court of Appeal directly, but the appellant gives notice to the superior court simply by serving that court with a *copy* of the notice the appellant filed in the Court of Appeal.
				2. The requirement of service of notice on the superior court when a case settles before the record has been filed in the Court of Appeal—so that the superior court may stop preparing the record—could require such service when the superior court is not in fact preparing any record, e.g., when the parties are proceeding by appendixes under rule 5.1 and no reporter's transcript has been designated. This possibility should be avoided by expanding the wording of the revised rule to exclude such cases.	2. Agree. The wording of subdivision (a)(1) of the revised rule (now rule 20) has been changed to address the point.
				3. For the reason given in the previous comment, the change there proposed should also be made in subdivisions (b)(1) and (c)(1) of the revised rule.	3. Disagree. Subdivisions (b) and (c) of the revised rule (now rule 20) use the filing of the record in the Court of Appeal as the date that determines whether the appellant must file an abandonment in the superior court or a request for dismissal in the Court of Appeal. If the parties use appendixes and no reporter's transcript, this date allows an abandonment to be filed

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					until the time an appendix is filed with the appellant's opening brief (see rule 5.1(d)(2)). While this is arguably late in the process, no other date has been suggested. In this respect the revised rule tracks the former rule.
				4. The Committee Comment to subdivision (c)(2) of the revised rule should cross-refer to revised rule 24(a)(1), which requires the reviewing court clerk to notify the parties of all orders issued by the court—including therefore an order dismissing an appeal at the appellant's request.	4. Agree. The Comment to the revised rule (now rule 20(c)) has been revised to cross-refer to revised rule 24(a)(1).
12.	20	Appellate Courts Com. State Bar of California	Y	1. Although there was no consensus, some members were concerned about eliminating the requirement of the former rule that matters agreed on at a prehearing conference must be approved by the conference judge. The concern is that the requirement is a procedural protection that could become significant if a dispute arises regarding the contents of the agreement.	1. Disagree. The committee considered this question and explained the reason for the change in its Comment to subdivision (b) of the revised rule (now rule 21). Moreover, the new requirement that the agreement be signed by the parties—and therefore be reduced to writing—greatly diminishes the chance of a later dispute about its contents.
				2. Subdivision (d) of the revised rule, which changes the time to file briefs after a prehearing conference is ordered to a *tolling* provision rather than the current 30-day *extension*, "strikes the proper balance between encouraging participation in prehearing	2. No response necessary.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				settlement conferences and avoiding unwarranted lengthening of the briefing process."	
13.	20	Maurice H. Oppenheim Attorney at Law	N	1. Objects to the deletion of the word "short" from the phrase "a short statement" in subdivision (a) of the former rule and to the explanation given in the Committee Comment.	1. Agree in part. Some reference to the desired brevity of the statement is advisable. To make the wording of the rule consistent with the wording of revised rule 28.1(b)(1), the word "concise" has been substituted in subdivision (a)(1) of the revised rule (now rule 21). No substantive change is intended.
				2. States that the revised rule "does not provide for a chairperson" and "does not specify that [the presiding officer] must be a judge or lawyer or have any legal training."	2. Disagree. The reference to a "chairperson" is unclear; no such person was mentioned in the former rule. The revised rule (now rule 21) should not specify the qualifications of a presiding officer: the Courts of Appeal need flexibility to experiment with different types of hearing officers if they deem it advisable, and it may be assumed the presiding justices will appoint persons qualified to perform the duties of the position.
14.	20	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. Subdivision (b) of the revised rule states that "Unless the Court of Appeal orders otherwise, an agreement governs the appeal." The commentator believes that statement "is ambiguous as to whether it requires the appellate court to accept the terms of the parties'	1. Disagree. The statement (now rule 21(b)) is not ambiguous. Like the current rule, it creates a rebuttable presumption that the court accepts the terms of the agreement *unless it*

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				agreement."	*orders otherwise.* To require the court to affirmatively declare that it accepts the terms of every agreement would put an unnecessary burden on the court.
				2. Subdivision (d) of the revised rule changes the time to file briefs after a prehearing conference is ordered to a *tolling* provision rather than the current 30-day *extension*. The commentator believes the new tolling procedure could "operate unfairly" by depriving a party of adequate time to respond in light of the outcome of the conference.	2. Disagree. The tolling procedure (now rule 21(d)) strikes an appropriate balance (see comment 12.2). If more time is needed to respond to an agreement, the party may obtain it by stipulation or application for extension under rule 15(b).
15.	20	Robert S. Wolfe Supervising Attorney Court of Appeal, 4th District	N	1. The revised rule should include a catch-all provision allowing each Court of Appeal to provide otherwise by local rule or order. 2. Subdivision (a)(1) of the revised rule should be amended to allow the presiding judge to order all parties—not just the appellant—to file a prehearing conference statement. The respondent's input can be as useful as the appellant's, if not more so. 3. Subdivision (a)(1) of the revised rule adds a requirement that a party filing a pretrial conference statement also *serve* the statement on the other parties. The service requirement should be deleted or made a matter of judicial discretion. Experience shows that parties are more likely to be candid, with less posturing, if they know the statement will be confidential. The commentator states it is the practice	1. Disagree. Statewide rules of practice should be uniform to the extent possible. 2. Agree. Subdivision (a)(1) of the revised rule (now rule 21) has been amended to allow the presiding judge to order "one or more parties" to file a statement. 3. Agree in part. Although the new service requirement should be retained for the reason stated in the Advisory Committee Comment to the rule, the Comment has been revised to make it clear that the requirement is not intended to prohibit the presiding justice, in

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				of the Court of Appeal, 4th Dist., Div. 3, to ask for initial settlement proposals, assessments of the opponent's incentives to settle, and an appraisal of the strengths and weaknesses of each side.	appropriate cases, from ordering the parties to submit additional, *confidential* material.
				4. Subdivision (a)(2) of the revised rule (now rule 21)) authorizes the presiding justice to order "all necessary persons" to attend the prehearing conference. The quoted phrase should be changed to "all appropriate persons" because many attorneys believe only they are "necessary," not their clients or insurance company representatives.	4. Disagree. The revised rule does not restrict the presiding justice's discretion. In this respect the revised rule tracks former rule 19.5(a)(2), which authorized the presiding justice to order "counsel for the parties, and any other persons he deems *necessary*," to appear at the conference.
				5. Court approval of a settlement agreement need not be required if the agreement merely terminates the appeal or simplifies the issues. But such approval should be required if the agreement addresses "other issues" governing the prosecution of the appeal, e.g., briefing schedules, consolidation of appeals, or introduction of evidence on appeal. The risk is that the parties may thereby attempt to evade court rules.	5. Disagree. A sufficient safeguard against such abuse is the proviso that the parties' agreement governs the appeal "unless the Court of Appeal orders otherwise" (revised rule 21(b)). To require the court to affirmatively declare that it accepts the terms of every agreement that might be construed to address "other issues" would put an unnecessary burden on the court.
				6. Under former rule 19.5(b), the presiding officer at a prehearing conference was precluded from participating in or influencing "the consideration or decision of the appeal *on its merits*." (Italics added.) The emphasized phrase should be restored in the revised rule (now rule 21(c)(2)), which more broadly	6. Disagree. The phrase, "on its merits," was deleted as surplusage; in this respect the former rule and the revised rule are functionally equivalent. Any practice of using prehearing conferences for

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				precludes the officer from participating in or influencing "the determination of the appeal." The commentator states it is the practice of the Court of Appeal, 4th Dist., Div. 3, to use prehearing conferences "for nonsettlement purposes," e.g., to expose jurisdictional defects such as untimeliness, record omissions, or a party's lack of capacity. This information need not be kept confidential.	"nonsettlement purposes" appears foreign to the purpose of such conferences. To limit the confidentiality requirement in any significant respect would discourage the full and candid participation of the parties in prehearing conferences.
16.	20	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	The revised rule should provide that the tolling of the time to file a brief "should commence on the date the court issues its [prehearing conference] order and conclude on the date the court orders it so [*sic*, presumably meaning declares the tolling concluded]."	Disagree. The commentator gives no reason for the proposed change. The revised rule provides an appropriate and predictable date for ending the tolling and resuming the briefing process.
17.	22	Appellate Courts Com. State Bar of California	Y	The Committee Comment should note that the reference in the revised rule to Code Civ. Proc., § 909 is not a substantive change, because that statute also governed former rule 23 even though the former rule did not expressly refer to it.	Agree. The point has been added to the Comment.
18.	22	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	The revised rule should not be limited in its application to the Court of Appeal, but should apply generally, like the former rule, to the "reviewing court."	Agree. The revised rule has been amended to so provide.
19.	22	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	The revised rule, like the former rule, allows a party to offer documents into evidence in the reviewing court. To make it clear that this rule does not supplant the rule allowing the reviewing court to take judicial notice of documents, a cross-reference to the latter should be added to the revised rule.	Agree in part. To make the point clear—and to treat related topics in a single rule—the provisions on judicial notice and the provisions on making findings and taking evidence on appeal have been consolidated into a single rule, revised rule 22.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
20.	22	Maurice H. Oppenheim Attorney at Law	N	The revised rule should not be limited in its application to the Court of Appeal, but should apply, like the former rule, generally to the "reviewing court."	Agree. The revised rule has been amended to so provide.
21.	22	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	The commentator makes two suggestions for the wording of a proposed similar rule in juvenile dependency appeals.	No response necessary. The comment will be considered when the committee revises the rules governing juvenile dependency appeals.
22.	23	Appellate Courts Com. State Bar of California	Y	Approves of new provision of the revised rule (now rule 23(b)) requiring the Court of Appeal clerk to send the parties notice of the time and place of oral argument at least 20 days before the argument date, but recommends that the committee consider extending the period to 30 days.	Disagree. The committee considered prescribing a 30-day period, but concluded that a 20-day period strikes the proper balance between appellate counsel's need to prepare for oral argument and the reviewing court's need to manage its calendar efficiently. Because the rule provides that the clerk must give "at least" 20 days' notice, it does not preclude a notice of more than 20 days.
23.	23	Michael P. Judge Los Angeles County Public Defender	Y	1. The revised rule should clarify whether the provision for requesting "calendar preference" applies only to preference in scheduling a case for oral argument or more broadly to preference in the entire decision-making process. The latter was the practice of the reviewing courts under former rule 19.3, which this rule replaces. 2. The revised rule should not require a motion for preference when the preference is provided by statute.	1. Agree. To clarify that the preference provision applies to the entire decision-making process, the provision has been removed from the rule on oral argument (revised rule 23) and assigned to a rule of its own at the outset of Part IV (revised rule 19). 2. Disagree. The revised rule (now rule 19) tracks former rule 19.3, which drew no distinction between

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					statutory and nonstatutory preferences but required a motion in all cases. A motion relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. Neither the former rule nor the revised rule, however, states that the reviewing court cannot order preference without a motion or purports to authorize the court to ignore a statutory preference. The Committee Comment has been revised to avoid a contrary implication.
				3. When the preference is provided by statute, it should be enough to require that "the cover of the document filed" bear a notice of the claim of preference.	3. Disagree. The commentator does not identify "the document filed," but appears to be referring to a brief. A motion may be filed much earlier in the appellate process than a brief, however, and will draw the immediate attention of the reviewing court.
				4. The Committee Comment to the revised rule (now rule 19) should not state that a preference motion is for the moving party's sole benefit; certain preferences are for the benefit of the public.	4. Agree. The statement has been deleted from the Comment.
				5. The revised rule (now rule 19) should not require the motion to be served on the opposing party, because that party will never have grounds to object.	5. Disagree. The opposing party should have the opportunity to argue that a preference is inappropriate on the facts of the

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					case. In addition, rule 41(a) requires service of all motions filed in the reviewing court.
24.	23	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	1. The revised rule (now rule 19) should distinguish between preferences provided by statute and discretionary preferences; no motion should be required to claim the former.	1. Disagree. See response to comment 23.2.
				2. The revised rule (now rule 19) should clarify whether the provision for requesting "calendar preference" applies only to preference in scheduling a case for oral argument or more broadly to preference in the entire decision-making process. The latter was the practice of the reviewing courts under former rule 19.3, which this rule replaces.	2. Agree. See response to comment 23.1.
				3. Subdivision (e)(1) of the revised rule (now subd. (d)(1)) states that a cause is submitted when the court has heard oral argument "or approved its waiver." Why is approval of waiver necessary?	3. In this respect the revised rule tracks former rule 22.5(a). Approval of waiver allows the reviewing court, in appropriate cases, to hear argument despite waiver by the parties.
				4. Under subdivision (e)(2) of the revised rule (now subd. (d)(2)), could the Court of Appeal request supplemental briefing *in addition to* that authorized by revised rule 29.3(f)? The revised rule makes no provision for time to prepare and file such a brief.	4. The revised rule does not prohibit such briefing (now see amended rule 13)(a)(4)), although it is unlikely to be requested. If it were, the court could vacate submission to allow the necessary time.
25.	23	Mark Christiansen Attorney at Law	N	Subdivision (c) of the revised rule (now subd. (d)) requires the Court of Appeal clerk to send the parties notice of the time and place of oral argument at least 20	Disagree. See response to comment 22.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				days before the argument date. The commentator suggests that the period be extended to 30 days.	
26.	23	Maurice H. Oppenheim Attorney at Law	N	1. The statement in the Committee Comment to the revised rule (now rule 19) that the reviewing court may order preference without a motion when the ground is apparent on the face of the record should appear in the rule rather than in the Comment. 2. Revised rule 23(b) should provide that if the presiding justice shortens the notice period for oral argument, the clerk must immediately notify the parties by telephone or other expeditious method.	1. Disagree. The Comment does not grant a power to the court but simply recognizes a power implied by the rule. 2. Agree. Subdivision (b) of the revised rule has been amended to so provide.
27.	23	Holly R. Paul Appellate Courts Com. Los Angeles County Bar Assn.	Y	Subdivision (f)(1) of the revised rule (now subd. (e)(1)) requires the Court of Appeal to set a timetable for resubmission if it vacates submission. The rule should also provide a remedy if the court fails to do so.	Disagree. The rules should not assume that the Courts of Appeal will ignore such an explicit requirement.
28.	23	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. Subdivision (c) of the revised rule (now subd. (b)) requires the Court of Appeal clerk to send the parties notice of the time and place of oral argument at least 20 days before the argument date. The commentator suggests that the period be extended to 30 days. 2. The notice of oral argument should advise the parties of any local rule that prescribes particular requirements of that court regarding the conduct of argument. 3. The revised rule should prescribe consistent	1. Disagree. See response to comment 22. 2. Disagree. The proposed amendment would impose an unnecessary burden on the clerk. Local rules are widely available to practitioners, both in standard publications and on the Internet. 3. Disagree. In this respect the revised

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				standards for all Courts of Appeal to follow in approving waiver of oral argument.	rule tracks former rule 22.5(a). The commentator does not identify any problems that have arisen from the application of that rule or from variations in Court of Appeal procedures for approving waiver.
				4. The revised rule should be amended to provide for instances in which the Court of Appeal *defers* rather than vacates submission. The court may do so for "various valid reasons."	4. Disagree. The commentator does not identify the "reasons" referred to. If the court defers submission because it allows or orders supplemental briefing at oral argument, the case is governed by subdivision (d)(1) of the revised rule (i.e., the cause is submitted when the time has expired to file all briefs, "including any supplemental brief permitted by the court").
				5. Subdivision (e)(2) of the revised rule should be qualified, like subdivision (d)(1), by the phrase, "and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court."	5. Disagree. The likelihood of supplemental briefs being filed under subdivision (e)(2) is significantly less than under subdivision (d)(1). If such briefs are nevertheless permitted, the court may vacate submission.
29.	24	Michael P. Judge Los Angeles County Public Defender	Y	The revised rule should address the problem that assertedly arises when a petition for extraordinary writ raises two issues (A and B) and the Court of Appeal grants an alternative writ as to issue A but is silent as to issue B. Does this mean the court has denied relief as to issue B by a final decision? The rule should specify that	Disagree. The suggested problem should not arise under the revised rule. Subdivision (b)(2)(A) provides that a Court of Appeal decision is final in that court on filing if it is "the denial of a *petition*" for an original writ without

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				the petition is not final as to issue B until the proceedings on issue A are final.	issuance of an alternative writ (italics added). In the hypothesized situation, the court has not denied "a petition." There is therefore no final decision on issue B that would support a petition for review at that time.
30.	24	Mark Christiansen Attorney at Law	N	Under revised rule 24(b) a Court of Appeal decision is final in that court 30 days after filing, but a summary denial of a petition for habeas corpus is final on filing; under revised rule 28(d) a petition for review in the Supreme Court must be filed within 10 days after finality in the Court of Appeal. Revised rule 24(b)(4) provides that a Court of Appeal decision summarily denying a petition for habeas corpus is final at the same time as its decision in a related appeal if the two are filed on the same day. The revised rule should address the problem arising in such cases when the Court of Appeal grants rehearing in the appeal more than 10 days after filing but leaves intact its order denying the habeas corpus petition; it is then too late to seek review of the latter order, defeating the policy of encouraging petitioners to file their habeas corpus petitions in the court where their appeal is pending rather than originally in the Supreme Court.	Agree. The text of revised rule 24(b)(4) has been amended to resolve the problem.
31.	24	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	Revised rule 24(b)(5) provides that if a Court of Appeal certifies its decision for publication after filing its decision and before the decision is final in that court, the finality period runs from the filing date of the order of publication. The commentator objects to the provision as a substantive change beyond the purview of the rules revision project, and further disagrees with it on the	Disagree. The provisions of revised rule 24(b)(5) and 25(b)(1) restarting the finality period after a postfiling order of publication are essentially the same as those circulated for public comment in the spring 2001 rules cycle as proposal SPR01-2. After reviewing the

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				merits.	responsive comments, the committee voted to recommend to the Judicial Council that the proposal be adopted.
32.	24	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	1. To prevent mootness, revised rule 24(b)(3) permits the Court of Appeal to order early finality of a decision granting an original *writ*; it should also permit the court to order early finality of a decision in an *appeal* on stipulation by the parties, to permit a petition for Supreme Court review to be filed sooner. The lack of such a provision is "incongruous" in light of revised rule 26(c)(1), which permits the Court of Appeal to direct immediate issuance of a remittitur on stipulation by the parties. 2. Revised rule 24(b)(4) provides that a Court of Appeal decision summarily denying a petition for habeas corpus is final at the same time as its decision in a related appeal if the two are filed on the same day, "but the proceedings are not deemed consolidated for the purpose of filing a single petition for review under rule 28." The Committee Comment states it is Supreme Court practice to require separate petitions for review for each such decision. The commentator states the rule does not make it clear that separate petitions are not required if the two cases *are* consolidated; questions why separate petitions should be required even when the cases are not consolidated; and asserts the Supreme Court Clerk's Office "can do little" to enforce the requirement because "opinions under either procedure . . . look the same."	1. Disagree. In this respect the revised rule tracks former rule 24, which also did not provide for stipulated early finality of appeals. Rules 24 and 26 are not incongruous: rule 26 does not provide for stipulated early *finality*, but for stipulated early issuance of the *remittitur*, which assumes the decision is already final. 2. Agree in part. The clerk's office is able to determine from the face of the opinion if an appeal is consolidated with a related habeas corpus petition. The stated practice allows the Supreme Court to avoid finality problems if it decides both to deny review of the decision in the appeal and to grant an order to show cause in the related habeas corpus matter. To clarify the point, the provision has been moved to revised rule 28(d).
33.	24	Maurice H. Oppenheim	N	Revised rule 24(b)(4) provides that a Court of Appeal	Agree. The provision has been moved

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Attorney at Law		decision summarily denying a petition for habeas corpus is final at the same time as its decision in a related appeal if the two are filed on the same day, "but the proceedings are not deemed consolidated for the purpose of filing a single petition for review under rule 28." The quoted proviso does not belong in this rule and should be moved to rule 28.	to revised rule 28(d).
34.	24	Norm Vance Director, Criminal Central Staff California Supreme Court	N	Revised rule 24(b)(4) provides that a Court of Appeal decision summarily denying a petition for habeas corpus is final at the same time as its decision in a related appeal if the two are filed on the same day, but the proceedings are not deemed consolidated for the purpose of filing a single petition for review under rule 28. The provision should make it clear that separate petitions are required only if the two cases are *not* consolidated.	Agree. The provision has been moved to revised rule 28(d) and rewritten for clarity.
35.	24	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	The text of revised rule 24(b)(1) should specify that interlocutory orders of the Court of Appeal fall within the general 30-day rule of finality.	Agree in part. The point has been clarified in the Committee Comment to rule 24(b).
36.	24	Appellate Courts Com. State Bar of California	Y	Some members are concerned that this rule and others declare consequences of finality (e.g., a final decision is not subject to modification or rehearing) but do not define the term "finality." For example, finality does not preclude a reviewing court from recalling its remittitur even long after the finality date.	Disagree. The former rules did not define "finality" or prohibit recall of the remittitur after finality, and the commentator does not identify any difficulties that arose as a result.
37.	25	Holly R. Paul Appellate Courts Com. Los Angeles County Bar Assn.	Y	1. Revised rule 25(b)(2) should be amended to provide that an answer to a petition for rehearing cannot be filed unless the Court of Appeal requests an answer, but the court will not grant a petition for rehearing	1. The proposal deserves consideration but is beyond the purview of the present rules revision project.

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				without requesting an answer. Any finality problem can be solved by amending revised rule 24(b) to provide that if the court requests an answer, the finality period runs from the date of the request. Because most petitions for rehearing are denied, these amendments would save the parties time and expense and save the Court of Appeal time and effort. 2. The provision of revised rule 25(d) that an order granting rehearing "sets the cause at large in the Court of Appeal" should be amended to require the court to set a timetable for rehearing and resubmission of the appeal, to assure counsel and their clients that a decision "will be rendered in the near future."	2. Disagree. Reviewing courts need flexibility in processing rehearings because of the wide variety of reasons for ordering rehearing (e.g., retirement of a justice, supervening decision of higher court, error of law, etc.). Any need for an early decision may be communicated to the court by counsel.
38.	25	Appellate Courts Com. State Bar of California	Y	1. Endorses new provision allowing a petition for rehearing after a modification order changing the appellate judgment or a postfiling publication order. Some members suggested allowing a petition for rehearing after a modification order that does *not* change the appellate judgment. 2. Revised rule 25(b)(3), requiring a petition for rehearing and any answer to comply with the form requirements of rule 14 "as nearly as possible," should be amended to state that the petition need not include a statement of appealability (rule 14(a)(2)(B)).	1. Disagree. Most modifications that do not change the appellate judgment are minor and do not warrant a delay in finality. 2. Agree in part. To clarify the cross-reference, revised subdivision (b)(3) has been changed to require a petition and answer to comply with "the relevant provisions of" rule 14. Unless the appeal was dismissed under the one final judgment rule,

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					subdivision (a)(2)(B) of that rule is plainly not relevant to a petition for rehearing.
39.	25	John R. Evans Sr. Appellate Attorney Court of Appeal, 2d District	N	Revised rule 25(c), providing that the time to act on a petition for rehearing may not be extended, should bear the proviso, "except as provided in rule 25(a)(2)." The latter states that if the clerk's office is closed on the date of finality, "the court may order rehearing on the next day the clerk's office is open."	Disagree. Rules of court should avoid using such provisos unless the rule is so complex that they are necessary to avoid confusion. Revised rule 25(c) is not so complex.
40.	25	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	Rather than provide that a petition for rehearing and any answer must comply with rule 14 "as nearly as possible," revised rule 25(c) should retain the wording of former rule 27(d), i.e., "insofar as practicable."	Agree in part. To clarify the cross-reference, revised subdivision (b)(3) has been rewritten to require a petition and answer to comply with "the applicable provisions of" rule 14.
41.	25	Maurice H. Oppenheim Attorney at Law	N	1. For clarity, revised rule 25(b)(1) should be restated in separate sentences. 2. The revised rule should restore the provision of former rule 27(d) declaring that when a petition for rehearing is deemed denied by operation of law because the reviewing court did rule on it before its decision became final, "the clerk shall enter a notation in the register to that effect." 3. The provision of revised rule 25(d) that an order granting rehearing "sets the cause at large in the Court of Appeal" should be defined in the rule or explained in the Committee Comment.	1. Agree. The provision has been restated. 2. Disagree. The quoted provision is unnecessary micromanagement of the clerk's office. 3. Disagree. The quoted phrase is adequately defined in the case law.
42.	26	Joseph Lane	Y	1. Former rule 27(a)(2) provided that a remittitur must	1. Disagree. In this context the word

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Clerk/Administrator Court of Appeal, 2d District		issue "after the *final* determination of . . . any appeal." Revised rule 26(a)(1) provides simply that a Court of Appeal must issue a remittitur "after a decision in . . . an appeal." The word "final" should be restored. 2. Former rule 25(a) provided that the remittitur "shall be transmitted immediately, with *a certified copy* of the opinion or order, to the lower court" (italics added). Revised rule 26(b) directs the clerk to send the lower court the remittitur and "a file-stamped copy" of the opinion or order. The former language should be restored.	"final" is ambiguous, as it could be read to mean final in the Court of Appeal or final for all purposes. It is also unnecessary in view of the specificity of revised subdivision (b) on the issue of when the clerk must issue the remittitur. 2. Disagree. As explained in the Committee Comment to revised rule 26(b), the rule does not use the word "certified" because of its possible ambiguity, but is not intended to change the general practice of the Court of Appeal clerks, which is to "certify" in the remittitur that the attached opinion is a copy of the original opinion and to attach a copy that is file-stamped but *not* embossed with the court's seal.
43.	26	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	Revised rule 24(b)(3) permits the Court of Appeal to order early finality of a decision granting an original writ; it should also permit the Court of Appeal to order early finality of a decision in an appeal on stipulation by the parties. The lack of such a provision is "incongruous" in light of revised rule 26(c)(1), which permits the Court of Appeal to direct immediate issuance of a remittitur on stipulation by the parties.	Disagree. See response to comment 32.1.
44.	27	Michael P. Judge Los Angeles County Public	Y	The revised rule should state, as did former rule 26(a)(1), that the cost provisions "do not apply in criminal cases."	Agree. Revised rule 27(a)(1) has been amended to so state.

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Defender			
45.	27	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	The revised rule should not have eliminated the requirement of current rule 26(a)(3) that an opinion must specify the award of costs if the judgment is reversed in its entirety, because "it is easier to remember that costs need to be specified in all instances other than full affirmance rather than remember two variations to the requirement."	Disagree. It is equally easy to remember that costs need to be specified in all cases other than full affirmance *or reversal*. A party who gains a full affirmance or reversal is clearly the "prevailing party" and should not have to bear the risk of a failure to specify costs. The revised rule focuses the court's attention on those cases in which it is often *not* clear who is the prevailing party.
46.	27	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	1. In the last sentence of the Advisory Committee Comment on subdivision (a), the qualifying phrase, "In an unusual case," should be deleted because it implies that the court's discretion in the matter of costs is limited. 2. Either the rule or the Committee Comment should include a cross-reference to the standards for costs on writs, which currently appear in rule 54 (*sic*, presumably referring to rule 56.4 [costs in original proceedings]).	1. Agree. The Comment has been revised accordingly. 2. Disagree. The revised rules on appeals contain few if any cross-references to the rules on original proceedings, and such a reference is unnecessary here. Excessive cross-referencing is poor drafting practice.
47.	27	Maurice H. Oppenheim Attorney at Law	N	The Committee Comment to revised rule 27(c)(1)(A) should not state that a party entitled to costs may recover "any amount" it paid for the record, because the rule is limited to such amount only "if reasonable."	Agree. The Comment has been revised accordingly.
48.	27	Kimberly Stewart	Y	The revised rule should state, as did former rule 26(a)(1),	Agree. See response to comment 44.

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Appellate Court Com. San Diego County Bar Assn.		that the cost provisions "do not apply in criminal cases."	
49.	27	First District Appellate Project	Y	1. The revised rule should state, as did former rule 26(a)(1), that the cost provisions "do not apply in criminal cases." 2. Costs are also generally not awarded in other appeals with appointed counsel, such as dependency cases and those involving mental commitments. The Committee Comment should clarify that the revised rule is not intended to expand the categories of appeals currently subject to awards of costs.	1. Agree. See response to comment 44. 2. Agree. The Comment has been revised to clarify the point.
50.	27	Angela Bradstreet President San Francisco Bar Assn.	Y	1. Revised subdivision (c)(1)(B) or its Committee Comment should specify what items are included in "the cost to produce additional evidence on appeal." 2. A provision similar to revised subdivision (c)(2) [attorney fees on appeal] should be incorporated into rule 135, which governs costs on appeal to the superior court.	1. Disagree. In the rare case in which such evidence is offered and admitted, the court will resolve any question concerning the particular items recoverable. In this respect the revised rule tracks former rule 26(c)(3). 2. The proposal is beyond the purview of the present rules revision project.
51.	28	Dennis A. Fischer Attorney	N	The grounds for review (revised rule 28(b)) should be expanded to reflect the Supreme Court practice of granting review for the purpose of transferring the case back to the Court of Appeal with instructions. (E.g., on a	Agree. The gap in the rule has been filled to reflect this Supreme Court practice. (See revised rule 28(b)(4).)

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				petition to review a summarily denial of a writ petition, the Supreme Court may grant review for the purpose of transferring the matter to the Court of Appeal with directions to issue an alternative writ returnable before that court or a trial court.)	
52.	28	Michael P. Judge Los Angeles County Public Defender	Y	The bar against reviewing "the denial of a transfer of a case within the appellate jurisdiction of the superior court" (revised rule 28(a)(1)) should be lifted. Review should be allowed of *any* decision of the Appellate Division, particularly those that are published or certified to the Court of Appeal.	Disagree. The bar is longstanding and recognized in the case law. (See, e.g., *Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 517, fn.5.) Removing the bar is beyond the purview of the present rules revision project.
53.	28	Appellate Courts Com. State Bar of California	Y	1. Revised rule 28(a)(1) eliminates the ambiguity in former rule 28(a) as to whether an interlocutory order of the Court of Appeal is a "decision" that may be challenged by petition for review. 2. Revised rule 28(d)(4) could be misread to mean that an answer to a petition is mandatory. It should be amended to read, "any" answer. 3. Revised rule 28(e)(2) should be amended to provide that copies of answers and replies—not just petitions for review—should be served on the Court of Appeal clerk.	1. No response necessary. 2. Agree. The provision (now (e)(4)) has been revised to so read. 3. Disagree. The reason for serving a copy of the petition is to enable the Court of Appeal clerk to calculate the finality date of the Court of Appeal decision; answers and replies do not affect that date. The commentator does not explain why the Courts of Appeal need to be informed of any issues presented to the Supreme Court in an answer.

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				4. Revised rule 28(e)(4) should be amended to specify the event that triggers the five-day period for filing a corrected proof of service.	4. Agree. The provision (now (f)(4)) has been revised to specify that the period begins when "the clerk gives notice of the defect."
54.	28	Maurice H. Oppenheim Attorney at Law	N	1. Revised rule 28(c)(1) and (2) should not provide that "as a policy matter" the Supreme Court "will normally" take a certain action.	1. Disagree. The quoted phrase reflects the practice of the Supreme Court without limiting its discretion to take different action in appropriate cases. It was so used in the former rules (e.g., rule 29(b)).
				2. The word "will" is not defined.	2. Disagree. The word is defined in the Introductory Advisory Committee Comment to these rules.
				3. Revised rule 28(c)(1) and (2) should be rewritten to provide that the Supreme Court may consider, "upon a showing of good cause," an issue that the petitioner failed to raise below.	3. Disagree. To require a specific finding of good cause would unduly limit the court's discretion in deciding which issues it needs to address.
				4. 4. Revised rule 28(f) should be amended to require the Supreme Court to notify the parties when it intends to consider an amicus curiae letter.	4. Disagree. The suggested amendment would be unnecessarily burdensome and unduly limit the court's discretion.
55.	28	Sylvia L. Paoli Appellate Attorney	N	Revised rule 28(d)(4) could be misread to mean that an answer to a petition is mandatory.	Agree. See response to comment 53.2.
56.	28	Kimberly Stewart Appellate Court Com. San Diego County Bar	Y	1. In revised rule 28(d)(1), add a cross-reference to the finality rule for Court of Appeal decisions, i.e., "under rule 24(b)."	1. Agree. The cross-reference has been inserted.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Assn.		2. Revised rule 28(d)(4) could be misread to mean that an answer to a petition is mandatory.	2. Agree. See response to comment 53.2.
				3. Revised rule 28(e)(4) should be amended to specify the event that starts the five-day time limit for filing a corrected proof of service.	3. The provision has been revised to so specify.
				4. Revised rule 28(e)(4) should be amended to substitute "within a reasonable time" for the five-day time limit for filing a corrected proof of service. Prisoners acting in propria persona may require more time.	4. Disagree. By providing that the court "may"—not "must"—impose sanctions for failure to timely file a corrected proof of service, the revised rule gives the court adequate flexibility to deal with unusual situations. Any special difficulties of pro. per. prisoners will be addressed when the criminal rules are revised.
				5. Unlike the former rule, revised rule 28(g)(1) does not provide for amicus curiae letters in support of petitions for original writs. That provision should be restored, at least until the rules on such petitions are revised.	5. Agree. The omitted provision has been restored.
57.	28	Roberta Gilmore Sr. Deputy Clerk California Supreme Court	N	1. Revised rule 28(e)(1) should be amended to provide that if the last day to timely file a petition for review falls on a day when the Supreme Court Clerk's Office is closed, it may be filed on the next day the clerk's office is open.	1. Disagree. Code of Civil Procedure section 12a already so provides. It is not good rule drafting practice to duplicate such basic provisions of the Code of Civil Procedure.
				2. Revised rule 28(f)(2) should be amended to expressly	

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				require that the petition for review be served on the superior court clerk.	2. Agree. The revised rule has been rewritten to so state.
58.	28	Angela Bradstreet President San Francisco Bar Assn.	Y	Paragraph (2) of revised rule 28(e) correctly provides that the time to file a petition for review cannot be extended; paragraphs (4) and (5) of the revised rule should be amended to so provide for the time to file an answer to a petition or a reply to an answer.	Disagree. As explained in the Advisory Committee Comment to subdivision (e), by clear negative implication rule 45(c) permits an application for extension of time to file an answer or reply under rule 43.
59.	28.1	Appellate Courts Com. State Bar of California	Y	Revised rule 28.1(a) requires petitions for review, answers, and replies to "comply as nearly as possible with rule 14." The provision should be amended to specify that compliance is not required with subdivision (b)(2) of rule 14 (statement of appealability).	Agree in part. Rather than specify particular exemptions from compliance, revised rule 28.1(a) has been rewritten to simply require compliance with "the relevant provisions" of rule 14.
60.	28.1	Roberta Gilmore Sr. Deputy Clerk California Supreme Court	N	Revised rule 28.1 (b) should be amended to require that the title of the case and designation of the parties on the cover of the petition for review be identical to the title and designation in the Court of Appeal opinion or order.	Agree. Subdivision (b)(5) of the revised rule has been added to impose that requirement.
61.	28.1	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. Revised rule 28.1(f)(2) should be amended to permit a petitioner who does not contest the statement of facts in the Court of Appeal opinion to incorporate that opinion by reference in the body of the petition. 2. Revised rule 28(b)(3) provides that if a petition for rehearing "could have been filed," the petition for review must state whether it was filed and, if so, how the court ruled. The provision should be amended to	1. Disagree. A summary recital of the significant facts is more helpful to the Supreme Court than an incorporation by reference of the entire Court of Appeal opinion. The revised rule tracks former rule 28(e)(5), par. 3. 2. Disagree. The wording of the revised rule is more helpful to the Supreme Court: it ipso facto excludes all cases in which a

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				read: if a petition for rehearing "was filed," the petition for review must so state and also state how the court ruled.	petition for rehearing was not and *could not* have been filed (see rev. rule 24(b)(2)).
62.	28.1	Michael P. Judge Los Angeles County Public Defender	Y	The word limits on petitions and replies provided by revised rule 28.1(e)(1) are too short and should be recalculated by using a conversion ratio of 300 words per page, rather than the ratio of 250 words per page used in the rule.	Disagree. The ratio of 280 words per page is the ratio used in calculating the length limits of briefs in the Court of Appeal (see rule 14(c) and Advisory Committee Comment thereto) and in the Ninth Circuit (see FRAP 32(a)(7)).
63.	28.1	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	The commentator questions the "practical ability" of a reviewing court to enforce the word-count limits, noting there is no apparent way to verify counsel's certificate and that certificate is not required to be executed under penalty of perjury.	Disagree. It cannot be assumed that appellate counsel will falsely certify a computer word count to the court. In the rare event of a deliberate miscount, the reviewing court has adequate means of sanctioning the misconduct.
64.	28.2	Joseph Lane Clerk/Administrator Court of Appeal, 2d District	Y	1. Revised rule 28.2(a) directs the Supreme Court clerk to return the record to the Court of Appeal if review is denied. The rule should be amended to require the clerk to do so "promptly." 2. Former rule 28(b) directed the Supreme Court clerk—if review was granted—to "retain[]" and "properly number[]" the record. Revised rule 28.2(a) deletes the directive as unnecessary micromanagement. The commentator asserts the directive explains "what happens to the record" and "its absence will lead to confusion and misunderstanding [for] many litigants and the public."	1. Disagree. After a denial of review, it is the practice of the Supreme Court clerk to retain the record no longer than necessary. The commentator does not explain why its return to the Court of Appeal is urgent. 2. Disagree. The commentator does not explain how the removal of this minor housekeeping provision could result in such public confusion and misunderstanding.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
65.	28.2	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	Subdivision (d) of revised rule 28.2 provides that if the period in which the court may order review on its own motion ends on a day when the clerk's office is closed the court may act on the next day it is open; but subdivision (b) does not so provide for the period in which the court may grant a petition for review. To conform to current Supreme Court practice, it should be amended to do so.	Disagree. The Supreme Court's practice is otherwise: the court's case management system is triggered by the filing of a petition for review; if the period in which the court can grant the petition ends on a day when the clerk's office will be closed, the system automatically *advances* the due date to a day when the office is open. That system would not be triggered in the rare case in which no petition is filed but the court is considering ordering review on its own motion.
66.	28.2	Norm Vance, Director Criminal Central Staff California Supreme Court	N	The commentator makes essentially the same comment as comment 65.	Disagree. See response to comment 65.
67.	29	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. Revised rule 29(a)(2) allows the Supreme Court to order argument on specified issues or fewer "or additional issues." The commentator is concerned that the wording might allow the court to order argument on additional issues not briefed by the parties. 2. Revised rule 29(b)(1) allows the Supreme Court to "decide any issue raised in the petition or answer or fairly included in those issues." The wording should be expanded to include issues presented when the court orders review on its own motion under rule 28.2(d).	1. Disagree. It is the court's practice to invite the parties to file supplemental briefs if it orders argument on unbriefed additional issues. 2. Disagree. In the rare case in which the court orders review on its own motion, it does not need rule authority to decide the issues thus before it.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
68.	29.1	Mark Christiansen Attorney at Law	N	1. Revised rule 29.1(a)(1) requires petitioner to file an opening brief on the merits within 30 days after filing of order of review. The commentator is concerned that it usually takes more than 30 days to appoint counsel on appeal for indigent criminal appellants. 2. The commentator appears to suggest that if an answer is filed the court should always specify the issues to be briefed.	1. It is the practice of the Supreme Court in such cases to routinely grant an extension of time to file the brief under rules 43 and 45. 2. Disagree. If that is indeed the commentator's point, it is beyond the purview of the present rules revision project.
69.	29.1	Michael P. Judge Los Angeles County Public Defender	Y	The word limits on briefs provided by the revised rule are too short and should be recalculated by using a conversion ratio of 300 words per page, rather than the ratio of 250 words per page used in the rule.	Disagree. See response to comment 62.
70.	29.1	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	The commentator questions the "practical ability" of a reviewing court to enforce the word-count limits, noting there is no apparent way to verify counsel's certificate and that certificate is not required to be executed under penalty of perjury.	Disagree. See response to comment 63.
71.	29.1	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	Revised rule 29.1 should specify longer page limits for briefs in capital cases and noncapital criminal cases, or should specify that it is not intended to apply to such cases.	Disagree. Former rule 29.3 did not so specify, and no confusion followed. The page limits for briefs in criminal cases (capital and otherwise) will be specified when the rules on criminal appeals are revised.
72.	29.2	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. Revised rule 29.2(a) declares that the rule governs oral argument in the Supreme Court "unless the court provides otherwise in its Internal Operating Practices and Procedures [IOPPs] or by order." The	1. Disagree. The proposed amendment would impose an unnecessary burden on the clerk. The IOPPs are widely available to practitioners,

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				commentator suggests that the clerk be required to advise the parties, in the notice of oral argument, of any such provisions applying to the argument in each case.	both in standard publications and on the Internet.
				2. The Supreme Court clerk should send notice of argument 30 days—not 20 days, as the revised rule provides—before argument.	2. Disagree. The rule should be the same for the Supreme Court as it is for the Court of Appeal. In any event, it is Supreme Court practice to give 30 days notice of argument.
				3. The commentator is concerned that the rule provides for only one counsel to argue on each side, regardless of number of parties on that side, "unless the court orders otherwise on request." The rule should be same as in Court of Appeal (revised rule 23(d)(3) [one counsel may argue for each separately represented party]).	3. Disagree. In this respect the revised rule tracks former rule 22(d). The proposed amendment is beyond the purview of the present rules revision project. As the commentator acknowledges, the revised rule allows the court to permit additional counsel to argue on request. It is the practice of the court to grant such requests in most cases.
				4. Revised rule 29.2(i)(2) provides that in a capital case "each side is allowed 30 minutes for argument, but on request the court may allow up to 45 minutes to each side." The rule should impose no upper limit of 45 minutes, but should give the court unlimited discretion to grant additional time in a capital case.	4. Agree in part. The proposed amendment is beyond the purview of the present rules revision project. But the quoted provision of the revised rule does not track former rule 22(b), which provided that "Counsel for each side is allowed 45 minutes for oral argument in a death penalty case and 30 minutes for oral argument in all other

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					cases." The 45-minute limit in capital cases has been restored and moved to a new rule governing oral argument in capital cases (revised rule 36.2).
				5. Revised rule 29.2(i)(3) provides that in a capital case "two counsel *may* argue on each side if they notify the court that the case requires it." Because "may" is permissive under current rule 40(d), its use here suggests the court has discretion to either grant or deny a request for two counsel to argue; but Penal Code § 1254 states that in capital appeals "two counsel *must* be heard on each side, if they require it." (Italics added.) The rule should be clarified.	5. Disagree. In this respect the revised rule tracks former rule 22(d), and neither can be fairly read the way the commentator does. The revised rule does not say, "*the court may* permit two counsel to argue on each side." As written, it is clear that "may" is used in the sense of "can": to say that "two counsel may argue" clearly means that two counsel *can* argue, i.e., have the right to argue. The provision, however, has been moved to a new rule governing oral argument in capital cases (revised rule 36.2).
				6. Revised rule 29.2(i)(4) should be clarified by changing "a request or notice under (2) or (3) must be filed . . . " to "a request under (2) or notice under (3) must be filed . . . ."	6. Agree, but the provision has been rewritten and moved to a new rule governing oral argument in capital cases (revised rule 36.2).
73.	29.2	Michael P. Judge Los Angeles County Public Defender	Y	The commentator makes several suggestions concerning the provision of proposed revised rule 29.2(c) on motions for calendar preference in the Supreme Court.	No response necessary: the provision has been deleted. Former rule 19.3 did not expressly authorize motions for calendar preference in the Supreme Court, and it is not the court's practice to proceed by such motions. If counsel

† On behalf of a group: Y = Yes; N = No

NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					believes the court should give a matter special scheduling treatment, the court will entertain a letter request to that effect.
74.	29.2	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	The commentator makes several suggestions concerning the provision of proposed revised rule 29.2(c) on motions for calendar preference in the Supreme Court.	See response to comment 73.
75.	29.2	Appellate Courts Com. State Bar of California	Y	1. To conform to Supreme Court practice, revised rule 29.2(c) should require the Supreme Court clerk to send notice of argument 30 days—not 20 days, as the rule provides—before argument, and the rule on notice of argument in the Court of Appeal (revised rule 23(b)) should be amended to conform.	1. Disagree. The Committee considered prescribing a 30-day period, but concluded that a 20-day period strikes the proper balance between appellate counsel's need to prepare for oral argument and the reviewing court's need to manage its calendar efficiently. Because the rule provides that the clerk must give "at least" 20 days notice, it does not prevent the Supreme Court from continuing its practice of giving a notice of more than 20 days.
				2. Revised rule 29.2(f)(3) provides that multiple counsel "must not divide their arguments into segments of less than 10 minutes each." The commentator recommends that parties and amici should be permitted to request shorter segments and the Supreme Court should be given discretion to grant such requests.	2. Disagree. The proposed amendment is beyond the purview of the present rules revision project: the quoted provision is derived directly from section V of the Supreme Court's Internal Operating Practices and Procedures. If the court wishes to make an exception in any case, it has the power to so order under

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					subd. (a) of the revised rule.
76.	29.2	Mark Christiansen Attorney at Law	N	To conform to Supreme Court practice, revised rule 29.2(c) should require the Supreme Court clerk to send notice of argument 30 days—not 20 days, as the rule provides—before argument.	Disagree. See response to comment 75.1.
77.	29.2	Maurice H. Oppenheim Attorney at Law	N	Revised rule 29.2(c) should provide that if the Chief Justice shortens the notice period for oral argument, the clerk must immediately notify the parties by telephone or other expeditious method.	Agree. Subdivision (c) of the revised rule has been rewritten to so provide.
78.	29.2	John Rossi Asst. Clerk/Administrator California Supreme Court	N	Revised rule 29.2(h) provides that if counsel agrees to let to an amicus share counsel's argument time, "counsel *or the amicus curiae* must file a request [with the court, asking to divide time]." The Supreme Court practice on the topic is to require that request to be filed by counsel, not the amicus. The italicized words should be deleted.	Agree. The reference to a request by amicus has been deleted.
79.	29.3	Appellate Courts Com. State Bar of California	Y	Revised rule 29.3(b)(3) should be amended to provide that after an order dismissing review, a previously published Court of Appeal opinion either (1) is automatically republished or (2) is subject to republication on request.	Disagree. The proposed change would require a major amendment of rule 976(d) and of settled Supreme Court practice on the topic. That practice—sanctioned by both the former rule and the revised rule—is to allow the court to use its discretion to *order* republication of the Court of Appeal opinion in appropriate cases. A proposal for automatic republication or republication on request is beyond the purview of the present rules revision project.
80.	29.3	Holly R. Paul	Y	As written, revised rule 29.3(f) provides for requests to	Agree. The provision has been moved

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Appellate Courts Com. Los Angeles County Bar Assn.		file supplemental briefs in the Court of Appeal after a Supreme Court order transferring a cause to the Court of Appeal for further proceedings. The provision should be moved to the rules relating to the Court of Appeal, where practitioners would expect to find it.	to new subdivision (b) of rule 13 (briefs in the Court of Appeal).
81.	29.4	Mat Zwerling Executive Director First District Appellate Project; letter dated 4/24/02 from California Federal Public Defenders	Y	1. Revised rule 29.4(b)(2)(C) provides that a summary denial of a petition for original writ in the Supreme Court is final on filing. The commentators assert that, at least as to petitions for habeas corpus, the practice of the Supreme Court is to treat such denials as final 30 days after filing, as a federal appellate court declared in *Bunney v. Mitchell* (9th Cir. 2001) 262 F.3d 973, 974. The revised rule should be amended to reflect this practice and should cite *Bunney*. 2. The revised rule should provide that whenever the Supreme Court issues an order that is final on filing, the order must expressly state that it is final on filing.	1. Disagree. Although the provision is new to the rules, it reflects the practice of the Supreme Court since at least 1989 of declining to file petitions for rehearing after orders denying habeas corpus petitions without opinion. (See, e.g., *In re Hayes* (S004421) Minutes, Cal. Supreme Ct., July 28, 1989.) 2. Disagree. The proposal is both burdensome and unnecessary: the finality periods of appellate decisions are prescribed by revised rules 24 and 29.4. The Courts of Appeal are under no such obligation, and no reason is given to treat the Supreme Court differently.
82.	29.4	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	1. Revised rule 29.4(b)(2) should be amended to add other types of Supreme Court decisions that are final on filing, i.e., the several types of dispositions authorized under revised rule 29.3(b)–(e).	1. Agree in part. A dismissal, a transfer, and a retransfer under subdivisions (b), (d), and (e), respectively, of rule 29.3 are decisions final on filing; those references have been added to revised rule 29.4(b)(2). A remand

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
					under subdivision (c) of rule 29.3 is not a "decision final on filing" because it is not a separately filed order. The distinction is explained in the Advisory Committee Comment to revised rule 29.4(b).
				2. The commentator suggests that a citation to *Bunney v. Mitchell* (9th Cir. 2001) 262 F.3d 973, 974, be added to the Advisory Committee Comment to revised rule 29.4(b)(2)(C).	2. Disagree. See response to comment 81.1.
83.	29.4	Appellate Courts Com. State Bar of California	Y	1. Revised rule 29.4(a) states: "The Supreme Court clerk must promptly file all *opinions or orders* issued by the court and promptly send copies . . . to *the lower court or tribunal* and to the parties." In the first italicized phrase, the word "or" should be changed to "and."	1. Agree. The word has been changed.
				2. The second phrase italicized above should be clarified.	2. Disagree. The phrase is taken directly from former rule 24(a), where it was uniformly understood by reviewing courts. "Lower court" refers to the Court of Appeal in appeal cases and to all courts in writ cases; "tribunal" refers to administrative agencies in writ cases.
				3. Revised rule 29.4(b)(1)(B) states that Supreme Court decisions that are not final on filing are final 30 days after filing unless, "before the 30-day period or any extension expires, the court orders one or more	3. Disagree. The wording of the revised rule is not ambiguous. It closely tracks the wording of former rule 24(a), and the

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				extensions, not to exceed a total of 60 additional days." The commentators assert the quoted phrase is ambiguous because it could mean either (1) all extensions in the aggregate must not exceed 60 days or (2) only "new" extensions must not exceed 60 days, "notwithstanding the length of any prior extension." They propose: "before the 30-day period or any extension expires the court orders one or more extensions, *but all extensions, in the aggregate, must not exceed 60 days*."	commentators do not advise of any difficulties the reviewing courts have had in applying it.
84.	29.5	Appellate Courts Com. State Bar of California	Y	1. Revised rule 29.5(b) states in part: "A petition for rehearing and any answer must comply with rule 25(b)(1), (2), and (3)." The commentators suggest that "for clarity" the sentence should read instead: "A petition for rehearing and any answer must comply with *the time limitation in* rule 25(b)(1) *and the provisions of rule 25(b)*(2) and (3)." 2. The revised rule should restore the provision of former rule 27(e) declaring that when a petition for rehearing is deemed denied by operation of law because the reviewing court did rule on it before its decision became final, "the clerk shall enter a notation in the register to that effect."	1. Disagree. The suggestion does not significantly add clarity: the reader would still have to turn to rule 25 to learn what is incorporated by the cross-reference. 2. Disagree. The quoted provision is unnecessary micromanagement of the clerk's office.
85.	29.5	Maurice H. Oppenheim Attorney at Law	N	The provision of revised rule 29.5(e) that an order granting rehearing "sets the cause at large in the Supreme Court" should be defined in the rule or explained in the Committee Comment.	Disagree. The quoted phrase is adequately defined in the case law.
86.	29.5	Holly R. Paul Appellate Courts Com.	Y	The provision of revised rule 29.5(e) that an order granting rehearing "sets the cause at large in the Supreme	Disagree. Reviewing courts need flexibility in processing rehearings

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Los Angeles County Bar Assn.		Court" should be amended to require the court to set a timetable for rehearing and resubmission of the appeal, to assure counsel and their clients that a decision "will be rendered within the near future."	because of the wide variety of reasons for ordering rehearing (e.g., retirement of a justice, supervening decision of higher court, error of law). Any need for an early decision may be communicated to the court by counsel.
87.	29.6	Appellate Courts Com. State Bar of California	Y	The commentator "endorses revised rule 29.6. It reflects existing case law and is helpful to practitioners, particularly those who practice infrequently before the Supreme Court."	No response necessary.
88.	29.7	Michael P. Judge Los Angeles County Public Defender	Y	The revised rule should indicate it applies only to civil cases, not to criminal cases.	Agree. The rule has been amended to so provide.
89.	29.7	Mary Eikel Sr. Managing Attorney Court of Appeal, 4th Dist., et al.	Y	The revised rule authorizes the Supreme Court to impose sanctions on an attorney pursuant to rule 27(e) for "committing any unreasonable violation of these rules." The quoted wording is "tautologous" because it already appears in the cross-referenced rule, i.e., in rule 27(e)(1)(C). Revised rule 29.7 should therefore either omit the quoted words and simply cross-refer to rule 27(e) or "Mirror[] the entire structure and language" of the cross-referenced rule.	Disagree. The cross-reference is necessary to incorporate the *procedural* provisions of rule 27(e). The quoted words identify the permissible *ground* for a Supreme Court sanction. A blanket cross-reference to rule 27(e) would include two additional grounds that do not apply to the Supreme Court—taking a frivolous appeal and "packing the record." And to repeat "the entire structure and language" of rule 27(e) would be excessive.
90.	29.8	Michael P. Judge Los Angeles County Public Defender	Y	1. Restore the requirement of former rule 29.5(b)(4) that in requesting the Supreme Court to decide a question of California law, the court of another jurisdiction must include a statement "demonstrating that the question certified is *contested*." The	1. Disagree for the reasons explained at length in the Advisory Committee Comment to Subdivision (b) of the revised rule, citing federal decisions.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				commentator believes this statement is necessary to prevent the Supreme Court's ensuing decision from being merely an advisory opinion, and cites an Oregon state case so stating. 2. If the above-proposed change is not made, amend the rule to require "notifying and accepting briefing from *other entities* [than the parties and the Attorney General] which may wish to oppose the interpretation of the law upon which the involved parties agree."	2. Disagree. The commentator does not suggest how the court could "notify" unknown entities. And briefing by such entities will rarely be needed: as the Advisory Committee Comment cited in the preceding response acknowledges, "in most cases the question [will] in fact be contested by the parties."
91.	29.8	Appellate Courts Com. State Bar of California	Y	1. Former rule 29.5(a) included, among the prerequisites for Supreme Court action on a question presented by a court of another jurisdiction, that "the decisions of the California appellate courts provide no controlling precedent concerning the certified question." Revised rule 29.8(a)(2) provides simply, "there is no controlling precedent." The commentators urge that the rule should specify that it means "controlling *California* precedent." In support, they hypothesize a complicated scenario of successive appellate decisions in which certain rules of federal practice might result in a result unintended by the revised rule. 2. Revised rule 29.8(f)(5) provides, like former rule 29.5(g), that the Supreme Court "may restate the question or ask the requesting court to clarify the question." The commentators acknowledge that the	1. Disagree. The simple reference in the revised rule to "controlling precedent" is not intended to include such arcane rules of federal practice; the rule simply deletes the adjective "California" as superfluous, because only California decisions are *precedents* in California case law. 2. No response necessary.

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
				power to restate a pending question is inherent in a reviewing court's jurisdiction, but opine that the narrower that discretion, the more likely the court's ensuing decision would avoid being an advisory opinion. However, the commentators "reached no consensus on any suggested amendment."	
92.	29.8	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	Revised rule 29.8(e)(1) allows "any party or other person or entity" 20 days in which to send the Supreme Court letters supporting or opposing a request for the court to take such a case. The commentators believe that 20 days may be too short a period for a *non*party to act, because it "may not be aware of such a request until a number of days after the request is made." They suggest 30 days for nonparties.	Disagree. The former rule did not even allow nonparties to support or oppose the request, and to have two different time limits would unnecessarily complicate the process. The Supreme Court's experience with the former rule shows that even opposing *parties* rarely participate at this stage.
93.	29.8	Angela Bradstreet President San Francisco Bar Assn	Y	1. Revised rule 29.8(f)(2) should be amended to state explicitly that an order granting a request must be signed by at least four justices, etc., rather than cross-refer to revised rule 28.2(b)(2). 2. Revised rule 29.8 should be amended to impose a requirement that the Supreme Court must act on a request within 60 days after it is filed, with the power to extend that time by a further 30 days, and that if no ruling is issued within that time the request will be deemed denied. The purpose is to give the requesting court "a sense of how long the process of obtaining a ruling on its request will take."	1. Agree. The provision has been rewritten accordingly. 2. Disagree. Although the Supreme Court has acted on such requests within 90 days in most cases, the court needs to retain flexibility in the matter in order to deal with unusual cases that may require more time to process.
94.	29.9	Kimberly Stewart Appellate Court Com. San Diego County Bar	Y	The rule should not be entitled "Transfer before *decision*" because subdivision (a) thereof provides that the Supreme Court may transfer to itself a cause	Agree in part. The proposed title, "Transfer to the Supreme Court," is too broad, because it would include cases

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NO.	RULE	COMMENTATOR	†	COMMENTS	COMMITTEE RESPONSE
		Assn.		"pending in a Court of Appeal," and for the purpose of this rule a cause is pending in a Court of Appeal "until the Court of Appeal *decision* is final in that court," which implies that the Court of Appeal has rendered a decision but it is not yet final. Instead, the rule should be entitled "Transfer to the Supreme Court."	that the Supreme Court transfers to itself not in order to decide them but to retransfer them to the Court of Appeal without decision but with instructions (revised rule 29.3(e)). To clarify that revised rule 29.9 applies only to the former cases, the rule has been retitled "Transfer *for* decision" and the qualifying phrase, "for decision," has been inserted into subdivision (a).
95.	29.9	Norm Vance Director, Criminal Central Staff California Supreme Court	N	The commentator believes that revised rule 29.9, which applies only to a case that "presents an issue of great public importance that the Supreme Court must promptly resolve" (subd (c)), and the accompanying Advisory Committee Comment, are inconsistent with the Advisory Committee Comment to revised rule 29.3(e). It is suggested that the inconsistency be resolved by inserting the word "normally" in subd. (c) of the revised rule.	Agree in part: The apparent inconsistency has been resolved by amending the Advisory Committee Comment to clarify that revised rule 29.9, like its predecessor former rule 27.5, applies only to the rare case that the Supreme Court transfers to itself (before decision in the Court of Appeal) with the intent of retaining the matter and deciding it on the merits.
96.	29.9	Maurice H. Oppenheim Attorney at Law	N	The word "will" is not defined.	Disagree. The word is defined in the Introductory Advisory Committee Comment to these Rules.
97.	47.1	Kimberly Stewart Appellate Court Com. San Diego County Bar Assn.	Y	Revised rule 47.1(a)(1) should not read "The Supreme Court may transfer a cause *before decision*," because certain transfers it authorizes may take place after the Court of Appeal files its decision but before its decision is final in that court (see revised rule 29.9(b)).	Agree. The italicized phrase has been deleted. The revised rule now tracks former rule 20(a).

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