NEWS RELEASE

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SUBJECT:

SUPREME COURT ADOPTS RULES TO IMPLEMENT PROPOSITION 32

Chief Justice Rose Elizabeth Bird today announced that the California Supreme Court has adopted rules to help implement Proposition 32.

Proposition 32, which was passed by the voters last November, goes into effect on May 6th. That measure streamlines the Supreme Court's procedures for reviewing cases from the Courts of Appeal.

On April 4th, the Judicial Council adopted a number of changes in the California Rules of Court to help ensure the effectiveness of Proposition 32. The Supreme Court then adopted additional rules with that same goal in mind.

The text of the rules adopted by the Supreme Court is attached. Also attached is the text of the rules adopted by the Judicial Council.

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Attachments

Rule 976 of the California Rules of Court

(d) Unless otherwise ordered by the Supreme Court, no opinion superseded by a grant of review, rehearing, or other action shall be published. After granting review, after decision, or after dismissal of review and remand as improvidently granted, the Supreme Court may order the opinion of the Court of Appeal published in whole or in part. [As amended by the California Supreme Court, effective May 6, 1985.]

Rule 977 of the California Rules of Court

(d) An opinion of the Court of Appeal ordered published by the Supreme Court pursuant to rule 976 is citable._/ [Adopted by the California Supreme Court, effective May 6, 1985.]

_/ Any citation to the Court of Appeal opinion shall include reference to the grant of review and any subsequent action by the Supreme Court.

Rules

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council of the State of California
Effective May 6, 1985

Rule 22. Oral argument

Unless otherwise ordered: (1) counsel for each party shall be allowed 30 minutes for oral argument, except that in a case in which a sentence of death has been imposed each party shall be allowed 45 minutes; (2) not more than one counsel on a side may be heard except that different counsel for the appellant or the moving party may make opening and closing arguments and in a case in which a sentence of death has been imposed two counsel may be heard in either opening or closing argument for each side; (3) each party and intervener who appeared separately in the court below may be heard by his *or her* own counsel; and (4) the appellant *on a direct appeal* or the moving party shall have the right to open and close. *On Supreme Court review of a Court of Appeal decision, the petitioner for review is the moving party.*

If two or more parties file notices of appeal or petitions for review, the court will indicate the order of argument. [*As amended effective May 6, 1985; previously amended effective July 1, 1981.*]

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~~, or~~; ~~(2)~~ *(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 ~~(3)~~ *(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 orginal 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 ~~a hearing~~ *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 certifed 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. [*As amended effective May 6, 1985; previously amended effective Jan. 1, 1957, Jan. 1, 1961, Nov. 11, 1966, July 1, 1980, and July 1, 1984.*]

(b)-(e) * * *

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. [*Adopted effective May 6, 1985.*]

(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. [*Adopted effective May 6, 1985.*]

(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. [*Adopted effective May 6, 1985.*]

(d) [Form of petition and answer] The petition and any answer shall conform as nearly as practicable to the requirements of rule 28(e). [*Adopted effective May 6, 1985.*]

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

(a) [Time within which court may ~~grant hearing~~ *order review*] ~~Within 30 days after a decision of a Court of Appeal becomes final as to that court, the Supreme Court, on its own motion, or on petition as provided in subdivision (b), may order the cause transferred to itself for hearing and decision, and within the original 30 day period or any extension thereof the Supreme Court may for good cause extend the time for one or more additional periods not to exceed a total of an additional 60 days.~~

(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.*

(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*

*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).

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. [*As amended effective May 6, 1985; previously amended effective Jan. 1, 1957, Jan. 1, 1959, Jan. 1, 1961, Jan. 2, 1962, Nov. 11, 1966, and Jan. 1, 1968.*]

(b) [Time for filing petition] A party seeking ~~a hearing~~ *review* must serve and file a petition ~~therefor~~ within 10 days after the decision of the Court of Appeal becomes final as to that court, ~~except that~~ *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 or justice court. Proof shall be ~~made~~ *filed* of the delivery or mailing of one copy of the petition to the clerk of the Court of Appeal which rendered the decision~~. When a copy is delivered to the clerk of the Court of Appeal, the clerk~~ *who* shall forthwith transmit to the Clerk of the Supreme Court the original record, briefs, and all original papers and exhibits on file in the cause. 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. [*As amended effective May 6, 1985; previously amended effective Jan. 1, 1957, Jan. 1, 1959, Jan. 2, 1962, Nov. 11, 1966, Jan. 1, 1972, and July 1, 1984.*]

(c) [Time for filing answer] An answer may be served and filed within 20 days after the ~~decision becomes final as to the Court of Appeal~~ *filing of the petition.* [*As amended effective May 6, 1985; previously amended effective Jan. 1, 1957, Jan. 1, 1959, and Nov. 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.* [*Adopted effective May 6, 1985.*]

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

(1) Except as provided ~~herein~~ *in this rule*, the petition, ~~and~~ answer *and reply* shall, insofar as practicable, conform to the provisions of rule 15.

(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.

~~(2)~~*(4)* Each copy of the petition shall contain or be accompanied by a copy of the opinion of the Court of Appeal, showing the date of ~~its~~ filing.

~~(3)~~*(5)* The petition shall be a single document including a brief in support of the request for ~~hearing~~ *review*. All contentions in support of the petition shall be included ~~therein~~, including all legal authorities and argument. If a party files an answer to the petition, it shall be a single document which includes all ~~of his~~ 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, ~~or into the~~ answer~~, except that~~ *or reply, but* the petition, ~~or~~ answer *or reply* may incorporate by reference specified portions of a petition for ~~hearing~~ *review*, ~~or~~ 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 ~~hearing~~ *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, ~~or~~ answer *or reply*, ~~except where such~~ *unless the* annexed material is page-numbered consecutively with the body of the petition, ~~or~~ answer *or reply* and the total length, including the annexed material, does not exceed the limit established in paragraph ~~(4)~~*(6)*.

~~(4)~~*(6)* A petition or answer shall not exceed ~~40~~ *25* pages if printed or ~~50~~ *30* pages if typewritten or produced by other process of duplication, exclusive of the Court of Appeal opinion, index of contents and table of

authorities, and any other indices. *A reply shall not exceed 10 pages if printed or 15 pages if typewritten or produced by other process of duplication, exclusive of index of contents and table of authorities.* There shall be no exhibits or appendices, however denominated, annexed ~~thereto~~ *to it* or filed ~~therewith~~ *with it* other than the opinion of the Court of Appeal and any annexed material permitted by paragraph ~~(3)~~*(5)*, except ~~that, if it is of unusual significance,~~ an evidentiary exhibit or order of a lower court may be annexed if it *is of unusual significance and* does not exceed 10 pages. In all other instances, reference to evidentiary matters and lower court orders shall be by appropriate reference to the record, if they cannot be included in the body of the petition, ~~or~~ answer *or reply* without exceeding the length limitations ~~previously stated~~ *provided in this rule*. The Chief Justice may permit petitions, ~~or~~ answers *or replies* of greater length, or the inclusion of more annexed material, upon written application. [*As amended and relettered effective May 6, 1985; previously amended Nov. 11, 1966, July 1, 1975, and Jan. 1, 1983.*]

~~(e)~~*(f)* **[Determination of petition]** ~~A hearing in~~ *Review by* the Supreme Court~~, after~~ *of a* decision ~~in the~~ *of a* Court of Appeal~~,~~ may be granted by an order, signed by at least four judges ~~assenting thereto~~, and filed with the clerk. The denial of ~~a hearing~~ *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 ~~for hearing~~ shall be deemed denied and the clerk shall enter a notation in the register to that effect. [*As amended and relettered effective May 6, 1985; previously amended effective Nov. 11, 1966.*]

~~(f)~~*(g)* **[Oral argument]** When ~~a hearing~~ *review* is granted, the cause shall be placed on the calendar for oral argument~~,~~ unless oral argument is waived, or ~~unless~~ 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.*

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 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.

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

(a) [Grounds] ~~A hearing in~~ *Review by* the Supreme Court ~~after~~ *of a* decision ~~by~~ *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. [*As amended effective May 6, 1985; previously amended effective Nov. 11, 1966.*]

(b) [Limitations] As a matter of policy, on petition for ~~hearing~~ *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 ~~hearing~~ *review* without the necessity of filing a petition for rehearing. [*As amended effective May 6, 1985; previously amended effective Nov. 11, 1966, July 1, 1970, and Jan. 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. [*Adopted effective May 6, 1985.*]

(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. [*Adopted effective May 6, 1985.*]

(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. [*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 expriation 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 eight pages if printed or 10 pages if typewritten or produced by other process of duplication. [*Adopted effective May 6, 1985.*]

(b) [On request] The Supreme Court may request additional briefs on all or any issues, whether or not the parties have filed new briefs. [*Adopted effective May 6, 1985.*]

(c) [Form and content] The briefs provided for in this rule shall conform, as nearly as possible, to the requirements of rule 15. Unless otherwise ordered, the petitioner's and opposing party's briefs on the merits shall not exceed 40 pages if printed or 50 pages if typewritten or produced by other process of duplication, and a petitioner's reply brief shall not exceed 10 pages if printed or 15 pages if typewritten or produced by other process of duplication, 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. [*Adopted effective May 6, 1985.*]

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).

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. [*Adopted effective May 6, 1985.*]

(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. [*Adopted effective May 6, 1985.*]

(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 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. [*Adopted effective May 6, 1985.*]

(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. [*Adopted effective May 6, 1985.*]

(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. [*Adopted effective May 6, 1985.*]

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).

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. [*Adopted effective May 6, 1985.*]

(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. [*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. [*Adopted effective May 6, 1985.*]

(b) [Transfer before decision] New rule 27.5 applies to all causes pending in the Courts of Appeal on and after May 6, 1985. [*Adopted effective 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). [*Adopted effective May 6, 1985.*]

(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 new brief on the merits or the Court of Appeal brief.

Rule 44. Form and filing of papers

(a) * * *

(b) [Number of copies] When a brief, paper, or document, other than the record, is filed in a reviewing court the following number of copies shall be filed:

(1) If filed in the Supreme Court:

(i) An original and 14 copies of a petition for ~~hearing~~ *review* or other petition, or an answer, opposition or other response to any such petition.

(ii) An original and 10 copies of a brief in a cause pending in that court.

(iii) An original and 7 copies of a notice of motion, motion, or opposition or other response to a motion.

(iv) An original and one copy of any other document or paper.

(2) If filed in a Court of Appeal:

(i) An original and 3 copies of a petition or an answer, opposition or other response to a petition.

(ii) An original and 3 copies of a brief with, in civil actions, proof of delivery of 7 copies to the Supreme Court.

(iii) An original and 3 copies of a notice of motion, motion, or opposition or other response to a motion.

(iv) An original and one copy of any other document or paper. [*As amended effective May 6, 1985; previously amended effective Jan. 1, 1951, Jan. 2, 1962, Nov. 11, 1966, Jan. 1, 1972, Jan. 1, 1973, and July 1, 1973.*]

(c) [Covers] So far as practicable, the covers of briefs and petitions should be in the following colors:

Appellant's opening brief *(rule 16(a))* ..... green
Respondent's brief *(rule 16(a))* ..... yellow
Appellant's reply brief *(rule 16(a))* ..... tan
Amicus curiae brief ..... gray
Petition for ~~hearing or~~ rehearing ..... orange
Answers to petition for ~~hearing or~~ rehearing ..... blue
Petition for original writ or answer (opposition) to writ petition .. red
Petition for review (rule 28(b)) ..... *white*
Answer to petition for review (rule 28(c)) ..... *blue*
Reply to answer (rule 28(d)) ..... *white*
Petitioner's brief on the merits (rule 29.3(a)) ..... *white*
Answer brief on the merits (rule 29.3(a)) ..... *blue*
Reply brief on the merits ..... *white*

A brief or petition not conforming to this subdivision shall be accepted for filing; but in case of repeated violations by an attorney or party, the court may proceed as provided in rule 18. [*As amended effective May 6, 1985; adopted effective Jan. 4, 1984.*]

Rule 45. Extension and shortening of time

(a)-(b) * * *

(c) **[Extension of time]** The time for filing a notice of appeal, *filing a petition for Supreme Court review of a Court of Appeal decision* or the granting or denial of a rehearing in the Court of Appeal shall not be extended. The time for the granting or denial of ~~a hearing in the~~ Supreme Court *a* ~~after~~ *review of* decision ~~by~~ *of* a Court of Appeal shall only be extended as provided in subdivision (a) of rule 28. The time for the granting or denial of a rehearing in the Supreme Court shall only be extended as provided in subdivision (a) of rule 24. The time for ordering a case transferred from the superior court to the Court of Appeal as provided in rule 62 shall not be extended, and the time for a superior court to certify the transfer of a case to the Court of Appeal shall not be extended except as provided in subdivision (d) of rule 63. The Chief Justice or presiding justice, for good cause shown, may extend the time for doing any other act required or permitted under these rules. ~~and~~ *The Chief Justice or presiding justice* may relieve a party from a default for failure to file a timely petition for ~~hearing or~~ *review or* rehearing ~~or an answer thereto~~ if the time within which the court ~~must act on the petition~~ *could order review or rehearing on its own motion* has not expired. An application for extension of time shall be made as provided in rule 43. [*As amended effective May 6, 1985; previously amended effective Jan. 1, 1951, Jan. 1, 1957, Jan. 1, 1961, Jan. 2, 1962, Nov. 11, 1966, and Jan. 1, 1979.*]

(d)-(e) * * *

Advisory Committee Comment

Extensions of time for petitions for hearing under former rule 28 were acceptable because the time within which the Supreme Court could order hearing ran from finality in the Court of Appeal; the extension did not affect that time. As rule 28 is amended effective May 6, 1985, time for the Supreme Court to act runs from the filing of the petition. An extension of that time would extend the time for the Supreme Court to act. Rule 45(c) is therefore amended to prohibit those extensions, and restrict grants of relief from default, assuring a clear time limit on the Supreme Court's jurisdiction to grant review.