

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR16-05

Title	Action Requested
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 8.487	January 1, 2017
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

Based on suggestions received from an attorney, the Appellate Advisory Committee is proposing to amend the rules governing writ proceedings to include a new procedure for submission of applications to file amicus curiae briefs.

Background

Rules 8.200(c) and 8.520(f) of the California Rules of Court address, respectively, applications to file amicus curiae briefs in appeals in the Court of Appeal and in cases in which the Supreme Court has granted review. Rule 8.487(f)(8) addresses amicus curiae briefs from the Attorney General in writ proceedings. Currently, however, there are no rules that specifically address the filing of amicus curiae briefs by any other person or entity in writ proceedings.

The Proposal

To provide guidance about how to seek permission to file an amicus brief in writ proceedings, the Appellate Advisory Committee is proposing amendments to rule 8.487 that add a new subdivision to address amicus curiae briefs by anyone other than the Attorney General. This provision is modeled on a combination of rules 8.200(c) and 8.520(f). The proposed new provision would only apply if the court issues an alternative writ or order to show cause. The amendment would require that the amicus application be filed no later than 14 days after the return is filed. This is the same timeframe within which rule 8.487(d) currently requires that amicus briefs from the Attorney General be filed. It is also similar to the timeframe for filing an

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

amicus application in the Court of Appeal under rule 8.200, but considerably shorter than the timeframe for filing such an application in the Supreme Court under rule 8.520.

Alternatives Considered

The committee considered whether to propose rule provisions addressing the filing of amicus letters supporting or opposing a writ petition before the court has determined whether to issue an alternative writ or order to show cause. It was noted that rule 8.500(g), relating to petitions to review in the Supreme Court, establishes such a procedure for filing an amicus letter to express support or opposition to a petition for review. However, the committee decided not to propose adding such a provision to the rules on writ proceedings. Committee members noted that the majority of writ petitions are summarily denied within a short period of time after filing. The committee was concerned about either delaying action in these cases or encouraging the preparation of amicus letters that are not helpful to the court's decision-making. It was also noted that the court may request such letters if it determines amicus participation would be helpful to its determination of whether to issue an alternative writ or an order to show cause.

In addition, the committee discussed whether the rule should also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance (commonly known as a *Palma* notice). The committee decided not to propose that the rule address amicus participation when a *Palma* notice is issued because such notices are typically issued when the petitioner's right to relief is obvious or there is unusual urgency, making amicus participation unlikely to be helpful to the court's decision-making. The committee would, however, appreciate comments on whether the rule should address situations in which a *Palma* notice is issued.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because the proposed procedures mirror existing procedures for amicus applications in other contexts. The proposed rules should provide potential amicus curiae with guidance regarding applications to file amicus briefs in writ proceedings, which may reduce questions about how to do this and also ensure that the court has the information it needs to consider such applications.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the rule also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachment

Cal. Rules of Court, rule 8.487, at pages 4–5

Rule 8.487 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1
2 **Title 8. Appellate Rules**
3

4 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**
5

6 **Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and**
7 **Court of Appeal**
8
9

10 **Rule 8.487. Opposition and ~~Attorney General~~ amicus curiae briefs**
11

12 **(a) Preliminary opposition * * ***
13

14 **(b) Return or opposition; reply * * ***
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16 **(c) Supporting documents * * ***
17

18 **(d) Attorney General's amicus curiae brief**
19

20 (1) If the court issues an alternative writ or order to show cause, the Attorney General
21 may file an amicus curiae brief without the permission of the Chief Justice or
22 presiding justice, unless the brief is submitted on behalf of another state officer or
23 agency.
24

25 (2) The Attorney General must serve and file the brief within 14 days after the return is
26 filed or, if no return is filed, within 14 days after the date it was due.
27

28 (3) The brief must provide the information required by rule 8.200(c)(2) and comply with
29 rule 8.200(c)(~~4~~)(5).
30

31 (4) Any party may serve and file an answer within 14 days after the brief is filed.
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33 **(e) Other amicus curiae briefs**
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35 (1) If the court issues an alternative writ or order to show cause, any person or entity
36 may serve and file an application for permission of the Chief Justice or presiding
37 justice to file an amicus curiae brief.
38

Rule 8.487 of the California Rules of Court would be amended, effective January 1, 2017, to read:

- 1 (2) The application must be filed no later than 14 days after the return is filed or, if no
2 return is filed, within 14 days after the date it was due. For good cause, the Chief
3 Justice or presiding justice may allow later filing.
4
- 5 (3) The proposed brief must be served on all parties. It must accompany the
6 application and may be combined with it.
7
- 8 (4) The proposed brief must provide the information required by rule 8.200(c)(2) and (3)
9 and comply with rule 8.200(c)(5).
10
- 11 (5) If the court grants the application, any party may file either an answer to the
12 individual amicus curiae brief or a consolidated answer to multiple amicus curiae
13 briefs filed in the case. If the court does not specify a due date, the answer must be
14 filed within 14 days after either the court rules on the last timely filed application to
15 file an amicus curiae brief or the time for filing applications to file an amicus curiae
16 brief expires, whichever is later. The answer must be served on all parties and the
17 amicus curiae.
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