Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 24-25, 2014

Title
CEQA Actions: Rules to Implement Senate Bill 743

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 3.1365, 3.2200, 3.2220–3.2237, 8.700–8.705; renumber and amend rules 3.1366 and 3.1367 as rules 3.2206 and 3.2207; renumber rules 3.1365 and 3.1368 as rules 3.2205 and 3.2208; amend rule 8.104; repeal rule 8.497

Recommended by
Civil and Small Claims Advisory Committee,
Hon. Patricia M. Lucas, Chair

Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2014

Date of Report
March 1, 2014

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Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend adopting new rules of court and amending existing rules to fulfill the Judicial Council's obligation under recently enacted legislation to adopt rules on or before July 1, 2014, to implement expedited procedures for resolution of actions or proceedings under the California Environmental Quality Act attacking certain large development projects.

Recommendation

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective July 1, 2014:

1. Amend rule 3.1365; renumber rules 3.2205 and 3.2208 and renumber and amend rules 3.2206–3.2207 to move the procedural rules for actions in the Superior Court under the California Environmental Quality Act (CEQA) to a new division within title 3, Civil Rules;

2. Adopt rules 3.2200, 3.2220–3.2237 to implement expedited trial court procedures for CEQA cases under Public Resources Code sections 21168.6.6 and 21178–21189.3;

3. Amend rule 8.104 to exempt appeals in CEQA cases under Public Resources Code sections 21168.6.6 and 21178−21189.3 from the general rules regarding appeals;

4. Repeal rule 8.497, which set out appellate procedures for CEQA cases under a statute that has now been amended; and

5. Adopt rules 8.700−8.705 to implement expedited appellate procedures for CEQA proceedings under Public Resources Code sections 21168.6.6 and 21178−21189.3.

The text of the proposed rules and proposed amendments to the rules is attached at pages 16−39.

Previous Council Action

In 2011 the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to "leadership" projects, large development projects designated by the Governor as having met specified environmental standards. Under that legislation, challenges to such projects were to be brought directly to the Court of Appeal with geographic jurisdiction over the project, and that court was to complete its review within 175 days. [1] (Former Pub. Res. Code, § 21185, repealed effective January 1, 2014 .) AB 900 required the Judicial Council to adopt rules of court to implement this expedited review procedure and it did so, adopting rule 8.497.

Rationale for Recommendation

Background

To date, only three projects have been approved as leadership projects entitled to expedited judicial review under the AB 900 provisions and none of them has yet been the subject of a court challenge under CEQA. In March 2013, however, following a court trial, the Superior Court of Alameda County held that the provision in AB 900 requiring that a petition for writ relief be filed only in a Court of Appeal is unconstitutional.

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[1] At the same time, a separate bill was enacted, Senate Bill 292 (Stats. 2011, ch. 353), applicable only to CEQA review of a planned football stadium and surrounding entertainment complex in Los Angeles, which had its own separate streamlined review provisions. (See Pub. Res. Code, § 21186.6.5.)

At least partially in response to the court's decision, in 2013 the Legislature once again addressed the question of expedited CEQA review by the courts in leadership cases and also took up the issue of CEQA review in cases relating to a new sports arena in Sacramento. Among other things, Senate Bill (SB) 743 (Stats. 2013, ch. 386),[2] which was signed into law on September 27, 2013:

- Addresses the constitutional issue raised by the Superior Court of Alameda County's decision by eliminating the requirement that a CEQA challenge to a leadership project be brought directly in the Court of Appeal;

- Replaces the statutory provisions relating to the time for the Court of Appeal to act on leadership cases with a requirement that the Judicial Council adopt rules that require the actions or proceedings, including any potential appeals there from, be resolved, within 270 days of certification of the record of proceedings (SB 743, § 11; amending Pub. Res. Code, § 21185); and

- Similarly provides for expedited review for projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento ("Sacramento arena" project) and requires the Judicial Council to adopt rules to implement this process (Sen. Bill 743, 7; adding Pub. Res. Code, § 21168.6.6).[3]

The proposal

The recommended new rules and rule amendments are designed to fulfill the Judicial Council's statutory obligation to adopt rules implementing the expedited judicial review procedure established by SB 743 on or before July 1, 2014. Because SB 743 did not provide discrete time frames for actions and proceedings in the trial court and proceedings in the Court of Appeal, but instead provided a single time frame (270 days) in which both the trial court and appellate court proceedings were to be resolved, the Civil and Small Claims Advisory Committee and Appellate Advisory Committee worked together, with the assistance of subject matter experts from the courts and the bar, [4] to develop and recommend the new rules required by SB 743.

The main provisions of the rule changes are discussed below, but a couple of preliminary notes:

- Many provisions in CEQA and the Code of Civil Procedure—such as those addressing the

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[2] A copy of this legislation can be accessed at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB743&search_keywords=

[3] The bill also contains some amendments to substantive CEQA provisions, as well as extensive provisions concerning the environmental review process applicable to the Sacramento Kings basketball arena project in Sacramento and the limited remedies available for violation of that process. None of those provisions, however, appear pertinent to court administration or procedures.

[4] The joint subcommittee formed by the two advisory committees to work on this project was chaired by Justice Ronald B. Robie of the Court of Appeal, Third Appellate District, and Judge Steven A. Brick of the Superior Court of Alameda County.

statute of limitations, the time for service of a petition on the respondent public agency and real party in interest, the contents of the administrative record, settlement meetings, and mediation—were not specifically modified by SB 743. Some of these statutory provisions, such as the statute of limitations and time for service, make it all but impossible to meet the 270-day time frame envisioned by the Legislature. SB 743 does provide, for the Sacramento arena cases, that the expedited procedures to be established by the Judicial Council will apply "notwithstanding any other law." (Pub. Res. Code § 21168.6.6(c). [5]) But the new law does not have a similar provision regarding leadership cases. (Cf. § 21185). In light of this distinction in the statute, the advisory committees concluded that while the council is authorized to adopt rules notwithstanding the provisions of the Public Resources Code or the Code of Civil Procedure in relation to Sacramento arena cases, it could not do so in relation to leadership cases.

- In an effort to meet the time for issuance of a decision specified in SB 743, many of the time frames specified in proposed rules are extremely short, and many deadlines follow closely on one another. The rules permit extensions of time "for good cause" and "to promote the interests of justice," so, depending on the circumstances, in an individual case some of the deadlines specified in the proposed rules may be extended, causing the resolution of the case to extend beyond the 270-day period specified in the statute.

Trial court rules

Starting the proceedings

One way in which the Legislature has attempted to expedite the environmental review process for the Sacramento arena and the leadership cases—in addition to mandating extremely fast court review—is to expedite the creation of the administrative record in such cases. In both types of cases, the public agency responsible for approving the project is also responsible for creating an electronic version of the administrative record as the project is being reviewed by the agency, and for certifying the final version of that record within five days of the agency's issuing its statutorily mandated Notice of Determination.

SB 743 sets the certification of the record as the trigger for the 270-day period in which the trial court and the Court of Appeal are to complete their review. The certification of the record, however, does not necessarily coincide with the commencement of a CEQA action in the courts—a petition can be filed up to 30 days after the Notice of Determination has been filed. (§21167.) So up to 25 days of the 270-day period designated for the court's review of these CEQA decisions may have passed before the matter is within the jurisdiction of the court. The advisory committees attempted to address this issue by including in the proposed rules an incentive for parties to file their action more quickly, in the form of extra briefing time for petitioners who file within 10 days of the issuance of a Notice of Determination (and so within 5 days of certification of the record and the beginning of the 270-day period). (See proposed rule 3.2227(a).)

[5] All statutory references hereafter are to the Public Resources Code unless otherwise indicated.

An additional difficulty in meeting the 270-day timeline arises because the Public Resources Code provides that a party may take up to 10 business days after filing its petition to serve the respondent public agency and another 20 business days after that to serve any real party in interest. (§§21167.6(a), 21167.6.5(a).) Because, as noted above, SB 743 provides that the rules of court for the Sacramento arena cases are applicable notwithstanding any other law, the advisory committees concluded that the council may adopt rules in relation to Sacramento arena cases mandating that service be completed within three court days on all named parties, rather than over a two- to four-week period, as permitted in the Public Resources Code. (See proposed rules 3.2222(c) and 3.2236.)

Because SB 743 does not provide similar authority with respect to leadership projects, the advisory committees concluded that they are unable to recommend a rule mandating faster service in those cases. Instead, the advisory committees propose a rule providing a strong incentive for earlier service in leadership cases by providing that if the petition is not served on the public agency and the real party in interest within three days of filing, the time for filing petitioner's briefs on the merits in both the trial court and the appellate court will be decreased by one day for every additional two court days in which service is not completed. (See proposed rule 3.2222(d).)

Other trial court rules

The proposed rules require that, once started, the actions must proceed very swiftly through the trial court. Among other things, the proposed trial court rules would address the following:

- *Exemption from procedures for complex cases*. Exempt the Sacramento arena and leadership project statutes from the complex case rules, to eliminate any confusion about which case management conference rules should apply, and exempt such cases from what can be a lengthy process of coordinating complex cases. (Proposed rule 3.2220(c).)

- *Time limits*. Allow extensions of time by the court only for good cause. Should the parties stipulate to extend time, the 270-day period will essentially be extended for the length of that stipulated extension. The rule also provides for sanctions if any party fails to comply with the time requirements within the rules. (Proposed rule 3.2221.)

- *E-filing and service*. Require electronic filing in all courts where it can occur, require that all service on represented parties be by electronic means, and provide that such service is exempted from the two-day extension of time provided in the Code of Civil Procedure. (Proposed rule 3.2222.)

- *Responsive pleadings*. Require that any pleadings filed in response to the petition, including motions to change venue and motions to intervene, be served and filed within 10 days of service of the petition and any opposition be filed within 10 days after that. (Proposed rule 3.2224.)

- *Administrative record.* Restate the statutory requirement that an electronic version of the administrative record in the Sacramento arena cases be lodged within 10 days of the filing of the petition (see §21168.6.6(f)(8)) and require the same in leadership cases. Also provide that a court may obtain a paper version of the record from the lead agency upon request, and a party may obtain one upon paying a reasonable cost or on order of the court for good cause. (Proposed rule 3.2225.)

- *Case management conference.* Require the court to hold a case management conference (CMC) within 30 days of the filing of the petition. (Proposed rule 3.2226(a).) Require that the parties file a joint CMC statement addressing various issues and that the court consider them all at the CMC, including:
  - Any outstanding issues regarding the administrative record;
  - Briefing schedules for any other motions that may need to be addressed before the hearing on the merits;
  - Identification of all issues to be included in the briefing on the merits;
  - Page limits for briefs on the merits, including whether each side may file more than one brief;
  - Final briefing schedule, should it be different than as provided in the rules;
  - Any potential for settlement discussions; and
  - Various other issues, including any the court deems appropriate.

  (Proposed rule 3.2226(c)–(d).)

- *Briefing schedule*. Require that, unless otherwise ordered by the court, each side may file only a single brief on the merits, on the following schedule:
  - Petitioner has 25 days after CMC, or 35 days if the early-filing incentive applies;
  - Respondent and real parties have 25 days to file an opposition;
  - Petitioner has 10 days to file a reply.
  - All parties, unless otherwise ordered by the court, have 5 days after filing a brief to submit an electronic version with hyperlinks to all citations to the administrative record, cases, or other parties' briefs (if electronically filed). This provision was added following the circulation for comments in light of the concerns raised about the limited amount of time a court will have to review the materials prior to the hearing.
    (Proposed rule 3.2227(a).)

- *Hearings*. Require that the court hold a hearing on the merits within 80 days of the CMC. (Proposed rule 3.2227(b).) In cases in which petitioner has earned extra briefing time through the early-filing incentive, the hearing would occur within 10 days after the reply brief is due; if no incentive applies, the hearing would be as long as 20 days after the reply is due.

- *Judgments*. Provide that the court should issue its final decision within 30 days of the hearing, and require that the decision be in writing. The proposed rules also clarify that,

because these cases do not involve trials of questions of fact, they do not fall within the scope of Code of Civil Procedure section 632 regarding statements of decision. (Proposed rule 3.2228.)

- *Post-judgment motions.* Where legally authorized, require that post-judgment motions be made on an extremely short time frame. In all cases governed by the rules, motions to void or correct the judgment under Code of Civil Procedure section 473 would have to be served and filed within five days of notice of entry of judgment. (Proposed rule 3.2231(b).)[6] In Sacramento arena cases, motions for new trial and motions to vacate judgment would have to be brought within the same time frame. (Proposed rule 3.2231(b).) The proposed rules do not shorten the deadline for filing motions for new trial and motions to vacate judgment in leadership cases, because such rules would be inconsistent with statutes providing 15 days in which to file such motions. (See Code Civ. Proc., §§657 (motion for new trial) and 663 (motion to vacate judgment).)

Court of Appeal rules

As with the trial court rules, the proposed rules for the Court of Appeal require that actions covered by SB 743 proceed very swiftly. Among other things, the proposed rules address the following:

- *Application.* The proposed rules only govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding governed by the provisions of SB 743. (Proposed rule 8.700(b).) These rules do not cover:
    - *Petitions for writs seeking initial review in the Court of Appeal of an environmental impact report or project approval under CEQA for the Sacramento arena project or leadership projects*. Although the Court of Appeal has concurrent jurisdiction with the superior court in such original proceedings, the usual practice is for such matters to be reviewed in the superior court first.
    - *Petitions for review in the Supreme Court*. Early versions of SB 743 included provisions specifying time frames for petitions for review in the California Supreme Court relating to the Sacramento arena project and leadership projects. These provisions were taken out of the version of SB 743 that was ultimately enacted. The advisory committees concluded that this removal reflected legislative intent that the 270-day time period included in SB 743 was not intended to cover any potential petition for review process and, thus, no provisions addressing that process are included in these proposed rules.

  The proposed rules also specify that, except as provided in these special rules for the Sacramento arena and leadership cases, the general rules on appeals and writ proceedings apply. (Proposed rules 8.702(a) and 8.703(a).)

[6] The leadership cases can be encompassed by the rule shortening time on motions under Code of Civil Procedure section 473 because those motions are subject to the notice provisions of Code of Civil Procedure section 1005, which expressly permits exceptions as provided by other laws. (Code. Civ. Proc., §1005(b).)

- *Service and filing*. The proposed rules generally require that all service be by personal delivery, electronic service, express mail, or other means reasonably calculated to ensure delivery of the document not later than the close of the business day after the document is filed or lodged with the court. The rules also permit the court to order that all documents be electronically filed and be served electronically on parties that have stipulated to electronic service. As in the trial court rules, parties represented by counsel would be deemed to have stipulated to electronic service, and the rules exempt electronic service under these rules from the two-day extension of time provided in the Code of Civil Procedure. (Proposed rule 8.701.)

- *Notice of appeal*. As part of the attempt to meet the 270-day time period specified by SB 743, the proposed rules would set an extremely short deadline for filing a notice of appeal. A notice of appeal must be filed within 5 court days, rather than the usual 60 days, after the superior court clerk or a party serves a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment. (Proposed rule 8.702(b).) Note that in Sacramento arena cases, this is the same time period for filing most post judgment motions and, in a leadership case, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for new trial, motion for reconsideration, or a motion to vacate.

- *Extensions of time to appeal.* Like current rule 8.108, the proposed rules would extend the time to file a notice of appeal when a new trial motion, motion to vacate a judgment, or motion to reconsider an appealable order is timely filed and denied or a cross-appeal is filed. However, the proposed rule provides for a much shorter extension of this time period: 5 court days, rather than 30 days in the case of the motions or 20 days in the case of a cross-appeal. (Proposed rule 8.702(c).)

- *Record on appeal.* The proposed rules make several changes to the general rules relating to records on appeal, including:
  - Requiring that parties proceed by appendix in lieu of using a clerk's transcript, which reduces the burden on the trial court associated with preparing the record in these cases and eliminates the possibility of delay associated with preparation of clerk's transcript.
  - Requiring that the appellant's notice designating the record be filed with the notice of appeal, which is 10 days earlier than in regular appeals.
  - Requiring that, if the appellant wants a record of the oral proceedings, a reporter's transcript be used. In regular appeals, appellants have other options, such as an agreed statement, that can be used instead of a reporter's transcript.
  - Requiring that the reporter's transcript be prepared within 10 days after the court notifies the reporter to prepare the transcript, which is 20 days earlier than in regular appeals. (Note that under rule 8.130, the court notifies the reporter to prepare the transcript as soon as the required deposit or permissible alternative is provided to the court and that deposit is supposed to accompany the designation. Thus, if the appellant makes the deposit at the time that both the notice of appeal and the designation are filed, as required, the reporter's transcript should be prepared around 10 to 15 days after the notice of

appeal is filed.)
  - Giving the appellant only 5, rather than 15, days' notice to cure a default in making the required deposit for a designated reporter's transcript.

  (Proposed rule 8.702(d).)

- *Superior court clerk duties relating to appeals.* The proposed rules require the superior court clerk to transmit items to the parties and to the reviewing court very quickly—within five court days after the notice of appeal is filed—including:
  - Sending the register of actions to the parties to assist them in preparing appendices; and
  - Sending an electronic copy of the administrative record to the Court of Appeal.

  (Proposed rule 8.702(e).)

- *Briefs on appeal.* The proposed rules establish a very quick briefing schedule; unless otherwise ordered by the reviewing court:
  - Appellant is required to serve and file the opening brief within 25 days after the notice of appeal is served and filed;
  - Respondent is required to file its brief within 25 days after the appellant files its opening brief; and
  - Appellant is required to file any reply brief within 15 days after respondent files its brief.

  (Proposed rule 8.702(f)(2).)

  As in the trial court rules, the appellate rules provide that if the parties stipulate to extend the time to file briefs, the 270-period will be extended for the length of the stipulated extension. The rules also provide that if a party fails to timely file a brief, the party will have only 5 days from service of notice by the clerk to cure that default or sanctions may be imposed. (Proposed rule 8.702(f)(4) and (5).)

  In addition, the proposed rules:
  - Require briefs to be electronically filed unless otherwise ordered by the reviewing court (Proposed rule 8.702(f)(1));
  - Allow parties to submit briefs that do not contain citations to the reporter's transcript if it is not yet available (Proposed rule 8.702(f)(3)(B)); and
  - Require parties to submit e-brief versions of their briefs within five days after filing the brief (Proposed rule 8.702(f)(3)(C)).

- *Oral argument on appeal.* The proposed rules require that, unless otherwise ordered by the reviewing court, oral argument will be set within 45 days of the date the last reply brief is due. This time period is intended to reflect that it is the practice of the reviewing courts to review the briefs and the record and analyze the issues before oral argument. (Proposed rule 8.702(g).)

- *Writ proceedings*. The proposed rules provide that, in general, the regular rules relating to writ proceedings in the Court of Appeal apply in Sacramento arena or leadership project

cases. However, the proposed rules require that a writ petition be filed very quickly—within 30 days after service of notice of entry of the superior court judgment or order being challenged. (Proposed rule 8.703.)

- *Special fee*. Public Resources Code section 21183(e), which was enacted in 2011 as part of AB 900, provides that the applicant for certification of a project as a leadership project "agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council." The Judicial Council adopted rule 8.497(i) to implement that statutory provision. Because the committees are recommending the repeal of rule 8.497, the provisions relating to this fee would be moved to a new rule in this chapter. (Proposed rule 8.705.) The proposed new rule also includes references to appeals as well as writ proceedings, and the sanction of proceeding in the superior court if the fee is not paid has been deleted.

Comments, Alternatives Considered, and Policy Implications

The proposed rules were circulated for public comment from December 13, 2013, to January 24, 2014. Seven commentators responded to the invitation to comment: the Superior Courts of Los Angeles, Sacramento, and San Diego Counties; a research attorney from the Superior Court of Orange County; the Joint Rules Working Group of the Trial Court Presiding Judges and the Court Executives Advisory Committees (Joint Rules Working Group), the Orange County Bar Association, and the State Bar Committee on Appellate Courts. All commentators noted the difficulties in complying with the rules, all sought modification of the proposed rules, and one, the Superior Court of San Diego County, disagreed with the proposed rules altogether.[7]

General comments

The Superior Court of San Diego County commented that, while sympathetic to the issues raised by SB 743, the shortened timelines will provide significant challenges to the court and, on that basis, the court disagreed with the proposal, at least until budgetary constraints no longer impede compliance with the suggested time frames. The court noted that it is currently setting case management conferences over five months after a civil case is filed, due to heavy caseloads and staffing constraints, and so would be very hard-pressed to comply with the 30-day deadline for CMCs in these rules. After raising several more objections to specific rules (addressed below), the court concluded:

> It will be extremely challenging for the trial court and appellate court to complete all proceedings within 270 days. The budget reductions has forced courts to close courtrooms and increase caseloads for judges, which has resulted in a significant backlog in setting matters timely. Calendars are already overset and we do not have the ability to

[7] A chart summarizing all comments received and the committees' response to each is attached at pages 40–58.

> add the proposed hearings in the expected timeline.

The Joint Rules Working Group, while not formally opposing the proposal, raised similar concerns:

> The schedule is overly aggressive assuming that there will be no motions; and there is no time built in for the inevitable motion practice, so motions will get short shrift (or worse, will be heard along with the final hearing itself, out of necessity). . . . [¶] It is difficult to ascertain how this proposal will work in practice. There are too many points at which the strict deadlines will likely not be met —and very little guidance to the Court about how to handle those events, particularly since there are no other deadlines that can be shortened to make up for missed deadlines. The trial courts will be unduly pressured to comply with artificial and unrealistic deadlines.

The Superior Court of Sacramento County noted "We are not sure the time deadlines included in the rule are feasible."

The committees do not disagree with any of these comments: the proposed rules do set out a very aggressive timeframe, which will be challenging for courts to comply with, and with no room for moving any deadlines if the 270-day goal is to be met. Unfortunately, that is the mandate the Legislature set for the council, and the committees could only work within that mandate. In light of the legislative mandate, it is not possible to allow for any longer time in the rules. In fact, in light of the statutory provision requiring the council to develop rules providing for resolution of the subject proceedings within 270 days, the advisory committees actually considered *shorter* time frames for setting the case management conference and for parties' filing briefs on the merits in the trial courts and appellate briefs in the Courts of Appeal, to allow more time for the trial court to make its decision after the hearing and for the Courts of Appeal to consider a case before oral argument. However, the committees ultimately concluded that the time frames in the proposed rules are already so short as to be unrealistic and declined to propose anything shorter. These cases will be, by definition, about large and complex projects. It would be a disservice to the parties and to the public to require any shorter time for the parties' briefing or the courts' decision-making process. But, as noted above, no more time can be added to the rules in light of the legislative mandate.

The Superior Court of Sacramento County also requested a modification to the set of new rules: "Since the statute says 'to the extent feasible,' we would prefer that the Rule of Court also use this language." The statute regarding Sacramento arena cases does require only that such actions be resolved within 270 days "to the extent feasible." (See §21168.6.6.) As noted above, however, there is no similar provision that applies to the leadership cases. In light of this distinction, and because the provision is already in the statute for the arena cases, the committee concluded that it need not be repeated in the rules.

Specific comments
The commentators raised some specific issues, all of which the committees considered. Responses to each are included in the comment chart. The major points are summarized here.

Incentive for early filing. The committee invited specific comments on whether another 5 days should be added to the incentive for parties filing an action earlier than required by law, to provide the court with more time overall to resolve the case. This change would allow a petitioner who filed early an extra 5 days to file the brief, although that would leave the trial court—in cases in which the incentive is applied—with only 5 (rather than 10) days between the time when a reply brief is filed and the date of the hearing. All who commented on this point—the Superior Court of San Diego County, a research attorney from the Superior Court of Orange County, and the Joint Rules Working Group—objected that holding a hearing even 10 days after the reply brief was filed would be very difficult, and changing that to 5 days would make it impossible. The committees have therefore left the proposed rule as circulated and did not increase the early filing incentive.

Administrative record. The Superior Court of Los Angeles County requested that the rule be modified to require the respondent to lodge a paper version of the administrative record, and two other commentators, the Superior Court of San Diego County and the Joint Rules Working Group, requested that the rule permit a court to at least request that such a copy be lodged in addition to the electronic version. The rules as circulated do authorize a court to discuss obtaining a paper version of the administrative record at the case management conference. However, in light of the comments received, the committees concluded that the rule should be clarified by expressly authorizing such a request in the rule regarding the lodging of the administrative record. See proposed rule 3.2225(b). The committees declined to mandate the lodging of a paper version because many courts have made it clear in commenting on other proposals that they do not want to receive the many boxes of paper that comprise such a record in a large case such as the ones governed by these rules.

Motions. Superior Court of Los Angeles County proposed adding more rules regarding motions, including rules setting the time for filing reply briefs on various motions, the time for hearings, deadlines for filing further pleadings should a demurrer be granted, and the number of rounds of amended pleadings and challenges to them to be allowed. The committees disagreed with these suggested modifications. The committees intended the rules to leave some flexibility for the judicial officer handling a case governed by these provisions. As to multiple demurrers, in light of the fact that the demurring party would generally be the lead agency or real party in interest—both of whom are seeking to expedite review—the committee thinks such motions will be rare in these cases.

The committees agreed with the suggestion of the Los Angeles court to include motions to intervene in the rule that provides a short time for filing motions after the initial pleading is filed, and has modified that rule in light of the comment. See proposed rule 3.2224. The committees did not recommend any further rules regarding the filing of pleadings in intervention, however, concluding that it is better to leave such details to the judicial officer who grants the motion to

intervene.

As to the suggestion by the Superior Court of Los Angeles County to add rules regarding motions for reconsideration following issuance of an order (applicable only when a judgment is not issued at the same time), the committees noted that such motions are uncommon occurrences in CEQA cases, and are particularly unlikely to be made in these expedited procedures, where the short time frame makes it unlikely that the prerequisites of new or different facts or law (see Code Civ. Proc. §1008) would exist. The committees concluded that specific rules about such motions—which could be applied only to Sacramento arena cases, in any event—are unnecessary in this set of rules and believe that, should such a motion be filed in one of the cases governed by these rules, the court will seek to expedite it as appropriate so that judgment can be entered as soon as possible.

Time for case management conference. The committees asked for specific comments on whether 30 days after filing was too soon to set a CMC and, if so, where in the proposed rules other time could be removed to allow for the conference to be set 35 or 40 days after filing and still have the rules comply with the 270-day timeframe. Two commentators, the Superior Court of San Diego County and the Joint Rules Working Group, both opined that the 30 days was too soon, although neither made any proposal of where additional time could be shaved from another part of the timeline under the proposed rules to make up for holding the CMC later. Because a later CMC would not allow the legislatively mandated time frame to be met without some other change in the timeline envisioned by these rules, and because the committees did not find any other place where time could be removed from that timeline without further limiting time needed by the parties or the courts to properly address the issues in these complicated cases, the committee did not modify the rules regarding setting the CMC.

Time for filing notice of appeal. As circulated for public comment, the proposal would have required that the notice of appeal of a decision in a Sacramento arena or a leadership case be filed within five days, rather than five court days of service of notice of entry of the judgment. The committees specifically sought comment on whether this proposed period for filing a notice of appeal was too short. Two commentators provided input on this issue. Both suggested that the time be increased to at least five **court** days. Based on these comments, the committee's modified the proposal to give parties five court days within which to file the notice of appeal

In addition, the committees specifically sought comment on how to address the potentially overlapping time periods for filing the notice of appeal and for filing motions for new trial or to vacate judgment in leadership cases.[8] Two commentators provided input on this issue. One specifically suggested that the time to file a notice of appeal in leadership cases should not be earlier than the time for filing motions for new trial or to vacate judgment. The other

[8] The invitation to comment focused on this potential overlap with respect to motions for new trial or to vacate the judgment. There is also a potential overlap with respect to motions for reconsideration. As discussed above, the committees view is that these motions will be extremely rare in leadership or Sacramento arena cases.

commentator also expressed concern about potential overlap, suggesting that the time for filing a notice of appeal should not be before the trial court rules on such motions.

Based on these comments, the committees considered modifying the proposal to make the time for filing a notice of appeal in leadership cases the same as the time set by statute for filing these motions—15 days after service of notice of entry of the judgment. However, the committee was concerned about the increase this change would cause in the time to disposition in leadership cases, particularly given the fact that disposition in such cases is already likely to take longer because of statutory service periods that cannot be modified by rule. Committee members also expressed the view that, given the nature of CEQA proceedings, these posttrial motions are unlikely to be filed in most leadership cases and, therefore, the potential complications associated with such motions should not be the basis for establishing a time frame applicable to all such cases. In addition, there is case law suggesting that, at least with respect to motions for new trial, the filing of a notice of appeal does not divest the trial court of jurisdiction to consider the motion (see *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 and *Weisenburg v. Molina* (1976) 58 Cal.App.3d 478). Finally, nothing prevents a cautious attorney from filing the notice of intention to move for new trial before the time for appeal has expired. The preparation of such a notice is not a significant burden. Given this and the committees' desire not to further decrease the possibility that leadership cases could be resolved within the 270-day statutory timeframe, the committees decided not to increase the proposed time to file a notice of appeal in leadership cases so as to make it the same as the time for filing motions for new trial or to vacate the judgment.

The committees also sought input on whether the rule should include a provision, similar to that in rule 8.108, providing for an extension of the time to file a notice of appeal of an appealable order if a valid motion to reconsider that order has been filed. No comments were received on this specific issue. However, to ensure that the general rule on such extensions— rule 8.108(e), which extends the time to appeal an appealable order to, at a minimum, 30 days after the superior court clerk or a party serves an order denying a motion to reconsider or a notice of entry of that order—does not apply in Sacramento arena or leadership cases, the committees added a provision to the proposed rules that provides only a 5-day extension on the time to file a notice of appeal in these circumstances. The committees similarly added a provision giving only a 5-day extension to file a cross-appeal.

Time for clerk to prepare and transmit register of actions and other materials on appeal. Two commentators, the Joint Rules Working Group and the Superior Court of San Diego County, expressed concerns about the proposed two-day timeframe within which proposed rule 8.702(d), as circulated, would have required the trial court clerk to prepare and transmit a register of actions, along with other material, to the parties and to the Court of Appeal. One of these commentators specifically suggested that this timeframe be extended to five court days. Based on these concerns, the committees modified the proposal to give the trial court clerk five court days to complete these tasks.

Implementation Requirements, Costs, and Operational Impacts

Implementing the new expedited procedures will generate costs and operational impacts for both the trial courts and the Courts of Appeal in which the proceedings governed by these rules are filed. The $100,000 fee for each appeal authorized by statute should offset these additional costs in the Courts of Appeal, but no such fee is authorized in the trial courts.

Attachments

1. Cal. Rules of Court, rules 3.1365, 3.2200, 3.2205–3.2208, 3.2220–3.2237, 8.104, 8.497, and 8.700–8.705, at pages 16-39.
2. Chart of comments, at pages 40-58.

Rules 3.1365, 3.2200, 3.2220–3.2237, and 8.700–8.705 of the California Rules of Court are adopted; rules 3.1366 and 3.1367 are renumbered and amended as rules 3.2206 and 3.2207; rules 3.1365 and 3.1368 are renumbered as rules 3.2205 and 3.2208; rule 8.104 is amended; and rule 8.497 is repealed, as follows:

Title 3. Civil Rules

Division 11. Law and Motion

~~Chapter 7. Petitions Under the California Environmental Quality Act~~

Rule ~~3.1365~~ 3.2205. Form and format of administrative record lodged in a CEQA proceeding
Rule ~~3.1366~~ 3.2206. Lodging and service
Rule ~~3.1367~~ 3.2207. Electronic format
Rule ~~3.1368~~ 3.2208. Paper format

Chapter ~~8~~ 7. ~~Other~~ Civil Petitions

Rule 3.1365. Petitions Under the California Environmental Quality Act

Rules for petitions for relief brought under the California Environmental Quality Act have been renumbered and moved to division 22 of these rules, beginning with rule 3.2200.

Advisory Committee Comment

Former rule 3.1365 on the form and format of administrative record lodged in a CEQA proceeding has been renumbered as rule 3.2205.

Division 22. Petitions Under the California Environmental Quality Act

Chapter 1. General Provisions

Rule 3.2200. Application

Except as otherwise provided in chapter 2 for actions under Public Resources Code sections 21168.6.6 and 21178–21189.3, the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as set forth in division 13 of the Public Resources Code.

Rule ~~3.1365~~ 3.2205. Form and format of administrative record lodged in a CEQA proceeding

* * * *

Rule ~~3.1366~~ 3.2206. Lodging and service

The party preparing the administrative record must lodge it with the court and serve it on each party. A record in electronic format must comply with rule 3.~~1367~~2207. A record in paper format must comply with rule 3.~~1368~~2208. If the party preparing the administrative record elects, is required by law, or is ordered to prepare an electronic version of the record, (1) a court may require the party to lodge one copy of the record in paper format, and (2) a party may request the record in paper format and pay the reasonable cost or show good cause for a court order requiring the party preparing the administrative record to serve the requesting party with one copy of the record in paper format.

Rule ~~3.1367~~ 3.2207. Electronic format

(a) Requirements

The electronic version of the administrative record lodged in the court in a proceeding brought under the California Environmental Quality Act must be:

(1) In compliance with rule 3.~~1365~~2205;

(2) – (5) * * * *

The electronic version of the index required under rule 3.~~1365~~2205(b) may include hyperlinks to the indexed documents.

(b) Documents not included

Unless otherwise required by law, ~~A~~any document that is part of the administrative record and for which it is not feasible to create an electronic version may be provided in paper format only. Not feasible means that it would be reduced in size or otherwise altered to such an extent that it would not be easily readable.

Rule ~~3.1368~~ 3.2208. Paper format

* * * *

Chapter 2. California Environmental Quality Act Proceedings under Public Resources Code sections 21168.6.6 and 21178–21189.3

Article 1. General Provisions

Rule 3.2220. Definitions and application

(a) Definitions

As used in this chapter:

(1) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(2) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means an entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute described in section 21168.6.6(j)(1).

(b) Proceedings governed

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for the Sacramento arena project or a leadership project. Except as otherwise provided in Public Resources Code sections 21168.6.6 and 21178–21189.3 and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

(c) Complex case rules

Any action or proceeding governed by these rules is exempted from the rules regarding complex cases.

Rule 3.2221. Time

(a) Extensions of time

The court may order extensions of time only for good cause and in order to promote the interests of justice.

(b) Extensions of time by parties

If the parties stipulate to extend the time for performing any acts in actions governed by these rules, they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the performance of the act has been stipulated to be extended, and to that extent to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6(c)–(d) and 21185. Any such stipulation must be approved by the court.

(c) Sanctions for failure to comply with rules

If a party fails to comply with any time requirements provided in these rules or ordered by the court, the court may issue an order to show cause as to why one of the following sanctions should not be imposed:

(A) Reduction of time otherwise permitted under these rules for the performance of other acts by that party;

(B) If the failure to comply is by petitioner or plaintiff, dismissal of the petition;

(C) If the failure to comply is by respondent or a real party in interest, removal of the action from the expedited procedures provided under Public Resources Code sections 21168.6.6(c)–(d) and 21185 and these rules; or

(D) Any other sanction that the court finds appropriate.

Rule 3.2222. Filing and service

(a) Electronic filing

All pleadings and other documents filed in actions or proceedings governed by this chapter must be filed electronically, unless the action or proceeding is in a court that does not provide for electronic filing of documents.

(b) Service

Other than the petition, which must be served personally, all documents that the rules in this chapter require be served on the parties must be served personally or electronically. All parties represented by counsel are deemed to have agreed to accept electronic service. All self-represented parties may agree to such service.

(c) Service of petition in action regarding Sacramento arena project

Service of the petition or complaint in an action governed by these rules and relating to a Sacramento arena project must be made according to the rules in article 2.

(d) Service of petition in action regarding leadership project

If the petition or complaint in an action governed by these rules and relating to an leadership project is not personally served on any respondent public agency, any real party in interest, and the Attorney General within three court days following filing of the petition, the time for filing petitioner's briefs on the merits provided in rule 3.2227(a) and rule 8.702(e) will be decreased by one day for every additional two court days in which service is not completed, unless otherwise ordered by the court for good cause shown.

(e) Exemption from extension of time

The extension of time provided in Code of Civil Procedure section 1010.6 for service completed by electronic means does not apply to any service in actions governed by these rules.

Advisory Committee Comment

Parties should note that, while Public Resources Code section 21167 provides the statute of limitations for filing petitions under the California Environment Quality Act, these rules provide an incentive for parties to file actions governed by these rules more quickly, in the form of extra briefing time for petitioners who file within 10 days of the issuance of a Notice of Determination. See rule 3.2227(a).

Rule 3.2223. Petition

In addition to any other applicable requirements, the petition must:

(1) On the first page, directly below the case number, indicate that the matter is either a "Sacramento Arena CEQA Challenge" or an "Environmental Leadership CEQA Challenge";

(2) State either:

(A) The proponent of the project at issue provided notice to the lead agency that it was proceeding under Public Resources Code section 21168.6.6 and is subject to this rule; or

(B) The project at issue was certified by the Governor as a leadership project under Public Resources Code sections 21182–21184 and is subject to this rule;

(3) If a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must, if the matter goes to the Court of Appeal, make the payments required by Public Resources Code section 21183(f); and

(4) Be verified.

Rule 3.2224. Response to petition

(a) Responsive pleadings and motions

Respondent and any real party in interest must serve and file any answer to the petition; any motion challenging the sufficiency of the petition, including any motion to dismiss the petition; any other response to the petition; any motion to change venue; or any motion to intervene within 10 days after service of petition or complaint on that party or within the time ordered by the court. Any such answer, motion, or other response from the same party must be filed concurrently.

(b) Opposition

Any opposition or other response to a motion challenging the sufficiency of the petition or to change venue must be served and filed within 10 days after the motion is served.

Rule 3.2225. Administrative record

(a) Lodging and service

Within 10 days after the petition is served on the lead public agency, that agency must lodge the certified final administrative record in electronic form with the court and serve notice on petitioner and real party in interest that the record has been lodged with the court. Within that same time, the agency must serve a copy of the administrative record in electronic form on any petitioner and real party in interest who has not already been provided a copy.

(b) Paper copy of record

(1) On request of the court, the lead agency shall provide the court with the record in paper format.

(2) On request and payment of the reasonable cost of preparation, or on order of the court for good cause shown, the lead agency shall provide a party with the record in paper format.

(c) Motions regarding the record

Unless otherwise ordered by the court:

(1) Any request to augment or otherwise change the contents of the administrative record must be made by motion served and filed no later than the filing of that party's initial brief.

(2) Any opposition or other response to the motion must be served and filed within 10 days after the motion is filed.

(3) Any motion regarding the record will be heard at the time of the hearing on the merits of the petition unless the court orders otherwise.

Rule 3.2226. Initial case management conference

(a) Timing of conference

The court should hold an initial case management conference within 30 days of the filing of the petition or complaint.

(b) Notice

Petitioner must provide notice of the case management conference to respondent, real party in interest, and any responsible agency or party to the action who has been served before the case management conference, within one court day of receiving notice from the court or at time of service of the petition or complaint, whichever is later.

(c) Subjects for consideration

At the conference, the court should consider the following subjects:

(1) Whether all parties named in the petition or complaint have been served;

(2) Whether a list of responsible agencies has been provided and notice provided to each;

(3) Whether all responsive pleadings have been filed, and if not, when they must be filed, and whether any hearing is required to address them;

(4) Whether severance, bifurcation, or consolidation with other actions is desirable and, if so, a relevant briefing schedule;

(5) Whether to appoint liaison or lead counsel, and either a briefing schedule on this issue or the actual appointment of counsel;

(6) Whether the administrative record has been certified and served on all parties, whether there are any issues with it, and whether the court wants to receive a paper copy;

(7) Whether the parties anticipate any motions before the hearing on the merits concerning discovery, injunctions, or other matters, and if so, a briefing schedule for these motions;

(8) What issues the parties intend to raise in their briefs on the merits and whether any limitation of issues to be briefed and argued is appropriate;

(9) Whether a schedule for briefs on the merits different from the schedule provided in these rules is appropriate;

(10) Whether the submission of joint briefs on the merits is appropriate and the page limitations on all briefs, whether aggregate per side or per brief;

(11) When the hearing on the merits of the petition will be held and the amount of time appropriate for it;

(12) The potential for settlement and whether a schedule for settlement conferences or alternative dispute resolution should be set;

(13) Any stipulations between the parties;

(14) Whether a further case management conference should be set; and

(15) Any other matters that the court finds appropriate.

(d) Joint case management conference statements

At least three court days before the case management conference, petitioner and all parties that have been served with the petition must serve and file a joint case management conference statement that addresses the issues identified in (c) and any other pertinent issues.

(e) Preparation for the conference

At the conference, lead counsel for each party and each self-represented party must appear by telephone or personally, must be familiar with the case, and must be prepared to discuss and commit to the party's position on the issues listed in (c).

Rule 3.2227. Briefing and Hearing

(a) Briefing schedule

Unless otherwise ordered by the court:

(1) Within 5 days after filing its brief, each party must submit an electronic version of the brief that contains hyperlinks to material cited in the brief, including electronically searchable copies of the administrative record, cited decisions, and any other brief in the case filed electronically by the parties. Such briefs must comply with any local requirements of the reviewing court relating to e-briefs.

(2) The petitioner must serve and file its brief within 25 days after the case management conference, unless petitioner served and filed the petition within 10 days of the public agency's issuance of its Notice of Determination, in which case petitioner must file and serve its brief within 35 days after the case management conference.

(3) Within 25 days after the petitioner's brief is filed, the respondent public agency must—and any real party in interest may—serve and file a respondent's brief. Respondents and real parties must file a single joint brief, unless otherwise ordered by the court.

(4) Within 5 days after the respondent's brief is filed, the parties must jointly file an appendix of excerpts that contain the documents or pertinent excerpts of the documents cited in the parties' briefs.

(5) Within 10 days after the respondent's brief is filed, the petitioner may serve and file a reply brief.

(b) Hearing

(1) The hearing should be held within 80 days of the case management conference, extended by the number of days to which the parties have stipulated to extend the briefing schedule.

(2) If the court has, within 90 days of the filing of the petition or complaint, set a hearing date, the provision in Public Resources Code section 21167.4 that petitioner request a hearing date within 90 days is deemed to have been met and no further request is required.

Advisory Committee Comment

Parties should note that, in the event of an appeal, the only form of record of the hearing is a court reporter's transcript. See rule 8.702(d).

Rule 3.2228. Judgment

The court should issue its decision and final order, writ, or judgment within 30 days of the completion of the hearing in the action. The court must include a written statement of the factual and legal basis for its decision. Code of Civil Procedure section 632 does not apply to actions governed by the rules in this division.

Rule 3.2229. Notice of settlement

The petitioner or plaintiff must immediately notify the court if the case is settled.

Rule 3.2230. Settlement procedures and statement of issues

In cases governed by the rules in this chapter, unless otherwise ordered by the court, the procedures described in Public Resources Code section 21167.8, including the filing of a statement of issues, are deemed to have been met by the parties addressing the potential for settlement and narrowing of issues within the case management conference statement and discussing those points as part of the case management conference.

Rule 3.2231. Post-judgment motions

(a) Exemption from statutory provisions

In any actions governed by the rules in this article, any postjudgment motion except for a motion for attorney's fees and costs is governed by this rule. Such motions are exempt from the timing requirements otherwise applicable to postjudgment motions under Code of Civil Procedure section 1005. Motions in Sacramento arena project cases are also exempt from the timing and procedural requirements of Code of Civil Procedure sections 659 and 663.

(b) Time for post-judgment motions

(1) *Time for motions under Code of Civil Procedure section 473*

Moving party must serve and file any motion before the earlier of:

(A) Five days after the court clerk mails to the moving party a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served; or

(B) Five days after the moving party is served by any party with a written notice of judgment or a file-stamped copy of the judgment, accompanied by a proof of service.

(2) *Time for motions for new trial or motions to vacate judgment*

Moving party in Sacramento arena project cases must serve and file motion before the earlier of:

(A) Five days after the court clerk mails to the moving party a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served; or

(B) Five days after the moving party is served by any party with a written notice of judgment or a file-stamped copy of the judgment, accompanied by a proof of service.

(c) Memorandum

A memorandum in support of a post-judgment motion may be no longer than 15 pages.

(d) Opposition to motion

Any opposition to the motion must be served and filed within five days of service of the moving papers and may be no longer than 15 pages.

(e) Reply

Any reply brief must be served and filed within two court days of service of the opposition papers and may be no longer than 5 pages.

(f) Hearing and decision

The court may set a hearing on the motion at its discretion. The court should issue its decision on the motion within 15 days of the filing of the motion.

Article 2. CEQA Challenges to Approval of Sacramento Arena Project

Rule 3.2235. Application

This article governs any action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report or any project approvals for the Sacramento arena project.

Rule 3.2236. Service of Petition

(a) Respondent

Unless the respondent public agency has agreed to accept service of summons electronically, the petitioner or plaintiff must personally serve the petition or complaint on the respondent public agency within three court days after the date of filing.

(b) Real parties in interest

The petitioner or plaintiff must serve the petition or complaint on any real party in interest named in the pleading within three court days after the date of filing.

(c) Attorney General

The petitioner or plaintiff must serve the petition or complaint on the Attorney General within three court days after the date of filing

(d) Responsible agencies

The petitioner or plaintiff must serve the petition or complaint on any responsible agencies or public agencies with jurisdiction over a natural resource affected by the project within two court days of receipt of list of such agencies from respondent public agency.

(e) Proof of service

The petitioner or plaintiff must file proof of service on each respondent, real party in interest, or agency within one court day of completion of service.

Rule 3.2237. List of responsible parties

Respondent public agency must provide the petitioner or plaintiff, not later than three court days following service of the petition or complaint on the public agency, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

Title 8. Appellate Rules

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

Chapter 2. Civil Appeals

Article 1. Taking the Appeal

Rule 8.104. Time to appeal

(a) Normal time

(1) Unless a statute, ~~or~~ rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served;

(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

(C) 180 days after entry of judgment.

(2) – (3) * * *

(b)–(e) * * *

Chapter 8. Miscellaneous Writs

~~**Rule 8.497. Review of California Environmental Quality Act cases under Public Resources Code sections 21178–21189.3**~~

~~**(a) Application**~~

~~(1) This rule governs actions or proceedings in the Court of Appeal alleging that a public agency has approved or is undertaking an environmental leadership development project in violation of the California Environmental Quality Act. As used in this rule, an "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.~~

~~(2) Except as otherwise provided in Public Resources Code sections 21178–21189.3 and this rule, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act apply in proceedings governed by this rule.~~

~~**(b) Service**~~

~~Except as otherwise provided by law, all documents that this rule requires be served on the parties must be served by personal delivery, electronic service, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013 and reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court.~~

~~**(c) Petition**~~

~~(1) *Service and filing*~~

~~A person alleging that a public agency has approved or is undertaking a leadership~~

~~project in violation of the California Environmental Quality Act must serve and file a petition for a writ of mandate in the Court of Appeal with geographic jurisdiction over the project.~~

~~(2) *Form and contents*~~

~~In addition to any other applicable requirements, the petition must:~~

~~(A) State that the project at issue was certified by the Governor as a leadership project under Public Resources Code sections 21182–21184 and is subject to this rule;~~

~~(B) Provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by (h);~~

~~(C) Include any other claims required to be concurrently filed by the petitioner under Public Resources Code section 21185; and~~

~~(D) Be verified.~~

~~**(d) Administrative record**~~

~~(1) *Lodging and service*~~

~~Within 10 days after the petition is served on the lead public agency, that agency must lodge the certified final administrative record with the Court of Appeal and serve on the parties a copy of the certified final administrative record and notice that the record has been lodged with the court.~~

~~(2) *Form and contents*~~

~~(A) Unless otherwise ordered by the Court of Appeal, the lead agency must lodge with the court one copy of the record in electronic format and one copy in paper format and serve on each party one copy of the record in electronic format. The record in electronic format must comply with rules 3.1365 and 3.1367. The record in paper format must comply with rules 3.1365 and 3.1368.~~

~~(B) A party may request the record in paper format and pay the reasonable cost or show good cause for a court order requiring the lead agency to serve the requesting party with one copy of the record in paper format.~~

~~(C) The record must include all of the materials specified in Public Resources Code section 21167.6.~~

~~(3) *Motions regarding the record*~~

~~(A) Any request to augment or otherwise change the contents of the administrative record must be made by motion in the Court of Appeal. The motion must be served and filed within 25 days after the record is served.~~

~~(B) Any opposition or other response to the motion must be served and filed within 10 days after the motion is filed.~~

~~(C) The Court of Appeal may appoint a special master to hear and decide any motion regarding the record. The order appointing the special master may specify the time within which the special master is required to file a decision.~~

~~**(e) Notice of settlement**~~

~~The petitioner must immediately notify the court if the case is settled.~~

~~**(f) Response to petition**~~

~~(1) Within 25 days after service of the administrative record or within the time ordered by the court, the respondent and any real party in interest must serve and file any answer to the petition; any motion challenging the sufficiency of the petition, including any motion to dismiss the petition; and any other response to the petition. Any such answer, motion, or other response from the same party must be filed concurrently.~~

~~(2) Any opposition or other response to a motion challenging the sufficiency of the petition must be served and filed within 10 days after the motion is filed.~~

~~**(g) Briefs**~~

~~(1) *Service and filing*~~

~~Unless otherwise ordered by the court:~~

~~(A) The petitioner must serve and file its brief within 40 days after the administrative record is served.~~

~~(B) Within 30 days after the petitioner's brief is filed, the respondent public agency must—and any real party in interest may—serve and file a respondent's brief.~~

~~(C) Within 20 days after the respondent's brief is filed, the petitioner may serve and file a reply brief.~~

~~(2) *Form and contents*~~

~~The briefs must comply as nearly as possible with rule 8.204.~~

~~**(h) Certificate of Interested Entities or Persons**~~

~~(1) Each party other than a public agency must comply with the requirements of rule 8.208 concerning serving and filing a *Certificate of Interested Entities or Persons*.~~

~~(2) The petitioner's certificate must be included in the petition. Other parties must include their certificate in their brief, or if the party files an answer or other response to the petition, a motion, an application, or an opposition to a motion or application in the Court of Appeal before filing its brief, the party must serve and file its certificate at the time it files the first answer, response, motion, application, or opposition. The certificate must appear after the cover and before any tables.~~

~~(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party by mail that the party must file the certificate within 10 days after the clerk's notice is mailed and that failure to comply will result in one of the following sanctions:~~

~~(A) If the party is the petitioner, the court will strike the petition; or~~

~~(B) If the party is the real party in interest, the court will strike the document.~~

~~(4) If the party fails to comply with the notice under (3), the court may impose the sanctions specified in the notice.~~

~~**(i) Court costs**~~

~~(1) In fulfillment of the provision in Public Resources Code section 21183 regarding payment of the Court of Appeal's costs:~~

~~(A) Within 10 days after service of the petition on the real party in interest, the person who applied for certification of the project as a leadership project must pay a fee of $100,000 to the Court of Appeal.~~

~~(B) If the Court of Appeal incurs any of the following costs, the person who applied for certification of the project as a leadership project must also pay, within 10 days of being ordered by the court, the following costs or estimated costs:~~

~~(i) The costs of any special master appointed by the Court of Appeal in the case; and~~

~~(ii) The costs of any contract personnel retained by the Court of Appeal to work on the case.~~

~~(2) If the fee or costs under (1) are not timely paid, the Court of Appeal may transfer the case to the superior court with geographic jurisdiction over the project, and the case~~

~~will proceed under the procedures applicable to projects that have not been certified as leadership projects.~~

~~(j) Extensions of time~~

~~The court may order extensions of time only for good cause and in order to promote the interests of justice.~~

~~Advisory Committee Comment~~

~~Subdivision (b).~~ ~~This provision does not apply to service of the petition on the respondent public agency or real party in interest because the method of service on these parties is set by Public Resources Code sections 21167.6 and 21167.6.5.~~

~~Subdivision (c).~~ ~~Under this provision, a proceeding in the Court of Appeal is initiated by serving and filing a petition for a writ of mandate as provided in rule 8.25, not by filing a complaint and serving a summons and the complaint.~~

~~Subdivision (d)(3)(C).~~ ~~Public Resources Code section 21185 provides that the court may appoint a master to assist the court in managing and processing cases subject to this rule. Appointment of a special master to hear and decide motions regarding the record is just one example of when a court might make such an appointment.~~

~~Subdivision (f).~~ ~~A party other than the petitioner who files an answer, motion, or other response to a petition under (e) may be required to pay a filing fee under Government Code section 68926 if the answer, motion, or other response is the first document filed in the proceeding in the reviewing court by that party. See rule 8.25(c).~~

~~Subdivision (g).~~ ~~On application of the parties or on its own motion, the court may set different briefing periods. For example, if a motion to augment or otherwise modify the contents of the record is filed, the court might order that petitioner's brief be filed within a specified time after that motion is decided.~~

Chapter 11. Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21168.6.6 and 21178–21189.3

Rule 8.700. Definitions and application

(a) Definitions

As used in this chapter:

(1) An "environmental leadership development project" or "leadership project" means a project certified by the Governor under Public Resources Code sections 21182–21184.

(2) The "Sacramento entertainment and sports center project" or "Sacramento arena project" means the entertainment and sports center project as defined by Public Resources Code section 21168.6.6, for which the proponent provided notice of election to proceed under that statute as described in section 21168.6.6(j)(1).

(b) Proceedings governed

The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to review a superior court judgment or order in an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the granting of any project approvals for an environmental leadership development project or the Sacramento arena project.

Rule 8.701. Filing and service

(a) Service

Except when the court orders otherwise under (b) or as otherwise provided by law, all documents that the rules in this chapter require be served on the parties must be served by personal delivery, electronic service, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013 and reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court.

(b) Electronic filing and service

Notwithstanding rules 8.71(a) and 8.73, the court may order that:

(1) All documents be filed electronically;

(2) All documents be served electronically on parties who have stipulated to electronic service. All parties represented by counsel are deemed to have stipulated to electronic service. All self-represented parties may so stipulate.

(c) Exemption from extension of time

The extension of time provided in Code of Civil Procedure section 1010.6 for service completed by electronic means does not apply to any service in actions governed by these rules.

Rule 8.702. Appeals

(a) Application of general rules for civil appeals

Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to civil appeals, apply to appeals under this chapter.

(b) Notice of appeal

(1) *Time to appeal*

The notice of appeal must be served and filed on or before the earlier of:

(A) Five court days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served; or

(B) Five court days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service.

(2) *Contents of notice of appeal*

The notice of appeal must:

(A) State that the superior court judgment or order being appealed is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to the Sacramento arena project or a leadership project; and

(C) If the judgment or order being appealed pertains to a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by rule 8.705.

(c) Extending the time to appeal

(1) *Motion for new trial*

If any party serves and files a valid notice of intention to move for a new trial or, under rule 3.2237, a valid motion for a new trial and that motion is denied, the time to appeal from the judgment is extended for all parties until the earlier of:

(A) Five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; or

(B) Five court days after denial of the motion by operation of law.

(2) *Motion to vacate judgment*

If, within the time prescribed by subdivision (b) to appeal from the judgment, any party serves and files a valid notice of intention to move—or a valid motion—to vacate the judgment and that motion is denied, the time to appeal from the judgment is extended for all parties until five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order.

(3) *Motion to reconsider appealable order*

If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until five court days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order.

(4) *Cross-appeal*

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 5 court days after the superior court clerk serves notification of the first appeal.

(d) Record on appeal

(1) *Record of written documents*

The record of the written documents from the superior court proceedings other than the administrative record must be in the form of a joint appendix or separate appellant's and respondent's appendixes under rule 8.124.

(2) *Record of the oral proceedings*

(A) The appellant must serve and file with its notice of appeal a notice designating the record under rule 8.121 specifying whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must designate a reporter's transcript.

(B) Any party that submits a copy of a Transcript Reimbursement Fund application in lieu of a deposit under rule 8.130(b)(3) must serve all other parties with notice of this submission when the party serves its notice of designation of the record. Within five days after service of this notice, any other party may submit to the trial court the required deposit for the reporter's transcript under rule 8.130(b)(1), the reporter's written waiver of the deposit under rule 8.130(b)(3)(A), or a certified transcript of all of the proceedings designated by the party under rule 8.130(b)(3)(C).

(C) Within 10 days after the superior court notifies the court reporter to prepare the transcript under rule 8.130(d)(2), the reporter must prepare and certify an original of the transcript and file the original and required number of copies in superior court.

(D) If the appellant does not present its notice of designation as required under (A) or if any designating party does not submit the required deposit for the reporter's transcript under rule 8.130(b)(1) or a permissible substitute under rule 8.130(b)(3) with its notice of designation or otherwise fails to timely do another act required to procure the record, the superior court clerk must serve the defaulting party with a notice indicating that the party must do the required act within two court days of service of the clerk's notice or the reviewing court may impose one of the following sanctions:

(i) If the defaulting party is the appellant, the court may dismiss the appeal; or

(ii) If the defaulting party is the respondent, the court may proceed with the appeal on the record designated by the appellant.

(e) Superior court clerk duties

Within five court days following the filing of a notice of appeal under this rule, the superior court clerk must:

(1) Serve the following on each party:

(A) Notification of the filing of the notice of appeal; and

(B) A copy of the register of actions, if any.

(2) Transmit the following to the reviewing court clerk:

(A) A copy of the notice of appeal;

(B) A copy of the appellant's notice designating the record; and

(C) An electronic copy of the administrative record.

(f) Briefing

(1) *Electronic filing*

Unless otherwise ordered by the reviewing court, all briefs must be electronically filed.

(2) *Time to serve and file briefs*

Unless otherwise ordered by the reviewing court:

(A) An appellant must serve and file its opening brief within 25 days after the notice of appeal is served and filed.

(B) A respondent must serve and file its brief within 25 days after the appellant files its opening brief.

(C) An appellant must serve and file its reply brief, if any, within 15 days after the respondent files its brief.

(3) *Contents and form of briefs*

(A) The briefs must comply as nearly as possible with rule 8.204.

(B) If a designated reporter's transcript has not been filed at least 5 days before the date by which a brief must be filed, an initial version of the brief may be served and filed in which references to a matter in the reporter's transcript are not supported by a citation to the volume and page number of the reporter's transcript where the matter appears. Within 10 days after the reporter's transcript is filed, a revised version of the brief must be served and filed in which all references to a matter in the reporter's transcript must be supported by a citation to the volume and page number of the reporter's transcript where the matter appears.

(C) Unless otherwise ordered by the court, within 5 days after filing its brief, each party must submit an electronic version of the brief that contains hyperlinks to material cited in the brief, including electronically searchable copies of the record on appeal, cited decisions, and the parties' other briefs. Such briefs must comply with any local requirements of the reviewing court relating to e-briefs.

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6(c)–(d) and 21185 for the duration of the stipulated extension.

(5) *Failure to file brief*

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must serve the party with a notice indicating that if the required brief is not filed within two court days of service of the clerk's notice, the court may impose one of the following sanctions:

(A) If the brief is an appellant's opening brief, the court may dismiss the appeal;

(B) If the brief is a respondent's brief, the court may decide the appeal on the record, the opening brief, and any oral argument by the appellant; or

(C) Any other sanction that the court finds appropriate.

(g) Oral argument

Unless otherwise ordered by the reviewing court, oral argument will be held within 45 days after the last reply brief is filed. The reviewing court clerk must send a notice of the time and place of oral argument to all parties at least 15 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.

Advisory Committee Comment

Subdivision (b). It is very important to note that the time period to file a notice of appeal under this rule is the same time period for filing most post judgment motions in a case regarding the Sacramento arena project and, in a case regarding an leadership project, the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, motion for reconsideration, or a motion to vacate the judgment.

Rule 8.703. Writ proceedings

(a) Application of general rules for writ proceedings

Except as otherwise provided by the rules in this chapter, rules 8.485–8.493—relating to writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal—apply to writ proceedings under this chapter.

(b) Petition

(1) *Time for filing petition*

A petition for a writ challenging a superior court judgment or order governed by the rules in this chapter must be served and filed on or before the earliest of:

(A) Thirty days after the superior court clerk serves on the party filing the petition a document entitled "Notice of Entry" of judgment or order, or a file-stamped copy of the judgment or order, showing the date either was served; or

(B) Thirty days after the party filing the petition serves or is served by a party with a document entitled "Notice of Entry" of judgment or order, or a file-stamped copy of the judgment or order, accompanied by proof of service.

(2) *Contents of petition*

In addition to any other applicable requirements, the petition must:

(A) State that the superior court judgment or order being challenged is governed by the rules in this chapter;

(B) Indicate whether the judgment or order pertains to the Sacramento arena project or a leadership project; and

(C) If the judgment or order pertains to a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by 8.705.

Rule 8.705. Court of Appeal costs in leadership projects

In fulfillment of the provision in Public Resources Code section 21183 regarding payment of the Court of Appeal's costs with respect to cases concerning leadership projects:

(1) Within 10 days after service of the notice of appeal or petition in a case concerning a leadership project, the person who applied for certification of the project as a leadership project must pay a fee of $100,000 to the Court of Appeal.

(2) If the Court of Appeal incurs any of the following costs, the person who applied for certification of the project as a leadership project must also pay, within 10 days of being ordered by the court, the following costs or estimated costs:

(A) The costs of any special master appointed by the Court of Appeal in the case; and

(B) The costs of any contract personnel retained by the Court of Appeal to work on the case.

(3) If the party fails to timely pay the fee or costs specified in this rule, the court may impose sanctions that the court finds appropriate after notifying the party and providing the party with an opportunity to pay the required fee or costs.

ITC number W14-02

Title of proposal: CEQA Actions: Rules to Implement Senate Bill 743

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Robert L. Becking Senior Research Attorney Superior Court of Orange County	AM	The move to exempt these cases from the complex rules seems like a move in the wrong direction. Handling a matter under the complex rules allows much more flexibility than under other rules. And, how are cases that require coordination going to be coordinated if an exemption is given from such rules? There does not appear to be any alternative mechanism for that. The time restraints for the hearing after the reply is received prevent a trial court from properly preparing for the hearing. These are necessarily going to be complex actions, and a hearing date 10 days after a reply is unworkable, 5 days is impossible. An effort should be made to ensure that there is a window of at least 20 days between the filing of the reply and the hearing date.	The committees considered this comment, but concluded that the exemption should remain to make clear that it is the case management rules within these rules, rather than in the complex case rules, that apply to the CEQA cases proceeding under these rules. The statute permitting courts to transfer and consolidate non-complex cases would, where appropriate, would apply to these cases. (See Code Civ. Proc. § 403.) In light of this comment and others received, the committees have decided not to increase the early filing incentive and so will not further reduce the time between reply brief and hearing. The committees have concluded, however, that the incentive as originally proposed is appropriate in order to attempt to meet the overall goal for resolution of an action under these rules, even though the incentive could result in only ten days between reply and hearing.
2.	Committee on Appellate Courts, State Bar of California, By: Saul Bercovitch	N/I	With regard to the specific invitation to comment on whether the time for filing the notice of appeal under proposed rule 8.702(b) is feasible, the Committee believes the 5 day time in which to file a notice of appeal is too short to allow meaningful review of the decision to appeal. The Committee is mindful of the very tight time constraints governing review of the projects subject to this proposed rule, but, unlike many other deadlines, the deadline to file a notice of appeal is not one that can be extended; that notice is a jurisdictional document. Given the constraints on post- judgment motions,	Based on this and other comments, the committees revised the proposal to provide that the notice of appeal must be filed within five **court** days on service of the notice of entry of the judgment.

	Commentator	Position	Comment	Committee Response
			which the Invitation to Comment acknowledges could require the notice of appeal to be filed before post-judgment motions, and the other limitations imposed on these projects, the Committee recommends the proposal increase the time allotted to file a notice of appeal. The additional amount of time may allow parties to reflect on whether it is necessary or appropriate to file an appeal. That is particularly so for public agencies, which typically need to comply with open meeting laws in setting meetings at which decisions about litigation will be made. Under the proposed rule it will be difficult if not impossible for a public agency to set even an emergency meeting to discuss whether an appeal is appropriate if the notice of entry of judgment is served on the same day the judgment issued. If it were served on a Friday afternoon it would be even more difficult for a public agency. CEQA decisions are not always black or white, and particularly where some issues or parts of a project can be severed from others, allowing more time to consider the merits of an appeal, or even to allow for some settlement discussions, could eliminate the need for appeal in some situations. The Committee recommends the time be extended to 7 days. In the alternative, the Committee recommends the time to appeal be extended to 5 court days. “Court days” however are not routinely used in the Rules of Court governing appellate proceedings, making the change to “court days” less desirable.	

	Commentator	Position	Comment	Committee Response
			Also, the Committee recommends that proposed rule 8.705 clarify whether the $100,000 fee, and other fees and costs required on appeal under the rule, will be considered recoverable costs under rule 8.278(d).	The committees appreciate these comments and this suggestion. However, adding a provision addressing whether these court costs are recoverable would be an important substantive change that was not included in the proposal circulated for comment. Under rule 10.22, substantive changes to the rules of court generally cannot be recommended for adoption without first being circulated for public comment. Furthermore, there may be some questions about whether this issue might best be addressed by statute, rather than by rule. For these reasons, the committee is not recommending adding anything to the rules regarding this issue.
3.	Orange County Bar Association By: Thomas Bienert, Jr., President	AM	Comments to the proposed rules are as follows: 1. The time to serve a petition for writ of mandate challenging a project for the Sacramento Arena for the respondent, the Real Parties in Interest and the Attorney General's office should all be the same time frame, rather than varying times as proposed in Rule 3.2236. Recommend 3 court days across the board. 2. For Leadership Projects (projects approved by the Governor as such, with a minimum investment of $100M), Rule 3.2222(d) providing for a reduction in time for the petitioner to submit its opening brief by one day for every two days the petition is not served after 3 court days for filing, is too complicated and unworkable. Suggest simply that any petitioner who accomplishes service within 3	 1. The committees agree with this comment and have modified proposed rule 3.2236 in light of the comment. 2. The committees disagree with this suggestion. Although complicated, the proposed scheme provides a disincentive for delay in serving the petition which becomes progressively more severe the longer the delay. In light of the very tight time frame required by the Legislature, the committees determined that the CMC needs to be set within 30 days of filing, and this increasing disincentive is an attempt to ensure that the parties are served

	Commentator	Position	Comment	Committee Response
			court days be given the full 35 days to file its opening brief on the petition, and if not served within 3 court days, then 25 days to file.	well before that point.
			3. Proposed Rule 8.702(g) provides for oral argument on appeal to be within 45 days of the date the reply briefs are due. Suggest cutting down the 45 days to 35 days, in order to save 10 additional days.	3. In appellate proceedings, the practice is for the Court of Appeal to review the briefs and record and analyze the issues before oral argument. The committees view is that it would not be appropriate to further reduce this time and therefore they declined to make this suggested change.
			Responses to the specific Request for Comments are as follows (note that comments are only provided for those particular issues for which changes to the Proposed Rules are suggested):	
			1. The incentive referenced in the second bullet point on page 11 is too confusing and should be replaced with a straightforward incentive of 10 days if service is accomplished within 3 court days (discussed in item 2 above).	1. See response at 2 above.
			2. The suggestion in the seventh bullet point to change the time to appeal from 5 days to 5 court days is appropriate, and should be recommended.	2. Based on this and other comments, the committees revised the proposal to provide that the notice of appeal must be filed within five **court** days on service of the notice of entry of the judgment.
			3.For Leadership projects, the time to file an appeal should be no less than the time a party has to file a motion for new trial or a motion to vacate the judgment. Otherwise, the Rules	3. Based on these and other comments, the committees considered modifying the proposal to make the time for filing a notice of appeal in leadership cases the same as the time set by

	Commentator	Position	Comment	Committee Response
			would create confusion and parties may well attempt to file motions for new trial/vacation of the judgment after they have filed their notices of appeal, which cannot be done because of the divesting of the trial court's jurisdiction once the appeal has been filed.	statute for filing these motions —15 days after service of notice of entry of the judgment. However, the committees were concerned about the increase this change would cause in the time to disposition in leadership cases. Committee members also expressed the view that given the nature of CEQA proceedings, these post-trial motions are not likely to be filed in most leadership cases and, therefore, the potential complications associated with such motions should not be the basis for establishing a timeframe applicable to all leadership cases. In addition, there is case law suggesting that, at least with respect to motions for new trial, the filing of a notice of appeal does not divest the trial court of jurisdiction to consider the motion (see *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 and *Weisenburg v. Molina* (1976) 58 Cal.App.3d 478). Finally, in the rare instance where a motion for new trial might be warranted, a cautious attorney can easily file a notice of intent to move for new trial before the time for appeal has expired. Given this and the committees' desire not to further decrease the possibility that leadership cases could be resolved within the 270-day statutory timeframe, the committees ultimately decided not to increase the proposed time to file a notice of appeal in these cases.
4.	Superior Court of Los Angeles County	AM	**Rule 3.2224. Response to Petition** While this rule provides that motions attacking the pleadings must be filed within 10 days after service, it does not specify when the hearing	The committees disagree with these suggested modifications. The committees intend the rules to leave some flexibility for the judicial officer handling a case governed by these provisions. As

	Commentator	Position	Comment	Committee Response
			will be conducted. This is important if different parties are served on different days. That is, all demurrers/motions to strike should be heard on the same date. If a demurrer is sustained with leave to amend, the rule should provide for the number of days the petitioner will have to file an amended pleading. It is recommended that number of days be a maximum of five. The rule should limit the number of rounds of demurrers/motions to strike to two.	to multiple demurrers, in light of the fact that the demurring party would generally be the lead agency or real party in interest—both of whom are seeking to expedite review—the committee believes that such motions will be rare in these cases, and so declines to recommend special rules regarding them .
			The proposed rule does not provide for filing any reply. A reply should be allowed but with a short three day time limit.	See above response.
			It is common for a nonparty to seek to intervene in a CEQA lawsuit. Rule 3.2224(a)(1)(B) should be modified to read: "Any motion to challenge the sufficiency of the petition, including any motion to dismiss the petition, **<u>or to intervene as a party.</u>**" The rule should be further modified so that a party served with a pleading in intervention may within 10 days after service move, demur, or otherwise plead to this pleading in the same manner as to the original petition.	The committees agree with the suggestion o to include motions to intervene in the rule that provides a short time for filing motions after the initial pleading is filed, and has modified that rule in light of the comment. See proposed rule 3.2224. The committees did not recommend any further rules regarding the filing of pleadings in intervention, however, concluding that it was better to leave such details to the judicial officer who grants the motion to intervene.
			<u>Rule 3.2225. Administrative Record</u> The lead agency should be required to provide the court with the administrative record, consecutively numbered ("Bates-stamped") from beginning to end, in paper format <u>unless</u> the court only wants to receive it electronically and makes this known to the parties at the initial	The rules as circulated do authorize a court to discuss obtaining a paper version of the administrative record at the case management conference. However, in light of this and other comments received, the committees conclude that the rule should be clarified by expressly authorizing such a request in the rule regarding

	Commentator	Position	Comment	Committee Response
			case management conference. (This would also require a change to the rule concerning subjects for consideration at the initial case management conference). This rule should be modified to allow for a reply within three days.	the lodging of the administrative record. See proposed rule 3.2225(b). The committees decline to mandate the lodging of a paper version because many courts have made it clear in commenting on other proposals that they do now want to receive unnecessary papers.
			Rule 3.2227. Briefing and Hearing The rule should add that unless otherwise authorized by the court at the initial case management conference, the parties may not exceed the page limits set forth in California Rules of Court, rule 3.1113(d).	The committees disagree with this suggestion. The question of the appropriate length of the briefs is expressly included in proposed rule 3.2226(a) as a matter to be addressed at the CMC. The cases governed by these rules will be large and likely complicated, and justice will not be well served by limiting the briefing to the standard 15 pages.
			The joint appendix should be filed together with petitioner's reply brief—not before. It defeats the purpose of filing a joint appendix if it does not contain excerpts cited by petitioner in its reply brief.	The committees disagree. Because the reply brief should not be raising new factual issues and because of the short time between the briefing and the hearing, the committees concluded that the joint appendix of excerpts of record should be filed following the filing of the respondent's brief. See rule 3.2227(a)(4).
			Rule 3.2228. Judgment This rule does not appreciate the distinction between a decision granting or denying the writ and a judgment concluding the case. The rule should be modified to allow a party to file a pre-judgment motion such as a motion for reconsideration of the decision. If a motion for reconsideration is allowed, the judgment should not be entered until the motion is decided which	The committees note that motions for reconsideration of an order issued before judgment are uncommon occurrences in CEQA cases, and are particularly unlikely to be made in these expedited procedures, where the short time frame makes it unlikely that the prerequisites of Code Civ. Proc. §1008 of new or different facts or law would exist. The committees concluded that specific rules about such motions –which could

	Commentator	Position	Comment	Committee Response
			will be more than 30 days after the writ is decided under the Code of Civil Procedure. If a motion for reconsideration is not allowed, the rule should say so explicitly.	only be applied to Sacramento arena cases in any event—are unnecessary in this set of rules, and believe that, should such a motion be filed in one of the cases governed by these rules, the court will seek to expedite it as appropriate so that judgment can be entered as soon as possible.
5.	Superior Court of Sacramento County By: Elaine Flores, ASO II	AM	We are not sure the time deadlines included in the rule are feasible. Since the statute says "to the extent feasible," we would prefer that the Rule of Court also use this language.	The statute regarding Sacramento arena cases does require only that such actions be resolved within 270 days "to the extent feasible." (See § 21168.6.6.) As noted above, however, there is no similar provision that applies to the environmental leadership cases. In light of this distinction, and because the provision is already in the statute for the arena cases, the committee concluded that it need not be repeated in the rules.
6.	Superior Court of San Diego County By: Michael Roddy, Executive Officer	N	While our court is sympathetic to the issues raised by SB 743, our court is going to find it very difficult to comply with many of the requirements set forth in the proposed rules and, therefore, must disagree with the proposal until budgetary constraints no longer impede compliance with the suggested time frames.	The committees do not disagree that the proposed rules set out a very aggressive timeframe, which will be challenging for courts to comply with, and with no room for moving any deadlines if the 270-day goal is to be met. Unfortunately, that is the mandate the Legislature set for the council, and the committees could only work within that mandate, and so was unable to provided any longer time frames. In light of the statutory deadline or resolution of the subject proceedings within 270 days, the advisory committees actually considered shorter time frames for setting the CMC and for parties' filing briefs on the merits, in order to allow more time for the trial court to make its decision after the hearing. However, the committees ultimately concluded that the time frames in the proposed rules are already so short

	Commentator	Position	Comment	Committee Response
				as to be unrealistic and declined to propose anything shorter. These cases will be, by definition, about large and complex projects. It would be a disservice to the parties and to the public to require any shorter time for the parties briefing or for the courts' decision-making process. The committees concluded that, in light of the legislative mandate, it is not possible to allow for any longer time.
			In addition to comments on the proposal as a whole, the advisory are interested in comments on the following: ☐*Does the proposal appropriately address the stated purpose?* Yes, although the shortened timelines, as set forth above, will pose significant challenges for the courts.	The committees note the comment and agree.
			☐*The proposed rules provide petitioners who file a court action within 10 days from issuance of the Notice of Determination with 10 extra days for filing their brief on the merits. (See rule 3.2227(a).) Should an additional 5 days be added to that incentive, in order to make it more likely that cases will be filed quickly, but leaving the possibility of only 5 days between the filing of a reply brief and hearing by the trial court?* The additional 5 days as an incentive may assist the courts if the result expedites the filing of the petition.	In light of this comment and others received, including another one from this commentator, the committees have decided not to increase the early filing incentive and so will not further reduce the time between reply brief and hearing. The committees have concluded, however, that the incentive as originally proposed is appropriate in order to attempt to meet the overall goal for resolution of an action under these rules, even though the incentive could result in only ten days between reply and hearing.

ITC number W14-02

Title of proposal: CEQA Actions: Rules to Implement Senate Bill 743

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			☐*Should the incentive for early filing be referred to in the rule regarding filing and service (rule 3.2222)?* Yes.	The committees have added an advisory committee comment to rule 3.2222 referencing the incentive for early filing.
			☐*Is the case management conference (CMC) set too early under the proposed rules (see rule 3.2226)? Should another 5 or 10 days be provided to make sure all parties have been served and can participate in the joint preparation of the CMC statement? If yes, where else in the process could time be shortened in order to try to meet the goal of resolution of the action within 270 days?* Due to budget reductions and the consolidation of courtrooms, caseloads have significantly increased thereby resulting in a backlog of matters to be set for hearing. Given the current caseloads and reduced staffing levels, CMC hearings are being scheduled beyond five months and sometimes close to 8 months. The calendars are so impacted that it will nearly impossible to set a CMC hearing within 30 days of filing.	See initial response to this commentator above.
			☐*Are there issues or items in addition to those set out in rule 3.2226(c) that should be included in the matters to be considered at the CMC*? All important issues appear to be covered.	The committee notes this comment and agrees.
			☐*Are there any additional topics that should be addressed in the proposed appellate rules for Sacramento arena and leadership projects rather than be governed by the general appellate rules?* No comment on this item.	

	Commentator	Position	Comment	Committee Response
			☐*Is the 5-day time period for filing the notice of appeal feasible? Should this time period be changed to 5 court days or some other period?* No comment on this item. ☐*Is there any way to address within these rules the issues that may arise in environmental leadership cases because the proposed time for filing a notice of appeal comes before the deadline for filing certain post-trial motions? Should an advisory committee comment be added referencing this? Should the time for filing the notice of appeal be extended to correspond with the deadline for filing motions to vacate or motions for new trial?* The deadline for **ruling** on motions to vacate or motions for new trial should correspond to the appeal filing date as it may make the appeal moot. With court resources being so short, it makes no sense to require the appellate process to be moving forward while potentially dispositive motions are still pending in the trial court.	Based on these and other comments, the committees considered modifying the proposal to make the time for filing a notice of appeal in leadership cases the same as the time set by statute for filing these motions —15 days after service of notice of entry of the judgment. However, the committees were concerned about the increase this change would cause in the time to disposition in leadership cases. Committee members also expressed the view that given the nature of CEQA proceedings, these post-trial motions are not likely to be filed in most leadership cases and, therefore, the potential complications associated with such motions should not be the basis for establishing a timeframe applicable to all leadership cases. In addition, there is case law suggesting that, at least with respect to motions for new trial, the filing of a notice of appeal does not divest the trial court of

	Commentator	Position	Comment	Committee Response
				jurisdiction to consider the motion (see *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 and *Weisenburg v. Molina* (1976) 58 Cal.App.3d 478). Finally, in the rare instance where a motion for new trial might be warranted, a cautious attorney can easily file a notice of intent to move for new trial before the time for appeal has expired. Given this and the committees' desire not to further decrease the possibility that leadership cases could be resolved within the 270-day statutory timeframe, the committees ultimately decided not to increase the proposed time to file a notice of appeal in these cases.
			The advisory committees also seek comments from courts on the following cost and implementation matter: ☐ *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.* Implementation of this change will require training multiple business office staff, courtroom staff, and staff attorneys in the new process. This will also require changes to our case management system which will involve programming time and the creation of a new hearing type and code, which is not tied to the other civil cases.	The committees thank the commentator for proving this information regarding operational impacts and training required.

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			In addition, this will require a change in the calendaring practices for our judicial officers as there is a significant backlog in the setting of matters. Finally, our court has no way to schedule a hearing based upon the filing of a reply document. The rule should either require a hearing to be set within a specified time period and work back from that date as to the filing of the papers, or the rule should direct the petitioner to contact the court upon the receipt of the reply whereupon the hearing will be set within (20) days of the request to set a hearing. [Five days is an insufficient amount of time for a judicial officer to be expected to prepare a CEQA case for trial. It should be at least a 20 day window to be prepared.] ☐*What costs will the trial courts incur in implementing the underlying statutes and these rules?* The cost is unknown at this time.	
			Some additional concerns: • Rule 3.2225- Requirement to lodge final administrative record with the court electronically- There should be an option to lodge a paper and electronic record with the court upon request.	The rules as circulated do authorize a court to discuss obtaining a paper version of the administrative record at the case management conference. However, in light of this and other comments received, the committees concluded the rule should be clarified by expressly authorizing such a request in the rule regarding the lodging of the administrative record. See proposed rule 3.2225(b).
			• Setting the hearing on petition within 80 days of the CMC: Given the backlog in calendar settings, motion/petition hearings	See initial response to commentator .

	Commentator	Position	Comment	Committee Response
			are being scheduled 6 to 12 months out. It will be very difficult to meet the requirement to hold the hearing within the proposed timeframe. • Appellate Rule 8.702(e) – Superior Court Clerk Duties- The proposed two days to serve documents listed is insufficient time. The proposal should specify court days and the time should be extended to at least 5 court days to allow time to gather the documents and record for transmittal. • General Comment: It will be extremely challenging for the trial court and appellate court to complete all proceedings within 270 days. The budget reductions has forced courts to close courtrooms and increase caseloads for judges, which has resulted in a significant backlog in setting matters timely. Calendars are already overset and we do not have the ability to add the proposed hearings in the expected timeline.	Based on this and other comments, the committees modified the proposal to provide that the superior court clerks has five court days to perform these functions. See initial response to commentator.
7.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Working Group	AM	General comments First, it is important to understand that the authors recognize that "these cases will be, by definition, about large and complex projects" (page 9). They will involve large and complex Administrative Records. These are complicated cases at best. The Administrative Record (AR) must be filed within 10 days of filing the petition, which filing is due within 30 days of the agency's decision. This is very aggressive will probably	The committees agree that the cases governed by these rules are likely to be complicated ones. The committees note that statute requires that, in projects covered by these rules, the Administrative Record be created as the environmental review is occurring, so that it will

	Commentator	Position	Comment	Committee Response
			rarely occur, so the Court will have to decide what to do when the agency says that the AR cannot be ready in time. There is nothing in the rules to address this. Automatic dismissal? That would not be fair to the petitioner, who is after all challenging the agency action. So what will the Court do? The entire expedited schedule will be destroyed at the very outset. The law currently allows service of a petition on real parties in interest up to 30 days after filing. But the new proposed rule requires that a CMC be also be held "within 30 days of the filing". The CMC is crucial because the parties must file a joint statement and the Court must address and decide what issues require briefing, page limits, briefing schedules for other motions, etc. All on or before the last day for service on real parties in interest. Obviously, this will be impossible in many cases, so the parties will say that they have not had time to meet, or review the AR, etc. The Court may have separate statements handed over to the Court at the hearing itself. And what if there are significant motions to be made and decided? The schedule is overly aggressive assuming that there will be no motions; and there is no time built in for the inevitable motion practice, so motions will get short shrift (or worse, will be heard along with the final hearing itself, out of necessity).	be completed at the time the Notice of Determination is issued. Thus it is unlikely that there will be the same kind of problem with delay in creating the record that occurs in many CEQA cases. However, the rules do expressly authorize the court to issue sanctions, including removal of the case from the expedited procedures, should the time frame not be met. See proposed rule 3.2221. The committees do not disagree that the proposed rules set out a very aggressive timeframe, which will be challenging for courts to comply with, and with no room for moving any deadlines if the 270-day goal is to be met. Unfortunately, that is the mandate the Legislature set for the council, and the committees could only work within that mandate, and could not provide additional time within the rules. In light of the statutory deadline or resolution of the subject proceedings within 270 days, the advisory committees actually considered shorter time frames for setting the CMC and for parties' filing briefs on the merits, in order to allow more time for the trial court to make its decision after the hearing. However, the committees ultimately concluded that the time frames in the proposed rules are already so short as to be unrealistic and declined to propose anything shorter. These cases will be, by definition, about large and complex projects. It would be a disservice to the parties and to the public to require any shorter time for the parties briefing or for the courts' decision-making process. The committees concluded that, in light of the legislative mandate, it is not possible to

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				allow for any longer time.
			After all of the above, the rules require a hearing on the matter within 10 days of the reply brief being filed. This means that the court attorneys will have one weekend and a few days to review the voluminous AR and 40-60 pages of legal arguments to prepare and present a memo to the trial judge who will have to digest it all in another few days. This might work if there are no other cases or calendars pending during that time. This means that the hearings will not be as meaningful as they should be. Even worse, the invitation to comment asks about shortening this to 5 calendar days (which would likely include an intervening weekend), which would be impossible. So hearings will necessarily be conducted without advance preparation.	In light of this comment and others received, the committees have decided not to increase the early filing incentive and so will not further reduce the time between reply brief and hearing. The committees have concluded, however, that the incentive as originally proposed is appropriate in order to attempt to meet the overall goal for resolution of an action under these rules, even though the incentive could result in only ten days between reply and hearing.
			On the administrative side, clerks will have to prepare a register of actions and transmit an electronic copy of the AR to the Court of Appeal within 2 court days; and reporters would have to prepare transcripts within 10 days. These requirements are burdensome to attorneys, clerks, and court reporters.	Based on this and other comments, the committees modified the proposal to provide that the superior court clerks has five court days to perform these functions.
			It is difficult to ascertain how this proposal will work in practice. There are too many points at which the strict deadlines will likely not be met —and very little guidance to the Court about how to handle those events, particularly since there are no other deadlines that can be	See initial response to commentator above.

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			shortened to make up for missed deadlines. The trial courts will be unduly pressured to comply with artificial and unrealistic deadlines. <u>Results in additional training, which requires the commitment of staff time and court resources</u> Additional training and procedures will be required to implement the proposal. However, the instances where the training and procedures will be utilized will be small. The reason is that the proposal only applies to a small number of cases. It only applies to what the statute refers to as "environmental leadership cases"; it does not apply to the remainder of CEQA actions. The courts will need to be ready to handle such cases, but that readiness probably will not be utilized very frequently, if at all. Courts will need to train staff, set up procedures, and make any changes to the case management system with regard to the following: 1. These cases must be identified immediately, as the time requirements on them is quite short; 2. It should be noted that these cases will be exempt from complex designation and any rules related to complex matters; 3. A case management conference must be held within 30 days of filing the Petition; 4. The briefing schedule for the Writ is set by the Rules; 5. The hearing on the writ petition must be held within 80 days of the case management	The committee thanks the commentator for providing this information regarding the training that will be needed to implement these rules.

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			conference (the Replies may be due only 5 days prior to the hearing, so that must be processed immediately); 6. The court must issue its decision within 30 days of the hearing and it must be in writing; 7. The Notice if Appeal must be filed 5 days after notice of entry (extended by 5 days when a new trial motion or motion to vacate is filed); 8. As to any appeal, no clerk's transcript on appeal is allowed, only an appendix; the Notice of Designating the Record must be filed with the Notice of Appeal; and, if the party wants a record of the oral proceedings, it must be by a reporter's transcript. 9. The reporter's transcript must be prepared within 10 days of notice from the court to prepare it; an appellant will have only 5 days to cure a default in making payment for the transcript; 10. The court clerk will have 2 days after the Notice of Appeal is filed, to transmit the required items to the parties and court of appeal. Suggested modifications Clarify proposed rule 8.702 (d)(2)(D) to indicate that it is the "reviewing court" that may impose the sanctions.	The committees have modified the proposal as suggested by the commentator.
			Amend proposed rule 3.2225(a) to state that the court may order that a paper copy be lodged with the court.	The rules as circulated do authorize a court to discuss obtaining a paper version of the administrative record at the case management conference. However, in light of this and other comments received, the committees concluded the rule should be clarified by expressly authorizing

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				such a request in the rule regarding the lodging of the administrative record. See proposed rule 3.2225(b).