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Appeals can be a minefield for those who don't regularly practice in the appellate courts. This series of short articles, provided by members of the Association's Appellate Courts Committee, will help you find your way. Although the articles focus primarily on California state court appeals, much of the guidance will apply in any appellate court.

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Petitions for Review in the California Supreme Court

By **Jeremy B. Rosen**

After the Court of Appeal issues any decision, a party disappointed with the result may file a petition for review in the California Supreme Court. This article summarizes the grounds and strategy for filing a petition for review, the deadlines for filing them, and the court's procedures for disposing of them.

Grounds for seeking review

A petition for review should not be viewed as an opportunity to re-argue your appeal. Unlike the Court of Appeal, which generally must hear the merits of any case, the Supreme Court has discretion to choose among the cases presented to it and to decide only those that raise issues of concern beyond the interests of the litigants who are directly involved. The Supreme Court grants review in the following circumstances:

- (1) When necessary to secure uniformity of decision or to settle an important question of law;
- (2) When the Court of Appeal lacked jurisdiction;
- (3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or
- (4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

(Cal. Rules of Court, rule 8.500(b).)

Most petitions for review implicate the first criterion.

Considerations for the petitioner

The odds of the Supreme Court granting a petition for review are very low—no better than 3 to

5 percent.

Here is a checklist of specific considerations when deciding whether to seek review:

- * Was the Court of Appeal opinion published? An unpublished opinion does not raise concerns about ensuring uniformity in the law because it is not citable as precedent.
- * Does the Court of Appeal opinion depart from prior opinions? Even an unpublished opinion can reflect a split of authority or confusion among the lower courts that must be resolved by the Supreme Court.
- * Will the petitioner be able to find support from amici curiae to help demonstrate the recurring nature and importance of a particular issue?
- * Does the underlying opinion provide a good vehicle to address an important legal issue?
- * Does the issue concern a newly enacted law that has caused—or very likely will cause—confusion and unnecessary litigation if the court does not step in, perhaps to clarify an ambiguity or to fill obvious gaps in how to implement the law?
- * Conversely, does the issue concern an old legal principle that is being applied in modern times to new circumstances that were not contemplated when the principle was first laid down?
- * Is the same issue already pending before the court? If so, petitions in similar cases may be accepted on a "grant and hold" basis (discussed below).
- * Has the issue been presented to the court on a number of prior occasions? If any of the justices have previously dissented from the denial of a petition for review in another case raising the same issue it may signal that the court will take up the issue in the right case.

Content of the petition

A petition for review must include a concise and non-argumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail. (Cal. Rules of Court, rule 8.504(b)(1).) The petition must then explain how the issues identified present a ground for review under rule 8.500(b). (Cal. Rules of Court, rule 8.504(b)(2).)

The petition must also state whether a petition for rehearing was filed in the Court of Appeal and how that court ruled, include a copy of the opinion or order being challenged showing the date it was entered, and must include a cover that sets forth the parties and designations just as they were listed on the briefs in the Court of Appeal. (Cal. Rules of Court, rule 8.504(b)(3)-(6).) Myriad other procedural rules apply; when in doubt about the meaning of a particular rule, a call to the clerk's office is a great way to get answers.

Deadlines, answers, and replies

A petition for review must be filed within 10 days after the Court of Appeal decision is final in that court. (Cal. Rules of Court, rule 8.500(e)(1).) Thus, petitioners need to be very careful to ascertain when the decision they wish to challenge is final. For example, a decision in a civil appeal is final 30 days after the filing of the opinion. (Cal. Rules of Court, rule 8.264(b)(1).) But, the summary denial of a writ petition is final immediately. (Cal. Rules of Court, rule 8.490(b)(1).)

Any answer to the petition is due 20 days after it is filed. (Cal. Rules of Court, rule 8.500(e)(4).) Any reply to the answer is due within 10 days of the filing of the answer. (Cal. Rules of Court, rule 8.500(e)(5).)

Disposition

The Supreme Court has 60 days to rule on a petition for review, although the court can extend the deadline by 30 days. (Cal. Rules of Court, rule 8.512(b)(1).) It requires the vote of at least four justices (out of seven) of the Supreme Court to grant review. (Cal. Rules of Court, rule 8.512(d)(1).) If review is denied, the order denying review is final immediately. (Cal. Rules of Court, rule 8.532(b)(2).)

If review is granted, the parties will then brief the case on the merits in the Supreme Court and the Supreme Court will issue an opinion after oral argument. (Cal. Rules of Court, rules 8.520, 8.524, 8.528.) The Supreme Court can accept the issues as presented in the petition, or can specify the issues to be briefed and decided. (Cal. Rules of Court, rule 8.516(a).)

The court also can order action in the matter deferred pending disposition of another related matter already before the court (a "grant-and-hold") or may transfer the case back to the Court of Appeal with instructions to conduct further proceedings, such as to entertain a summarily denied writ petition on the merits or to reconsider a decision in light of a recently decided Supreme Court opinion (a "grant-and-transfer"). (Cal. Rules of Court, rules 8.512(d)(2) & 8.528(d).)



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