

## Cal. Prac. Guide Civ. App. & Writs Ch. 13-B

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Jon B. Eisenberg; Additional Original Co-Authors: Ellis J. Horvitz and Howard B. Wiener

### Chapter 13. Review by California Supreme Court

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1. [13:35] **Preliminary Consideration—Should the Petition be Filed:** Recognizing that supreme court review is rarely granted (¶ 13:18), a petition should be filed only after carefully considering the likelihood of its success. At a minimum, the case should present *arguable* grounds for review—i.e., it should appear that review is *necessary* to decide important legal questions or secure uniformity in case law (¶ 13:1 ff., 13:8).

a. [13:36] **Caveat—preserving right to U.S. Supreme Court review:** United States Supreme Court review (certiorari) lies only from “final judgments or decrees rendered by the *highest court of a State*” (see 28 USC § 1257(a) (emphasis added)). Therefore, if a party might want to seek review in the U.S. Supreme Court, a petition for California Supreme Court review *must* be filed. [Banks v. California (1969) 395 US 708, 89 S.Ct. 1901 (per curiam); see also Jefferson v. City of Tarrant, Ala. (1997) 522 US 75, 77, 118 S.Ct. 481, 484—certiorari in Alabama case dismissed for “want of a final judgment” because Alabama Supreme Court’s decision was only interlocutory (no *final* state court judgment resolving all issues)]

⇒ [13:37] **PRACTICE POINTERS:** Consider the following points in deciding whether to file a petition:

- Is there an issue of “institutional” (public policy) significance likely to affect the rights of other parties in other cases? (See ¶ 13:1.)
- Does the court of appeal’s decision conflict with another published court of appeal decision? (See ¶ 13:1.)
- Is there something about the case that is likely to kindle the court’s interest? (See ¶ 13:59.)
- Is this case a good “vehicle” for supreme court review? (E.g., Is the factual record fully developed? Is the issue squarely presented?)
- Does the case present an issue already pending before the supreme court in another case, so that there is a likelihood of obtaining review on a “grant and hold” basis? (See ¶ 13:125.)
- Is there some reason why the client might want the court of appeal’s opinion *depublished* absent a grant of review? (See ¶ 13:32 ff.)

If there simply is no arguable issue supporting a grant of review, the petition should not be filed and you should advise your client accordingly. (See generally, [CRPC 1.16](#) (eff. 11/1/18) & 3.1 (eff. 11/1/18) (formerly [CRPC 3-200 & 3-700](#)), regarding ethical obligation not to pursue unwarranted litigation or appeals.) Also keep in mind that your *professional reputation* with the court is on the line.

b. [13:37.1] **Petition by each party desiring supreme court review:** Each party interested in obtaining supreme court review should file either a separate petition for review or join in another party’s petition. Failure to do so might result in a determination that the party is not properly before the supreme court. [See J. Baxter concur.opn., [Woods v. Young](#) (1991) 53 C3d 315, 333, 279 CR 613, 623-624]

2. [13:38] **Time for Filing Petition:** Any party can file a petition for review, but there is a narrow time window: The petition must be served and *filed* within *10 days after the court of appeal’s decision becomes final as to that court*. [[CRC 8.500\(e\)\(1\)](#); and see ¶ 13:44 on place for filing]

The court of appeal’s decision ordinarily becomes final as to that court *30 days* after the decision is filed by the appellate court clerk/executive officer; see ¶ 11:190 ff., 15:236 ff. (A *modification* of the *judgment* by the appellate court commences a new finality period; see ¶ 11:200.) In effect then, the petition must be filed between the 31st and 40th day after filing of the court of appeal opinion (see ¶ 13:41.1).

A few types of decisions by the court of appeal become final immediately upon filing, such as summary denial of a writ petition (¶ 11:194), denial of a petition for writ of supersedeas, and voluntary dismissal of an appeal (¶ 11:194.1). For those decisions, the 10-day period to file a petition for supreme court review commences to run *immediately* upon filing of the decision by the appellate court clerk/executive officer.

⇒ [13:39] **PRACTICE POINTER:** [CRC 8.264\(b\)\(2\)](#) specifies the *only* decisions by the court of appeal that are final immediately upon filing. Consequently, all other decisions, including interlocutory decisions on contested motions in the court of appeal, are *not* final upon filing ... and the 10-day period for filing a petition for supreme court review thus commences to run after a 30-day period for finality in the court of appeal. [See [CRC 8.500](#), Adv. Comm. Comment]

a. [13:40] **Date of “filing”:** The petition must be “filed” no later than the 10-day post-finality deadline. The date of “filing” for this purpose is the date the petition is *received by the court clerk*. [[CRC 8.25\(b\)\(1\)](#)] However, a petition is *deemed* timely filed if the filing deadline has not expired on the date of either its *mailing by priority or express mail* or its *delivery to a common carrier promising overnight delivery*. (The date of mailing or overnight delivery is the date shown on the postmark or postal receipt or on the common carrier’s receipt.) [[CRC 8.25\(b\)\(3\)](#)]

(1) [13:40.1] **Special “prison delivery rule”:** A special rule applies when the petition (or other document) is submitted for filing by an inmate or patient in a custodial institution: If the clerk receives the petition after the filing period expires but the envelope shows it was *mailed or delivered to custodial officials for mailing within the period for filing the*

*petition*, the petition is *deemed timely*. [CRC 8.25(b)(5)]

b. [13:41] **No extension of time:** The time for filing the petition *cannot be extended* (although the Chief Justice may grant relief from default if the time for the court to grant review on its own motion has not expired; ¶ 13:42). [CRC 8.500(e)(2)] Thus, the extensions prescribed by CCP § 1013 for “service” by mail, fax, Express Mail or other overnight delivery method are inapplicable.

(1) [13:41.1] **Even if 30th day for court of appeal finality falls on holiday:** The rule extending the *court of appeal’s jurisdiction* when the 30th day falls on a weekend, holiday or other day the office of the clerk/executive officer is closed (CRC 8.264(c)(1), ¶ 11:191) does *not* extend the post-finality 10-day period for filing a petition for review. The 10-day period begins to run from the 30th day following filing of the court of appeal’s decision, regardless of the day of the week on which the 30th day falls. [CRC 8.500(e)(1)]

(2) [13:41.2] **Exception—extension when 10th day for filing petition falls on holiday:** But if the last day to *file the petition for review* (i.e., the 10th day after finality in the court of appeal) falls on a legal holiday (including Saturdays and Sundays), the deadline is extended to the *next day* that is *not* a holiday. [CCP §§ 12, 12a, 12b; CRC 8.60(a)—“The Code of Civil Procedure governs computing or extending the time to do any act required or permitted under these rules”; see ¶ 3:31]

c. [13:42] **Relief from default:** On the other hand, the Chief Justice has discretion to grant relief from a “default” for failure to file a timely petition (in effect allowing an extended time to file). However, such relief is authorized only if the time within which the court could order review on its own motion (¶ 13:23) has not expired. [CRC 8.500(e)(2)]

d. [13:43] **Effect of presenting petition too early:** The finality date as to the court of appeal commences the 10-day time period for petitioning for review. If a petition is presented *too early*—i.e., *before* the court of appeal’s decision becomes final as to that court—the supreme court clerk/executive officer must accept the petition and then file it on the day after finality. [CRC 8.500(e)(3)]

(Thus, when a petition is presented too early, the time to file an *answer* (¶ 13:87) commences to run on the day *after* the finality date.)

### 3. Filing and Service

#### a. Filing with supreme court

(1) [13:44] **Mandatory e-filing:** *Electronic filing* is now *mandatory* for all documents filed before the supreme court issues a decision to grant or deny review. This includes petitions for review as well as answers and replies on a petition for review. [Sup.Ct. E-filing R. 3(a)(1)]

*Exception:* E-filing is *voluntary* (instead of mandatory) for amicus curiae letters in support of or opposition to review (see ¶ 13:104 ff.) and requests for depublication and related documents (see ¶ 11:180.4 ff.). [Sup.Ct. E-filing R. 3(a)(1)(G)]

(2) [13:45] **Excuse from e-filing:** Upon proper motion, any party may be excused from e-filing all documents or a particular document or documents on grounds of undue hardship, significant prejudice, or infeasibility of converting a particular document by scanning, imaging, or another means. [Sup.Ct. E-filing R. 6]

(3) [13:46] **Exemption for self-represented parties:** A self-represented party is exempt from e-filing requirements but may elect to follow them. [CRC 8.71(b)]

#### (4) Procedures for filing

(a) [13:46.1] **Registration for e-filing:** As in the courts of appeal, each e-filer must register for e-filing, obtain a user ID and password for access to the TrueFiling system, and provide a valid credit card for payment of filing fees. [Sup.Ct. E-filing R. 7(a); see ¶ 9:263a]

(b) [13:46.2] **E-filing format:** An e-filing must be in text-searchable PDF format (or other searchable format approved by the court), maintaining original document formatting. If a document is possessed only in paper format, it must be converted to an electronic document by scanning or other means. [Sup.Ct. E-filing R. 10(a)] All pages of the filing, including the tables and text, must be consecutively numbered using only Arabic numerals. [Sup.Ct. E-filing R. 10(b); see ¶ 9:226] Each heading, subheading and the first page of any component to the document (e.g., tables, petition, points and authorities, etc.) must be electronically bookmarked. [Sup.Ct. E-filing R. 10(a)(3); see ¶ 9:263b]

(c) [13:46.3] **Signatures unnecessary:** Use of a registered user ID and password for filing via the TrueFiling system “is the equivalent of placing the registered user’s electronic signature on the document.” [Sup.Ct. E-filing R. 8] Thus, signatures on e-filed documents are unnecessary.

(d) [13:46.4] **Submission of paper copies:** An e-filer must also submit to the supreme court (by personal delivery or express mail) *one unbound paper copy* of the document, within *two court days* after it is e-filed. (If the filing requests an immediate stay, the paper copy must be delivered to the court by close of business the next court day.) [Sup.Ct. E-filing R. 5(a)]

Where a party is excused or exempted from e-filing requirements (¶ 13:45 ff.), filings in paper form should include an *original and 13 paper copies*. [See CRC 8.44(a)(1)]

(5) [13:47] **Filing fees:** There are fees totaling \$710 for filing a petition for review in a civil case after decision by the court of appeal. The fees consist of a \$540 filing fee (Gov.C. § 68927(a)), plus an “additional fee” of \$170 for deposit in the Appellate Court Trust Fund (Gov.C. §§ 68926.1(b), 68933). The fees are paid by credit card when the petition is e-filed (¶ 13:46.1). (For self-represented litigants who do not e-file (¶ 13:46), the fees must accompany the petition at the time of the paper filing (CRC 8.25(c)(1) & (2)(C)); and should be remitted by check made payable to the clerk of the supreme court.)

(a) [13:47.1] **Limitation—no filing fee in juvenile, parental termination, or LPS conservatorship cases:** A filing fee may *not* be charged for petitions for review in juvenile cases or proceedings to declare a minor free from parental custody or control, or in conservatorship proceedings under Welf. & Inst.C. § 5000 et seq. [Gov.C. § 68927(c)]

(b) [13:47.2] **Waiver of filing fees for indigent petitioners:** Indigent petitioners may be excused from paying the supreme court filing fees, on the same basis as a waiver of fees in the court of appeal (*see* ¶ 3:154 ff.), by submitting a

waiver application (*see* ¶ 3:156) in the supreme court along with the petition. [CRC 8.25(c)(1), 8.26(b)(3)(A)] (The Judicial Council “Information Sheet on Waiver of Appellate Court Fees” (APP-015-INFO) is available on the California Courts website ([www.courts.ca.gov](http://www.courts.ca.gov)).

[13:47.3 - 13:47.4] *Reserved.*

(6) [13:47.5] **Vendor fees:** In addition to the court’s filing fees (¶ 13:46.5 ¶ 13:46.5), TrueFiling will charge *vendor fees* for *each electronic filing*. [Sup.Ct. E-filing R. 12(b)] Parties with fee waivers and government officers and entities are exempt from vendor fees. [Sup.Ct. E-filing R. 12(c)]

[13:47.6 - 13:47.9] *Reserved.*

(7) [13:47.10] **Failed transmission due to trouble with court’s e-filing system:** The same rule for failed transmission of an e-filed document due to trouble with the court e-filing system in the court of appeal applies to e-filing in the supreme court. [Sup.Ct. E-filing R. 13] Thus, if a filer fails to meet a filing deadline because of a failure in the supreme court’s e-filing system, the filer may file the document electronically or in paper format “as soon thereafter as practicable,” accompanied by a motion to accept the document as timely filed, and, “for good cause shown,” the court may order the document filed nunc pro tunc to the date of the original attempted electronic transmission. [CRC 8.77(d)]

## b. Service



### (1) Who is served

(a) [13:48] **All civil appeals:** In all civil appeals, a copy of the petition must be served on:

- *Counsel for each party represented by separate counsel, each unrepresented party, and any other person or entity as required by statute or court rule* (CRC 8.25(a)(1));
- *The clerk/executive officer of the court of appeal* (CRC 8.500(f)(1)); and
- *The superior court clerk* (CRC 8.500(f)(1)).

(b) [13:48.1] **Certain public entity cases:** If one of the parties is the *state*, a *state officer*, or a *county whom the Attorney General is empowered to represent*, and the petition is filed on behalf of that party by someone *other than* the Attorney General, a copy of the petition must be served on the *Attorney General*. [CRC 8.29(c)(2), 8.500(f)(2)]

(c) [13:48.2] **Constitutionality cases:** The Attorney General must also be served with a copy of a petition for review that questions the constitutionality of a state statute. [CRC 8.29(c)(1), 8.500(f)(2)]

(d) [13:48.3] **Unfair competition, false advertising and false claims cases:** In *any unfair competition proceeding* under  [Bus. & Prof.C. § 17200 et seq.](#) or a *false advertising proceeding* under  [Bus. & Prof.C. § 17500 et seq.](#), the petition must be served on the Attorney General and the district attorney of the county in which the superior court action was filed. Such service must occur within three days of filing the petition (unless the time for service is extended for good cause). [[Bus. & Prof.C. §§ 17209, 17536.5](#)]

Similarly, in a false claims proceeding under  [Gov.C. § 12650 et seq.](#), the petition must be served on the

Attorney General (directed to the attention of the False Claims Section in Sacramento) within three days of filing (unless the time for service is extended for good cause). [Gov.C. § 12656; and see ¶ 3:164.6]

(e) [13:48.4] **Civil rights cases:** In a case filed under various California civil rights statutes—including the Unruh Civil Rights Act (Civ.C. § 51 et seq.)—the petition must also be served on the State Solicitor General at the Office of the Attorney General. [Civ.C. §§ 51.1, 55.2; see also Gov.C. § 4461; Health & Saf.C. §§ 19954.5, 19959.5]

(2) [13:48.5] **Electronic service:** A party may agree to accept e-service in the same manner as agreement to e-service in the court of appeal (see ¶ 9:268.10). Additionally, the party is *deemed* to have agreed to e-service if he or she agreed to e-service in the court of appeal. [Sup.Ct. E-filing R. 9(a)]

(3) [13:49] **Proof of service:** A *proof of service*, naming each party represented by each attorney served and showing service on each person or entity required to be served, must accompany the petition filed with the supreme court. [CRC 8.25(a)(2)]

A petition with a defective proof of service will be filed, but if a proper proof of service is not filed within five days after the clerk/executive officer gives notice of the defect, the court may *strike the petition* “or impose a lesser sanction.” [CRC 8.500(f)(3)]

4. [13:50] **Format of Petition:** A petition for review must be drafted in conformity with the specifications prescribed by CRC 8.504 (see ¶ 13:51 ff.).

• **FORM:** Sample Petition for Supreme Court Review, see *Form 13:A*.

a. [13:51] **Requirements for briefs generally apply:** Except as otherwise provided by CRC 8.504, a petition for review must comply with the relevant provisions of CRC 8.204 prescribing the format for briefs. [CRC 8.504(a)]

Essentially, this rule means that petitions for review must contain appropriate *headings*, a *table of contents*, a *table of authorities*, and appropriate *references to the record* (CRC 8.204(a)(1)); and must be *produced* by a method authorized by CRC 8.204(b). See *detailed discussion in Ch. 9*.

b. [13:52] **Similar to appellate brief:** Because the petition must comply with the relevant provisions of CRC 8.204 prescribing the format for briefs in the court of appeal (¶ 13:51), the format of the petition will resemble that of an appellate brief. The petition comprises a single document setting forth the request for review and all supporting points, authorities and arguments.

In addition, CRC 8.504(e) specifies the following regarding attachments and incorporation by reference:

(1) [13:53] **Generally, no incorporation by reference:** No incorporation by reference is permitted, *except* for:

- a reference to a petition filed by another party in the same case; or
- a reference to a petition filed in another case that raises the same or similar issues and in which a petition for review is pending or has been granted. [CRC 8.504(e)(3)]

(2) [13:54] **Attachments:** No attachments to the petition are permitted, *except* for:

- the opinion or order on which the petitioner seeks review (CRC 8.504(e)(1)(A));
- exhibits or orders by the trial court or court of appeal that the petitioner considers “unusually significant” (CRC 8.504(e)(1)(B)); and
- copies of relevant out-of-state statutes, local, state or federal regulations or rules, and similar citable materials that are not readily accessible (CRC 8.504(e)(1)(C)), and that do not collectively exceed *10 pages* (CRC 8.504(e)(2); but see CRC 8.504(d)(4)—longer attachments permitted by Chief Justice on good cause application).



**Comment:** In addition, [CRC 8.504\(e\)\(1\)\(D\)](#) provides for the attachment of an opinion “required to be attached” under [CRC 8.1115\(c\)](#) (certain citable unpublished opinions). However, [Rule 8.1115\(c\)](#) has been amended; it no longer requires the “attachment” of those opinions, but only that they be “furnished” to the court or a party *on request* of the court or a party. [[CRC 8.1115\(c\)](#)]

c. [13:55] **Statement of issues presented for review:** The petition must begin by stating the *issues presented for review*. [[CRC 8.504\(b\)\(1\)](#)]

(1) [13:56] **Tenor of statement:** The statement of issues must be “concise” and “nonargumentative,” framing the issues “in terms of the facts of the case but *without unnecessary detail*.” [[CRC 8.504\(b\)\(1\)](#) (emphasis added)]

(2) [13:57] **Major issues only:** Subissues within an issue need not be stated. The supreme court may decide any issues raised in the statement of issues “or fairly included in those issues.” [[CRC 8.516\(b\)\(1\)](#)]

(3) [13:58] **Waiver of omitted issues:** Because [CRC 8.516\(b\)\(1\)](#) authorizes the supreme court to decide “any issues that are *raised or fairly included* in the petition,” it is possible for a petitioner to *waive* issues by omitting them from the petition. Although the court has discretion to make exceptions ([CRC 8.516\(b\)\(2\)](#)), it ordinarily will not consider issues omitted from the statement. [See [Jimenez v. Sup.Ct. \(T.M. Cobb Co.\) \(2002\) 29 C4th 473, 481, 127 CR2d 614, 620](#)—argument not considered because not raised in trial court, court of appeal or petitions for review; [PLCM Group v. Drexler \(2000\) 22 C4th 1084, 1094, 95 CR2d 198, 205, fn. 3](#)—“The point, which was not raised below or in the petition for review by this court, was waived”; [MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc. \(2005\) 36 C4th 412, 421, 30 CR3d 755, 760, fn. 4](#)—issue not addressed because not raised in petition for review and not given any “meaningful discussion” in opening and reply briefs]

⇒ [13:59] **PRACTICE POINTERS:** The statement of issues can effectively “make or break” the likelihood of obtaining supreme court review. Accordingly, this section of the petition requires a great deal of thought and careful drafting.

- As with discussion headings in briefs ([¶ 9:106 ff.](#)), the statement of issues should be *short, concise, easy-to-understand* and *interesting*. Avoid long, convoluted sentences. If necessary, use more than one sentence.
- Be selective about the issues. It is rarely helpful to raise more than two issues (although again, in exceptional cases, several major issues may have to be raised so as not to risk a waiver on review, [¶ 13:58](#)). A petition with too many issues is likely to suggest to the court that *none* of them are very compelling.
- Strive to write the statement in a manner that suggests the issue is one of *broad application*; and attempt to convey a sense of *importance*. Avoid incorporating too much detail about your particular case, as this might give the impression that the issue is unique and not likely to recur (thus diminishing the chances for review). If there are special reasons why the case is a particularly appropriate “vehicle” for supreme court review (e.g., an especially well-developed factual record that fully presents the legal issue), state them. And do *not argue* points in the statement of issues; argument comes later in the petition.
- Finally, use a style that is likely to *grab the justices’ attention*. If the statement of issues is uninteresting, the reader might be inclined to overlook compelling arguments made in the balance of the petition.

d. [13:60] **Explanation of ground for review:** The petition must “explain how the case presents a ground for review.” [[CRC 8.504\(b\)\(2\)](#); see discussion of grounds for review at [¶ 13:7 ff.](#)]

e. [13:61] **Statement regarding petition for rehearing in court of appeal:** If a petition for rehearing could have been filed in the court of appeal (i.e., the court of appeal’s decision was not final immediately upon filing, see [¶ 12:10 ff.](#)), the petition for review must state *whether* a petition for rehearing was filed and, if so, *how the court ruled* on the rehearing petition. [[CRC 8.504\(b\)\(3\)](#)]

f. [13:62] **Maximum 8,400 words:** The petition cannot exceed 8,400 words, including footnotes (but see ¶ 13:65 re typewritten petitions). [CRC 8.504(d)(1)]

[13:63] *Reserved.*

(1) [13:64] **Certificate of word count:** The petition must include a “certificate” by appellate counsel (or an unrepresented party) stating the number of words in the petition. The person certifying the word count “may rely on the word count of the computer program used to prepare the document.” [CRC 8.504(d)(1)]

(2) [13:65] **30-page limit for typewritten petition:** A petition produced on a typewriter (ordinarily permitted only for unrepresented parties proceeding in forma pauperis, see ¶ 9:216) cannot exceed 30 pages. [CRC 8.504(d)(2)]

(3) [13:66] **Material excluded from word count limit:** The attached court of appeal opinion (¶ 13:70), the tables of contents and authorities, the certificate of word count (¶ 13:64), the information required for the petition’s cover (¶ 13:69), any signature block, and any permitted attachment (¶ 13:54), do *not* count against the maximum word count limit. [CRC 8.504(d)(3)]

(Excluded “signature blocks” include not only the signature but also the printed names, titles and affiliations of any attorneys filing or joining in the petition that may accompany the signature. See CRC 8.504(d), Adv. Comm. Comment.)

(4) [13:67] **Court permission to exceed word count limit:** Upon written application and for good cause, the Chief Justice may permit a party to file a petition exceeding the prescribed word count limit. [CRC 8.504(d)(4)]

⇒ [13:68] **PRACTICE POINTER:** A request to exceed the normal word count limit is rarely justified. Indeed, an excessively long petition is likely to lose the court’s attention, increasing the likelihood of a denial of review despite compelling arguments for granting review. As with brief-writing, strive to keep your petition succinct and within the allowable limit. Usually, careful editing to strike repetitive and unnecessary verbiage will bring a brief within the word count limit.

g. [13:69] **Cover of petition:** Petitions for review filed in paper form (see ¶ 13:46.4) must be bound in covers in the same manner as briefs. Covers must contain the same information as required for brief covers (see ¶ 9:240 ff.). [CRC 8.204(b)(10), 8.504(a)] The title of the case and designation of the parties must be identical to that in the court of appeal’s opinion or order. [CRC 8.504(b)(6)]

Also, when filed in paper form, the *color* of the cover must be *white*. (However, petitions with nonconforming covers will be accepted for filing unless the attorney or party has committed repeated violations of this Rule.) [CRC 8.40(b)(1) & (3)]

Plastic or acetate overlays should *not* be used (see ¶ 9:244).

h. [13:70] **Mandatory attachment of court of appeal opinion and any modification or publication order:** If the petition seeks review of a court of appeal opinion, the original petition and each copy filed in the supreme court *must* include a copy of the opinion showing its filing date, bound at the back of the petition (or *attached* if the petition is not filed in paper form). The same rule of mandatory attachment applies for any order modifying the opinion or directing its publication. [CRC 8.504(b)(4)] (The attachments need not be included in the service copies.)

i. [13:71] **Mandatory attachment of court of appeal order:** Likewise, if the petition seeks review of a court of appeal *order* (rather than an opinion), the original petition and each copy filed in the supreme court *must* include a copy of the order showing the date it was entered, bound at the back of the petition (or *attached* if the petition is not filed in paper form). [CRC 8.504(b)(5)]

j. [13:72] **Drafting tips and strategies:** Petitions for review should be drafted in a style similar to that used for appellate briefs (*Ch. 9*). But the central focus is not the same: Whereas the purpose of an appellate brief is to demonstrate trial court error, the primary objective of a petition for review is to convince the court that the case presents important legal questions warranting “institutional” review (not merely that the court of appeal erred). In other words, the first hurdle is to persuade the court to *grant review*; convincing it to change the result on the merits comes later, only *if* review is granted.

These general guidelines should be followed:

(1) [13:73] **Demonstrate and emphasize appropriate grounds for review:** The primary goal is to show that review is *necessary to decide important legal questions or secure uniformity in case law* (§ 13:1, 13:8). The petition should *not* attempt to persuade the justices that the court of appeal wrongly decided the case or committed some error and that your client “should have won” (§ 13:61). In fact, it is not uncommon for the supreme court to deny review because of the absence of the necessary grounds *even though it thinks the court of appeal was “wrong”!* A petition focusing solely on appellate court error will at best secure depublication of a published opinion, not supreme court review (although depublication may itself be an independent goal; § 13:32.1).

⇒ [13:73.1] **PRACTICE POINTERS:** It may not be enough to show an important legal question. Sometimes the supreme court will wait for an issue to be debated thoroughly—or “percolate”—in the courts of appeal before review is granted, or wait for a case that presents the best “vehicle” for supreme court review. Whenever possible, a petition for review should demonstrate that an issue has indeed “percolated”—e.g., through conflicting decisions on point—and that the case is a good “vehicle” for reviewing the issue (because of a well-developed factual record, etc.).

If you assert that an issue affects an entire industry statewide, it may be helpful to back up the claim by soliciting amicus curiae letters in support of review (§ 13:104 ff.).

A petition for review is especially likely to be granted if it raises an issue already pending in the supreme court or so closely related to an already-pending issue as to indicate that both issues should be decided in order to clarify the law in a particular area. (However, if the similarity is only superficial, your case may be held in the supreme court for a substantial period of time without your “core” issues being decided by the case already pending.) Thus, counsel *must* become familiar with the issues currently pending before the court.

(2) [13:74] **Focus on one or two issues:** Although the appeal may have involved multiple issues, it is rarely if ever advisable (or appropriate) to raise all of those issues in a petition for review. If at all possible, confine the petition to the one or two most *compelling* issues. Few cases present multiple grounds for review; and the assertion of multiple issues suggests mere disgruntlement with the court of appeal’s decision, which itself is *not* a ground for review. (*Also see* § 13:59.)

(3) [13:75] **Concentrate on brevity:** Edit and re-edit to make your petition as *short* and *concise* as possible. The supreme court receives several thousand petitions annually and simply does not have the time to “mull over” excessively long, poorly-written documents. An overly verbose, repetitive petition is likely to be given short shrift; indeed, the reader may lose interest and decide against you before getting to your most compelling arguments. (Some of the best and most effective petitions for review are under 10 pages.) Reserve exhaustive discussions for a new brief on the merits if review is granted.

(4) [13:76] **Make the case look interesting:** Whereas review in the court of appeal is a matter of right, supreme court review is entirely discretionary. No matter how important the case, the court is not obligated to grant review. Thus, an effective petition should be written in a manner that both shows the justices they *ought* to grant review *and* makes them *want* to grant review. In other words, your petition should *grab the court's attention*.

Strive to captivate the court's interest *within the first few pages* of the petition. A carefully drafted statement of issues can go a long way toward achieving this goal. Frame the issue (or issues) clearly and discretely, and in a manner that shows its "institutional" importance; if appropriate, demonstrate conflict on the issue among the courts of appeal (*see* ¶ 13:55 ff.).

(5) [13:77] **Sensibly organize the petition:** An effective petition must also be sensibly organized. It should be arranged into the following discrete components:

(a) [13:78] **Tables:** A *table of contents* and *table of authorities* (*see* ¶ 9:104 ff., 9:110 ff.).

(b) [13:79] **Issues:** A *statement of the issue(s)* presented for review (¶ 13:55 ff.).

(c) [13:80] **Introduction:** A *brief introduction*.

The introductory section should give a brief overview of the case, including the nature of the dispute, the holding of the court of appeal, the grounds for review, any public policy considerations, and any practical implications of the court of appeal's opinion (e.g., pervasive and adverse consequences upon the portion of the public interested in the issue). The primary purpose is to put the balance of the petition in context; hence, the introduction should be kept *short* (no more than one to three pages) or it will lose the reader's interest and defeat its purpose.

(Some appellate practitioners believe that the introduction or statement why review should be granted is the *single most important part* of the petition, usually more important than the statement of issues.)

(d) [13:81] **Facts:** A *statement of facts*.

Keep the factual summary to the bare minimum. Provide only those facts essential to put the issues in context. Indeed, if the salient facts can be woven into the introductory section (¶ 13:80), a separate statement of facts is unnecessary.

Similarly, a bare bones procedural history of the case should be included but may be integrated into the introductory section or the separate statement of facts.

(e) [13:82] **Discussion:** A complete argument in support of the petition (¶ 13:60 ff.).

Confine your discussion to points elaborating on the issue(s) and grounds for review identified at the outset of the petition. *Brevity* is crucial here. Resist the temptation to lift arguments directly from your appellate brief; often, material in the discussion portion of the appellate brief does not address the supreme court function of "institutional" review (¶ 13:1 ff., 13:8) and, in any event, is too long and detailed for the petition.

(f) [13:83] **Conclusion:** Close with a very *short* conclusion recapping the issue(s) presented and the *necessity* for granting review.

(g) [13:83.1] **Certificate of word count:** Attach the certificate of word count (¶ 13:64).

(h) [13:83.2] **Appellate opinion:** Finally, attach a *copy of the court of appeal opinion* and any modification or publication order (§ 13:70).

k. [13:84] **Accompanying motion for judicial notice?** The Rules of Court do not expressly authorize the filing of a motion for judicial notice (§ 5:160 ff.) in connection with a petition for review, nor do they prohibit it; the supreme court has occasionally granted such motions.

## 5. Answer to Petition

a. [13:85] **Optional:** An answer to a petition for review “may” be filed. [CRC 8.500(a)(2)] Technically, therefore, an answer is simply *optional*.

⇒ [13:86] **PRACTICE POINTER:** Many appellate specialists believe an answer should *always* be filed except in those extraordinary cases where the petition is so weak or poorly written that its denial is a virtual certainty.

In practice, however, answers frequently are not filed, and some court staff feel that they are seldom useful. An answer is likely to be most productive when it addresses the supreme court’s unique concerns by showing why there are *no grounds* for review (see § 13:98).

b. [13:87] **Time for filing:** Any answer must be served and filed within *20 days after the petition for review is filed*. [CRC 8.500(e)(4)]

(Unlike the petition, the time for filing an answer can be extended upon application to the Chief Justice. See CRC 8.500, Adv. Comm. Comment.)

(1) [13:87.1] **Commencement of 20-day period:** The 20-day period runs from the date the petition is *received by the court clerk*. [See CRC 8.25(b); § 13:40]

(2) [13:87.2] **Calculating timeliness:** The answer is timely so long as it is (a) *received by the clerk* as of the 20th day or (b) *deemed filed* as of the 20th day under the CRC 8.25(b)(3) priority/express mail or overnight common carrier delivery rules (§ 13:40).

[13:88] **Reserved.**

c. [13:89] **Filing and service:** The service and filing rules are the same as those governing the petition for review (§ 13:44 ff.), except that the answer need not be served on the court of appeal or superior court (although it is nonetheless good practice to do so).

(1) [13:89.1] **Filing fee:** Except when the answer is not the filing party’s first document filed in the supreme court (see below), the answer must be accompanied by a *\$390 filing fee* or an application for waiver of court fees under CRC 8.26 (§ 3:154 ff.). [Gov.C. § 68927(b); CRC 8.25(c)(1), (2)(D)(vi)] The fee should be remitted by check made payable to the

clerk of the supreme court.

In the rare event that the party files a document in the supreme court *before* filing an answer to a petition for review, the filing fee must accompany that prior document rather than the subsequent answer. [See [Gov.C. § 68927\(b\)](#)—fee imposed for “a party other than petitioner filing its first document in a civil case in the Supreme Court after a decision in a court of appeal”; [CRC 8.25\(c\)\(2\)\(D\)](#)]

#### d. Format requirements

(1) [13:90] **Petition rules apply:** Generally, an answer must be prepared in accordance with the same rules governing the format of the petition ([CRC 8.500\(a\)](#)):

(a) [13:91] **Conformity with briefing rules:** The answer must conform to the [CRC 8.204](#) format requirements for briefs ([¶ 13:51](#)). [[CRC 8.500\(a\)](#)]

(b) [13:92] **Same restrictions as petition:** The answer is subject to the [CRC 8.504](#) restrictions on incorporation by reference and attachments ([¶ 13:53 ff.](#)). [[CRC 8.504\(e\)](#)]

(2) [13:93] **Statement of additional issues:** An answering party can request the court to consider *additional issues* (not raised in the petition) if review is granted. [[CRC 8.500\(a\)\(2\)](#)]

Such a request must be accompanied by a statement of the additional issues, in the same manner as the petition’s statement of issues (*see* [¶ 13:55 ff.](#)). [[CRC 8.504\(c\)](#)]

(a) [13:94] **How presented:** A statement of additional issues, like the petition’s statement of issues, must be “a concise, nonargumentative statement” framed “in terms of the facts of the case but without unnecessary detail.” [[CRC 8.504\(c\)](#)]

(b) [13:95] **Compare—independent petition for review:** If a party desires review regardless of the ruling on another party’s petition for review, a *separate petition for review* (rather than an answer) must be filed within the 10-day post-finality period ([¶ 13:38](#)).

(3) [13:96] **Length of answer; certificate of word count:** Answers are subject to the same length limit applicable to petitions: i.e., no more than *8,400 words, including footnotes*, exclusive of the tables of contents and authorities, certificate of word count, cover information, and signature block, and permitted attachments; and a certificate of word count must be attached ([¶ 13:62 ff.](#)). Longer answers may be filed only with permission of the Chief Justice ([¶ 13:67](#)). [[CRC 8.504\(d\)](#)]

(A typewritten answer by an unrepresented party proceeding in forma pauperis is limited to a maximum 30 pages. [CRC 8.504\(d\)\(2\).](#))

(4) [13:97] **Cover rules:** Like petitions for review, answers filed in *paper form* (*see* [¶ 13:46.4](#)) must be bound in covers in the same manner as briefs. The cover must set forth the same information required for brief covers (*see* [¶ 13:69](#)). The cover should also include the *number* assigned to the petition by the supreme court; and the attorney information should include each counsel’s *email* address (*see* [¶ 13:69.1](#) [¶ 13:69.1](#)).

When filed in paper form, the *color* of the cover must be *blue*. [CRC 8.40(b)(1)]

(5) [13:98] **Style and strategy:** Although it should be written in a style similar to an appellate brief (§ 9:80 *ff.*), the central focus of an answer is to convince the supreme court *not* to grant review. It is at least as important to show there are *no grounds* for review (i.e., that review is not necessary to decide important legal questions or secure uniformity of decisional law) as to show that the court of appeal's decision was correct.

A good answer should be like a "stifled yawn." It should persuade the court to *lose interest* in the case.

• **FORM:** Sample Answer to Petition for Supreme Court Review, *see Form 13:B*.



[13:98.1 - 13:98.4] *Reserved.*

- e. [13:98.5] **Combined answer with permission:** The Rules of Court do not prescribe any particular procedure for one party to file a single answer responding to separate petitions for review, but the Cal. Supreme Court clerk's office has taken the position that permission of the Chief Justice is required to file such a combined answer. Thus, a combined answer should be accompanied by an application for permission to file it.
6. [13:99] **Reply:** The petitioner may file a reply to the answer. [CRC 8.500(a)(3)]
- a. [13:100] **Time for filing:** Any reply must be served and filed within *10 days after the answer is filed*. [CRC 8.500(e)(5)]  
(Unlike the petition, the time for filing a reply can be extended upon application to the Chief Justice. *See CRC 8.500, Adv. Comm. Comment.*)
- (1) [13:100.1] **Commencement of 10-day period; calculating timeliness:** The practice for replies conforms to that for petitions and answers—i.e., the 10-day filing period runs from the date the answer is *received by the clerk*; and the reply will be *deemed timely filed* if, on or before the 10th day, it is sent by priority/express mail or delivered to an overnight common carrier. *See § 13:40, 13:87.1.*
- b. [13:101] **Filing and service:** The service and filing rules are the same as those governing the petition for review (§ 13:44 *ff.*), except that the reply need not be served on the court of appeal or superior court (although it is nonetheless good practice to serve courtesy copies).
- c. [13:102] **Length of reply; certificate of word count:** A reply cannot exceed *4,200 words, including footnotes*, exclusive of the tables of contents and authorities, certificate of word count, cover information, any signature block, and permitted attachments; and a certificate of word count must be attached (§ 13:64). Longer replies may be filed only with permission of the Chief Justice (§ 13:67). [CRC 8.504(d)]  
  
(A typewritten reply by an unrepresented party proceeding in forma pauperis is limited to a maximum 15 pages. [CRC 8.504(d)(2).])
- d. [13:103] **Cover rules:** Replies filed in *paper form* must be bound in a *white* cover. [CRC 8.40(b)(1)] The cover is subject to the same content rules applicable to the petition and answer (§ 13:69, 13:97).
- e. [13:103.1] **Combined reply with permission:** The Rules of Court do not prescribe any particular procedure for a petitioner to file a single reply to multiple answers to the petition for review, but the Cal. Supreme Court clerk's office has

taken the position that permission of the Chief Justice is required to file such a combined reply. Thus, a combined reply should be accompanied by an application for permission to file it.

7. [13:104] **Amicus Curiae Letters in Support or Opposition:** Nonparties may submit argument in support of or opposition to the granting of a petition for review by sending the supreme court an “amicus curiae letter.” (The author need not be a lawyer admitted to practice in California ... or even a lawyer at all.) At this stage, a formal amicus curiae brief is not permitted. [CRC 8.500(g)(1)]

a. [13:105] **Format; statement of interest:** The amicus letter must conform to the CRC 8.504(e) limitations regarding incorporation of documents by reference and attachments (§ 13:53 ff.). And it must “describe the interest of the amicus curiae.” Beyond these requirements, however, the letter need not adhere to any particular formalities. [CRC 8.500(g)(2)] (For example, there is no requirement that the letter include the authorship and monetary-contribution disclosures required for applications to file amicus curiae briefs; see § 13:161.1.)

b. [13:106] **New issues:** Amicus letters ordinarily must be confined to the issues raised in the petition and answer; new issues cannot be asserted (although the court has discretion to depart from this restriction). [See  *Fisher v. City of Berkeley* (1984) 37 C3d 644, 709-713, 209 CR 682, 733-735, aff’d on other grounds  (1986) 475 US 260, 106 S.Ct. 1045; and § 9:210.1]

c. [13:107] **Submission, service, and receipt:** A copy of the letter must be served on *each party* to the action. The letter may be submitted to the court through the court’s e-filing system, but e-filing is not mandatory. [Sup.Ct. E-filing R. 4(c)] Instead of e-filing, the letter may be submitted to the court by paper filing, in which case an original and *eight copies* must be sent to the supreme court. [CRC 8.44(a)(4), 8.500(g)(1)] (Although the letter need not be served on the court of appeal, it is nonetheless good practice to serve a courtesy copy.)

The supreme court clerk’s office treats amicus curiae letters as “received” rather than “filed,” and the court keeps them in a separate folder within the case record. They are not posted on the court’s docketing system.

d. [13:108] **Limited effect:** The fact a letter is received *does not constitute leave to file an amicus brief on the merits if review is granted*; if review is granted, amicus briefs on the merits may be filed only with express permission from the Chief Justice (see discussion at § 13:159 ff.). [CRC 8.500(g)(3)]

⇒ [13:109] **PRACTICE POINTERS:** Amicus letters should be kept short, reserving full argument for a subsequent formal amicus brief in the event review is granted. Indeed, at this stage, the mere showing of interest by an amicus may be more important in swaying the court to grant review than the actual arguments of amicus.

If you solicit *multiple* amicus letters in support of review, avoid the use of *form letters*. Individually prepared letters will have a greater impact.

There is no formal *time deadline* for filing an amicus letter; as a practical matter, however, it is safest to submit the letter *within the first five weeks* after filing the petition for review, after which the court’s attorney staff will be working on the petition.

• **FORM:** Sample Amicus Curiae Letter in Support of or Opposition to Petition for Review, see *Form 13:B.1*.

e. [13:109.1] **Compare—nonparty (amici) requests for depublication:** Nonparties (amici) are usually more interested in broad “institutional” issues than in the outcome of a particular case. Thus, the publication status of the court of appeal opinion—i.e., whether it should be *depublished* and thus removed from the realm of citable authority (§ 11:182)—can be as important to an amicus as supreme court review. Amicus counsel favoring review should consider filing a separate letter requesting depublication; counsel opposing review and depublication requests should consider urging by separate letter



why the case should remain published.

(1) [13:109.2] **Letter request procedure:** As explained earlier, requests and responses to requests for supreme court depublication of a court of appeal opinion (whether by a party or nonparty) must be in conformity with the [CRC 8.1125](#) “letter” procedure; *see detailed discussion at ¶ 11:180.2 ff. and Form 11:A.*

A request for depublication (or a response to such a request) should be made by *separate letter* and not by incorporation into an amicus letter in support of supreme court review (or a response to such a letter).

(Nonparty depublication requests made directly to the *intermediate court of appeal* are probably *wholly improper*; ¶ [11:168.1](#), [11:180.9](#).)

8. [13:110] **Decision on Petition:** Petitions for review are decided as follows:

a. [13:111] **Time for granting review:** In all cases, the supreme court has at least *60 days* to grant review, running from the date that the last petition in the case was filed. But the court may extend this deadline (and often does) for one or more additional periods up to *30 more days*. Thus, the deadline can be as long as 90 days after filing of the last timely petition. [[CRC 8.512\(b\)\(1\)](#)]

In effect then, the supreme court can grant review up to 100 days after the court of appeal’s decision is final as to that court or 130 days after filing of the court of appeal’s decision.

(1) [13:112] **Effect of court of appeal denial of rehearing:** The supreme court’s deadline is not affected by the court of appeal’s denial of a rehearing, unless the court of appeal *modified its judgment* in connection with the denial. (A modification of the judgment starts a new finality period as to the court of appeal; *see* ¶ [12:67](#), [12:70](#).)

(2) [13:113] **Commencement of time period:** The deadline for granting review runs from the date the *last* petition in the case was *filed*; this may or may not be the last date on which a petition *could have been filed* (¶ [13:38](#)). [See [CRC 8.512](#), Adv. Comm. Comment]

[13:114] *Reserved.*

b. [13:115] **Decision procedure:** Upon receiving a copy of the petition for review or upon supreme court request (whichever is earlier), the clerk/executive officer of the court of appeal transmits to the supreme court clerk the record in the case. [[CRC 8.512\(a\)](#)]

(1) [13:116] **Central staff preparation of conference memorandum:** Under the direction of the Chief Justice, a Calendar Coordinator assigns the petition a conference date and refers it, ordinarily, to a *central staff attorney* for preparation of a conference memorandum. (Overflow petitions are referred to the justices in rotation.) [Sup.Ct. Int.Op.Prac. & Pro. § IV(B)]

Conference memoranda recommend dispositions (grant, grant and hold, grant and transfer, deny, deny and depublish, etc.), or whether the author believes a petition warrants special discussion at the court’s weekly conference. [See Sup.Ct. Int.Op.Prac. & Pro. § IV(C)]

The conference memoranda also assign cases to an “A” list and a “B” list. The “A” list includes cases in which the memorandum recommends a grant of review or some other affirmative action, or recommends denial but notes that

the case poses a question deserving special attention, or where a dissenting opinion was filed in the court of appeal. The “B” list includes cases in which the memorandum simply recommends denial of review. [Sup.Ct. Int.Op.Prac. & Pro. § IV(D)]

(2) [13:117] **Weekly conference; assignment for calendar memorandum:** The justices hold weekly conferences on Wednesdays, during which they discuss and vote on petitions. Subject to the jurisdictional deadline for ruling on the petition ([¶ 13:111](#)), any justice, before or after a vote is taken, may request that a case be put over to a subsequent conference for further study, preparation of a supplemental memorandum, or both. Special conferences may be called by the Chief Justice “whenever deemed necessary or desirable.” [Sup.Ct. Int.Op.Prac. & Pro. §§ III(A), (B) & IV(G)]

For urgent matters where time is of the essence, the court may consider the matter without a formal conference, and an order will be filed as soon as four justices vote for a particular disposition. [Sup.Ct. Int.Op.Prac. & Pro. § III(F)]

A case granted review is then assigned by the Chief Justice to one of the justices (usually one who voted for review) for preparation of a calendar memorandum. The purpose of the calendar memorandum is to present the facts and legal issues, and propose a resolution of the legal issues. [Sup.Ct. Int.Op.Prac. & Pro. § VI(A), (C)]

c. [13:118] **Grant of review:** A grant of review requires a timely order signed by at least four of the justices. [CRC 8.512(d)(1); see also *People v. Billa* (2003) 31 C4th 1064, 1073, 6 CR3d 425, 432, fn. 6 (addressing signature requirement for court’s opinion but same principle applicable to order granting review)—justices need not be physically present in California when formally signing an order or opinion (signed signature page may be faxed to clerk)]

(1) [13:119] **Effect on court of appeal opinion:** Unless the supreme court orders otherwise, grant of review does not affect the publication status of the court of appeal’s opinion; but special rules apply for citation of the opinion during the pendency of supreme court review and after rendition of the supreme court’s decision. See *detailed discussion at ¶ 11:172 ff.*

(a) [13:119.1] **Comment:** A grant of review does not necessarily mean, however, that the supreme court will reverse the court of appeal’s judgment. The supreme court’s reversal rate tends to run around 40 to 55 percent.

(2) [13:120] **Scope of issues subject to review:** The court has discretion to review “any issues that are raised or fairly included in the petition or answer.” [CRC 8.516(b)(1); see [Goldstein v. Sup.Ct. \(Grand Jury of Los Angeles County\)](#) (2008) 45 C4th 218, 225, 85 CR3d 213, 218, fn. 4] It also has discretion to review “an issue that is neither raised nor fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it.” [CRC 8.516(b)(2); see [Iskanian v. CLS Transp. Los Angeles, LLC](#) (2014) 59 C4th 348, 389, 173 CR3d 289, 317]

Thus, the scope of review upon granting of a petition is not necessarily prescribed by the statement of issues contained in the petition and answer ([¶ 13:55 ff., 13:93](#)). [See [Shulman v. Group W Productions, Inc.](#) (1998) 18 C4th 200, 234, 74 CR2d 843, 865, fn. 13—whether or not issue was “reasonably comprehended” in issues raised in petition for review, “we have found it necessary to address this point in order to state and decide fairly and accurately the legal questions inherent in the case”]

Similarly, the court can decide issues that were not raised and argued in the proceedings below ([¶ 13:14 ff.](#)). [See [Cedars-Sinai Med. Ctr. v. Sup.Ct. \(Bowyer\)](#) (1998) 18 C4th 1, 5-7, 74 CR2d 248, 250-251 & fn. 2; compare [Linder v. Thrifty Oil Co.](#) (2000) 23 C4th 429, 444, 97 CR2d 179, 191—“we decline the parties’ invitation to speculate” on the issue because, since it was not before the trial court, “the record remains factually undeveloped”]

Or, the court can decide fewer than all issues specified by the parties or the court. [CRC 8.516(b)(3)] No prior notice of the court’s intent to decide fewer than all the issues is required. [See [People v. Rios](#) (2000) 23 C4th 450, 459, 97 CR2d 512, 519, fn. 5; [Cotran v. Rollins Hudig Hall Int’l, Inc.](#) (1998) 17 C4th 93, 109, 69 CR2d 900, 911; *but*

*see also* ¶ 13:121 (notice required where court wants to *limit argument* to fewer than all issues)]

(a) [13:120.1] **Disposition of remaining issues:** If the court reviews only selected issues, the remaining issues are decided either by:

- The original court of appeal opinion; or
- Subsequent action by the court of appeal as directed by the supreme court. [CRC 8.528(c); *see* [Leone v. Medical Board of Calif.](#) (2000) 22 C4th 660, 670, 94 CR2d 61, 67; [Galanty v. Paul Revere Life Ins. Co.](#) (2000) 23 C4th 368, 389, 97 CR2d 67, 82; *and* ¶ 13:188 ff.]

(b) [13:120.2] **“Law of the case” doctrine applies:** The doctrine of “law of the case” (including its exceptions) applies to review by the supreme court even though the previous appeal was before the court of appeal and even though the supreme court may conclude the previous decision was wrong. [[Morohoshi v. Pacific Home](#) (2004) 34 C4th 482, 491, 20 CR3d 890, 896]

*Cross refer:* The doctrine of “law of the case” is discussed in detail at ¶ 14:172 ff.

(3) [13:121] **Specification of issues to be briefed and argued:** Upon or after granting review, the supreme court may (but is not required to) specify the issues to be briefed and argued. [CRC 8.516(a)(1)] This enables the court to clarify particular issues of importance and focus argument on them. Unless otherwise ordered by the court, the parties’ briefs on the merits and oral argument must be confined to the specified issues and “any issues fairly included in them.” [CRC 8.516(a)(1)]

(a) [13:122] **Subsequent changes:** A specification of issues can be changed to order argument on fewer or additional issues, on reasonable notice to the parties. [CRC 8.516(a)(2)]

(b) [13:123] **Decision on fewer issues:** The court is not obligated to decide all specified issues. It can decide fewer issues (as long as the parties were given the opportunity to argue those issues) without prior notice of its intention to do so. [CRC 8.516(b)(3); *Central Coast Forest Ass’n v. Fish & Game Comm’n* (2017) 2 C5th 594, 606, 214 CR3d 265, 273, fn. 5; [People v. Rios](#) (2000) 23 C4th 450, 459, 97 CR2d 512, 519, fn. 5]

(c) [13:124] **Not an expression of correctness on unspecified issues:** A specification of issues should not be construed as an expression of the supreme court’s opinion on the correctness of the court of appeal’s resolution of the unspecified issues.

(4) [13:125] **“Grant and hold”:** After granting review, the court may order further action on the case deferred until disposition of another case pending before it. [CRC 8.512(d)(2)] In such event, the order granting review will state that further briefing is deferred.

This “grant and hold” procedure commonly occurs when several appeals present the same issue and in fact accounts for a significant number of cases granted review. When review is granted in several related cases, the court treats one as the “lead case”; it holds the others until the lead case opinion becomes final and then either (a) *transfers* the held cases to the court of appeal for reconsideration in light of the lead case opinion (CRC 8.528(d)), or (b) *dismisses* review in the held cases (CRC 8.528(b)(1)). (Held cases are normally transferred if the court of appeal’s opinion is in disagreement with the lead case and “dismissed” if the opinion is in agreement with the lead case.) [See CRC 8.528, Adv. Comm. Comment to subd. (d)]

For summaries of cases pending in the Cal. Supreme Court, see the California Courts website ([www.courts.ca.gov](http://www.courts.ca.gov)), “Case Information, Pending Issues Summary” link.

(5) [13:125.1] **“Grant and transfer”**: Another option is for the court to simultaneously grant review and transfer the case back to the court of appeal for further proceedings. [CRC 8.500(b)(4), 8.528(d)]

This practice commonly occurs when the court of appeal summarily denied a writ petition but the supreme court feels an opinion by the court of appeal is warranted—either for the benefit of the parties or so that the supreme court may have the benefit of the court of appeal’s reasoning. Through the “grant and transfer” procedure, the supreme court directs the court of appeal to issue an alternative writ. This amounts to a determination by the supreme court that writ relief is the only adequate avenue for review, but it does not necessarily mean the supreme court disagreed with the court of appeal’s decision. [*Gressett v. Sup.Ct. (People)* (2010) 185 CA4th 114, 117, 109 CR3d 919, 920, fn. 2; *Desert Outdoor Advertising v. Sup.Ct. (Murphy)* (2011) 196 CA4th 866, 872, 127 CR3d 158, 162-163—“The Supreme Court’s transfer order does not mean petitioners are correct on the merits or that a writ should issue, but rather we should reconsider the matter and file an opinion. We may reach the same result as we did upon our first consideration of the case, and we do so now”]

(Notwithstanding the above, supreme court disagreement with the court of appeal’s decision is often implied when the supreme court’s “grant and transfer” order includes citations to legal authority.)

The supreme court may also “grant and transfer” for further consideration in light of a case decided *after* the court of appeal’s decision.

**[13:125.2 - 13:125.4] Reserved.**

(6) [13:125.5] **“Certification of Interested Entities or Persons” required if corporation a party**: Within 15 days after review is granted in a case in which a corporation is a party, *each party* (except governmental entities and agencies) must file a “Certification of Interested Entities or Persons.” The Certification must list persons, firms and other entities known by the party to have either (i) a financial interest in a party or the subject of the litigation, or (ii) “any other kind of interest that could be substantially affected by the outcome of the proceeding.” [Sup.Ct. Int.Op.Prac. & Pro. § IV(L)]

The clerk’s office will give written notice of this requirement and a form certificate to all parties when it notifies them that review has been granted. [Sup.Ct. Int.Op.Prac. & Pro. § IV(L)]

(a) [13:125.6] **Compare—Rule 8.208 Certificate**: The Certification filed in the supreme court differs slightly from the “Certification of Interested Entities or Persons” filed in the court of appeal pursuant to [CRC 8.208](#) (*see* ¶ 9:178 *ff.*). [Rule 8.208](#) applies *only* in the court of appeal.

d. [13:126] **Denial of review**: Review may be denied by *either*:

- Express *order* signed by the Chief Justice ([CRC 8.512\(d\)\(1\)](#)); or
- *Operation of law*, if no order is rendered within the jurisdictional period for ruling on the petition ([CRC 8.512\(b\)\(2\)](#); *see* ¶ 13:111). (Denial by operation of law is rare; and the court has occasionally issued a denial order even after the jurisdictional deadline.)

Denial of review may be accompanied by *depublication* of the court of appeal’s opinion—either on the supreme court’s own motion or after it has acted on a proper request for depublication (*see* ¶ 11:180 *ff.*).

(1) [13:127] **Record of dissenters**: Any justices who disagreed with the majority vote to deny review may request recordation in the court minutes of their vote to grant review. [Sup.Ct. Int.Op.Prac. & Pro. § IV(I)]

And on rare occasion, one or more of the justices may issue a “dissenting statement”—i.e., a written dissent from the denial of review. If that occurs and the court of appeal’s opinion is published, the dissenting statement “will also be published, appended to the original appellate court opinion in the Official Reports.” [*Vergara v. State of Calif.* (2016)]

246 CA4th 619, 652, 209 CR3d 532, 558 (statement by Cantil-Sakauye, C.J.)]

(2) [13:128] **Not an expression on merits:** A denial of review is not afforded any formal legal significance. Indeed, supreme court policy is that a denial should not be construed as an expression of opinion by the court on the correctness of the court of appeal's opinion. [See [Trope v. Katz](#) (1995) 11 C4th 274, 287, 45 CR2d 241, 250, fn. 1; [Vergara v. State of Calif.](#), *supra*, 246 CA4th at 652, 209 CR3d at 558—"an order denying review does not reflect the views of the justices voting to deny review concerning the merits of the decision below" but "represents only a determination that, for whatever reason, a grant of review is not appropriate at the time of the order"]

The same holds true for a supreme court order directing *depublication* of an opinion: That action "is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion." [See [CRC 8.1125\(d\)](#), [¶ 11:180.10](#)]

• [13:128.1] **Comment:** Even so, as a practical matter, many legal commentators (and, indeed, some court of appeal justices) are inclined to interpret a denial of review accompanied by the court's depublication order as suggesting the supreme court's tacit disapproval of some aspect of the court of appeal opinion. [See [People v. Dee](#) (1990) 222 CA3d 760, 763-765, 272 CR 208, 209-211 (disapproved on other grounds in [People v. Saunders](#) (1993) 5 C4th 580, 597, 20 CR2d 638, 647, fn. 9); and [¶ 11:180.11](#)]

Likewise, the denial of review of a published case contemporaneous with supreme court dismissal of review of pending cases raising the same point has been construed as a tacit approval of the published case. [See [In re Eli F.](#) (1989) 212 CA3d 228, 234-235, 260 CR 453, 455]

Occasionally, the courts of appeal have even perceived meaning (tacit supreme court approval of a particular point) in a simple denial of review. [See [Estate of Wathen](#) (1997) 56 CA4th 48, 53, 64 CR2d 805, 808, fn. 5—commenting that supreme court "apparently" agreed with opinion because "a petition for review was denied"; [Macedo v. Bosio Revocable Trust](#) (2001) 86 CA4th 1044, 1051, 104 CR2d 1, 6, fn. 6—in aligning with prior Calif. appellate decision on statute of limitations issue, court observed that an Illinois appellate case had recently rejected that position but commented, "We will not jump into the middle of [those] disagreements ... except to note that ... our Supreme Court unanimously denied review in [the Calif. case]" ]

(3) [13:128.2] **Immediate finality:** The supreme court's order denying review becomes final *when it is filed*. [[CRC 8.532\(b\)\(2\)\(A\)](#)]

(4) [13:129] **Issuance of remittitur:** Upon a denial of review, the supreme court clerk/executive officer returns the record to the court of appeal if the record was transmitted in paper form ([CRC 8.512\(a\)](#)), and the appellate court clerk/executive officer issues a remittitur to the trial court immediately after the supreme court denies review (or the period for granting review expires). [[CRC 8.272\(b\)\(1\)\(A\)](#)]

*Cross-refer:* For a complete discussion of remittitur, see [¶ 14:1 ff.](#)

[13:129.1 - 13:129.4] *Reserved.*

(5) [13:129.5] **Extension of time for responsive pleading under [CCP § 418.10\(c\)](#):** If the supreme court denies a petition for review after the court of appeal denied a writ of mandate challenging denial of a motion to quash service of summons or to stay or dismiss the action on the ground of inconvenient forum, the time for filing a responsive pleading in the trial court under [CCP § 418.10\(c\)](#) is extended until *10 days* after filing of the order denying review. [[CRC 8.491](#)]

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