



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

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Title	Agenda Item Type
CEQA Actions: Technical Rule Amendments to Implement SB 836	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, and 8.700-8.703	January 1, 2017
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	November 15, 2016
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact
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### Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend amending the rules regarding expedited review of certain cases under the California Environmental Quality Act (CEQA). The amendments will fulfill the Judicial Council's obligation under legislation enacted earlier this year to adopt rules to implement procedures for the expedited resolution of CEQA cases challenging "capitol annex projects."

### Recommendation

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2017, amend Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, and 8.700-8.703 relating to expedited review of CEQA challenges to "environmental leadership" and "Sacramento arena" projects by adding references to new statutory provisions establishing expedited review of such challenges to "capitol annex projects".

The Appellate Advisory Committee also recommends that the Judicial Council, effective January 1, 2017, amend rule 8.701 to ensure CEQA appellate rules conform to amendments to the appellate electronic filing rules approved by the Judicial Council at its October 2016 meeting.

The text of the amended rules is attached at page 4.

## **Previous Council Action**

In 2011, the Judicial Council adopted rule 8.497 to implement Assembly Bill 900 (Stats. 2011, ch. 354), which created an expedited judicial review procedure in the Court of Appeal for CEQA cases relating to “environmental leadership projects.” (Pub. Resources Code, § 21185.)

In 2013, the Legislature adopted legislation that changed the expedited CEQA review procedure in environmental leadership cases and also established expedited review in cases relating to a new sports arena in Sacramento (Senate Bill 743 (Stats. 2013, ch. 386). SB 743 required the Judicial Council to adopt rules providing for the resolution of these cases, including any potential appeals, within 270 days of certification of the record of proceedings (Pub. Resources Code §§ 21185 and 21168.6.6). The Judicial Council responded to SB 743 with the adoption of rules 3.1365, 3.2220-3.2231 and 8.700 - 8.705, effective July 1, 2014.<sup>1</sup>

At its meeting on October 27, 2016, the council approved amendments to the rules relating to electronic filing and service in the appellate courts which, among other things, make electronic filing mandatory unless otherwise ordered by the court or provided by local rule.

## **Rationale for Recommendation**

Senate Bill 836 (Stats. 2016, ch. 31),<sup>2</sup> which became effective on June 28, 2016, contains provisions similar to those enacted by SB 743 from 2013. It requires that the Judicial Council adopt rules, on or before July 1, 2017, that implement the expedited CEQA judicial review procedures for resolution of CEQA challenges to “capitol building annex projects” within 270 days from the date of certification of the administrative record. (Pub. Resources Code §21189.51; See also Pub. Resources Code §§ 21185 and 21168.6.6). These recommended rule amendments would fulfill the Judicial Council’s obligation under SB 836 by adding references to the new “capital building annex” statutes to the existing CEQA rules.

The Appellate Advisory Committee also recommends amending one of the existing CEQA rules, rule 8.701, to conform it to amendments to the appellate electronic filing rules approved by the

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The report to the Judicial Council regarding these rules can be accessed here at:  
<http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf>

<sup>2</sup> SB 836 can be accessed here: [http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0801-0850/sb\\_836\\_bill\\_20160627\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0801-0850/sb_836_bill_20160627_chaptered.pdf)

Judicial Council at its October 2016 meeting. Currently, rule 8.701 provides that the court may order electronic filing and service. Amended rule 8.71, which takes effect January 1, 2017, makes electronic filing mandatory unless otherwise ordered by the court or provided by local rule. Rule 8.701 would be conformed to rule 8.71 by similarly requiring electronic filing in all cases covered by the CEQA rules. Rule 8.701 would also be amended to provide by rule for electronic service on consenting parties, rather than requiring the court to order such service in these CEQA cases.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal has not been circulated for comment because the recommended amendments are minor and technical in nature. Given that these rules are necessary to fulfill the statutorily mandated obligations or conform the CEQA rules to recent amendments to the e-filing rules, these changes are also unlikely to be controversial. It is therefore within the Judicial Council's purview to adopt the rule amendments without circulation. (See Cal. Rules of Court, rule 10.22(d)(2)).

### **Implementation Requirements, Costs, and Operational Impacts**

Implementing the new legislation requiring expedited review of CEQA challenges to "capitol annex projects" may generate costs and operational impacts for both the trial courts and the Courts of Appeal in which the proceedings governed by these statutes are filed. The committee does not anticipate that this proposal will result in any additional costs to the courts.

### **Attachments and Links**

1. Cal. Rules of Court, rules 3.2200, 3.2220-3.2223, and 8.700-8.703, at p. 4.

Rules 3.2200, 3.2220-3.2223 and 8.700-8.703 of the California Rules of Court are amended effective January 1, 2017, to read:

1                   **Division 22. Petitions Under the California Environmental Quality Act**

2  
3                                   **Chapter 1. General Provisions**

4  
5 **Rule 3.2200. Application**

6  
7 Except as otherwise provided in chapter 2 of the rules in this division, ~~for which govern actions~~  
8 under Public Resources Code sections 21168.6, ~~and 21178–21189.3, and 21189.50-21189.57~~, the  
9 rules in this chapter apply to all actions brought under the California Environmental Quality Act  
10 (CEQA) as set forth in division 13 of the Public Resources Code.  
11

12  
13                   **Chapter 2. California Environmental Quality Act Proceedings Under Public Resources**  
14                                   **Code Sections 21168.6, ~~and 21178–21189.3, and 21189.50-21189.57~~**

15  
16                                   **Article 1. General Provisions**

17  
18 **Rule 3.2220. Definitions and application**

19  
20 **(a) Definitions**

21  
22       (1)-(2) \*\*\*

23  
24       (3) A “capitol building annex project” means a capitol building annex project as defined  
25 by Public Resources Code section 21189.50.

26  
27 **(b) Proceedings governed**

28  
29 The rules in this chapter govern actions or proceedings brought to attack, review, set aside,  
30 void, or annul the certification of the environmental impact report or the grant of any  
31 project approvals for the Sacramento arena project, ~~or a leadership project, or a capitol~~  
32 building annex project. Except as otherwise provided in Public Resources Code sections  
33 21168.6, ~~and 21178–21189.3, and 21189.50-21189.57~~ and these rules, the provisions of  
34 the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources  
35 Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or  
36 proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency  
37 on the grounds of noncompliance with the California Environmental Quality Act and the  
38 rules of court generally apply in proceedings governed by this rule.  
39

40 **(c) \*\*\***

41

1 **Rule 3.2221. Time**

2  
3 **(a) Extensions of time**

4  
5 \*\*\*

6  
7 **(b) Extensions of time by parties**

8  
9 If the parties stipulate to extend the time for performing any acts in actions governed by  
10 these rules, they are deemed to have agreed that the time for resolving the action may be  
11 extended beyond 270 days by the number of days by which the performance of the act has  
12 been stipulated to be extended, and to that extent to have waived any objection to  
13 noncompliance with the deadlines for completing review stated in Public Resources Code  
14 sections 21168.6.6(c)-(d), ~~and 21185,~~ and 21189.51. Any such stipulation must be  
15 approved by the court.  
16

17 **(c) Sanctions for failure to comply with rules**

18  
19 If a party fails to comply with any time requirements provided in these rules or ordered by  
20 the court, the court may issue an order to show cause as to why one of the following  
21 sanctions should not be imposed:  
22

23 (1)-(2) \*\*\*

24  
25 (3) If the failure to comply is by respondent or a real party in interest, removal of the  
26 action from the expedited procedures provided under Public Resources Code  
27 sections 21168.6.6(c)-(d), ~~and 21185,~~ and 21189.51, and these rules; or  
28

29 (4) \*\*\*  
30

31 **Rule 3.2222. Filing and service**

32  
33 **(a)-(c) \*\*\***

34  
35 **(d) Service of petition in action regarding leadership project and capitol building annex**  
36 **project**

37  
38 If the petition or complaint in an action governed by these rules and relating to a leadership  
39 project or a capitol building annex project is not personally served on any respondent  
40 public agency, any real party in interest, and the Attorney General within three court days  
41 following filing of the petition, the time for filing petitioner's briefs on the merits provided  
42 in rule 3.2227(a) and rule 8.702(e) will be decreased by one day for every additional two

1 court days in which service is not completed, unless otherwise ordered by the court for  
2 good cause shown.

3  
4 (e) \*\*\*

5  
6  
7 **Rule 3.2223. Petition**

8  
9 In addition to any other applicable requirements, the petition must:

10  
11 (1) On the first page, directly below the case number, indicate that the matter is either a  
12 “Sacramento Arena CEQA Challenge,” ~~or an “Environmental Leadership CEQA~~  
13 Challenge,” or a “Capitol Building Annex Project”;

14  
15 (2) State ~~either one of the following:~~

16  
17 (A) \*\*\*

18  
19 (B) The project at issue was certified by the Governor as a leadership project under  
20 Public Resources Code sections 21182–21184 and is subject to this rule; or

21  
22 (C) The project at issue is a capitol building annex project as defined by Public  
23 Resources Code section 21189.50 and is subject to this rule;

24  
25 (3)-(4) \*\*\*

26  
27  
28 **Chapter 11. Review of California Environmental Quality Act Cases Under Public**  
29 **Resources Code Sections 21168.6.6, and 21178–21189.3, and 21189.50-21189.57.**

30  
31 **Rule 8.700. Definitions and application**

32  
33 (a) **Definitions**

34  
35 As used in this chapter:

36  
37 (1) An “environmental leadership development project” or “leadership project” means a  
38 project certified by the Governor under Public Resources Code sections 21182–  
39 21184.

40  
41 (2) The “Sacramento entertainment and sports center project” or “Sacramento arena  
42 project” means the entertainment and sports center project as defined by Public

1 Resources Code section 21168.6.6, for which the proponent provided notice of  
2 election to proceed under that statute as described in section 21168.6.6(j)(1).

3  
4 (3) A “capitol building annex project” means a capitol building annex project as defined  
5 by Public Resources Code section 21189.50.

6  
7 **(b) Proceedings governed**

8  
9 The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to  
10 review a superior court judgment or order in an action or proceeding brought to attack,  
11 review, set aside, void, or annul the certification of the environmental impact report or the  
12 granting of any project approvals for an environmental leadership development project, ~~or~~  
13 the Sacramento arena project, or a capitol building annex project.

14  
15  
16 **Rule 8.701. Filing and service**

17  
18 **(a) Service**

19 \*\*\*

20  
21  
22 **(b) Electronic filing and service**

23  
24 ~~Notwithstanding rules 8.71(a) and 8.73, the court may order that:~~

25  
26 (1) In accordance with rule 8.71, all parties except self-represented parties are required  
27 to file all documents ~~be filed~~ electronically except as otherwise provided by these  
28 rules, the local rules of the reviewing court, or court order. Notwithstanding rule  
29 8.71(b), a court may order a self-represented party to file documents electronically.

30  
31 (2) All documents must be served electronically on parties who have stipulated  
32 consented to electronic service or who are otherwise required by law or court order  
33 to accept electronic service. All parties represented by counsel are deemed to have  
34 stipulated consented to electronic service. All self-represented parties may so  
35 stipulate consent.

36  
37 **(c) Exemption from extension of time**

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40  
41 **Rule 8.702. Appeals**

42  
43 **(a) Application of general rules for civil appeals**

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**(b) Notice of appeal**

(1) \*\*\*

(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,~~ or a capitol building annex 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)-(e) \*\*\***

**(f) Briefing**

(1)-(3) \*\*\*

(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,~~ and 21189.51 for the duration of the stipulated extension.

(5) \*\*\*

**(g) Oral argument**

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1 **Advisory Committee Comment**

2  
3 **Subdivision (b).** It is very important to note that the time period to file a notice of appeal under this rule  
4 is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena  
5 project, and in a case regarding a leadership project or capitol building annex project, the deadline for  
6 filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for  
7 reconsideration, or a motion to vacate the judgment.  
8  
9

10 **Rule 8.703. Writ proceedings**

11  
12 **(a) Application of general rules for writ proceedings**

13  
14 \*\*\*

15  
16 **(b) Petition**

17  
18 (1) \*\*\*

19  
20 (2) *Contents of petition*

21  
22 In addition to any other applicable requirements, the petition must:

- 23  
24 (A) State that the superior court judgment or order being challenged is governed by  
25 the rules in this chapter;  
26  
27 (B) Indicate whether the judgment or order pertains to the Sacramento arena  
28 project, ~~or~~ a leadership project, or a capitol building annex project; and  
29  
30 (C) If the judgment or order pertains to a leadership project, provide notice that the  
31 person or entity that applied for certification of the project as a leadership  
32 project must make the payments required by 8.705.  
33  
34