



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

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Title

Appellate Procedure: Amicus Curiae Briefs in  
Writ Proceedings

Agenda Item Type

Action Required

Effective Date

January 1, 2017

Rules, Forms, Standards, or Statutes Affected  
Amend Cal. Rules of Court, rule 8.487

Date of Report

August 19, 2016

Recommended by

Appellate Advisory Committee  
Hon. Raymond J. Ikola, Chair

Contact

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### Executive Summary

The Appellate Advisory Committee recommends amending the California Rule of Court governing writ proceedings to include a new procedure for submission of applications to file amicus curiae briefs in those writ proceedings in which an alternative writ or order to show cause is issued. This change, which is based on a suggestion received from an attorney, is intended to provide potential amicus curiae with guidance regarding applications to file amicus briefs in these writ proceedings, which may reduce questions about how to do this and also ensure that the court has the information it needs to consider such applications.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017, amend rule 8.487 to add a new procedure for submission of applications to file amicus curiae briefs in those writ proceedings in which an alternative writ or order to show cause is issued. The text of the amended rule is attached at pages 6–7.

## **Previous Council Action**

As part of the Rules on Appeal adopted effective July 1, 1943, the Judicial Council adopted a general rule requiring that individuals or organizations wishing to file amicus briefs first obtain permission from the Chief Justice of the California Supreme Court or the presiding justice of the Court of Appeal. Effective July 1, 2000, the Judicial Council amended this rule to allow the Attorney General's office to file amicus briefs without seeking permission from the Chief Justice or presiding justice and to establish time frames for the filing of these briefs. Effective January 1, 2002, as part of the overall revision and reorganization of the appellate rules, the provisions relating to amicus briefs were placed in new, separate rules relating to briefs in the Supreme Court and briefs in the Court of Appeal. At that time, the language regarding amicus briefs from the Attorney General's office was also copied into the rule relating to writ proceedings. These rules have subsequently been revised and renumbered, but remain substantively unchanged.

## **Rationale for Recommendation**

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

To provide guidance about how to seek permission to file an amicus brief in writ proceedings, the Appellate Advisory Committee is proposing amendments to rule 8.487 that add a new subdivision to address amicus curiae briefs by anyone other than the Attorney General. This provision is modeled on a combination of rules 8.200(c) and 8.520(f). The proposed new provision would govern only those situations in which the court issues an alternative writ or order to show cause. The amendment would require that the amicus application be filed no later than 14 days after the return is filed, unless the Chief Justice or presiding justice allows a later filing. This is the same time frame within which rule 8.487(d) currently requires that amicus briefs from the Attorney General be filed. It is also similar to the time frame for filing an amicus application in the Court of Appeal under rule 8.200, but considerably shorter than the time frame for filing such an application in the Supreme Court under rule 8.520. To reflect the courts' inherent power and to provide more complete parallelism within the rule for amicus briefs in writ proceedings, the committee is also recommending that a provision be added to the subdivision relating to amicus curiae briefs from the Attorney General to indicate that the time for filing these briefs may also be extended by the Chief Justice or presiding justice.

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

### **External comments**

The proposed amendments to rule 8.487 were circulated for public comment between April 15 and June 14, 2016, as part of the regular spring comment cycle. Thirteen individuals or

organizations submitted comments on this proposal. Seven commentators agreed with the proposal, two agreed with the proposal if amended, one did not agree with the proposal, and three did not indicate a position on the proposal, but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 8–28.

The one commentator who disagreed with the proposal expressed concern that it would cause undue delay in the writ proceedings, particularly in dependency proceedings, because it would encourage entities who do not have a direct interest to weigh in. The committee respectfully disagrees with this comment. The committee does not believe that this proposed amendment will encourage additional applications to file amicus briefs in dependency or other writ proceedings. Instead, the committee believes that this proposed amendment will provide guidance and uniformity in practice in circumstances in which individuals are already filing amicus applications in writ proceedings. The committee's view on this issue is consistent with the input provided by the other commentators who support the proposal. The committee therefore is recommending adoption of the amendment to rule 8.487.

***Should the rules address amicus applications when the court issues a Palma notice?***

The committee sought specific comments on whether the proposed rule should address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance (commonly known as a *Palma* notice). The committee decided not to address amicus participation when a *Palma* notice is issued in the proposal that was circulated because such notices are typically issued when the petitioner's right to relief is obvious or there is unusual urgency, making amicus participation unlikely to be helpful to the court's decisionmaking.

Five commentators provided input on this issue: three suggested that the proposal should not address amicus participation when a *Palma* notice is issued and two suggested that it should address amicus participation in such circumstances. Given the committee's original concerns about whether amicus participation when a *Palma* notice is issued would be helpful to the courts and the weight of the public comments, the committee decided not to revise its proposal to encompass these circumstances. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a *Palma* notice has been issued.

***Should the rules address amicus letters supporting or opposing a writ petition before the court has determined whether to issue an alternative writ or order to show cause?***

The invitation to comment indicated that the committee had considered, but ultimately decided against, proposing a rule to address the filing of amicus letters supporting or opposing a writ petition before the court has determined whether to issue an alternative writ or order to show

cause. This decision was based on the fact that the majority of writ petitions are summarily denied within a short period of time after filing and the committee's concern that providing for amicus participation at this stage might delay action in these cases or encourage the preparation of amicus letters that are not helpful to the court's decisionmaking. Two bar organizations—the Association of Southern California Defense Counsel and the San Diego County Bar Association—suggested that the committee should reconsider its decision on this issue. They urged the committee to propose an amendment that addresses filing amicus letters in support of petitions before an alternative writ or order to show cause issues. In the alternative, the Association of Southern California Defense Counsel recommended that the committee make clear in the advisory committee comment to rule 8.487 that the proposed change is not intended to limit the existing discretion of presiding justices to accept amicus letters before the issuance of an alternative writ or order to show cause.

Because adding a rule amendment that addresses filing amicus letters in support of petitions before an alternative writ or order to show cause issues would be an important substantive change, under rule 10.22, this is not something the committee could recommend for adoption without first circulating a proposal for public comment. The committee will therefore consider this suggestion for potential development in a later rules cycle. However, as suggested by the Association of Southern California Defense Counsel and as discussed above in connection with amicus briefs when *Palma* notices are issued, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case before the court has determined whether to issue an alternative writ or order to show cause.

#### ***Deadline for filing an amicus application***

As circulated for public comment, the proposal required that the amicus application be filed no later than 14 days after the return is filed. This is the same time frame within which rule 8.487(d) currently requires that amicus briefs from the Attorney General be filed in writ proceedings. It is also similar to the time frame for filing an amicus application in the Court of Appeal under rule 8.200. Several commentators provided input on this deadline. Two commentators expressed support for the deadline as circulated. One specifically indicated that, to avoid extending time in these writ proceedings, the proposed rule should incorporate the same deadline for filing amicus applications as for amicus briefs from the Attorney General. Another indicated that the fact that the proposal mirrors the procedure for Attorney General amicus briefs was a basis for the commentator's support for the proposal. Two other commentators suggested that the time frame for filing an amicus brief should be longer. One commentator suggested that the longer filing period would be more appropriate, apparently referring to the period for amicus applications in the Supreme Court set by rule 8.520. Another commentator, the League of California Cities, suggested that amicus applications should be due on the same date as the reply, the deadline for

which is within 15 days after the return or opposition is filed unless otherwise ordered by the court.

In light of these comments, the committee considered whether to modify the proposal to set a different, longer time period for filing an application to file an amicus brief. Ultimately, the committee decided against making a change in the proposed time period. Members' view was that it would be helpful to both the court and parties if amicus briefs from the Attorney General and from other entities or individuals were subject to the same deadline. In addition, members noted that the proposed rule includes a provision specifically allowing the Chief Justice or presiding justice to extend the time for filing an amicus application, which they thought should enable entities or individuals to seek additional time when this is needed. To reflect the courts' inherent power and to provide more complete parallelism within the rule for amicus briefs in writ proceedings, the committee did decide to recommend that a provision be added to the subdivision relating to amicus curiae briefs from the Attorney General to indicate that the time for filing these briefs may also be extended by the Chief Justice or presiding justice.

### **Alternatives**

The committee considered not proposing a rule regarding amicus briefs in writ proceedings. The committee concluded, however, that such a rule will provide litigants with helpful guidance about filing such applications and will assist courts by establishing uniformity in this practice, and therefore that it was appropriate for the committee to recommend this amendment.

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

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

### **Attachments and Links**

1. California Rules of Court, rule 8.487 at page 6–7
2. Chart of comments, at pages 8–28

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

**Title 8. Appellate Rules**

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

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

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

**(a) Preliminary opposition \* \* \***

**(b) Return or opposition; reply \* \* \***

**(c) Supporting documents \* \* \***

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

- (1) If the court issues an alternative writ or order to show cause, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or presiding justice, unless the brief is submitted on behalf of another state officer or agency.
- (2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due. For good cause, the Chief Justice or presiding justice may allow later filing.
- (3) The brief must provide the information required by rule 8.200(c)(2) and comply with rule 8.200(c)(~~4~~)(5).
- (4) Any party may serve and file an answer within 14 days after the brief is filed.

**(e) Other amicus curiae briefs**

- (1) This subdivision governs amicus curiae briefs when the court issues an alternative writ or order to show cause.
- (2) Any person or entity may serve and file an application for permission of the Chief Justice or presiding justice to file an amicus curiae brief.

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

- 1       (3)   The application must be filed no later than 14 days after the return is filed or, if no  
2       return is filed, within 14 days after the date it was due. For good cause, the Chief  
3       Justice or presiding justice may allow later filing.  
4  
5       (4)   The proposed brief must be served on all parties. It must accompany the application  
6       and may be combined with it.  
7  
8       (5)   The proposed brief must provide the information required by rule 8.200(c)(2) and (3)  
9       and comply with rule 8.200(c)(5).  
10  
11       (6)   If the court grants the application, any party may file either an answer to the  
12       individual amicus curiae brief or a consolidated answer to multiple amicus curiae  
13       briefs filed in the case. If the court does not specify a due date, the answer must be  
14       filed within 14 days after either the court rules on the last timely filed application to  
15       file an amicus curiae brief or the time for filing applications to file an amicus curiae  
16       brief expires, whichever is later. The answer must be served on all parties and the  
17       amicus curiae.  
18

19                                   **Advisory Committee Comment**  
20

21       \* \* \*

22  
23       **Subdivisions (d) and (e).** These provisions do not alter the court's authority to request or permit the  
24       filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these  
25       subdivisions, such as before the court has determined whether to issue an alternative writ or order to show  
26       cause or when it notifies the parties that it is considering issuing a peremptory writ in the first instance.

## SPR16-05

### Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings (amend rule 8.487)

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

	Commentator	Position	Comment	Committee Response
1.	Association of Southern California Defense Counsel by Steven Fleischman	AM	<p>ASCDC generally supports the proposed change to rule 8.487 because the Rules of Court should clearly reflect that appellate courts have discretion to grant applications to file amicus briefs in civil writ proceedings just as they do in civil appeals. We recommend, however, that rule 8.487 also be changed to reflect that appellate courts have discretion to accept amicus letters in support of petitions before an alternative writ or order to show cause issues. ASCDC respectfully submits that such letters can greatly assist appellate courts in deciding whether to grant writ review and that the amicus curiae process should track the rules that govern the Supreme Court's discretionary review of civil matters.</p> <p>Consistent with the Committee's proposed change to rule 8.487, the Rules of Court allow the Supreme Court to grant amici curiae leave to file briefs on the merits after the court has ordered review. (Cal. Rules of Court, rule 8.520(f).) But, unlike the Committee's proposed change to rule 8.487, amici curiae also may submit letters supporting or opposing the petition for review. (Cal. Rules of Court, rule 8.500(g).) Such letters can provide invaluable assistance to the Supreme Court in evaluating whether to grant review: They help the Court appreciate the broader context and importance of the issue presented, crucial factors to determining whether a case warrants discretionary review.</p>	<p>The committee notes the commentator's support for the proposal.</p> <p>Adding a rule amendment that addresses filing amicus letters in support of petitions before an alternative writ or order to show cause issues would be an important substantive change to the proposal that was circulated for public comment. Under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without first being circulating it for comment. Therefore, the committee cannot recommend adoption of a rule regarding amicus letters at this time; any such proposal must first be circulated for public comment. The committee will therefore consider this suggestion for potential development in a later rules cycle. However, in response to this and other comments, the committee did revise the proposed rule amendment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and, as suggested by the commentator, the accompanying advisory committee comment to clarify that it does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances.</p>



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			<p>Rule 8.500(g) amicus letters create no significant administrative burden on the Court. They are relatively short, informal submissions that do not require applications for leave to file or any court ruling. They do not give rise to any right of opposition. And there are no deadlines or formatting requirements that would require a court clerk to check for compliance. The letters are not even technically “filed” or listed on the court’s docket in the same way as other court submissions. The Supreme Court’s amicus curiae rules actually <i>avoid</i> administrative burdens by prohibiting amici curiae from presenting formal briefs on the merits at the petition stage. The rule 8.500(g) process ensures that the informal letters are available to the Court as a resource in deciding whether to grant review to the extent the Court chooses to use them.</p> <p>In the exact same way, amicus letters can be useful to intermediate appellate courts, with no significant administrative burden, in helping them determine whether to issue alternative writs or orders to show cause in civil writ proceedings. A key reason for granting interlocutory review is to take the opportunity to address important issues on a timely basis. (E.g., <i>Los Angeles Gay &amp; Lesbian Center v. Superior Court</i> (2011) 194 Cal.App.4th 288, 300 [“review [by writ] is appropriate where the order raises an issue of first impression of general importance to the legal community”];</p>	<p>This should prevent any confusion about whether a court can request or permit amicus participation in a particular case before the court has determined whether to issue an alternative writ or order to show cause.</p>

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			<p><i>Pugliese v. Superior Court</i> (2007) 146 Cal.App.4th 1444, 1448 [“Writ review is appropriate where the petition presents a significant issue of first impression”]; <i>Toshiba America Electronic Components v. Superior Court</i> (2004) 124 Cal.App.4th 762, 767 [“We believe these issues are sufficiently novel and important to justify review by extraordinary writ”]; <i>Boy Scouts of America National Foundation v. Superior Court</i> (2012) 206 Cal.App.4th 428, 438 [writ review of order overruling demurrer warranted where petition raised “a significant issue of law”].) Letters from amici curiae can greatly assist courts in determining whether an issue raised by a writ petition is, indeed, of widespread importance or of first impression.</p> <p>For example, in <i>Regents of the University of California v. Superior Court</i> (2013) 220 Cal.App.4th 549 (Second Dist., Div. Seven) (<i>Regents</i>), the court’s published opinion explained that amici curiae had submitted letter briefs in support of the petition before the court issued its order to show cause, and that those amicus letters were important to its decision to grant writ review. (<i>Id.</i> at pp. 557-58.)</p> <p>Here, the issue of statutory construction raised by the superior court's ruling and presented by the Regents’s petition has not previously been addressed by an appellate court <i>and, based on the amici curiae submissions we have received, appears to be of widespread interest.</i></p>	

**SPR16-05****Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings** (amend rule 8.487)

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	Commentator	Position	Comment	Committee Response
			<p><i>Accordingly, writ review is appropriate.</i></p> <p><i>(Id. at p. 558, emphasis added.)</i></p> <p><i>Regents</i> is not an aberration in this regard. Other Courts of Appeal issuing published opinions in civil cases have similarly accepted amicus letters filed <i>before</i> the court issued an alternative writ or order to show cause. (See <i>Sutter Health v. Superior Court</i> (2014) 227 Cal.App.4th 1546 [Third Dist.] [C072591, docket entries dated December 7 and 12, 2012]; <i>Fireman's Fund Ins. Co. v. Superior Court</i> (2011) 196 Cal.App.4th 1263 [Second Dist., Div. Three] [B229880, docket entries dated January 12, 20, and 25, 2011]; <i>Eisenhower Medical Center v. Superior Court</i> (2014) 226 Cal.App.4th 430 [Fourth Dist., Div. Two] [E058378, docket entries dated April 18, May 7, 2013, and July 11, 2013].) ASCDC itself has submitted letters in numerous courts explaining that particular writ petitions have widespread import across California.</p> <p>Because some appellate courts already accept amicus letters before issuing alternative writs or orders to show cause, and because such letters serve the same valid purpose (with no administrative burden) as rule 8.500(g) letters supporting Supreme Court discretionary review, ASCDC suggests that the Committee reconsider its recommendation and revise rule 8.487 to endorse terms parallel to the Supreme Court</p>	

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	Commentator	Position	Comment	Committee Response
			<p>amicus curiae process.</p> <p>We recommend the following language, which tracks rule 8.500(g) and adds another subdivision to the Committee’s currently-proposed change to rule 8.487:</p> <p><b>(f)</b> Before an alternative writ or order to show cause is issued, any person or entity wanting to support or oppose a petition for writ of interlocutory appellate review must serve on all parties and send to the Court an amicus curiae letter rather than a brief. The letter must describe the interest of the amicus curiae, and may not exceed five pages. Any matter attached to the letter or incorporated by reference must comply with rule 8.204(d). Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under paragraph (e) if an alternative writ or order to show cause is issued.</p> <p>The Committee’s “Invitation to Comment” indicates that the Committee chose not to address the filing of amicus letters supporting/opposing writ petitions out of concern that most petitions are summarily denied shortly after filing and amicus letters could delay such actions. But ASCDC’s proposed rule would not alter a court’s ability to summarily deny the pending writ petition <i>at any time</i>, just as the submission of amicus letters to the California Supreme Court under rule 8.500(g) does not restrict that Court’s ability to</p>	

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	Commentator	Position	Comment	Committee Response
			<p>deny a petition for review <i>at any time</i>. Further, although the Rules of Court permit a real party in interest to file a preliminary opposition to a writ petition within ten days (see rule 8.487(a)), they also specify that “[w]ithout requesting preliminary opposition or waiting for a reply, the court may grant <i>or deny</i> a request for temporary stay, <i>deny the petition</i>, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance” (rule 8.487(a)(4), emphases added). ASCDC’s proposal would not change an appellate court’s express unrestricted power to deny a writ petition whenever it wants. Moreover, ASCDC’s proposal will alleviate potential confusion and administrative burdens by making it clear that leave to file full-on briefs on the merits by amici curiae may be sought only after the Court has issued an alternative writ or order to show cause.</p> <p>For all these reasons, ASCDC asks that the Committee change its initial recommendation by amending rule 8.487 to permit the submission of amicus letters under a procedure similar to that set forth in rule 8.500(g).</p> <p>In the alternative, ASCDC asks that the Committee make clear in the Comment to rule 8.487 that the proposed change is not intended to limit the existing discretion of Presiding Justices to accept amicus letters before the issuance of an alternative writ or order to show</p>	

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	Commentator	Position	Comment	Committee Response
			<p>cause. We suggest the following language:</p> <p>Paragraph (e) is not intended to limit the discretion of Presiding Justices to accept amicus curiae letters before issuing an alternative writ or order to show cause. (See, e.g., <i>Regents of the University of California v. Superior Court</i> (2013) 220 Cal.App.4th 549, 557-558; Cal. Rules of Court, rule 8.500(g).)</p>	
2.	California Appellate Court Clerks Association by Kevin Lane CACCA President	NI	<p>In subpart (e)(3), an application may be combined with a brief. For e-filing, two documents are better; otherwise, we end up doing a work around to file the brief once the application is approved. For a combined application/brief, we file the application (send all the way to ACCMS) and note as to application only. When/if the application is approved, we add a second stamp for the brief and note as to brief. With two documents, you would file the application. When it is acted on, you file or reject the brief. I would suggest eliminating the phrase “and may be combined with it.”</p>	<p>The committee appreciates this suggestion. Since this language mirrors language that currently appears in both rules 8.200(c)(4) and 8.520(f)(5), the committee believes it would be best to consider whether all of these provisions should be modified. The committee will take this matter up during a later rules cycle.</p>
3.	Court of Appeal, Second Appellate District Joseph Lane Clerk/Administrator	NI	<p><b>1. Rule 8.487 (e) (3) page 5</b> Delete “and may be combined”. Especially with e-filing it is easiest on the courts to have the application separate from the brief.</p> <p><u>The proposed brief must be served on all parties. It must accompany the application.</u> <u><del>and may be combined with it.</del></u></p>	<p>Please see response to comments of the California Appellate Court Clerks Association above.</p>

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4.	Family Violence Appellate Project by Jeannafer Dorfman Wagner Director of Programs	A	<p>FVAP supports the proposed rule change, which provides guidelines for amicus curiae seeking permission to file briefs in pending writ actions. Many of this state's most important appellate decisions derive from writ actions, to wit, <i>Elkins v. Superior Court</i> (2007) 41 Cal. 4th 1337. This rule specifically addressing how and when to seek permission to file briefs in pending writ actions is in line with the process for other appellate amicus briefs, and will lessen confusion about whether and how such participation is permitted.</p> <p>The committee has specifically asked for comments on whether the rule should address situations in which a <i>Palma</i> notice is issued. FVAP believes adopting the rule as it is currently proposed, including the time-line whereby amicus briefs will generally be submitted only after the court determines to issue an alternative writ or an order to show cause, is appropriate. Although our writ practice has been limited, there is a general understanding that <i>Palma</i> letters serve to allow appellate court's to informally intervene on a much more expedited basis where the trial court can quickly correct any improper actions. Permitting amicus curiae participation at that point in the writ process would only serve to hinder and delay what is intended to be an expedited process used in limited circumstances.</p>	<p>The committee notes the commentator's support for the proposal.</p> <p>The committee appreciates this input. Based on the weight of the public comments, the committee decided not to revise its proposal to encompass situations in which a <i>Palma</i> notice is issued. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a <i>Palma</i> notice has been issued.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
5.	John Michael Jensen Attorney Law Offices of John Michael Jensen	A	I support including a procedure for the submission of applications to file amicus curiae briefs in writ proceeding. It is important and needed. As the invitation to comment indicates, Rules 8.200(c) and 8.520(f) of the Rules of Court allow amicus curiae briefs, but no rule allows an individual or entity to file an amicus in support or opposition to writ proceedings. Many issues that affect large groups of people are decide by Writ. The public should be allowed to the opportunity to file amicus briefs. However, the longer filing period would be more appropriate.	The committee notes the commentator's support for the proposal.  Please see the response to the comments of the League of California Cities below.
6.	League of California Cities by Alison Leary, Deputy General Counsel Sacramento	NI	The League supports the proposal to amend the rules governing writ proceedings to include a new procedure for submission of applications to file amicus curiae briefs. However, the League is concerned with the proposed timeframe. The proposed amendment would require that the amicus application be filed no later than 14 days after the return is filed. This deadline is at least one day shorter than the deadline on which the reply to the return is due. <sup>[1]</sup>  [ <sup>1</sup> And in many cases, this deadline is more than one day shorter. In our experience, Courts of Appeal typically "order otherwise" pursuant to rule 8.487(b)(2) and allow the reply to be filed 20 days after the return.]  The League recommends that the amicus application be due on the same date as the reply.	The committee notes the commentator's support for the proposal. The committee considered whether to modify the proposal to set a different, longer time period for filing an application to file an amicus brief. Ultimately, the committee decided against making a change in the proposed time period. Members' view was that it would be helpful to both the court and parties if amicus from the Attorney General and from other entities or individuals were subject to the same deadline. In addition, members noted that the proposed rule includes a provision specifically allowing the Chief Justice or presiding justice to extend the time for filing an amicus application, which they thought should enable entities or individuals to seek additional time when this is needed.



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			<p>This will not only allow membership organizations, such as the League, enough time to participate as amicus curiae in writ proceedings, but also will not lengthen the proceedings and therefore, will advance the court's interest in operating expeditiously.</p> <p><b>1. Extending the deadline for the amicus application so that it is due on the same date as the reply, will allow for greater amicus participation by membership organizations such as the League.</b></p> <p>Like many comparable membership organizations, the League has developed a formal Legal Advocacy Program through which it considers whether to participate in a case as amicus curiae. This Program takes time to administer, but ensures that valuable public resources are not expended on a case unless the League's amicus participation will ultimately help the court reach a wise and just resolution of a case impacting cities.</p> <p>When League staff are notified or become aware of a case potentially impacting cities, League staff carefully evaluate the case to determine whether it meets certain criteria such that it should be presented to the League's Legal Advocacy Committee (LAC) – the body of 24 city attorneys from throughout the state charged with administering the Legal Advocacy Program. If the case meets the criteria, League staff transmit the case to the LAC members for</p>	

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			<p>consideration. The LAC then meets in person or by conference call to discuss the case and debate its merits, with the ultimate goal of determining whether: (1) the case involves issues that may impact cities on a statewide basis; (2) cities hold uniform views on the issues presented by the case; and (3) League participation is beneficial to advance or preserve cities' collective interests. If League participation is approved, League staff then identify an attorney who is willing to draft the approved amicus brief on a pro bono basis. The League attempts to identify attorneys who are experts in the field of law at issue. Because those experts are in high demand, the more time they have to prepare, the more likely they are to agree to draft the brief. Once a draft is complete, League staff review the brief to ensure that it complies with League policies and standards. Current League practice is to file an amicus brief in a writ proceeding no later than the date that the reply brief is due. This practice affords the League as much time as possible to complete the above described internal review process, while ensuring that writ proceedings are fully briefed expeditiously. A review of the League's past participation in writ proceedings suggests that this deadline is typically twenty days after the return is filed. Frequently, it is not possible for the League to complete its internal review process any earlier than this date.</p> <p>The effect of requiring an amicus brief to be</p>	

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			<p>filed no later than fourteen days after the return is filed, which in many cases is six days before the League can typically turn these types of amicus briefs around, will likely be that the League and similarly situated member associations will not be able to participate in as many cases. Given the expedited nature of writ proceedings and their far reaching impacts, this result may have severe consequences, as member associations often provide courts with valuable insight into the broad, practical effects of their decisions. For example, if a city were involved in a writ proceeding regarding the validity of a tax that the city imposed, the League may be able to enlighten the court as to the implications and importance of its decision to non-parties by surveying its members to determine how many cities currently impose or plan to impose such a tax and why they do so—information which the court would not otherwise have available to it.</p> <p><b>2. Extending the deadline for the amicus application to be due on the same date as the reply does not prolong the proceedings and promotes judicial efficiency.</b></p> <p>The League recognizes that the court has a vested interest in ensuring that writ proceedings are briefed expeditiously. However, the League cannot discern and the Invitation to Comment does not explain why a rule that allows amicus applications to be due on the same date as the reply would prolong a writ proceeding.<sup>2</sup> If</p>	

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			anything, a rule that allows amicus applications to be due on the same date as the reply, thus affording member associations the opportunity to participate as amicus, would promote judicial efficiency by ensuring that courts are apprised of all relevant facts before making conclusions of law, decreasing the likelihood of an appeal. The League of California Cities fully supports the Judicial Council's efforts to codify the process for filing an amicus brief in writ proceedings, however the proposed rule does not provide any significant benefit when compared with a rule that allows amicus briefs to be filed when the reply brief is due, particularly in light of the potential practical effects of the proposed rule as discussed in our comments. The League of California Cities respectfully requests that the Supreme Court reject the rule as proposed and adopt an alternative rule which would allow amicus briefs to be submitted no later than the date that the reply brief is due.	
7.	Office of the County Counsel, County of Los Angeles by Alyssa Skolnick Deputy General Counsel	N	This proposed amendment would cause undue delay in the writ proceedings. It would encourage entities who do not have a direct interest to weigh in on numerous dependency writ proceedings, thereby delaying resolution in situations where prompt relief is necessary.	The committee respectfully disagrees with this comment. The committee does not believe that this proposed amendment will encourage additional applications to file amicus briefs in dependency or other writ proceedings. Instead, the committee believes that this proposed amendment will provide guidance and uniformity in practice in circumstances in which individuals are already filing amicus applications in writ proceedings.

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8.	Orange County Bar Association by Todd G. Friedland President	A	The OCBA believes that the proposal appropriately addresses the stated purpose and agrees that there is a need to address possible amicus participation in other situations such as when the court notifies the parties that it is considering issuing a writ. Should the rule also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance? <b>Yes</b>	The committee notes the commentator's support for the proposal and appreciates this input regarding addressing amicus participation in other situations. Based on this and other comments, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a <i>Palma</i> notice has been issued.
9.	San Diego County Bar Association Appellate Practice Section	AM	<p>We support the proposed changes to Rule 8.487 to provide a formal procedure to submit an application to file amicus curiae briefs if the court issues an alternative writ or order to show cause.</p> <p>An amicus brief is intended to bring to the attention of the court an issue that is not already presented by the parties but important to the court's consideration of the case. Often, amicus briefs highlight impacts the court's decision may have that reach beyond the parties involved in the judicial proceeding. Amici curiae sometimes endeavor to guide the court to either take a more broad or narrow approach in dealing with the issues presented on appeal.</p>	The committee notes the commentator's support for the proposal.

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			<p>Incorporating an option for interested third parties to submit amicus briefs in connection with a writ petition that is being considered by the court is particularly important because writs are only issued in rare situations where there is an immediate need for review. Some of the circumstances in which the court will choose to grant writ review include when the petition presents (1) an issue of widespread public importance; (2) a novel constitutional issue; (3) a statute that requires prompt interpretation because of a conflict of law requiring immediate resolution; or (4) prejudice or other time-sensitive considerations specific to the parties seeking relief. In the first three circumstances, amicus curiae would assist the court to evaluate whether the writ actually warrants attention and will bring a fresh perspective that may not have been addressed by the parties in seeking or opposing writ relief.</p> <p><b><u>Submission of Amicus Curiae Briefs when Palma notices are issued.</u></b> The committee also requested input on whether the rule should address situations in which a <i>Palma</i> notice has issued. We suggest a procedure that would also allow interested parties to submit an application to file amicus curiae briefs when a <i>Palma</i> notice is issued would be beneficial to the bench, the bar, and the public. The California Supreme Court explained the circumstances behind a <i>Palma</i> notice in <i>Lewis v. Superior Court</i> (1999)</p>	<p>The committee appreciates this input. Based on the weight of the public comments, the committee decided not to revise its proposal to encompass situations in which a <i>Palma</i> notice is issued. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the</p>

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			<p>19 Cal.4th 1232, 1236 (<i>Lewis</i>):</p> <p>When an appellate court considers a petition for a writ of mandate or prohibition, it is authorized in limited circumstances to issue a peremptory writ in the first instance, without having issued an alternative writ or order to show cause. (Code Civ. Proc., § 1088, 1105; <i>Alexander v. Superior Court</i> (1993) 5 Cal.4th 1218, 1222-1223 [23 Cal. Rptr. 2d 397, 859 P.2d 96] (<i>Alexander</i>); <i>Palma v. U.S. Industrial Fasteners, Inc.</i> (1984) 36 Cal.3d 171, 178 [203 Cal. Rptr. 626, 681 P.2d 893] (<i>Palma</i>).) In <i>Palma</i>, we held that even in such circumstances, a peremptory writ of mandate or prohibition should not issue in the first instance unless the adverse parties have received notice that such a writ in the first instance is being sought or considered. In addition, absent exceptional circumstances requiring immediate action, the court should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected. (<i>Palma, supra</i>, 36 Cal. 3d at p. 180.)</p> <p>Because <i>Palma</i> notices are issued to ensure the court is aware of the potential impacts of issuing a preemptory writ in the first instance, the court may benefit from additional insight into whether the writ should or should not be issued due to</p>	<p>court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a <i>Palma</i> notice has been issued.</p>

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			<p>the impact on persons outside the litigation.</p> <p>Providing an opportunity for amicus curiae briefs to be filed within the same timeframe that the respondent has to respond to the <i>Palma</i> notice would not delay the court's review of the case. It would, however, provide an additional perspective on the issue being considered that highlights the impact the writ would have outside the litigation. Allowing the opportunity to submit applications for the consideration of amicus curiae briefs to be filed will provide the court with additional information regarding whether other entities or individuals are actually interested in the issue or whether immediate guidance on a novel issue or conflict of law is required that should not be delayed through the normal course of litigation.</p> <p><b><u>Permitting Applications for Amicus Curiae Briefs Before Issuance of a Palma notice, an Alternative Writ, or an OSC.</u></b> We submit that the committee should propose an amendment that creates a procedure to file applications for amicus curiae to discuss the impact of a writ petition <i>before</i> the court has taken any action.</p> <p>As noted above, writs are granted in rare circumstances and only when there is a pressing need. Permitting the court to accept applications for amicus curiae briefs would allow it to have an additional perspective regarding whether to issue a <i>Palma</i> notice, an alternative writ, or an OSC. We believe</p>	<p>Please see the response to the comments of the Association of Southern California Defense Counsel above.</p>



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			<p>providing a procedure to file amicus curiae briefs in writ proceedings would not significantly increase the filings the court would need to review nor would it delay review.</p> <p>The court has the option to respond to the writ at any time, and, of course, the court would retain that option. It would only provide a mechanism for parties to provide additional information to the court while the court is still considering whether or not the writ warrants immediate attention. Allowing the court to receive this additional briefing would notify it that others are monitoring the case and also request the court to grant writ review.</p> <p>Additionally, it is likely that applications to file amicus briefs would only occur in matters of public importance or conflicts of law. For example, the California Academy of Appellate Lawyers attempted to submit a letter supporting writ review in <i>ISHR LLC v. Superior Court</i>, Case No. B271243, in which the real party in interest had requested review of the superior court's denial of a motion to use a settled statement in a case where there was no reported transcript of the oral proceedings. The court would not accept the request to submit an amicus brief, and thus was denied the insight regarding the impact of the bench's refusal to hear motions for a settled statement to be used on appeal. We suggest that the committee consider adding a provision to the proposed rule</p>	

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			so Courts of Appeal can accept letters like the one submitted in <i>ISHR</i> .	
10.	State Bar of California, Committee on Appellate Courts	A	The Committee on Appellate Courts supports this proposal. The rules currently do not provide a procedure by which individuals and entities other than the Attorney General may file amicus curiae briefs in writ proceedings. The proposed changes to rule 8.487 would furnish such a procedure. Because the rules should provide a procedure by which any amicus may file a brief in writ proceedings, and because the procedure proposed by the Appellate Advisory Committee generally mirrors the procedure already in place for amicus briefs filed by the Attorney General, we support this proposal. We also agree with the Appellate Advisory Committee's decision not to address amicus participation in situations where the court notifies the parties that it is considering issuing a <i>Palma</i> notice.	<p>The committee notes the commentator's support for the proposal.</p> <p>The committee appreciates this input. Based on the weight of the public comments, the committee decided not to revise its proposal to encompass situations in which a <i>Palma</i> notice is issued. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a <i>Palma</i> notice has been issued.</p>

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11.	Superior Court of Los Angeles County	A	No specific comment.	The committee notes the commentator's support for the proposal.
12.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<p>Q: Does the proposal appropriately address the stated purpose? Yes.</p> <p>Q: Should the rule also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance? No.</p> <p>Q: Would the proposal provide cost savings? No.</p> <p>Q: What are implementations requirements for courts? Any requests to file amicus briefs should be treated as urgent miscellaneous requests; associated additions/revisions of processing procedures.</p> <p>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>Additional comments:</p> <p>Proposed rule 8.487(e)(5) should mirror (d)(4) to avoid extension of response time.</p>	<p>The committee notes the commentator's support for the proposal and appreciates the responses to the committee's questions.</p> <p><b>Response to be discussed by committee – see staff memo</b></p>
13.	D'vora Tirschwell Writ Attorney Court of Appeal, First Appellate	A	Proposed rule 8.487(e) strikes an appropriate balance in writ proceedings, by limiting amicus applications and briefs to proceedings in which	The committee notes the commentator's support for the proposal. Please see the response to the comments of the Association of Southern

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	District		<p>an alternative writ or order to show cause has issued. In the alternative writ scenario, however, an amicus application should probably not be submitted until after the superior court has decided to change its ruling in response to the alternative writ, since if the court does change its ruling, the writ proceeding in the appellate court will likely be dismissed as moot.</p> <p>Since amicus participation in cases in which a Palma writ/peremptory writ in the first instance will likely be unhelpful to the court, the proposed rule properly excludes amicus participation in such situations. A Palma writ is only proper where a petitioner's entitlement to relief is clear, or where the case is unusually urgent. It is difficult to imagine how an amicus brief would assist the court in resolving clear cases, and if the petition is unusually urgent the amicus process would cause a slowdown in the granting of relief.</p>	California Defense Counsel above.