

## Retroactivity-Finality Cheat Sheet

For purposes of retroactivity of new criminal laws, a case is final when all direct appeals have been exhausted and the time for a petition for writ of certiorari has expired or the Supreme Court has denied certiorari. Calculating the date direct review is final requires understanding sub-deadlines. Below are descriptions of the relevant rules, followed by some scenarios applying those rules.

### Relevant Rules for Direct Criminal Appeals

- *Finality of the Court of Appeal Decision.* In a direct criminal appeal, the California Court of Appeal’s opinion normally becomes final, as to itself, 30 days after filing. ([Rule 8.366\(b\)\(1\)](#).) If, before the opinion becomes final, the Court of Appeal orders its decision published or modifies its opinion in a way that changes the judgment, the finality period runs from the date order. ([Rule 8.366\(b\)\(3\)](#) and [\(4\)](#).) An abandonment is final immediately ([Rule 8.366\(b\)\(2\)\(B\)](#)).<sup>1</sup>
- *Deadline for Petition for Review.* A petition for review must be filed within 10 days after the opinion becomes final in the Court of Appeal ([Rule 8.500\(e\)\(1\)](#)), i.e. 40 days after the Court of Appeal issued its decision.

Note: For purposes of calculating the deadline for a petition for review, “the date of finality is not extended if it falls on a day on which the office of the clerk/executive officer is closed” (e.g. holidays, weekend, emergency closures). ([Rule 8.500\(e\)\(1\)](#).)

- *Grant of Review on Court’s Own Motion.* The Cal. Supreme Court may grant review on its own motion within 30 days after the case becomes final in the Court of Appeal ([Rule 8.512\(c\)\(1\)](#)), i.e. 60 days after the Court of Appeal issued its decision.

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<sup>1</sup> Finality is calculated differently for Court of Appeal decisions on habeas corpus petitions. (See [Rule 8.387\(b\)](#).) We do not here address those deadlines because finality for purposes of retroactivity is governed by the completion of direct appeal review, not writ review.

- *Certiorari Deadline.* If the Cal. Supreme Court did not grant review, the petition for certiorari must be filed in the U.S. Supreme Court within 90 days after the Cal. Supreme Court denied review. If the Cal. Supreme Court granted review, the petition for certiorari must be filed in the U.S. Supreme Court within 90 days after the Cal. Supreme Court entered its judgment on the merits. ([U.S. Sup. Ct. Rule 13.1.](#))

## Scenarios

With these deadlines in mind, here are the calculations of when a case is final for purposes of retroactivity of new laws.

- Petition for review filed, review denied, no cert petition:
  - Final 90 days after denial of review.
- Petition for review filed, review denied, cert petition filed:
  - Final upon denial of certiorari
- No petition for review filed (finality calculation is not certain):
  - Possibility 1: final when time to petition for review has run, i.e. 40 days after the filing of the opinion.
  - Possibility 2: final when the Supreme Court's time to grant review on its own motion runs, i.e. 30 days after the Court of Appeal's decision becomes final.

## Caveats:

- If the Court of Appeal grants rehearing the clock restarts.
- If either high court actually *grants* review/cert., the case does not become final until after that review. The case may then become final upon issuance of the high court opinion. But if the high court remands or transfers the case, the clock is likely re-started.