



NEWS

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Supreme Court To Study Rules for Publication of Appeal Court Opinions

San Francisco—Chief Justice Ronald M. George today announced the appointment of the new Supreme Court Advisory Committee on Rules for Publication of Court of Appeal opinions.

To be chaired by Supreme Court Justice Kathryn Werdegar, the 13-member committee is charged with reviewing the current standards used by the Courts of Appeal and the Supreme Court in determining which Court of Appeal opinions should be certified for publication and with making recommendations to the Supreme Court on what changes, if any, should be instituted to better ensure that appropriate cases are published.

The committee's report to the Supreme Court is due by June 2005.

Under the state Constitution, the Supreme Court has the authority to determine which opinions of the Supreme Court and Courts of Appeal are published and may therefore be cited as case law in state courts. Under this authority, the court has established standards for publication of appellate opinions in rules 976 and 977 of the California Rules of Court.

Attached are the membership roster and the charge of the committee.

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Advisory Committee on Rules for Publication of Court of Appeal Opinions—2004

Chair:

Honorable Kathryn Mickle Werdegar
Associate Justice
California Supreme Court
San Francisco

Honorable Joanne Parrilli
Associate Justice, Court of Appeal
First Appellate District, Div. Three
San Francisco

Honorable Kathryn Doi Todd
Associate Justice, Court of Appeal
Second Appellate District, Div. Two
Los Angeles

Honorable Fred K. Morrison
Associate Justice, Court of Appeal
Third Appellate District
Sacramento

Honorable Patricia D. Benke
Associate Justice, Court of Appeal
Fourth Appellate District, Div. One
San Diego

Honorable Gene M. Gomes
Associate Justice, Court of Appeal
Fifth Appellate District
2525 Capitol St.
Fresno

Honorable Richard J. McAdams
Associate Justice, Court of Appeal
Court Services Analyst
Sixth Appellate District
San Jose

Dennis A. Fischer, Esq.
Santa Monica

Ellis J. Horvitz, Esq.
Horvitz & Levy
Encino

Victoria DeGoff, Esq.
DeGoff & Sherman
Berkeley

Richard Frank
Chief Deputy Attorney General
Department of Justice
Sacramento

Beth J. Jay
Principal Attorney to the Chief Justice
California Supreme Court
San Francisco

Edward Jessen
Reporter of Decisions
California Supreme Court
San Francisco

Staff:

Lyn Hinegardner
Attorney, Office of General Counsel
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
Telephone: 415-865-7698

Clifford Alumno
Office of General Counsel
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102
Telephone: 415-865-7683

Charge to Advisory Committee on Rules for Publication of Court of Appeal Opinions

The Supreme Court is vested with authority to determine which opinions of the Supreme Court and the Courts of Appeal shall be published. (Cal. Const., art. VI, § 14.) Pursuant to this constitutional authority, the court has established standards for publication of appellate opinions, set forth in the California Rules of Court, rule 976 et seq. The current rules provide that all opinions of the Supreme Court are published. An opinion of the Court of Appeal or the appellate division of the Superior Court may not be published unless it meets one of four specified criteria: the opinion “(1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule; (2) resolves or creates an apparent conflict in the law; (3) involves a legal issue of continuing public interest; or (4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.” (Rule 976(b).)

The committee is charged with reviewing the existing standards for the publication of opinions of the Courts of Appeal and with recommending to the Supreme Court whether the criteria or procedures set forth in the rules for publication of these opinions should be changed with regard to the practices of the Courts of Appeal and the Supreme Court.

In fulfilling its charge, the committee should consider consistency in practice among the districts and divisions of the Courts of Appeal, whether express or implicit local standards guide the process in any individual district or division of the Courts of Appeal, and whether further standards should be developed to assist those courts in their initial determination whether to certify an opinion for publication.

The committee further should consider what weight the Supreme Court should accord to the preferences of the authoring court when acting upon a request for publication, whether the criteria applied by the Supreme Court for ordering publication should be the same as those applied by the Court or Appeal, whether the Supreme Court should take into account additional criteria in determining whether to order depublishation, and the weight, if any, to be given to the issuance of a dissenting opinion by a justice on the Court of Appeal panel or to a request to publish by one justice on the Court of Appeal panel.

The committee also should consider whether doubts as to whether or not an opinion should be certified for publication should be resolved in favor of publication by the Court of Appeal initially, and by the Supreme Court when entertaining a request for publication.

In addition, the committee should consider whether the standards applied to determine whether to certify for publication an opinion of an appellate division of the superior court should remain the same as those governing the Courts of Appeal.

Finally, the committee should consider whether a procedure under which the Supreme Court would transfer a matter to the Court of Appeal for purposes of editing for publication should be available in instances in which the Supreme Court concludes that publication would be appropriate.

The committee shall report to the Supreme Court concerning its findings and conclusions and make recommendations, if appropriate, for improving the standards for publication of opinions to better ensure the publication of those opinions that may assist in the reasoned and orderly development of the law.