



# JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY  
COMMITTEE

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## APPELLATE ADVISORY COMMITTEE

### MINUTES OF OPEN MEETING WITH CLOSED SESSION

March 5, 2020

10:00 a.m.

455 Golden Gate Avenue, San Francisco, CA 94102

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**Advisory Body Members Present:** Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-Chair; Mr. Michael G. Colantuono, Mr. Kevin Green, Mr. Jonathan D. Grossman, Hon. Adrienne M. Grover, Hon. Joan K. Irion, Mr. Joshua A. Knight, Hon. Leondra R. Kruger, Mr. Jeffrey Lawrence, Ms. Heather J. MacKay, Ms. Mary K. McComb, Ms. Milica Novakovic, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy M. Schooley, Hon. Stephen D. Schuett, Hon. M. Bruce Smith, and Hon. Helen E. Williams

**Advisory Body Members Absent:** Mr. Jorge Navarrete and Ms. Mary-Christine Sungaila

**Others Present:** Ms. Christy Simons, Ms. Sarah Abbott, Ms. Adetunji Olude, Ms. Andi Liebenbaum, Mr. Eric Long, Mr. Daniel Richardson, and Mr. Jay Harrell

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The chair called the meeting to order at 10:00 a.m. and roll was called.

##### **Chair's Report**

Justice Mauro thanked the committee and staff for their work. We have a strong group of attorneys and staff supporting our committee and subcommittees.

He updated the committee on the leadership meeting for internal committee and advisory committee chairs and vice chairs held in Sacramento in February. Justice Slough emphasized communication, liaisons, and succession planning. They received a presentation on data analytics for finding efficiencies and supporting funding requests.

##### **Approval of Minutes**

The advisory body reviewed and approved the minutes of the November 14, 2019, Appellate Advisory Committee meeting.

##### **Public Comment**

No public comments were received.

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**I. DISCUSSION AND ACTION ITEMS (ITEMS 1–10)**

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**Item 1**

**Legislative Update (No Action Required)**

Ms. Liebenbaum explained the JCC’s purview with respect to legislation; that the council only takes positions on legislation that will impact the courts. She also updated the committee on legislative activity of interest to the appellate courts, including AB 3070 regarding jurors and peremptory challenges. Mr. Colantuono asked about SB 991, the bill to increase compensation for court reporters providing reporters’ transcripts. Ms. Liebenbaum will keep us posted.

**Item 2**

**Liaison Reports**

- Hon. Michael Sachs, Trial Court Presiding Judges Advisory Committee

No update provided.

- Ms. Adetunji Olude, Center for Judicial Education and Research

Ms. Olude updated the committee on the recent Appellate Judicial Attorneys Institute, the upcoming institute for appellate justices, and three webinars that will be available: ADA access in appellate courts, self-represented litigants in appellate courts, and one for appellate division judges and attorneys. She also mentioned distance education via CJER online. Mr. Green and Judge Williams mentioned a webinar in June on self-represented litigants that is being sponsored by CLA.

**Winter Proposals**

**Item 3**

**Access to Juvenile Case Files in Appellate Court Proceedings** (Action required-recommend Judicial Council action)

To implement recent Judicial Council–sponsored legislation amending the statute that governs access to records in a juvenile case, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee proposed amending the rules regarding confidentiality in juvenile court and appellate court proceedings. The statutory amendment provides that individuals who petitioned for, and by order of the juvenile court were granted access to, the juvenile case file are entitled to access those same records for purposes of appellate court proceedings in which they are parties. The committees also proposed a new information sheet to assist those litigants who must file a petition to request access to records and revisions to existing forms related to the petition process to add a new notice about access to records on review and make other clarifying changes. The committee reviewed the public comments and discussed the working group’s recommendations. For rule 5.552, these included the modification to (c)(3) requiring some diligence by the petitioner before the burden of service shifts to the clerk. The committee questioned whether form JV-574, which includes use of terms “access,”

“disclosure,” and “dissemination,” should be clarified. The committee agreed that this be raised with the Family and Juvenile Law Advisory Committee and that they determine whether any further revisions should be made.

**Action:** The committee approved recommending that the Judicial Council amend rules and revise forms as presented.

#### Item 4

**Appointment of Counsel in Misdemeanor Cases** (Action required-recommend Judicial Council action)

To implement the California Supreme Court’s decision in *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, the Appellate Advisory Committee proposed amending the rule regarding appointment of counsel in misdemeanor appeals to expand the circumstances under which the appellate division is authorized to appoint counsel for an indigent defendant. The proposal includes revising two forms to be consistent with the rule amendments. The committee reviewed the comments and the subcommittee’s recommendations. The committee questioned the use of the term “proceeding” in the rule, rather than “appeal.” Because this rule is in a chapter on appeals, there is a separate chapter on writs, and the committee received comments supporting a separate rule for writs, the committee agreed to change “proceeding” to “appeal.” The committee also agreed to replace “qualifies as” with “is” in the rule language. On the information sheet, the committee agreed to clarify in item 6 that, although the defendant is usually the appellant, sometimes the government is the appellant and the defendant is the respondent, and to narrow the example used in item 5, “difficulty getting a job.” The committee agreed to replace this example with “inability to get or keep a license or permit.”

**Action:** The committee approved recommending that the Judicial Council amend the rule and revise the forms as modified during the meeting.

#### Appellate Division Subcommittee (Hon. Stephen Schuett, Chair)

#### Item 5

**Finality of Appellate Division Opinions Certified for Publication** (Action required-recommend RUPRO action)

To address the problem of access to appellate division opinions that are certified for publication before they are final, the committee considered two options. The first was whether to recommend amending rule 8.888 so that the 30-day finality period for appellate division decisions certified for publication runs from the date the opinion is posted on the “Published Opinions” page of the California Courts website rather than the date the order for publication is sent by the court clerk to the parties. The committee agreed with the recommendation of the appellate division subcommittee to reject this option but pursue the other one, an operational change to the way appellate division decisions certified for publication are posted to the California Courts website. These opinions could be posted on a separate page of the website while the Court of Appeal considers transfer. Committee members discussed several issues, including whether

opinions should remain available on the website if transfer is granted and whether, as a future project, rule 8.1115 should be amended to include appellate division opinions.

**Action:** The committee rejected proposing to amend rule 8.888, approved moving forward with an operational change to the website for posting appellate division opinions certified for publication, and recommended future consideration of amendments to rule 8.1115.

#### **Item 6**

##### **Use of an appendix in limited civil cases (Action required-recommend RUPRO action)**

The committee considered the proposal to adopt a new rule, a new form, and to revise two more forms to allow litigants in limited civil appeals to use an appendix in lieu of a clerk's transcript as the record of documents filed in the trial court. The proposed rule is modeled on the existing rule for use of an appendix in unlimited civil appeals, and closely follows its structure and content, including numerous cross-references to other rules. The committee noted a gap in the proposed rule: if the parties use a joint appendix and no reporter's transcript, then no record is filed with the appellate division, and there is no trigger to file the appellant's opening brief. This issue is addressed by rule 8.212 for unlimited civil cases. The committee agreed to modify the proposal by amending rule 8.882 to add language regarding the time to file appellant's opening brief if there is an election to use an appendix.

**Action:** The proposal as modified during the meeting was approved to circulate for comment.

#### **Rules Subcommittee (Hon. Louis Mauro, Chair)**

#### **Item 7**

##### **Method of Notice to the Court Reporter (Action Required-recommend RUPRO action)**

The committee considered a proposal to amend rules 8.405, 8.450, and 8.454 to remove or modify the requirement that the clerk notify the court reporter "by telephone and in writing" to prepare a transcript in juvenile appeals and writs to make them more consistent with other appellate rules governing notice to court reporters.

**Action:** The proposal was approved as proposed to circulate for public comment.

#### **Item 8**

##### **Clarifying Filing Date of an Electronically Filed Document (Action Required-recommend RUPRO action)**

The committee discussed the proposal to amend rule 8.77 (the rule regarding confirmation of receipt and filing of electronically submitted documents) to clarify the date and time of filing. The rule currently addresses the receipt date of submissions received after the close of business but is silent as to when a received document is deemed filed. The proposal is to amend rule 8.77 to state that an electronic document that

complies with filing requirements is deemed filed on the date and time it was received by the court. The committee agreed with deleting one sentence in the rule as unnecessary.

**Action:** The proposal as modified was approved to circulate for comment.

**Item 9**

**Record Retention in Criminal Appeals (Action Required-recommend RUPRO action)**

The committee discussed the proposal to amend rule 10.1028 for two reasons: (1) to conform to recently amended Code of Civil Procedure section 271, subdivision (a), which now provides that the default original reporter's transcript is in electronic form, and (2) to extend from 20 years to 100 years the time the Court of Appeal must keep the original reporter's transcript in a felony case affirming the conviction. The committee expressed concern about having to keep so much paper for such a long time. However, courts may keep electronic transcripts, including scanning paper into electronic form, to reduce the amount of paper being stored. Also, there is an effort underway to provide funding for courts for digitizing their records. This rule does not apply to clerks' transcripts; their retention is controlled by the Government Code.

**Action:** The proposal was approved to circulate for comment.

**Item 10**

**Revision of Judicial Council Forms with Gender Neutral Terms (Action Required-recommend RUPRO action)**

As requested by the Rules Committee, the Appellate Advisory Committee reviewed the Judicial Council forms within its purview to identify any containing gender identity questions or gender terms. The committee identified several forms containing gender terms and recommends that they be revised to use gender-neutral language, and that the revisions proceed as technical changes that do not need to circulate for public comment.

**Action:** The proposal was approved to move forward as a group of technical changes.

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**II. ADJOURNMENT**

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**Adjourn to Closed Session**

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**III. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(C)(3))**

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**Item 1**

**Consent to Electronic Service (Action Required-recommend RUPRO action)**

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**ADJOURNMENT**

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There being no further business, the meeting was adjourned at 3:00 PM.

Approved by the advisory body on July 22, 2020.