



Supreme Court of California

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RONALD M. GEORGE
CHIEF JUSTICE OF CALIFORNIA

March 7, 2008

The Honorable Jared Huffman
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Member Huffman,

Thank you for your letter of March 4, 2008, concerning the publication of Court of Appeal decisions. Several members of the Legislature have expressed interest in this subject over the past few years. As you are aware, the Supreme Court Advisory Committee on Rules for Publication of Court of Appeal Opinions studied the rules governing the publication of these opinions promulgated by the Supreme Court pursuant to its express authority under article VI, section 14 of the California Constitution to determine which opinions of the Courts of Appeal should be published. The committee undertook an extensive review of the history, present practices, and the views of justices and members of the bar before developing its recommendations. The Supreme Court ultimately adopted the committee's recommendations.

Following Assembly Member Dymally's letter in May of 2007, I responded and met with him to discuss his concerns. This is a complex subject, and one that we believe may have fiscal ramifications not only for the courts, but for the practice of law in general. Ensuring the proper standards for publication of Court of Appeal opinions is a subject to which I and the entire court have devoted considerable thought over the years. I would welcome an opportunity to meet with you to discuss this matter in your office at the Capitol (or in my chambers in San Francisco) or by telephone.

In terms of the specific questions you have posed, the Supreme Court has been tracking the impact of the amendments we made. These changes have been

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in effect only since April of last year, but preliminary indications are that they have resulted in the publication of a larger percentage of opinions. In 2005, 817 opinions were published; in 2006, a total of 827, and in 2007 (with the amended rules in effect for 9 months) 944 opinions were published. The figures for the first two months of 2008 clearly suggest that the trend towards more publication is continuing and expanding, and that the number of opinions certified for publication is rising significantly.

The focus of the advisory committee's work, as described in the committee's report, was as follows: "The Supreme Court charged the committee with the task of reviewing the existing rules 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 should be changed to better ensure the publication of those opinions that may assist in the reasoned and orderly development of the law." The committee was asked to consider how the existing rules affected the publication of decisions that would be of benefit to the bench, the bar, and the public. The court did not bar consideration of whether rules prohibiting citation to unpublished cases was in some way in violation of constitutional free-speech rights. In order to explain the development of the publications rules, the committee's report details both their extensive history and the constitutional authority for their adoption.

As you observe, among the recommendations adopted by the court was one to establish a follow-up committee to consider various issues, including the feasibility of developing procedures whereby the Supreme Court could order the partial publication or partial depublication of a Court of Appeal opinion, whether there may be circumstances, in addition to those already specified, under which the parties may draw the attention of the Court of Appeal or the Supreme Court to unpublished opinions, and whether the rules and procedures for the publication of opinions of the appellate divisions of the superior court should be revised.

That committee has not yet been appointed. The court concluded that it would be useful to have data to assist it in evaluating the effect of the revisions it adopted effective April 1, 2007, before convening and charging a new committee with consideration of various issues arising from publication practices. We continue to monitor the effect of those revisions, and will form the committee once we conclude we have sufficient information to determine the appropriate scope of the new committee's charge.

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I hope that this information has been of assistance. For your convenience, I have attached a copy of the press release announcing the action taken by the Supreme Court on the committee's recommendations. In addition, you can find the entire report and the related appendices at www.courtinfo.ca.gov/courts/supreme/comm/ by scrolling down the page to the material under the title Advisory Committee on Rules for Publication of Court of Appeal opinions. Please feel free to contact me if you would like to set a time to discuss this matter further or if you would like additional information. Thank you for your interest in this matter.

Sincerely,



RONALD M. GEORGE

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Attachment

cc: Both Jay, Principal Attorney to the Chief Justice
Curt Child, Director, AOC Office of Governmental Affairs



JUDICIAL COUNCIL OF
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Lynn Holton
Public Information Officer

NEWS RELEASE

Release Number: 91

Release Date: December 12, 2006

Supreme Court Amends Rules on Publication of Court of Appeal Opinions

Court modifies presumption and bases for publication of opinions

San Francisco—The Supreme Court today announced amendments to the rules on publication of Court of Appeal opinions designed to encourage the publication of all appellate opinions that may assist in the reasoned and orderly development of the law and to improve public confidence in the publication process.

The state Constitution grants the Supreme Court authority to determine which opinions of the Courts of Appeal are published. (Cal. Const., Art. VI, § 14.) Generally only opinions certified for publication may be cited in the state courts. The court first established standards for publication of appellate opinions in 1964, adopting Rule 976¹ of the California Rules of Court.

The rule has been studied and amended several times since its initial adoption, and the most recent review was aimed at analyzing publication practices in order to determine whether they meet the goal of providing adequate and appropriate guidance to the bar and the public.

The newly adopted amendments, effective April 1, 2007, will:

- State that an opinion *should* be published if the opinion meets one or more of the criteria specified in the rule, replacing the current presumption against publication of an opinion unless it meets the criteria specified in the rule;

¹ Effective January 1, 2007, rule 976 will be renumbered as rule 8.1105.

(over)

- Specify that the rule applies to every opinion, whether it affirms or reverses a lower court opinion;
- Clarify and expand the criteria that the Courts of Appeal should consider when deciding whether to certify an opinion for publication; and
- Identify factors that should *not* be considered in deciding whether to certify an opinion for publication, such as court workload or embarrassment to attorneys, litigants, judges or others.

The Supreme Court adopted these amendments based on the final report and recommendations of its Advisory Committee on Rules for Publication of Court of Appeal opinions. This 13-member committee, chaired by Supreme Court Justice Kathryn Mickle Werdegar, was charged with reviewing the current standards provided by Rule 976 to guide the Courts of Appeal in determining which 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 opinions are published.

The advisory committee's final report was the culmination of two years of work, which included reviewing practices in other jurisdictions, analyzing statistical information on the publication rates of the California Courts of Appeal, and surveying the justices of the Courts of Appeal and appellate and other attorneys concerning the current criteria for publication in rule 976 and the courts' publication practices.

In 2005, the committee solicited public comments on its preliminary report and recommendations, which proposed more limited amendments than those contained in the final report. Based on the public comments received, the committee substantially revised its proposal for amending rule 976 and, earlier this year, sought additional public comment on this revised recommendation.

The committee's final report reflects all of the public input received, as well as the committee's extensive research and analysis. In addition to the amendments to rule 976 adopted by the court, the committee's final report recommends monitoring the impact of these rule amendments, providing judicial education on the publication rules and practices, and further evaluating other potential changes to the publication rules. As stated in the report, the committee believes that implementing these recommendations:

"will clarify the criteria for publication for both justices and attorneys, better ensure the publication of all those opinions that may assist in the reasoned and orderly development of the law, and improve public confidence in the publication process."

The committee's final report, including extensive background information considered by the committee in forming its recommendations and charts summarizing the public comments and the committee's responses, is available online at: <http://www.courtinfo.ca.gov/courts/supreme/comm/#opin>.

A copy of the amended rule is attached, as is a list showing the members of the committee.

A hard copy of the report may be requested by contacting Mr. Clifford Alumno at:

Administrative Office of the Courts
Office of the General Counsel
455 Golden Gate Avenue
San Francisco, California 94102

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