

**LEGISLATIVE BRIEFING:  
Unpublished Opinions**



JUDICIAL COUNCIL  
OF CALIFORNIA  
GOVERNMENTAL AFFAIRS

**Monday, December 7, 2015**

**1:00 p.m. – 2:00 p.m.  
State Capitol Room 447**

## **Agenda**

Welcome

*Cory Jasperson, Director, Judicial Council Governmental Affairs*

Introductions

*All*

Background and Current Practice: Unpublished or Non-citable Opinions

*Carin Fujisaki, Principal Attorney to the Chief Justice, California Supreme Court*

Federal Practice

*Carin Fujisaki*

Questions

*All*

Adjourn

## Publication and Requests for Publication of Appellate Decisions

### Authority

*California Constitution Article VI Section 14 & California Rules of Court 8.1100.*

The rules governing the publication of appellate opinions are adopted by the Supreme Court under section 14 of article VI of the California Constitution. Per the California Constitution, it is the Supreme Court's responsibility and prerogative to decide what opinions should be published. The Legislature provides for the prompt publication of such opinions and they are available for publication by any person. In addition, the California Constitution states that all decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated. The full text of Article VI Section 14 is included in Appendix A.

### Published Opinions

*California Rules of Court 8.1105 & 8.1115.*

Published or "citable" opinions of the appellate courts are opinions ordered published in the Official Reports, and may be cited or relied on by other courts and parties. All opinions of the Supreme Court are published in the Official Reports.

An opinion of a Court of Appeal or a superior court appellate division is published in the Official Reports if a majority of the rendering court certifies the opinion for publication before the decision is final in that court.

In addition, an opinion of a Court of Appeal or a superior court appellate division is generally certified for publication in the Official Reports if the opinion meets any of the standards or criteria for certification listed in *California Rules of Court 8.1105 (c)*, which is included in Appendix A.

Slip Opinions are as-filed versions of opinions certified for publication or ordered published. The Reporter of Decisions is responsible for editing slip opinions, subject to the rendering court's review, correction, and approval, before the opinions are published in the *Official Reports*. Slip opinions from the last 120 days are posted on the California Courts website as public information.

### Unpublished Opinions

*California Rules of Court 8.1115.*

An unpublished opinion is an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published. Unpublished opinions cannot be cited or relied on by a court or a party in any action, except as specified in *California Rules of Court 8.1115(b)*.

The contents of unpublished or 'non-citable' opinions are not protected or private information. All opinions are posted on the California Courts website and may and will be indexed by internet search engines as they are public records. Unpublished opinions are also available from or searchable through sources other than the California Courts website e.g. Lexus Nexus or Westlaw.

Unpublished opinions from the last 60 days are posted together on the California Courts website as public information about actions taken by the Courts of Appeal. After 60 days, these opinions remain available via the California Courts' Case Information Search or sources other than the California Courts website.

### **Requesting publication of an unpublished opinion**

*California Rules of Court 8.1120.*

Any person may request that an opinion be ordered published. A request is made by writing a concise letter to the rendering court including the person's interest and the reason why the opinion meets a standard for certification (See Appendix A). The request must be delivered within 20 days after the opinion is filed, and must be served on all parties.

After a request is made, the rendering court either grants or denies publication. If the rendering court does not or cannot grant the request before the decision is final in that court, the request is forwarded to the Supreme Court.

The Supreme Court may order the opinion published or deny the request. The court then sends notice of its action to the rendering court, all parties, and any person who requested publication.

### **Requesting depublication of published opinions**

*California Rules of Court 8.1125.*

Any person may request the Supreme Court to order that an opinion certified for publication not be published. A request can be made by writing a concise letter to the rendering court including the person's interest and the reason why the opinion should not be published. The request cannot exceed 10 pages, and must be separate from any and all petitions for review. The request must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal, and must be served on the rendering court and all parties.

After a request is made and received by the Supreme Court, the rendering court or any person may submit a response supporting or opposing the request. A response submitted by anyone other than the rendering court must state the person's interest.

The Supreme Court may order the opinion depublished or deny the request. The Supreme Court sends notice of its action to the rendering court, all parties, and any person who requested depublishation.

The Supreme Court may also order an opinion depublished on its own motion.

### **Partial Publication**

*California Rules of Court 8.1110.*

A majority of the rendering court may certify for publication any part of an opinion meeting a standard for certification (See Appendix A). The published part of the opinion must specify the part or parts not certified for publication. All material that aids in the application or interpretation of the published part must be published.

The published part of the opinion is treated as a published opinion and the unpublished part as an unpublished opinion.

## **Article VI Judicial Section 14.**

### *California Constitution*

The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person. Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.

## **Standards for certification**

### *California Rules of Court 8.1105.(c)*

An opinion of a Court of Appeal or a superior court appellate division—whether it affirms or reverses a trial court order or judgment—should be certified for publication in the Official Reports if the opinion:

- (1) Establishes a new rule of law;
- (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;
- (3) Modifies, explains, or criticizes with reasons given, an existing rule of law;
- (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;
- (5) Addresses or creates an apparent conflict in the law;
- (6) Involves a legal issue of continuing public interest;
- (7) 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;
- (8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or
- (9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law