



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION ONE
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

VAINO SPENCER
PRESIDING JUSTICE

Chambers: (213) 830-7503
Facsimile: (213) 830-7011

May 30, 2007

SENT VIA FACSIMILE

Honorable Mervyn M. Dymally
Member of the California Assembly
P.O. Box 942849
Sacramento, CA 94249-0052

Re: Citation of Unpublished Opinions

Dear Merv:

I believe it may be helpful to share with you my experience as a member of the Judicial Council pertinent to this matter. The Council's Court Management Committee, which I chaired, held all day hearings in San Francisco, Sacramento and Los Angeles, in either 1979 or early 1980, on the subject of unpublished opinions. The committee heard from numerous prosecutors, criminal defense counsel, and prominent attorneys who specialized in civil cases, as well as a number of appellate justices.

There were those who urged that all appellate opinions be published or, at least, that the unpublished be subject to citation. The overwhelming majority of attorneys in each segment of legal practice was strongly opposed to changing the system. As I recall, only one justice, Associate Justice L. Thaxton Hanson, expressed his view that any justice who dissented should be entitled to order publication unilaterally. The other justices stressed that preparing opinions slated to be published, and thereby available for citation, required an expenditure of considerably more time than the unpublished opinions. The latter reflect and include citations to established law upon which the opinion is based and usually are prepared expeditiously. They are fact specific and have no value except as to the parties, in that they do not meet the criteria for publication or contribute anything to the body of law.

Honorable Mervyn M. Dymally
May 30, 2007
Page 2

After careful consideration of the pros and cons, the committee recommended that the existing policy, which permitted opinions to be published only upon certification by a majority of the three-justice panel, and which met specific criteria, should be retained. The recommendation was adopted by unanimous vote of the Judicial Council. The same complex rationale underlying this decision by the Council applies equally to the concept of permitting citations of unpublished opinions.

After more than 26 years of experience as an appellate justice, I continue to strongly support the current system which limits citation of opinions.

In the year 2006, the Second District alone (one of six districts), consisting of eight divisions, each with four justices, disposed of 4,968 appeals and 2,752 original proceedings. Thus, each justice processed 153 appeals and 344 original proceedings. Of these, 3,530 appeals resulted in written opinions; hence, each justice was lead author on 110 opinions and associate on 220, in addition to processing the petitions in the original proceedings.

Being mindful that the parties had waited up to five years from the filing of the complaint until the filing of the notice of appeal, then wait an average of 14 months more from the notice of appeal to the filing of the opinion in civil actions and over a year in criminal cases, the justices did their best to expedite numerous opinions by relatively cursory treatment where appropriate. These were the unpublished opinions and, for good reason, not intended to be cited as they contribute nothing to the body of law.

When counsel cites opinions in their briefs, the justices and their respective staff attorneys are required to read the cited cases and to consider the citations upon which those cases are based. Citations to the thousands of unpublished opinions filed each year would in the vast majority of cases not be fruitful and would bog down our productivity. This would extend greatly the time the parties wait for a resolution. It would undoubtedly create the need for additional justices, court personnel and facilities. In my opinion, this would be great waste of state funds.

Honorable Mervyn M. Dymally
May 30, 2007
Page 3

I am pleased that you will be discussing this matter with our Chief Justice, as he has done extensive work on the issue. Further, he gained first hand knowledge of the intermediate appellate court during his tenure as an associate justice of the Second District Court of Appeal so he is well aware of the detrimental effect the proposal would have on the system. Chief Justice George and I have worked together harmoniously for over 30 years, and I have great respect for his judgment.

I look forward to seeing you soon. Also, I am planning a reception for Jerry Brown and his bride in August and will clear some prospective dates with your office.

Best regards,



Vaino

VS:sh

cc: Chief Justice Ronald M. George
William C. Vickrey