



NEWS RELEASE

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ADMINISTRATIVE OFFICE OF THE COURTS
STATE BUILDING, ROOM 3154, SAN FRANCISCO 94102

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RELEASE
DATE: August 20, 1982
RELEASE # 34
SUBJECT:

Chief Justice Rose Elizabeth Bird today announced that the California Supreme Court will hold a public hearing regarding proposals to amend the rules on publication of appellate opinions.

The court requests written comments and oral testimony from any interested parties. The date of the hearing, which will be held in the court's San Francisco courtroom, will be announced shortly.

The proposals before the court were formulated by the California Judicial Council based on the recommendations of the Advisory Committee for an Effective Publication Rule and the Committee on Partial Publication of Appellate Opinions.

A synopsis of these proposals is attached. The complete text of the proposed rule amendments is available from the Administrative Office of the Courts.

Written comments and requests to present testimony may be sent to Mr. Laurence P. Gill, Clerk of the Court, at 455 Golden Gate Avenue, Room 4250, San Francisco 94102. Individuals who wish to testify should include a brief summary of their testimony with their request.

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SUMMARY OF PROPOSED RULE AMENDMENTS
ON PUBLICATION OF APPELLATE OPINIONS

The rule amendments the Judicial Council has recommended that the Supreme Court adopt are summarized below.

Noncitation (rule 977)

Rule 977, which generally prohibits citation of unpublished opinions, would be amended to permit citation of unpublished Court of Appeal opinions in connection with petitions for hearing in the Supreme Court when it appears that an unpublished opinion is inconsistent with the case in which review is sought; to permit citation of unpublished opinions of appellate departments of the superior courts in those departments and in the municipal and justice courts within the same county; and to require that copies of unpublished opinions intended for citation be furnished in advance to the court and all parties.

Publication standards

The publication standards in rule 976(b) would be amended to provide for publication of opinions that apply established rules of law to factual situations significantly different from those in published cases; opinions that resolve or create conflicts in the law; opinions in cases involving dissenting opinions or concurring opinions in which reasons are stated, unless all three judges agree that the opinion should not be published; opinions that make a significant contribution to legal literature by undertaking an historical review of the law or describing legislative history; and opinions that otherwise aid the administration of justice. The presumption against publication would be removed from the rule.

Supreme Court procedures

Rule 976(c) would be amended to provide that in exercising its power to order opinions published or not published,

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the Supreme Court would observe the specified standards for publication. Rule 976(d) would be modified to delete language that prohibits publication of Court of Appeal opinions superseded by a Supreme Court grant of hearing. A superseded opinion in the Official Reports would be accompanied by an appropriate notation of the Supreme Court's action in the case.

An amendment to rule 29 would expressly authorize the Supreme Court to comment on a Court of Appeal opinion when denying a petition for hearing. The comments would be published with the Court of Appeal opinion in the Official Reports.

Requests for publication

Rule 978(a) would be amended to require the Court of Appeal to send its recommendation and statement of reasons regarding a request for publication to all parties and to any person who has requested publication. Rule 978(b) would be amended to provide that each party and any other person who has requested publication shall be notified of the action taken by the Supreme Court.

PROPOSED PARTIAL PUBLICATION EXPERIMENT

The Judicial Council has also recommended a one-year experiment with "partial" publication of Court of Appeal opinions. To authorize and provide guidelines for the experiment, the Council proposes a new rule 976.1, which would permit the Court of Appeal to certify for publication a part of an opinion, leaving unpublished any part that did not meet the standards for publication.

THE JUDICIAL COUNCIL OF CALIFORNIA
STATE BUILDING, 350 McALLISTER STREET, SAN FRANCISCO 94102

ADMINISTRATIVE OFFICE OF THE COURTS

PROPOSED RULE AMENDMENTS FOR
PUBLICATION OF APPELLATE OPINIONS

Chief Justice Rose Elizabeth Bird has announced that the California Supreme Court will hold a public hearing regarding proposals to amend the rules on publication of appellate opinions.

Written comments and requests to present testimony may be sent to Mr. Laurence P. Gill, Clerk of the Court, at 455 Golden Gate Avenue, Room 4250, San Francisco 94102. Individuals who wish to testify should include a brief summary of their testimony with their request.

Following is the text of the proposals, which were recommended by the Judicial Council of California to improve the system for selective publication of appellate court opinions (rules 976-978 of the California Rules of Court). The proposals were developed by the Chief Justice's Advisory Committee for an Effective Publication Rule.

Prior to their consideration by the Council, the advisory committee's recommendations were published and widely circulated for comment. Comments and suggestions were received from appellate and trial judges, attorneys, the State Bar, the California Judges Association, and other interested persons and organizations.

In addition to proposed rule changes, the Council approved an advisory committee recommendation for a one-year experiment permitting "partial publication" of an appellate opinion where only a portion of the opinion meets the standards for publication.

These proposals, as approved by the Council, are summarized below and their full text is attached.

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Rules 976, 977 and 978 of the California Rules of Court would be amended, and rule 29(c) would be added, to read:

Rule 976. Publication of appellate opinions

(a) * * *

(b) [Standards for opinions of other courts] No An opinion of a Court of Appeal or of an appellate department of the superior court shall be published in the Official Reports unless *only if* such opinion: (1) establishes a new rule of law, *applies an established rule or principle to a factual situation substantially different from that in published cases,* or alters or modifies an existing rule,¹ (2) involves a legal issue of continuing public interest² *to a substantial group of the public such as public officers, agencies or entities, members of an economic class, or a business or professional group, or* (3) criticizes existing law,³ (4) *resolves or creates an apparent conflict in the law,* (5) *constitutes a significant and nonduplicative contribution to legal literature*

1/ This criterion calls for publication of the relatively few opinions that establish new rules of law, including a new construction of a statute, or that change existing rules. This criterion does not justify publication of a fact case of first impression, where a legal rule or principle is applied to a substantially new factual situation.

2/ This criterion requires that the legal issue, rather than the case or controversy, be of public interest and that the interest be of a continuing nature and not merely transitory. Public interest must be distinguished from public curiosity. The requirement of public interest may be satisfied if the legal issue is of continuing interest to a substantial group of the public such as public officers, agencies or entities, members of an economic class, or a business or professional group. An opinion which clarifies a controlling rule of law that is not well established or clearly stated in prior reported opinions, which reconciles conflicting lines of authority, or which tests the present validity of a settled principle in the light of modern authorities elsewhere may be published under this criterion if it satisfies the requirement that the legal issue be of continuing public interest.

3/ This criterion would justify publication of the rare intermediate appellate opinion which finds fault with existing common law or statutory principles and doctrines and which recommends changes by a higher court or by the legislature.

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either by an historical review of the law or by describing the legislative history of a statute or ordinance, (6) otherwise aids the administration of justice, or (7) is one of the opinions in a case in which there is a dissenting opinion or a concurring opinion in which reasons are stated.

(c) [Publication procedure]

(1) [Courts of Appeal and appellate departments]

Unless otherwise directed by the Supreme Court, an opinion of a Court of Appeal or of an appellate department of the superior court shall be published in the Official Reports if a majority of the court rendering the opinion certifies, prior to the decision becoming final in that court, that it meets one or more of the standards for publication specified in paragraphs (1) through (6) of subdivision (b). If the opinion is one of the opinions in a case in which there is a dissenting or concurring opinion, as specified in paragraph (7) of subdivision (b), it shall be published unless all members of the panel agree that it shall not be published. An opinion not so certified shall nevertheless be published in the Official Reports upon order of the Supreme Court to that effect.

(2) [Supreme Court] Notwithstanding paragraph (1), an opinion certified for publication shall not be published in the Official Reports, and an opinion not so certified shall be published in the Official Reports, upon an order of the Supreme Court to such effect. In exercising its power to order opinions published or not published, the Supreme Court shall observe the standards for publication specified in subdivision (b) of this rule.

(d) [Superseded opinions Effect of grant of hearing]

Regardless of the foregoing provisions of this rule, no opinion superseded by the granting of a hearing, rehearing or other judicial action shall be published in the Official Reports. Published Court of Appeal opinions in cases in which the Supreme Court grants a hearing shall remain published in the Official Reports, and a notation of grant of hearing shall immediately follow such opinions.

(e) * * *

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Rule 977. Citation of unpublished opinions prohibited;
exceptions

(a) [General rule] An opinion of a Court of Appeal or of an appellate department of a superior court that is not published, certified for publication, or ordered published in the Official Reports* pursuant to rule 976 shall not be cited by a court or by a party in any other action or proceeding except when the opinion is relevant under the doctrines of the law of the case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same respondent as provided in subdivision (b) of this rule.

(b) [Exceptions] An opinion not published, certified for publication, or ordered published in the Official Reports may be cited in another action or proceeding in the following situations:

(1) In connection with a petition for hearing proceeding before the Supreme Court whenever it appears that an unpublished opinion of a Court of Appeal is inconsistent with the decision or order in the case in which a hearing is sought.

(2) When the opinion of an appellate department of the superior court is relevant to an action or proceeding before that appellate department, or before a municipal or justice court within the same county;

(3) When the opinion is relevant under the doctrines of the law of the case, res judicata, or collateral estoppel;

(4) When the opinion is relevant to a criminal action or proceeding or disciplinary proceeding involving the same party or a member of the State Bar.

(c) [Citation procedure] A copy of any opinion citable under the exceptions specified in subdivision (b) of this rule shall be furnished to the court and all parties by attaching it to the document in which citation is made, or, if the citation is to be made orally, then within a reasonable time in advance of citation.

* This rule shall not apply to an opinion certified for publication prior to its actual publication.

Rule 978. Requesting publication of unpublished opinions

(a) [Request procedure; action by court rendering opinion] A request by any person for publication in the Official Reports of an opinion not certified for publication may be made only to the court that rendered the opinion. The request shall be made promptly by letter, with a copy to each party to the action or proceeding not joining therein, stating concisely why the opinion meets one or more of the criteria for publication in rule 976. If the court does not, or by reason of the decision's finality as to that court cannot, grant the request, the court may, and at the instance of the person requesting publication shall, transmit the request and a copy of the opinion to the Supreme Court with its recommendation for appropriate disposition and a brief statement of its reasons therefor. *The transmitting court shall also send a copy of its recommendation and statement of reasons to each party to the action or proceeding and to any other person who has requested publication.*

(b) [Action by Supreme Court] When a request for publication is received by the Supreme Court from the court that rendered the opinion pursuant to subdivision (a) of this rule the Supreme Court shall either order the opinion published or deny the request. *The transmitting court, each party to the action or proceeding, and any person who has requested publication shall be notified of the action taken by the Court.*

(c) * * *

Rule 29. Grounds for hearing in Supreme Court; *comment on denial of hearing*

(a) - (b) * * *

(c) [Comment on denial of hearing] *Upon denial of hearing in a Court of Appeal case in which the opinion is published the Supreme Court may expressly withhold its*

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approval of or otherwise comment on the whole or any part of the Court of Appeal opinion, but the failure of the Supreme Court to do so shall not be deemed an approval thereof. Such expressions and comments shall be published in the Official Reports, and shall appear immediately following the Court of Appeal opinion to which they are addressed.

PARTIAL PUBLICATION EXPERIMENT

The Judicial Council has forwarded to the Supreme Court, with its favorable recommendation, a proposal for a one-year experiment with partial publication of Court of Appeal opinions.

The proposal was developed and presented to the Council by the Committee on Partial Publication of Appellate Opinions. It includes the text of a proposed rule (rule 976.1) authorizing partial publication for the term of the experiment, along with a set of proposed guidelines.

The Committee's Recommendations

The Committee on Partial Publication recommended that the Judicial Council conduct a one-year experiment with partial publication throughout the state, if the Supreme Court approves of the proposal and agrees to the joint adoption of a temporary rule expressly authorizing partial publication for the experimental period.

If the experiment and temporary rule are approved the committee proposes to disseminate general guidelines to all Court of Appeal and appellate department judges. These would emphasize the following points:

- a. Nothing that will aid in the application or interpretation of the published part of an opinion should be left unpublished.
- b. The published part should mention the existence of the unpublished part.
- c. No issue should be discussed in both the published

and the unpublished parts of a partially published opinion.

d. Partial publication will probably be found most useful in cases involving numerous issues, only a few of which meet the criteria for publication.

Copies of existing partially published opinions and opinions thought appropriate for such treatment would be disseminated along with the guidelines.

The committee would develop a plan for evaluation of the experiment. One copy of each partially published opinion would be sent to the Administrative Office of the Courts for analysis and preparation of staff reports to the committee.

The committee drafted a proposed rule 976.1 and a guidelines statement for consideration by the Judicial Council. These documents are attached at pages 10-11.

D R A F T

Rule 976.1 is added to the California Rules of Court, effective _____, to read:

Rule 976.1 Partial publication experiment

(a) [Partial publication authorized] A majority of the court rendering an opinion may certify for publication any part of the opinion that meets the standard for publication specified under subdivision (b) of rule 976. The published part shall indicate that part of the opinion is unpublished. All material, factual and legal, that aids in the application or interpretation of the published part shall be in the published part.

(b) [Other rules applicable] For purposes of rules 976, 977 and 978, the published part of the opinion shall be treated as a published opinion, and the unpublished part as an unpublished opinion.

(c) [Copy to Reporter of Decisions] One extra copy of both the published and unpublished parts of the opinion shall be furnished by the clerk to the Reporter of Decisions.

(d) [Rule repealed at end of one year] This rule is repealed effective _____.

D R A F T

GUIDELINES FOR THE PARTIAL PUBLICATION EXPERIMENT

The Judicial Council Committee on Partial Publication of Appellate Opinions has developed the following guidelines and materials to assist judges who wish to participate in the one-year partial publication experiment authorized by rule 976.1.

It is the intent of the rule that the court rendering an opinion have maximum discretion as to when to issue and how to prepare a partially published opinion. Therefore, only the most general guidelines are given.

Guidelines

1. Partial publication will probably be found most useful in cases involving numerous issues, only a few of which meet the criteria for publication.

2. Format is not prescribed by the rule except that the unpublished part of each partially published opinion must indicate that part is unpublished.

3. Since the unpublished part is not citable (rule 977), rule 976.1(a) requires that all material, factual or legal, that aids in the application or interpretation of the published part must be in the published part. Issues discussed in one part should not be discussed in the other part.

Samples of Partially Published and Excerpted Opinions

[The committee collected several examples of partially published Court of Appeal opinions. The cases are People v. Moore (1971) 15 Cal.App.3d 851; People v. Peterson (1978) 85 Cal.App.3d 163; and People v. Gartner, 2 Crim. 35858 (filed in bifurcated form August 4, 1980 and later consolidated and issued as an unpublished opinion). The texts of these opinions would be distributed as part of the guidelines, along with copies of published cases containing parts not considered appropriate for publication, and of unpublished cases thought to have publishable parts. The following cases would be included: Meyser v. American Building Maintenance, Inc. (1978) 85 Cal.App. 3d 933; Golden Gate Bridge Dist. v. Muzzi (1978) 83 Cal.App.3d 707; People v. Johnson (1978) 82 Cal.App.3d 183; People v. Superior Court (Hulbert) (1977) 74 Cal.App.3d 497; People v. Collins (1975) 44 Cal.App.3d 617.]