

APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

July 22, 2020

2:00 p.m.

Teleconference

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 Laurence, Mr. Jorge Navarrete, 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: Ms. Heather J. MacKay, Ms. Mary K. McComb, Ms. Mary-Christine Sungaila

Others Present: Ms. Christy Simons, Ms. Sarah Abbott, Hon. Kimberly Gaab, Hon. Richard D. Huffman, Ms. Andi Liebenbaum, Mr. Eric Long, Mr. Jason Mayo, Ms. Adetunji Olude, Hon. Michael A. Sachs, and Mr. Jay Harrell

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 2:00 p.m. and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the March 5, 2020, committee meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1-10)

Item 1

Chair's Report

Presenter: Hon. Louis Mauro

Justice Mauro thanked all members for agreeing to extend their terms by one year to assist the Chief Justice and the Judicial Council and to maintain stability for the committee during the pandemic, and noted that a furlough has been implemented for staff. He observed that other committees are using videoconferencing for meetings, and asked whether the committee would be open to a videoconference platform for future committee and subcommittee meetings. Several members expressed support; none were opposed.

Item 2

Proposed New Rule 10.492

Presenters: Hon. Kimberly Gaab, Mr. Jason Mayo

Judge Gaab described a proposed new rule of court that would temporarily assist judicial officers and court employees with completing education required to be in-person. In-person instruction has been postponed indefinitely due to the pandemic. The new rule would extend deadlines for content-based requirements for one year and prorate hours-based requirements. Extending deadlines for content-based requirements would allow programming to resume when it is safe to do so while ensuring that crucial content is received. At the same time, reducing hours-based requirements prorated based on the duration of the crisis would allow the courts to deal with the current crisis without accruing additional burdens in the future. CJER has, in the meantime, added webinars and other programming to provide more instruction to judicial officers and court staff. The rule would sunset at the end of 2022. Several committee members asked questions about the rule's applicability to required qualifying ethics instruction and suggested clarifying, possibly in an advisory committee comment, that the new rule does not apply to the ethics training and would not extend that deadline. Members also supported an additional information campaign to be sure judicial officers understand this point.

Item 3

Legislative Update

Presenter: Andi Liebenbaum

The Legislature has been working to adapt to the pandemic and its impact on the legislative process. Because of disruptions and delays, fewer bills are going forward this year. The Legislature has simply run out of time; a number of bills will lapse. The Legislature will reconvene later this month; floor votes during the second week of August; the constitutional deadline for bills going to the Governor is August 31. Bills of interest address preemptory challenges and juror issues, CEQA, and housing and tenancy.

Item 4

Liaison Reports

Presenter: Hon. Michael A. Sachs, TCPJAC Liaison

Judge Sachs informed the committee that the presiding judges are very busy and meeting monthly by videoconference because of the impact of the pandemic on day-to-day trial court operations. A bench guide for court leadership has been prepared to present best practices and other guidance for operating a courthouse in a time of pandemic. One focus of discussion is on jury trials and how to conduct them with social distancing. Courts are seeking bigger spaces outside the courthouse to accommodate jury selection and jury deliberation. Judge Sachs provided an example of the impact of the pandemic: the San Bernardino and Santa Clara courts were about to participate in a pilot program based on recommendations of the Futures Commission for streamlined discovery for unlimited civil cases, but the program was put on hold. The incentive for participating was an early trial date, but now courts cannot make any guarantees regarding trial dates. Judge Sachs emphasized that the COVID-19 pandemic has affected all the trial courts and the committee is focused on how to keep the business of the courts moving under the present conditions. The TCPJAC next meeting is August 14.

Presenter: Ms. Adetunji Olude, Judicial Council CJER Liaison

On behalf of the Appellate Practice Curriculum Committee, Ms. Olude informed the committee that two online courses are now available; one is a criminal law update, the other addresses self-represented litigants. There will be more webinars and educational opportunities added in the fall; there are no dates yet.

Item 5

Use of an Appendix in Limited Civil Cases Action:

Presenters: Judge Stephen D. Schuett, Ms. Christy Simons

Judge Schuett provided a summary of the proposal to adopt a new rule of court providing for the use of an appendix as the record of documents filed in the trial court and the public comments received by the committee. The comments regarding whether the rule should include provisions regarding administrative records were mixed. The subcommittee declined to add any such provisions because the existence of an administrative record in a limited civil case would be an exceedingly rare occurrence. Members of the subcommittee could not recall ever encountering this situation. Agency decisions involved administrative records, but these are reviewed by writ and do not go to the appellate division. Ms. Novakovic suggested adding a provision advising self-represented litigants that they cannot include any documents not in the court file or any altered documents. The committee agreed, and Ms. Novakovic will follow up with proposed language and placement.

Action: The committee approved the proposal as circulated with the addition of language noted above, and recommends it for approval by the Judicial Council.

Item 6

Update on Posting Appellate Division Opinions Certified for Publication (No Action Required)

Presenters: Hon. Helen E. Williams, Ms. Sarah Abbott, Ms. Christy Simons

Judge Williams provided a comprehensive summary of the issues and status of this project to improve access to published appellate division opinions so the public and other courts can see the development of the issues and what is happening with the cases. The California Style Manual contains specific provisions instructing the Reporter of Decisions not to process these opinions in a manner that makes them available to the public until the Court of Appeal has made its decision on transfer. Only then, and only if transfer is denied, are the opinions made available to the public. If transfer is granted, the opinions never become public despite having been deemed worthy of publication and despite no rule addressing these opinions. The CSM is being revised this year and the Reporter of Decisions welcomes feedback. The Reporter is also open to changes to the website that could include posting published appellate division opinions pending a decision on transfer. Once the Court of Appeal takes transfer, an option is to keep these opinions available with a note that they have been transferred. Ultimately, the project will involve rules to clarify the status and citability of these opinions. Discussions are ongoing regarding next steps.

Item 7

Method of Notice to the Court Reporter (Action Required)

Presenters: Hon. Louis R. Mauro, Ms. Sarah Abbott

The committee reviewed public comments on the proposed rule amendments to update the language regarding the method of notice by the clerk to the court reporter in juvenile appeals and writs. Justice Mauro described possible changes to the language of the rule that were discussed at the subcommittee meeting to address redundancy. Committee members discussed a number of possibilities, but ultimately decided to not to change the word “notify,” and to retain the words “immediately” in (b)(1) and “immediate” in (b)(1)(B) in the rule on appeals to preserve the meaning of the rule, i.e., that the clerk must act immediately to notify the court reporter and the action taken must be designed to provide immediate notice. The same wording was also approved for the two writ rules.

Action: The committee approved the proposal as amended and recommends it for approval by the Judicial Council.

Item 8

Date and Time of Filing Electronic Documents (Action Required)

Presenters: Hon. Louis R. Mauro, Mr. Eric Long

The committee reviewed public comments on the proposed rule amendments to clarify the date and time of filing of electronically submitted documents. In drafting the proposal, the committee considered the alternative of using the date and time the document is received by the electronic filing service provider rather than the date and time the document is received by the court, and included a question in the Invitation to Comment. There were no comments regarding instances of delay between the time an electronic filing service provider received a document and the time the court received it, and the committee concluded there was no need to change the proposed language.

Action: The committee approved the proposal as circulated and recommends it for approval by the Judicial Council.

Item 9

Consent to Electronic Service (Action Required)

Presenters: Hon. Louis R. Mauro, Mr. Eric Long

The committee reviewed public comments on the proposed rule amendments and revisions to one form to clarify e-service procedures in the appellate courts. The subcommittee endorsed one change to rule 8.25 to reflect the procedure for proof of service for electronically filed documents. Other minor changes include removing the words, “Note that,” from an advisory committee comment to be consistent with a comment to another rule and deleting a stray comma on the form.

Action: The committee approved the proposal as modified and recommends it for approval by the Judicial Council.

Item 10

Retention of Reporters’ Transcripts in Criminal Appeals (Action Required)

Presenters: Hon. Louis R. Mauro, Ms. Christy Simons

The committee received positive public comments on this proposal to extend the time for keeping reporters’ transcripts in cases affirming a felony conviction to 100 years and to conform

the rule to recent statutory changes. However, based on feedback from the courts, the Rules Subcommittee recommends tabling this project to gather more information. The courts understand the need to keep transcripts in these cases longer than 20 years, but are concerned about the cost of storing them, the number and types of records involved, and whether there is existing funding or additional funding. The committee agreed with deferring the project until it has answers to these questions. The committee is also concerned that the appellate courts be alerted not to destroy transcripts while the committee gathers the information. A revised retention time of 75 years was suggested, as was surveying the courts regarding this question. The option of moving forward with the part of the proposal addressing recent statutory changes was raised, but the committee saw no urgent need to proceed with those amendments separately.

Action: The committee approved the recommendation to table this proposal to gather more information on cost and the appropriate retention time.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 3:30 p.m.

Approved by the advisory body on March 1, 2021.