



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

March 1, 2021

1:00 p.m.

Via BlueJeans

Advisory Body Members Present: Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-Chair; Mr. Michael G. Colantuono, Mr. Kevin K. Green, Mr. Jonathan D. Grossman, Hon. Joan K. Irion, Mr. Joshua A. Knight, Hon. Leondra R. Kruger, Mr. Jeffrey Laurence, Ms. Heather J. MacKay, Ms. Mary K. McComb, 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: Hon. Adrienne M. Grover, Ms. MC Sungaila

Others Present: Ms. Christy Simons, Ms. Khayla Salangang, Ms. Kate Nitta, Hon. Michael A. Sachs, Ms. Adetunji Olude

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 1:00 p.m., and roll was called.

Approval of Minutes

The advisory body reviewed and approved the minutes of the July 22, 2020, and September 1, 2020, Appellate Advisory Committee meetings.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Item 1

Chair's Report

Presenter: Hon. Louis R. Mauro

As ITAC liaison, Justice Mauro informed the committee that ITAC has a lot of projects in the works. Modernization funding will help appellate courts with e-filing and electronic document. There are also projects to improve self-help resources and facilitate video remote interpreting. Other projects address improving information security, identity management, and disaster recovery. As chair of the Homelessness Work Group, Justice Mauro described the project, explaining that the Chief Justice asked how the judicial branch could work with the legislative

and executive branches, and how courts could assist in responding to the crisis of homelessness. The work group is considering how unhoused individuals may access courthouses, noting that different courts handle these issues differently. The work group is developing best practices, including working with collaborative courts, adding charging stations, and providing remote services. A report to the Chief is due in August. He also addressed articles in the media regarding delay in the Third District Court of Appeal.

Info 2

Legislative Update

Presenter: Kate Nitta

Ms. Nitta provided an update on legislation and budget items of interest. At the February deadline, over 2,400 bills had been introduced. Of those, Governmental Affairs is tracking over 500 with potential impact on the courts. GA will know how many of those are moving forward in May. SB 7 would revive the Environmental Leadership Act and add a housing component. Other bills add transit projects and student housing to case types eligible for expedited handling under CEQA. Other bills of interest include eviction protection and reduction or elimination of bail. The proposed budget would restore \$200 million to the courts if approved on July 1. A budget trailer bill includes funding for remote appearances.

Info 3

Liaison Reports

Presenter: Hon. Michael A. Sachs, TCPJAC Liaison

Judge Sachs informed the committee that the focus of the February TCPJAC meeting was the ongoing impact of the pandemic on day-to-day trial court operations, and particularly issues regarding COVID vaccines. Another pressing topic was budget restoration. The trial courts have been severely affected by reduced funding; they are down approximately 200 employees. Landlord/tenant law continues to evolve quickly in response to the pandemic. There are new and revised Judicial Council forms out for comment. Judge Sachs noted the Governor's new appointments secretary, Luis Cespedes, and highlighted a new mentorship program for individuals interested in being judges.

Presenter: Ms. Adetunji Olude, Judicial Council CJER Liaison

On behalf of the Appellate Practice Curriculum Committee, Ms. Olude informed the committee that, in response to the pandemic, CJER has been converting some in-person trainings to remote delivery, extending deadlines and prorating hours under rules 10.492 and 10.493 to assist judicial officers and staff to meet mandatory training requirements. CJER is planning a live institute for judicial officers in November and for attorneys in Spring of 2022, health and safety permitting.

DISCUSSION AND ACTION ITEMS (ITEMS 4-8)

Item 4

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

Presenters: Hon. Stephen Schuett, Ms. Christy Simons

Judge Schuett and Ms. Simons provided an update on the status of the project to improve access to published appellate division opinions. The Appellate Division Subcommittee identified options for improving access, including amending rules to clarify publication and citability of these opinions, revising the California Style Manual to update publication procedures, and making changes to the courts website to post opinions certified for publication while transfer is pending and possibly keep them posted if transfer is granted. These avenues (rules, CSM, and website) are all within the purview of the Supreme Court. Staff contacted the Supreme Court's chief supervising attorney, who expressed interest in the project. At his request, staff prepared a memo detailing the issues noted by the Appellate Division Subcommittee, the current project in the Reporter of Decisions' office to update the CSM, discussions with the Reporter regarding the website and posting of these opinions, and possible modifications to rules, the CSM, and the website to address the issues. The chief supervising attorney hopes to take this up with the court in the next several months, resources permitting. The project on AAC's annual agenda for this year has been modified to reflect that this is primarily a Supreme Court project and to save space for the AAC to provide feedback and subject matter expertise, and to assist with the project.

Item 5

Telephone Appearances at Oral Argument in the Appellate Division (Action Required)

Presenters: Hon. Stephen Schuett, Ms. Christy Simons

Judge Schuett and Ms. Simons presented the recommendation of the Appellate Division Subcommittee to table this project temporarily. Currently, the emergency rules in place due to the pandemic are very broad with respect to remote appearance in all the courts; any amendments to the rule governing oral argument in the appellate division would not be as broad as permitted under the emergency rule. It would also be a complex project in light of statutes, trial court rules, and agreements with vendors regarding telephone appearances. In addition, other groups within the Judicial Council are exploring remote appearance options at this time. Any proposal from AAC would have to be consistent with these other efforts. Since the current emergency rule is working well for the appellate division, the subcommittee recommends deferring this project at the present time.

Action: *The committee approved the recommendation to defer the project at this time.*

Item 6

Electronic Signatures on E-filed Documents (Action Required)

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons presented the proposal developed by the Rules Subcommittee to amend rules 8.70 and 8.75 to allow use of electronic signatures on electronically filed documents in the appellate courts. The amendments are based closely on the parallel trial court rules. One exception is the proposed placement of the definition of "electronic signature" in rule 8.70 with other definitions. The committee reviewed options for amending the definition of "electronic filing." The committee discussed the rule 8.75 provision regarding digital signatures, noting that the term is not defined or used elsewhere in the appellate rules. The committee agreed to add an advisory committee comment citing to Government Code section 16.5. The committee also

questioned the procedure described in the rule for retaining wet signatures on hard copies of documents with multiple signatories; this is no longer common practice. The committee agreed to circulate the proposal with these provisions in the interest of consistency with the trial court rule. The committee expects comments on these issues.

Action: The committee recommended that the proposal as modified circulate for public comment.

Item 7

Notice of Appeal in Felony Cases Following a Plea of Guilty or No Contest or Admission of Probation Violation (Action Required)

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons presented proposed amendments to clarify rule 8.304 and improve procedures for commencing an appeal in these cases. The committee discussed several wording changes to better conform to cases discussing issues regarding certificates of probable cause. The committee also discussed expanding the advisory committee comments for subdivision (b) to include Supreme Court cases analyzing whether a certificate of probable cause is required for the appeal.

Action: The committee recommended that the proposal as modified circulate for public comment.

Item 8

Remote Access to Electronic Appellate Court Records (Action Required)

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro presented the Rules Subcommittee's recommendation to shift this proposal to the winter rules cycle to allow time for the courts to implement their document management system.

Action: The committee agreed to defer this proposal until the winter cycle.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 3:10 p.m.

Approved by the advisory body on July 16, 2021.