



APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

February 27, 2023

10:00 AM

Hybrid In-Person and Videoconference

Malcolm M. Lucas Boardroom and BlueJeans

Advisory Body Members Present: Hon. Louis R. Mauro, Chair; Hon. Kathleen M. Banke, Vice-Chair; Ms. Marsha Amin; Mr. David Andreasen; Mr. Michael G. Colantuono; Hon. Allison M. Danner; Mr. Kevin K. Green; Mr. Jonathan D. Grossman; Hon. Leondra R. Kruger; Ms. Heather J. McKay, Ms. Mary K. McComb; Mr. Jorge Navarrete; Ms. Milica Novakovic; Hon. Charles S. Poochigian; Ms. Beth Robbins; Hon. Laurence D. Rubin; Mr. Benjamin G. Shatz; Ms. Robin H. Urbanski; Hon. Helen E. Williams; Mr. Joseph Ford; Hon. Tracie L. Brown

Advisory Body Members Absent: Hon. Joan K. Irion, Hon. Stephen D. Schuett; Hon. Victoria Wood

Others Present: Mr. Todd Harshman; Ms. Aviva Simon; Ms. Heather Anderson; Mr. Kendall Hannon; Ms. Christy Simons; Ms. Khayla Salangsang

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:05AM, and roll was called.

Approval of Minutes

The advisory body reviewed and approved the minutes of the September 12 and October 28, 2022 Appellate Advisory Committee meetings.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Chair's Report

Presenter: Hon. Louis Mauro

Justice Mauro thanked staff for their work supporting the committee. He provided an update on referrals the committee had received from the Appellate Caseload Workgroup, and proposed that the subcommittee on appellate efficiency work on this referral as time and resources allow. He provided an update on the work of the Workgroup on Post-Pandemic Initiatives to develop an umbrella policy to guide committees regarding remote access to court records. He also updated the committee on the status of the pilot project within the third district court of appeal to provide electronic delivery of inmate filings from Folsom State Prison and California State Prison, Sacramento. Finally, he provided a report on the recent work of the Information Technology Advisory Committee and the Appellate Court Security Committee.

Info 2

Legislative Update

Presenter: Ms. Aviva Simon

Ms. Simon provided an update on legislation. She reported that a record 2,700 bills had been introduced in the Legislature over the past two-and-a-half months. She noted there are currently two bills relating to civil court proceedings. SB 21 addresses civil remote proceedings generally, and would extend the sunset authorization for remote proceedings for three years. SB 22 specifically addresses remote appearances in civil commitment proceedings and juvenile justice proceedings. SB 22 was recently amended to address criminal remote proceedings as well. Additionally, she noted that a spot bill has been introduced that would allow for electronic court reporting when a court reporter is not available.

Info 3

Liaison Reports

Presenter: Mr. Joseph Ford, CJER Advisory Committee Liaison

Mr. Ford described that, in light of the pandemic, CJER had begun diversifying how training is delivered, with training being provided both remotely and in person. He noted that the CJER Advisory Committee has proposed amending Rule 10.493 to provide expanded definitions for delivery methods for training. Finally, he provided an update on the courts' compliance rate with the minimum education requirements contained at rule 10.461 and 10.462. Justice Mauro also introduced Justice Tracie Brown as a new liaison to the committee from the CJER Advisory Committee.

Presenter, Mr. Todd Harshman, Judicial Council CJER Liaison

Mr. Harshman updated the committee on three upcoming live CJER education programs: (1) appellate justice orientation in April 2023, (2) the Appellate Judicial Attorney Institute in June 2023, and (3) the Appellate Justice Institute in October 2023. He further described two new distance learning products: (1) a video on anti-SLAPP, and (2) a webinar on trial court appellate division best practices.

DISCUSSION AND ACTION ITEMS (ITEMS 4-10)

Item 4

Appellate Procedure: Costs on Appeal

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

Justice Mauro and Heather Anderson provided a description of the proposal to amend rules 8.278 and 8.891 relating to costs on appeal and the committee reviewed the one comment received.

Action: The committee voted to recommend that the proposal as presented go to the Rules Committee for consideration.

Item 5

Appellate Procedure: Reporters' Transcripts

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

The committee reviewed the comments received on the proposal to amend several rules relating to the format of reporters' transcripts and borrowing of the record on appeal. The committee agreed with commenters that the proposal to amend the advisory committee comments accompanying rules 8.130, 8.866, and 8.919 should be further revised to: (1) state that parties submitting certified transcripts in lieu of a deposit are responsible for ensuring that the certified transcripts are in the proper format, and (2) indicate that the parties may either do the necessary formatting themselves or arrange to have a court reporter do the formatting. The committee further agreed that an advisory committee comment should be added to Rule 8.834 which addresses the use of certified transcripts in lieu of a deposit for a reporter's transcript. Regarding the proposed amendment to rule 8.153 to permit a lending party to ask a court reporter to provide the borrowing party a read-only electronic copy of the reporter's transcript, Ms. Anderson noted that the California Court Reporters Association provided in its comments on the proposal an alternative rule proposal. For electronic records, the CCRA's proposed rule would require the lending party to reach out to the court reporter to obtain a read-only electronic copy of the record and would give the court reporter the option of setting an expiration date on the document. In light of this substantive suggestion, the committee voted to not recommend amendment of rule 8.153 at this time to allow for further consideration of this issue. The committee agreed with commenters that the proposal to amend rule 8.144 should be revised to provide that clerk's transcripts delivered in electronic format can be produced in a single volume. As circulated for comment, the proposal included amendments to rule 8.144(f)(2) and (3)'s provisions regarding pagination of the reporter's transcript in cases with multiple reporters. Ms. Anderson reported that comments on this proposal were mixed, and that further research had demonstrated that the proposed amendments (as well as an alternative suggested by the CCRA) did not rectify the printing or page location issues which gave rise to the proposed amendments. The committee decided to not recommend amendment of Rule 8.144(f) at this time to allow for further research into this issue. The committee, however, agreed that rules 8.144(d)(1)(C), 8.452(e), and 8.456(e) should be revised to acknowledge that, under existing rules, page numbers on a transcript may not match the page numbers shown in the PDF viewer.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 6

Appellate Procedure: Oral Argument in Appellate Division

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons described the invitation to comment on the proposal to update the rules regarding oral argument in the appellate division to provide for broader authorization for remote appearances. The committee discussed whether the proposal should include the proposed provisions relating to remote appearance fees which parallel those in rule 3.672(k). The committee voted to include the fee provisions as presented, with addition of the words “or otherwise” following the citation to Government code section 70630.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 7

Appellate Procedure: Time for Respondent to Elect an Appendix

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons described the invitation to comment on the proposal to amend the rules regarding appendixes to allow appellants to file an appendix before the opening brief and to give respondents more time to elect an appendix by moving this deadline to when other record designations are due. Ms. Simons also described the proposed revisions to the forms related to designation of the record on appeal in civil cases. The committee made further revisions to the relevant information sheets to make clear that if a respondent elects an appendix the appeal will proceed by an appendix. The committee further revised the item on each form where the applicant states the reasons the extension is needed to specifically reference the prejudice factor contained in rule 8.63 and 8.811(b).

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 8

Appellate Procedure: Forms for Extension of Time

Presenters: Hon. Louis Mauro, Ms. Christy Simons

Justice Mauro and Ms. Simons described the invitation to comment on the proposal to revise the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court. The committee discussed whether the forms should include the proposed item for an applicant to list what work has been done on the appeal. The committee opted to include the item in the proposal and seek comments on this proposed item. The committee further revised item 4 on form APP-006 to indicate that the maximum stipulated time had already been used.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 9

Appellate Procedure: Notice of Appeal Form

Presenters: Hon. Louis Mauro, Mr. Kendall Hannon

Justice Mauro and Mr. Hannon described the invitation to comment on the proposal to revise the unlimited civil notice of appeal form to make the item for listing the date of the order being appealed more clear and to add an item by which attorneys could expressly indicate their intention to appeal an order or judgment requiring the attorney to pay sanctions. The committee discussed whether the attorney-appeal item was useful or necessary. The committee revised the wording of this item to read that the attorney was appealing the sanction order, rather than “joining” an underlying appeal. The committee further revised the form to add an optional item by which an appellant can indicate that the order or judgment being appealed is attached to the notice of appeal. The committee decided to expand the proposal to include the limited civil notice of appeal form (form APP-102) and to propose the above items be added to that form.

Action: The committee voted to recommend that the proposal as modified go to the Rules Committee and be circulated for public comment.

Item 10

Appellate Procedure: Attachment of Trial Court Order to a Petition for Review

Presenters: Hon. Louis Mauro, Ms. Heather Anderson

Justice Mauro and Ms. Anderson described the invitation to comment on the proposal to amend rule 8.504 to provide for the attachment of the entire trial court order where a petitioner seeks review of a Court of Appeal summary denial of a writ petition.

Action: The committee voted to recommend that the proposal as presented go to the Rules Committee and be circulated for public comment.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:40 p.m.

Approved by the advisory body on June 29, 2023.