AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Supreme Court on June 1, 2016
Effective on July 1, 2016

Title 8. Appellate Rules

Division 5. Publication of Appellate Opinions

Rule 8.1105. Publication of appellate opinions

(a) - (d) * * *

(e) Changes in publication status

(1) Unless otherwise ordered under (2)~~,~~:

(A) An opinion is no longer considered published if the ~~Supreme Court grants review or the~~ rendering court grants rehearing.

(B) Grant of review by the Supreme Court of a decision by the Court of Appeal does not affect the appellate court's certification of the opinion for full or partial publication under rule 8.1105(b) or rule 8.1110, but any such Court of Appeal opinion, whether officially published in hard copy or electronically, must be accompanied by a prominent notation advising that review by the Supreme Court has been granted.

(2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order depublication of part of an opinion ~~in whole or in part,~~ at any time after granting review.

(f) * * *

~~Advisory Committee~~ Comment

Subdivision (e)(2). This subdivision allows the Supreme Court to order depublication of an opinion that is under review by that court.

Rule 8.1115. Citation of opinions

(a) - (b) * * *

(c) Citation procedure[1]

On request of the court or a party, a copy of an opinion citable under (b) ~~or of a cited opinion of any court that is available only in a computer-based source of decisional law~~ must be promptly furnished to the court ~~and all parties~~ or the requesting party ~~by attaching it to the document in which it is cited or, if the citation will be made orally, by letter within a reasonable time in advance of citation~~.

(d) * * *

(e) When review of published opinion has been granted

(1) *While review is pending*

Pending review and filing of the Supreme Court's opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only. Any citation to the Court of Appeal opinion must also note the grant of review and any subsequent action by the Supreme Court.

(2) *After decision on review*

After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter, and any published opinion of a Court of Appeal in a matter in which the Supreme Court has ordered review and deferred action pending the decision, is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court.

(3) *Supreme Court order*

At any time after granting review or after decision on review, the Supreme Court may order that all or part of an opinion covered by (1) or (2) is not citable or has a binding or precedential effect different from that specified in (1) or (2).

~~Advisory Committee~~ Comment

~~A footnote to a previous version of this rule stated that a citation to an opinion ordered published by the Supreme Court after grant of review should include a reference to the grant of review and to any subsequent Supreme Court action in the case. This footnote has been deleted because it was not part of the rule itself and the event it describes rarely occurs in practice.~~

[1] These amendments were approved by the Court before June 1, but will also take effect July 1, 2016.

Subdivision (e)(1). In two respects, this subdivision alters the effect of published Court of Appeal decisions after review is granted by the Supreme Court and while a decision on review is pending.

Under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, published "[d]ecisions of every division of the District Courts of Appeal are binding upon all the . . . superior courts of this state . . . ." (*Id*., at p. 455.) The nature of this binding effect changes when there are conflicting published Court of Appeal opinions: in that circumstance, the superior court is still bound, but it "can and must make a choice between the conflicting decisions." (*Id*., at p. 456.) Because the practice and rule in effect before July 1, 2016, automatically depublished the decision under review, superior courts were not allowed to choose to be bound by the appellate court decision that was under review. Under new subdivision (e)(1) of this rule, if the Supreme Court grants review of a published Court of Appeal decision, that decision now remains published and citable while review is pending and yet — similar to the result under the former rule — it will not have binding or precedential effect on the superior courts, but will instead have a lesser status of "potentially persuasive value only." Accordingly, pursuant to the new rule (as before), when a decision that is pending review conflicts with another published Court of Appeal decision that is not under review, only that other published decision will continue to have binding or precedential effect on the superior court.

Subdivision (e)(1) also slightly alters practice with respect to the Court of Appeal pending decision after grant of review. It has long been the rule that no published Court of Appeal decision has *binding* effect on any other Court of Appeal (e.g., *In re Marriage of Hayden* (1981) 124 Cal.App.3d 72, 77, fn. 1; *Froyd v. Cook* (E.D.Cal. 1988) 681 F.Supp. 669, 672, fn. 9, and cases cited) or on the Supreme Court. Under prior practice and the former rule, because a grant of review automatically depublished the decision under review, the Court of Appeal was not allowed to cite or quote that review-granted decision concerning any substantive point. Under the new subdivision, a published Court of Appeal decision as to which review has been granted remains published and is citable, while review is pending, for any potentially persuasive value.

Subdivision (e)(2). The fact that a Supreme Court decision does not discuss an issue addressed in the prior Court of Appeal decision does not constitute an expression of the Supreme Court's opinion concerning the correctness of the result of the decision on that issue or of any law stated in the Court of Appeal decision with respect to any such issue.

Subdivision (e)(3). This subdivision specifically provides that the Supreme Court can order that an opinion under review by that court, or after decision on review by that court, have an effect other than the effect otherwise specified under this rule. For example, the court could order that, while review is pending, specified parts of the published Court of Appeal opinion have binding or precedential effect, rather than only potentially persuasive value.