



INVITATION TO COMMENT

Title:

Publication and Citation of Appellate Opinions; Service of Requests for Depublication

Rules Affected:

Cal. Rules of Court, rules 8.1115 and 8.1125

Action Requested:

Review and submit comments by Wednesday, March 25, 2026

Proposed Effective Date:

July 1, 2026

Contact:

E-mail all comments to:
CSC2026-Comments@jud.ca.gov

I. SUMMARY

The California Supreme Court seeks comments on potential amendments to rules 8.1115 and 8.1125 of the California Rules of Court.¹ Rule 8.1115 addresses the citation of appellate opinions and rule 8.1125 describes the procedures for seeking depublication of an appellate opinion. The amendments would: (1) allow unpublished appellate opinions to be cited for certain purposes in addition to those presently allowed under rule 8.1115(b); (2) remove language from rule 8.1115(e)(2) providing for the restoration of the precedential status of a Court of Appeal opinion in a review-granted case that has been “held” for another review-granted matter immediately upon the Supreme Court’s decision on review in the “lead” case; (3) incorporate within rule 8.1115 principles presently articulated only in that rule’s comment regarding the citation and precedential status of published Court of Appeal opinions when review is pending before the Supreme Court, or

¹ All subsequent rule references are to the California Rules of Court.

after a decision on review by the court; and (4) add to those who must be served with a request for depublication in the Supreme Court (see rule 8.1125(a)(5)) any person who had successfully requested that the authoring court certify the opinion for publication.

Possible amendments to these rules appear as an appendix to this invitation to comment.² To ensure their timely consideration, all comments must be emailed to the court at CSC2026-Comments@jud.ca.gov no later than Wednesday, March 25, 2026. Comments so received will be a matter of public record.

II. BACKGROUND

The rules in title 8, division 5 of the California Rules of Court, governing the publication and citation of appellate opinions, are adopted exclusively by the Supreme Court pursuant to its authority under article VI, section 14 of the California Constitution and Government Code section 68902.

Rule 8.1115, one of the rules within this title and division, addresses the citation of appellate opinions. The rule distinguishes between unpublished opinions and opinions that have been certified for publication in the Official Reports. Unpublished opinions may be cited or relied upon only “[w]hen the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel” or “[w]hen the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.” (Rule 8.1115(b)(1), (2).)

Rule 8.1115, as amended in 2016, draws a further distinction between published opinions of the Courts of Appeal in cases in which review has been granted by the Supreme Court and published opinions of the Courts of Appeal in other matters. Prior to 2016, a grant of review by the Supreme Court automatically depublished a Court of Appeal opinion that had been certified for publication, meaning that the opinion could not be cited for any purpose other than those described in rule 8.1115(b)(1) and (2). Under the current rule, absent a contrary order by the Supreme Court, a published Court of Appeal opinion in a review-granted matter does not constitute conventionally binding precedent when review is pending, but the Court of Appeal’s opinion remains citable for whatever “potentially persuasive value” it may have. (Rule 8.1115(e)(1).)

Rule 8.1115 further specifies that after decision on review by the Supreme Court (which, as the accompanying rule comment explains, also includes a dismissal of review), unless otherwise ordered by the court, “a published opinion of a Court of Appeal

² The fact that the court is soliciting public comment on possible amendments should not be understood as conveying the court’s endorsement of these amendments.

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.” (Rule 8.1115(e)(2).)

Rule 8.1115(e)(3) provides that “[a]t any time after granting review or after decision on review, the Supreme Court may order that all or part of an opinion” covered by rule 8.1115(e)(1) or (2) “is not citable or has a binding or precedential effect different from that specified” as a default under those provisions. Utilizing this authority, in 2021 the Supreme Court adopted Administrative Order 2021-04-21, *Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115(e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion*. Pursuant to this standing order, and as explained in contemporaneous revisions made to the comment to rule 8.1115, when the Supreme Court is reviewing a case involving a published Court of Appeal opinion, a superior court may choose to follow that opinion’s holding on an issue as to which there is a conflict among published Court of Appeal authority. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456.)

Finally, rule 8.1125 details the procedures for requesting that the Supreme Court exercise its authority to depublish an opinion that has previously been certified for publication by a Court of Appeal or superior court appellate division. Rule 8.1125(a)(5) provides that any request for depublication “must be served on the rendering court and all parties.”

III. PROPOSAL

It has been suggested that rule 8.1115 be amended to allow unpublished Court of Appeal opinions to be cited for more purposes than the rule presently permits and to incorporate within the rule itself certain principles presently explained only in the accompanying rule comment. Further, the service requirement in rule 8.1125(a)(5) has been criticized on the ground that it does not require service of a depublication request on a person who successfully sought publication of an appellate opinion before the authoring court.

Having reviewed and considered rules 8.1115 and 8.1125 in light of these critiques, the court has decided to seek public comments on the following possible amendments.

A. RULE 8.1115

The possible amendments to rule 8.1115 would alter the text of rule 8.1115 and its accompanying rule comment by:

- Allowing unpublished opinions of the Courts of Appeal and the appellate divisions of the superior courts to be cited in the following contexts, in addition to those presently permitted under the rule: (1) in a petition for review, an answer to a petition for review, or a reply in support of a petition for review, for the limited purpose of showing the existence or nonexistence of grounds for ordering review under rule 8.500(b)(1); and (2) in a request for publication or partial publication of an opinion, for the limited purpose of showing that the opinion involves “a legal issue of continuing public interest” under rule 8.1105(c)(6). (See accompanying redline of rule 8.1115(b).)
- Specifying that when the Supreme Court orders review in a matter involving a published Court of Appeal opinion and defers further proceedings in that matter pending resolution of another case that is also before the Supreme Court, the Court of Appeal’s opinion in the “held” case will not, as a default, regain full precedential status as soon as the “lead” case is decided by the Supreme Court; instead, unless the Supreme Court orders otherwise, even if it is consistent with the decision in the “lead” case the opinion in the “held” case will continue to be citable only for the limited purposes specified under rule 8.1115(b) and (e)(1) for so long as the “held” case is pending review before the Supreme Court. (See accompanying redline of rule 8.1115(e)(2).)
- Incorporating within the text of rule 8.1115 itself the principles, presently articulated only in the comment to that rule, that (1) a published Court of Appeal opinion in a review-granted matter may be followed by a superior court when it represents one side of a published conflict of authority; and (2) a published Court of Appeal opinion that has been vacated by the Supreme Court incident to a transfer for reconsideration is thereby rendered depublished, or not citable. (See accompanying redline of rule 8.1115(e)(1), (3) and accompanying rule comment.)

B. RULE 8.1125

The possible amendments to rule 8.1125 would add to the list of those who must be served with a request for depublication any person who successfully requested publication of the opinion below. (See proposed amended rule 8.1125(a)(5).)

IV. CONCLUSION

The court would appreciate any comments regarding these possible amendments, including but not limited to comments regarding whether these amendments are desirable, whether different or additional language would most effectively communicate their meaning, and whether other amendments to these rules should be considered.

APPENDIX

Possible Amendments to California Rules of Court, Rules 8.1115 and 8.1125

As Circulated for Public Comment, February 2026

New language that would be added to the rules and rule comment appears in **red** text; language that would be deleted is shown in **red strikethrough**.

Rule 8.1115. Citation of opinions

(a) Unpublished opinion

Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) Exceptions

An unpublished opinion may be cited or relied on:

- (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; ~~or~~
- (2) In a petition for review, answer to a petition for review, or reply in support of a petition for review, to show the existence or nonexistence of grounds for ordering review under rule 8.500(b)(1);
- (3) In a request for partial publication or publication, to show that an opinion or part of an opinion involves a legal issue of continuing public interest under rule 8.1105(c)(6); or

(24) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

(c) Citation procedure

On request of the court or a party, a copy of an opinion citable under (b) must be promptly furnished to the court or the requesting party.

(d) When a published opinion may be cited

A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

(e) When review of published opinion has been granted

(1) While review is pending

~~Pending review and filing of the Supreme Court's opinion~~ While review is pending before the Supreme Court, ~~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~~ may be cited for any potentially persuasive value it may have, and to demonstrate a conflict between published Court of Appeal opinions that, in turn, allows a superior court to choose which published opinion to follow. Such an opinion otherwise has no binding or precedential effect, except as may be ordered by the Supreme Court under (3). Any citation to the Court of Appeal opinion ~~while review is pending~~ must also note the grant of review and any subsequent action by the Supreme Court ~~affecting the opinion's precedential status~~.

(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). ~~Unless otherwise specified by the Supreme Court, an order transferring a matter to the Court of Appeal with directions to vacate its published opinion and reconsider the matter has the effect of rendering the Court of Appeal opinion depublished, or not citable.~~

Comment

Subdivision Rule 8.1115(e)(1). The practice and rule in effect before July 1, 2016, automatically depublished the Court of Appeal ~~decision opinion~~ under review, rendering it ~~uncitable-not citable~~. Under ~~subdivision rule 8.1115(e)(1) of this rule~~, if the Supreme Court grants review of a published Court of Appeal ~~decision opinion~~, that ~~decision opinion~~ now remains published and citable for its potentially persuasive value while review is pending unless the Supreme Court orders otherwise.

~~Under the authority recognized by subdivision (e)(3) of this rule, and as explained in the second paragraph of the comment to that subdivision, by standing administrative order of the Supreme Court Pursuant to this provision, superior courts may choose to be bound by follow parts of a published Court of Appeal decision opinion under review when those parts conflict with another published appellate court decision opinion, regardless of whether review has been granted in the other case. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456 (*Auto Equity*) [“where there is more than one appellate court decision, and such appellate decisions are in conflict[,] . . . the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions”].) In all other respects, the review-granted opinion is only “potentially persuasive.”~~

~~Finally, 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; *Floyd 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, a grant of review automatically depublished the decision under review. For this reason, the Court of Appeal was not allowed to cite or quote that review granted decision concerning any substantive point. Under this 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 Rule 8.1115(e)(2). The fact that a Supreme Court decision opinion does not discuss an issue addressed in the prior Court of Appeal decision opinion does not constitute an expression of the Supreme Court’s opinion views concerning the correctness of the decision opinion on that issue or of any law stated in the Court of Appeal decision opinion with respect to any such issue.

Subdivision Rule 8.1115(e)(3). This subdivision provision 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. For purposes of subdivision rule 8.1115(e)(2) and (3), a “decision on review” includes any order by the Supreme Court dismissing review. (See rules 8.528(b) [addressing an “order dismissing review”] & 8.532(b)(2)(B) [listing, among “decisions final on filing,” an order filed under rule 8.528(b)].) Accordingly, upon dismissal of review, any published Court of Appeal opinion regains binding or precedential effect to the extent recognized under rule 8.1115(e)(2) unless the court orders otherwise under that rule’s subdivision 8.1115(e)(3).

~~As provided in Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115(e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying~~

Published Court of Appeal Opinion, Administrative Order 2021-04-21, under this subdivision, when the Supreme Court grants review of a published Court of Appeal opinion, the opinion may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow *superior courts* to exercise discretion under *Auto Equity, supra*, 57 Cal.2d at page 456, to choose between sides of any such conflict. Superior courts may, in the exercise of their discretion, choose to follow a published review granted Court of Appeal opinion, even if that opinion conflicts with a published, precedential Court of Appeal opinion. Such a review granted Court of Appeal opinion has only this limited and potential precedential effect, however; superior courts are not required to follow that opinion's holding on the issue in conflict. Nor does such a Court of Appeal opinion, during the time when review is pending, have any precedential effect regarding any aspect or holding of the Court of Appeal opinion outside the part(s) or holding(s) in conflict. Instead it remains, in all other respects, "potentially persuasive only." This means, for example, that if a published Court of Appeal opinion as to which review has been granted addresses "conflict issue A," as well as another issue as to which there is no present conflict — "issue B" — the Court of Appeal's discussion of "issue B" remains "potentially persuasive" only, unless and until a published Court of Appeal opinion creates a conflict as to that issue. This paragraph of this comment applies with respect to all published Court of Appeal opinions giving rise to a grant of review by the Supreme Court on or after April 21, 2021.

Finally, under *this subdivision* rule 8.1115(e)(3), unless the Supreme Court specifies otherwise, an order transferring a matter to the Court of Appeal with directions to vacate its published opinion and reconsider the matter has the following effect: (1) If the Court of Appeal opinion has not yet been published in the bound volumes of the Official Appellate Reports, the opinion is deemed to be depublished (that is, the Reporter of Decisions is directed not to publish it in the Official Appellate Reports); or (2) If the underlying Court of Appeal opinion has already been published in the bound volumes of the Official Appellate Reports (or publication is imminent and hence as a practical matter the volume cannot be revised to eliminate the opinion), the underlying Court of Appeal opinion is deemed to be "not citable" — meaning it has neither precedential nor even potentially persuasive value, even though it will not be removed from the Official Appellate Reports. This *paragraph of this comment* aspect of the rule applies only to such transfers occurring on and after April 21, 2021.

Rule 8.1125. Requesting depublication of published opinions

(a) Request

- (1) Any person may request the Supreme Court to order that an opinion certified for publication not be published.
- (2) The request must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages.
- (3) The request must concisely state the person's interest and the reason why the opinion should not be published.
- (4) The request must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal.
- (5) The request must be served on the rendering court, ~~and~~ all parties, ~~and~~ any person that requested publication of the Court of Appeal opinion.

(b) Response

- (1) Within 10 days after the Supreme Court receives a request under (a), the rendering court or any person may submit a response supporting or opposing the request. A response submitted by anyone other than the rendering court must state the person's interest.
- (2) A response must not exceed 10 pages and must be served on the rendering court, all parties, and any person who requested depublication.

(c) Action by Supreme Court

- (1) The Supreme Court may order the opinion depublished or deny the request. It must send notice of its action to the rendering court, all parties, and any person who requested depublication.
- (2) The Supreme Court may order an opinion depublished on its own motion, notifying the rendering court of its action.

(d) Effect of Supreme Court order to depublish

A Supreme Court order to depublish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Advisory Committee Comment

Subdivision (a). This subdivision previously required depublication requests to be made “by letter to the Supreme Court,” but in practice many were incorporated in petitions for review. To clarify and emphasize the requirement, the subdivision was revised specifically to state that the request “must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages.” The change is not substantive.