

CALIFORNIA COURTS

THE JUDICIAL BRANCH OF CALIFORNIA

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NEWSROOM

NEWS RELEASE

Supreme Court Eliminates Automatic Depublication

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SAN FRANCISCO—The Supreme Court of California announced today that it has amended the California Rules of Court to eliminate the practice of automatically “depublishing” published Court of Appeal decisions when the Supreme Court grants review. The [new rules](#) will become effective on July 1, 2016.

“*These changes will allow useful Court of Appeal opinions to live on after review by the Supreme Court, to the extent they are not inconsistent with the decision of the Supreme Court. This rule change is the culmination of an effort by many thoughtful persons and entities — including the California Attorney General, the State Bar, the California Academy of Appellate Attorneys, the California Judges’ Association, and Court of Appeal justices — tracing back nearly forty years.*

—Chief Justice Tani G. Cantil-Sakauy

The Supreme Court’s decision to adopt the amendments was unanimous and will apply to any published Court of Appeal decision as to which review is granted on or after July 1, 2016. The court plans to revisit the issue within three years to assess the changes, after gaining practical experience with the new rules.

In July 2015, the proposed rule amendments were circulated for public comment and nearly 40 comments were received from numerous bar groups, lawyers, and judges. Prior review documents (*see table below*), and the [recent public comments](#) are available on the court’s website.

Under amended rule 8.1105(e)(1)(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.” This provision makes California’s practices consistent with those of the vast majority of other jurisdictions. Pursuant to amended rule 8.1105(e)(2), the Supreme Court retains authority to “order that an opinion certified for publication is not to be published or that an opinion not certified is to be published,” and it may “also order depublication of part of an opinion at any time after granting review.”

Amended rule 8.1115(e) governs citation of published Court of Appeal opinions after review has been granted by the Supreme Court. Subdivision (1) of that rule, addressing citation while review is pending, adopts what had been set out as “Alternative B” in the July 2015 request for comment, referred to above. It provides: “Pending review and filing of the Supreme Court’s opinion, unless otherwise ordered by the Supreme Court . . . , 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.” (*Amended Rule 8.1115 also sets out an unrelated provision, in subdivision (c), concerning copies of certain unpublished opinions. This change relates to an [earlier proposal](#) previously considered by the Supreme Court.*)

Subdivision (2) of rule 8.1115(e), addressing citation after decision on review, makes some changes from the text circulated for comment in July 2015, and provides: “After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court . . . , 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.”

For clarity, the court added subdivision (3), which was not included in the text circulated for comment in July 2015, providing: “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).”

Prior Review Documents

PREVIOUS PROPOSALS:

1. 1979 proposal:

[Report of the Chief Justice's Advisory Committee for an Effective Publication Rule](#)

(1979)

[May 13, 1980, AOC News Release #26, "Judicial Council Approves](#)

[Recommendations of the Chief Justice's Advisory Committee for an Effective Publication Rule."](#)

[Aug. 20, 1982, AOC News Release #34 \(attaching a "Summary of Proposed](#)

[Amendments on Publication of Appellate Opinions"\)](#)

[Dec. 31, 1982, AOC News Release #62, "Rules on Publication of Appellate Opinions and Petitions for Hearing Amended."](#)

2. 1985 proposal:

[Mar. 28, 1985, Report and Recommendations of the Advisory Committee to](#)

[Implement Proposition 32](#)

[April 19, 1985, AOC News Release #19, "Supreme Court Adopts Rules to Implement](#)

[Proposition 32."](#)

3. 1986 proposal:

[October 3, 1986, letter by Administrative Presiding Justice Racanelli to Chief Justice](#)

[Bird, concerning "Request to amend rule 976\(d\), California Rules of Court."](#)

[Oct. 17, 1986 letter by Administrative Presiding Justice Puglia to Chief Justice Bird](#)

[concerning "Request to amend rule 976\(d\), California Rules of Court."](#)

[Nov. 26, 1986, letter by Larry Gill to APJ Racanelli.](#)

4. 1988 proposal:

[May 2, 1988 letter by Elliot Bien to Chief Justice Lucas, concerning "Publication of](#)

[Court of Appeal Opinions"](#) ;

[May 2, 1988, "Request to Refer to Judicial Council a Proposed Rule Change](#)

[Concerning Publication of Court of Appeal Opinions."](#)

[November 8, 1988, letter by Chief Justice Lucas to Elliot Bien, with copies to those](#)

[who signed the May 2, 1988 proposal](#)