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SUBJECT:

RULES ON PUBLICATION OF APPELLATE OPINIONS
AND PETITIONS FOR HEARING AMENDED

The Judicial Council of California and the Supreme Court of California have jointly adopted amendments to the rules on publication and citation of appellate opinions (rules 976-978 of the California Rules of Court), and a new rule authorizing a one-year experiment with "partial publication" (rule 976.1). In addition, the Judicial Council, acting on a recommendation of the Supreme Court, has adopted amendments to subdivision (b) of rule 29.

The amendments are effective January 1, 1983.

In acting on the publication rules, the Supreme Court considered the recommendations of the Chief Justice's Advisory Committees for an Effective Publication Rule and on Partial Publication of Appellate Court Opinions, as well as the recommendations of the Judicial Council, and comments presented at a public hearing before the court on October 21, 1982. Joint adoption by the Supreme Court and the Judicial Council follows past practice.

The amendments to rule 29 result from suggestions by the State Bar and others.

A summary of the amendments and new rule follows; their full text is attached.

1. Rule 29(b), Petitions for Hearing. The amended rule summarizes the Supreme Court's policy as to when a petition for rehearing will normally be required in the Court of Appeal before petitioning for hearing, and when a petition for rehearing is not

expected.

2. Rule 976, Publication of Opinions. This amendment clarifies the criteria for publication of appellate opinions.

3. New rule 976.1, Partial Publication Experiment. This rule establishes a one-year experiment under which a Court of Appeal may order publication of only part of an opinion when that part meets one of the criteria for publication, but the balance of the opinion does not. The published portion must be complete in itself, including all legal and factual material in the opinion that aids in its application or interpretation.

4. Rule 977, Citation of Unpublished Opinions. This rule prohibiting citation of unpublished opinions, with limited exceptions, is rewritten for clarity and a new subdivision specifies that a copy of any citable unpublished opinion must be given to the court and other parties.

5. Rule 978, Requests for Publication. This rule, which provides for a request for publication of an unpublished opinion, is rewritten with the following changes: The Court of Appeal shall transmit to the Supreme Court any request for publication that it does not grant, and shall send to the parties and the person who submitted the request a copy of its recommendations to the Supreme Court. The Supreme Court is to send notice of its action on the request to the Court of Appeal, each party, and the person who requested publication.

Rule 976.1 is added to the California Rules of Court and rules 29(b), 976, 977, and 978 are amended effective January 1, 1983, to read:

Rule 29. Grounds for hearing in Supreme Court

(a) * * *

(b) [Examination of record] On petition for hearing the Supreme Court will not examine the record for error unless the petition shows that substantial issues of law or fact were incorrectly stated or were not considered in the opinion of the Court of Appeal and that such issues were raised in the briefs and set forth in a petition for rehearing in the Court of Appeal.

[Limitations] As a matter of policy, on petition for hearing the Supreme Court normally will not consider (1) any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal; nor (2) any issue or any material fact that was omitted from or misstated in the opinion of the Court of Appeal, unless the omission or misstatement was called to the attention of the Court of Appeal in a petition for rehearing. All other issues and facts may be presented in the petition for hearing without the necessity of filing a petition for rehearing.

Rule 976. Publication of appellate opinions

(a) * * *

(b) [Standards for publication of opinions of other courts] No opinion of a Court of Appeal or of an appellate department of the superior court shall ~~shall~~ may be published in the Official Reports unless ~~such~~ the opinion (1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or ~~alters or~~ modifies or criticizes with reasons given

an existing rule;^{1/} (2) resolves or creates an apparent conflict in the law; (3) involves a legal issue of continuing public interest; ^{2/}; or ~~(3)~~ criticizes existing law (4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law. ^{3/}

(c) [Publication procedure]

(1) [Courts of Appeal and appellate departments] Unless otherwise directed by the Supreme Court; An opinion of a Court of Appeal or of an appellate department of the superior court shall be published in the Official Reports if a majority of the court rendering the opinion certifies, prior to the decision's becoming final finality in that court, that it meets one or more of the standards for publication specified in of subdivision (b).

(2) [Supreme Court] An opinion certified for publication shall not be published, and an opinion not so certified shall nevertheless be published in the Official Reports upon, on an order of the Supreme Court to that effect.

(d) [Superseded opinions] Regardless of the foregoing provisions of this rule; No opinion superseded by the granting of a hearing, rehearing, or other judicial action shall be published in the Official Reports.

(e) * * *

1/ This criterion calls for publication of the relatively few opinions that establish new rules of law; including a new construction of a statute; or that change existing rules. This criterion does not justify publication of a fact case of first impression; where a legal rule or principle is applied to a substantially new factual situation.

2/ This criterion requires that the legal issue; rather than the case or controversy; be of public interest and that the interest be of a continuing nature and not merely transitory. Public interest must be distinguished from public curiosity. The requirement of public interest may be satisfied if the legal issue is of continuing interest

to a substantial group of the public such as public officers; agencies or entities; members of an economic class; or a business or professional group. An opinion which clarifies a controlling rule of law that is not well established or clearly stated in prior reported opinions; which reconciles conflicting lines of authority; or which tests the present validity of a settled principle in the light of modern authorities elsewhere may be published under this criterion if it satisfies the requirement that the legal issue be of continuing public interest.

- 3/ This criterion would justify publication of the rare intermediate appellate opinion which finds fault with existing common law or statutory principles and doctrines and which recommends changes by a higher court or by the Legislature.

Rule 976.1. Partial publication experiment

(a) [Partial publication authorized] A majority of the court rendering an opinion may certify for publication any part of the opinion that meets the standard for publication specified under subdivision (b) of rule 976. The published part shall indicate that part of the opinion is unpublished. All material, factual and legal, that aids in the application or interpretation of the published part shall be in the published part.

(b) [Other rules applicable] For purposes of rules 976, 977, and 978, the published part of the opinion shall be treated as a published opinion, and the unpublished part as an unpublished opinion.

(c) [Copy to Reporter of Decisions] One extra copy of both the published and unpublished parts of the opinion shall be furnished by the clerk to the Reporter of Decisions.

(d) [Rule repealed at end of one year] This rule is repealed effective January 1, 1984.

Rule 977. Citation of unpublished opinions prohibited; exceptions

An opinion of a Court of Appeal or of an appellate department of a superior court that is not published in the

Official Reports* shall not be cited by a court or by a party in any other action or proceeding except when the opinion is relevant under the doctrines of the law of the case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same respondent.

*This rule shall not apply to an opinion certified for publication prior to its actual publication.

(a) [Rule] An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b).

(b) [Exceptions] Such an 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) when the opinion is relevant to a criminal or disciplinary action or proceeding because it states reasons for a decision affecting the same defendant or respondent in another such action or proceeding.

(c) [Citation procedure] A copy of any opinion citable under subdivision (b) shall be furnished to the court and all parties by attaching it to the document in which it is cited, or, if the citation is to be made orally, within a reasonable time in advance of citation.

Rule 978. Requesting publication of unpublished opinions

(a) [Request procedure; action by court rendering opinion] A request by any person for publication in the Official Reports of an opinion not certified for publication may be made only to the court that rendered the opinion. The request shall be made promptly by letter, with a copy to each party to the action or proceeding not joining therein, stating concisely why the opinion meets one or more of the criteria for publication standards in rule 976. If the court does not, or by reason of the decision's finality as to that court cannot,

grant the request, the court may, and at the instance of the person requesting publication shall, transmit the request and a copy of the opinion to the Supreme Court with its recommendation for appropriate disposition and a brief statement of its reasons therefor. The transmitting court shall also send a copy of its recommendation and reasons to each party and to any person who has requested publication.

(b) [Action by Supreme Court] When a request for publication is received by the Supreme Court ~~from~~ pursuant to subdivision (a), the court ~~that rendered the opinion the Supreme Court~~ shall either order the opinion published or deny the request. The court shall send notice of its action to the transmitting court, each party, and any person who has requested publication.

(c) * * *