



Judicial Council of California

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April 30, 2003

Honorable Ellen Corbett, Chair
Assembly Judiciary Committee
State Capitol, Room 4126
Sacramento, California 95814

Subject: Assembly Bill 1165 (Dymally), as amended April 29, 2003 – Oppose
Hearing: Assembly Judiciary Committee – May 6, 2003

Dear Assembly Member Corbett:

The Judicial Council opposes Assembly Bill 1165, which requires that all opinions of the Supreme Court, courts of appeal, and appellate divisions of the superior courts that are not published in the official reports be made available to all private and public reporting services and that each such opinion may be cited to, or by, any court. Opinions issued before the effective date of this bill that have not been published in the official reports cannot be cited as precedent, according to AB 1165, but may be cited for persuasive value.

The council's opposition is based on the following:

The current rules for publication and citability best serve the public interest. Pursuant to the California Constitution, the California Rules of Court, Rule 976, establish the grounds for publication of appellate opinions in the official reports. A case is publishable in the official reports and thus has precedential value when it satisfies any of the following criteria:

1. Establishes a new rule of law, applies an existing rule to a significantly different set of facts in previous opinions, or modifies or criticizes with reasons given an existing rule;
2. Resolves or creates an apparent conflict in the law;
3. Involves a legal issue of continuing public interest; or

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4. Makes a significant contribution to legal literature by reviewing the development of the common law or the legislative or judicial history of a provision of the constitution, statute or other written law.

All other appellate cases are available to the public from both the clerk of the court and the courts' website. Moreover, these cases are already privately publishable and indeed are published in unofficial reports. However, they cannot be cited as binding precedent nor can they be cited for persuasive value.

Conferring precedential or persuasive value on the many thousands of cases not certified for official report publication would add nothing to the development of the law. On the other hand, requiring counsel to search for and review all appellate cases, whether or not officially reported, would place undue time and cost burdens on litigants, their counsel, and the courts. As the court in *Schmier v. Supreme Court* (2000) 78 Cal.App.4th 703 states, this would "merely clutter overcrowded library shelves and databases with information utterly useless to anyone other than the actual litigants therein and complicate the search for meaningful precedent."

Finally, Article VI, Section 14 of the California Constitution reads, "the Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal *as the Supreme Court deems appropriate*" [italics added]. Allowing unpublished opinions to be cited as precedent contravenes this clause of the California Constitution. As the *Schmier* court states:

to the extent appellant suggests that...all appellate decisions will be published and may be cited as authority, such a rule is inconsistent with the Constitution....the Supreme Court – California's highest court - is the appropriate body to establish policy for determining those Court of Appeal opinions entitled to the precedential value.

For these reasons the Judicial Council opposes Assembly Bill 1165.

Sincerely,

Ray LeBov
Director

RL/fs

cc: Members, Assembly Judiciary Committee
Hon. Mervyn M. Dymally
Member of the Assembly
Mr. Drew Liebert, Chief Counsel
Assembly Judiciary Committee