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Assembly California Legislature



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BUDGET
NATURAL RESOURCES
UTILITIES AND COMMERCE

BUDGET SUBCOMMITTEE NO.3
ON RESOURCES

9 August 2011

The Honorable Tani Cantil-Sakauye
Chief Justice of California
Chair, Judicial Council
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Allow Citation of Unpublished California Court of Appeal Decisions

Dear Chief Justice Cantil-Sakauye:

I write to ask for your consideration of and support for citing unpublished Court of Appeal decisions. I believe the issue is timely, that it complements your goal of enhancing public access to the courts, that a reliable body of research supports greater flexibility in citing unpublished opinions, that transparency, accountability, and dependability of the judiciary are enhanced by more liberal citation rules, and that California should be engaged in this issue as a leader in this arena of state jurisprudence.

According to correspondence in 2008 from your predecessor, the Honorable Ronald M. George, to this office, the California Supreme Court Advisory Committee on Rules for Publication of Court of Appeal Opinions recommended in 2006 the formation of a subcommittee to consider the issue of citing unpublished appellate opinions. Specific topics included allowing partial publication and de-publication of opinions, and expanding the situations in which parties can draw the attention of Courts of Appeal and the Supreme Court to unpublished decisions. I responded with follow-up questions, which remain unanswered. That follow-up correspondence is attached and also can be found by searching this link: www.nonpublication.com/huffman090508.pdf. I write to you now for answers to these questions, and to encourage your support and leadership for the citation of unpublished California Court of Appeal decisions as good policy and policy consistent with the evolving state of the law in other jurisdictions including the federal courts.

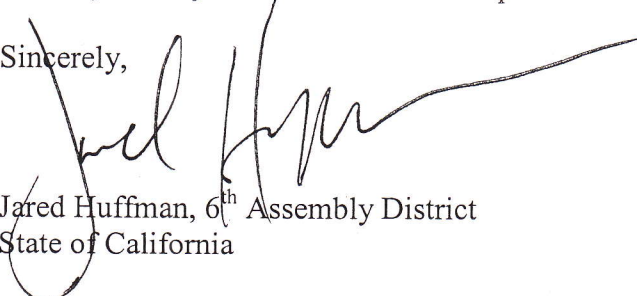
Over the past decade, many jurisdictions, including the federal courts, have addressed and often debunked arguments against citation of unpublished decisions, which focused

on two main points: (1) the potential far-reaching impacts on our state's jurisprudence of citation to unpublished case law, and, (2) additional costs associated with accessing and citing unpublished decisions. In response to these issues, both the Administrative Office of the United States Courts (AO) and the Federal Judicial Center (FJC) studied these issues and prepared comprehensive reports for the federal Advisory Committee on Appellate Rules of the U.S. Judicial Conference (Advisory Committee). The reports served as part of the Advisory Committee's consideration of the now adopted (in 2006) Federal Rule of Appellate Procedure 32.1 [see, e.g., *FJC Citations to Unpublished Opinions in the Federal Courts of Appeals: Preliminary Report 15, 70* (2005); cf. <http://ftb.resource.org/courts.gov/fjc/citatio2.pdf>]. The federal Advisory Committee, chaired by now-Supreme Court Justice Samuel Alito, and upon which now- Chief Justice John Roberts was a concurring member, reported that numerous federal and state courts abolished or liberalized no-citation rules, and that there was no evidence of additional costs or other negative consequences to the judiciary, attorneys or litigants. This has been proven further by more than four years of actual implementation.

I urge your consideration of and support for greater access to and use of unpublished Court of Appeal decisions in California, and look forward to your response to these questions and your leadership in this arena.

Thank you for your attention to this request.

Sincerely,



Jared Huffman, 6th Assembly District
State of California