



JUDICIAL COUNCIL OF CALIFORNIA

APPELLATE ADVISORY
COMMITTEE

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APPELLATE ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

February 21, 2019

10:00 a.m.

**Advisory Body
Members Present:**

Hon. Louis Mauro, chair; Hon. Kathleen M. Banke, vice-chair; Mr. Kevin Green, Mr. Jonathan Grossman, Hon. Adrienne M. Grover (phone), Hon. Joan K. Irion (phone), Hon. Kent M. Kellegrew, Mr. Daniel M. Kolkey, Mr. Jeffrey Laurence, Ms. Heather MacKay, Ms. Mary K. McComb, Mr. Jorge Navarrete, Ms. Milica Novakovic, Ms. Beth Robbins, Hon. Laurence D. Rubin, Mr. Timothy Schooley, Hon. Stephen D. Schuett (phone), and Hon. M. Bruce Smith

**Advisory Body
Members Absent:**

Ms. Laura Arnold, Hon. Leondra R. Kruger, Ms. Mary-Christine Sungaila

Others Present:

Ms. Christy Simons, Ms. Sarah Abbott, Ms. Kristi Morioka (phone), Mr. Dan Pone, and Mr. Jay Harrell

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:00 a.m., and roll was called.

Chair's Report

Justice Mauro acknowledged the staff and attorneys working for the committee and the strong relationship with RUPRO. Due to the unexpected staffing shortage during this rules cycle, projects were re-prioritized and some Privacy Subcommittee projects have been deferred until a later time.

Approval of Minutes

Minutes of the 06/01/2017, 07/31/2017, 07/17/2018, and 09/11/2018 Appellate Advisory Committee meetings were approved.

DISCUSSION AND ACTION ITEMS (ITEMS 1–12)

Item 1

Legislative Update (Information Only)

Mr. Dan Pone provided the committee an update on the budget and pending legislation that is of interest to the committee.

Item 2

Update from the Privacy Subcommittee (Information Only)

Justice Banke provided an update on the work of the subcommittee. She observed that rule 8.90 has been effective and courts are becoming more mindful of privacy concerns in drafting appellate opinions. Justice Banke also updated the committee on a non-committee project she and Mr. Schooley undertook to draft a chapter on privacy for the judicial appellate attorney manual.

Item 3

Format of Motions and Applications (Action Required)

Consider whether to recommend circulation of a proposed new rule governing formatting of documents filed in the appellate division of the superior courts.

Action:

The committee reviewed the proposal and recommended that it be circulated for public comment as submitted.

Item 4

Oral Argument in Misdemeanor and Limited Civil Appeals (Action Required)

Consider whether to recommend circulation of amended rules to provide that oral argument will not be set in cases presenting no arguable issues and to set forth a procedure for waiving oral argument. The proposal also includes two optional forms, one for limited civil cases and one for misdemeanor cases, to assist litigants in waiving oral argument if they choose to do so. The committee discussed possible amendments to the waiver procedure. Mr. Kolkey raised an issue regarding the submission date of *Wende* appeals.

Action:

The committee reviewed the proposal and recommended that it be circulated for public comment as submitted, with the understanding that staff would look into the submission date issue to determine whether the proposal should be modified. The committee delegated approval of any modification and the final language of the proposal to the committee chair. Any comments should be sent to Ms. Simons.

Item 5

Appellate Procedure: Notice of Appeal and the Record in Civil Commitment Cases (Action Required)

Consider whether to recommend circulation of a new rule setting forth the required contents of the normal record on appeal for civil commitment cases and a new form notice of appeal for civil commitment cases. The new rule is modeled on the rule regarding the record on appeal in criminal cases. Mr. Kolkey described the Rules Subcommittee's discussion regarding where to place the new rule and recommendation that an advisory committee comment be added to the criminal rule to assist practitioners in finding the new rule. The committee discussed modifying the language regarding the reports that must be included in the clerk's transcript. Mr. Kolkey noted that the proposed rule provides that all written defense motions are included in the clerk's transcript, but that the oral proceedings of defense motions are included in the reporter's transcript only if the appellant is the person subject to the commitment order.

Action:

The committee recommended that the proposal be circulated for comment as modified, with the understanding that staff would look into whether the inconsistency in the inclusion of defense

motions in the clerk's transcript and the reporter's transcript should stand or be modified. The committee delegated approval of any modification and the final language of the proposal to the chair.

Item 6

Appellate Procedure: Advisement of appellant rights in juvenile cases (Action Required)

Consider whether to recommend circulation of an amended rule regarding advisement of appellate rights in juvenile cases to remove the limitation that the court need only provide this information to parents and guardians who are present at the hearing that resulted in the judgment or order. To alleviate any burden created by requiring the court to provide this advisement to parents and guardians who are not present at the hearing, the proposal also includes a new optional form notice for clerks to send with court orders following a hearing to provide the advisement.

Action:

The committee recommended that the proposal, with minor, non-substantive changes to the form, be circulated for public comment.

Item 7

CEQA: New fees for expedited review (Action Required)

Consider whether to approve the approach recommended by the working group to develop rules to implement Assembly Bills 734, 987, and 1826, which require the council to implement procedures for the expedited resolution of CEQA actions and proceedings for "Oakland sports and mixed use projects" (relating to a new baseball park), the Inglewood NBA arena project, and additional projects related to the capitol building annex projects. The new laws for the Oakland ballpark and the Inglewood arena projects include provisions that project applicants must agree to pay "any additional costs incurred by the court in hearing and deciding any case subject to this [new law]" in a form and manner specified by the council in rules of court. This is a joint project with the Civil and Small Claims Advisory Committee; an ad hoc working group chaired by Justice Robie will develop the proposal.

Action:

The committee voted to approve the approach recommended by the ad hoc working group.

Item 8

Appellate Procedure: Word limit for petitions for rehearing in unlimited civil cases (Action Required)

Consider whether to recommend circulation of an amended rule to reduce the maximum length of petitions for rehearing and answers to those petitions in the Court of Appeal. Currently, the rule sets forth maximum limits of 14,000 words for briefs produced on a computer and 50 pages for briefs produced on a typewriter. These limits apply to all types of briefs. This proposal would provide lower limits of 7,000 words and 25 pages for petitions for rehearing and answers.

Action:

The committee voted to recommend circulation of the proposal as submitted.

Item 9

Appellate Procedure: Access to juvenile case files in appellate court proceedings (Action Required)

Consider whether to recommend for circulation amended rules and new and revised forms to implement legislation amending the statute that specifies who may access and copy records in a

juvenile case file. The statutory amendment clarified that a person who has been granted access to records in a juvenile court proceeding by the juvenile court is entitled to access the same records on review in the appellate court. The proposal would implement the legislation by updating the rules relating to juvenile appeals to include provisions relating to persons with limited access to the juvenile case file and the record that must be prepared and provided to these persons. The committee discussed options for creating a limited record, including a redacted version of the normal record, a separate record containing only records the juvenile court had released to the person, and an appendix. The committee also noted some language on the forms conflates writs and appeals.

Action:

The committee voted to recommend circulation of the proposal with the understanding that Mr. Kolkey and Justice Banke will provide clarifying language regarding a limited record, and that the forms language will be referred to staff of the Family and Juvenile Law Advisory Committee. The committee delegated final approval of the proposal as modified to the chair.

Item 10

Appellate Procedure: Service copy of petitions for review (Action Required)

Consider whether to recommend circulation of an amended rule regarding petitions for review in the California Supreme Court to remove the outdated requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. When a petition is filed electronically, the Court of Appeal automatically receives a filed/endorsed copy of the petition; a separate service copy is unnecessary. This proposal does not change the requirement to serve the Court of Appeal with a separate copy if a petition for review is filed in paper form. Mr. Navarrete confirmed that the Courts of Appeal are receiving copies of e-filed petitions and that receipt is without delay.

Action:

The committee voted to recommend circulation of the proposal as submitted.

Item 11

Rules modernization: Uniform formatting rules for electronic documents (Action Required)

Consider whether to recommend circulation of amended rules to create uniform formatting rules for electronic documents filed in the appellate courts. The committee discussed issues related to paper and electronic copies, bookmarking, and pagination, and suggested a number of modifications to clarify certain provisions. The committee also discussed challenges that arise from cross-referencing to other rules that address formatting of paper and electronic documents, and how to clarify for litigants which rules to apply. One member asked about the origin of banning Times New Roman; the Second District's local rules ban it because of readability concerns. The ban on e-filing documents with color components and the limits of ACCMS were also discussed. One member noted that there seemed to be some disconnect between what practitioners say is do-able (for example, with respect to pagination) and what the courts want or need.

Action:

The committee voted to approve the proposal in concept and recommended that it circulate for public comment with the modification to rule 8.74(a)(2) proposed by Mr. Green and subject to further changes to implement committee suggestions. The committee delegated final approval to the chair.

Item 12

E-filing for incarcerated individuals (Action Required)

Consider whether to recommend to the Judicial Council a pilot program with the California Department of Corrections and Rehabilitation for e-filing between one prison and the Court of Appeal, Third Appellate District.

Action:

The committee voted to approve the pilot project.

Item 13

Liaison Reports (Information Only)

No liaison reports were presented.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 2:10 p.m.

Approved by the advisory body on July 19, 2019.