

INTERNAL OPERATING PRACTICES

Introduction

The purpose of this document is to acquaint the bar and interested members of the public with the general operating practices of the Court of Appeal, Sixth Appellate District.

The internal procedures of the Court of Appeal are largely governed by the California Constitution, statutes, and the appellate rules adopted by the Judicial Council. The Court of Appeal may adopt and publish its own rules that do not conflict with a statute or rule adopted by the Judicial Council.

I. STRUCTURE OF THE COURT AND ORGANIZATION OF STAFF

A. JUSTICES

The court has seven authorized judicial positions, consisting of a presiding justice and six associate justices.

The Chief Justice, as Chairperson of the Judicial Council, may assign a retired justice or judge, or an active trial court judge to serve temporarily on a Court of Appeal. Justices pro tem may be assigned (1) when there is a judicial vacancy, or (2) when a Court of Appeal justice is absent or unable to serve, or is disqualified in a given case, or (3) when the court needs assistance in reducing a backlog of cases.

Justices sit in panels of three that change periodically.

The courtroom and office of the clerk of the court are located in the Comerica Bank building at 333 West Santa Clara Street, Suite 1060, San Jose, California 95113.

B. PRESIDING JUSTICE

The presiding justice convenes conferences and presides at hearings (oral argument) when he or she is a member of the three-justice panel assigned to hear a case. The presiding justice has specific authority under rule 10.1012 of the California Rules of Court to grant or deny applications and to extend time for filing of records and briefs on appeal. The rule also gives the presiding justice limited authority to dismiss an appeal for noncompliance with the Rules of Court and to grant relief from default. The presiding justice also has overall responsibility for the calendaring of cases, the management of the caseload within the district, and the scheduling of oral arguments.

If the presiding justice is absent or disqualified, or not a member of the three-justice panel that is to decide a matter, the presiding justice designates the senior associate justice to serve as acting presiding justice.

C. CLERK/ADMINISTRATOR

The Clerk/Administrator is responsible for maintaining the court's public records and files and for advising litigants, counsel, and the public of the status of matters before the court.

Appointed by the court, the clerk assists in the preparation of the court's calendar, docket its cases, and supervises other administrative functions required for the court's operation. The clerk is aided by an assistant clerk/administrator, six deputy clerks and a support staff.

D. RESEARCH ATTORNEYS

1. Attorneys Assigned to Justices

Each justice is currently authorized to employ two permanent research attorneys.

Research attorneys employed by or assigned to a justice work primarily on appeals assigned to the justice. The attorney's work involves legal research, examination of the trial court record, conferring with the justices assigned to the case, and preparing written memoranda and draft opinions.

2. Writ Attorneys

The court is currently authorized to employ two writ attorneys who assist the court in reviewing petitions for various writs, such as mandate, prohibition, certiorari or review, habeas corpus, and error coram vobis.

3. Central Staff

In addition to the writ attorneys and research attorneys assigned to justices, the court employs a staff of several senior research attorneys. This staff is known as the "central staff" because it provides research and analysis assistance for the justices of the court. Central staff attorneys are assigned to individual justices by the court and provide the same research and assistance required of the justices' permanent research staff.

4. Externs

The Sixth Appellate District cooperates with law schools in enabling law students to earn academic credits by working one semester, without pay, performing research for individual justices. These law students are selected and supervised by individual justices.

E. LAW LIBRARIAN

The court's law library collection of approximately 30,000 volumes is maintained by a professional Law Librarian. The collection includes the latest technological developments in legal research such as: a wide variety of CD-ROM's on the Local Area Network (LAN); access to various online research services including the Internet; and a selection of microforms, audio tapes and video tapes, in addition to the books. The Law Librarian is also responsible for keeping current on technology and legal trends, which affords the court staff the opportunity to do efficient and effective research on all issues before the court.

F. JUDICIAL ASSISTANTS TO APPELLATE COURT JUSTICES

Each justice is authorized to employ one judicial assistant who is responsible for the timely processing of the justice's opinions, including circulating draft opinions for review by other members of the panel, typing judicial correspondence, cite-checking and shepardizing draft opinions, and delivering opinions to the clerk for filing. The court employs other secretarial support staff as needed.

II. PROCESSING APPEALS

A. In General

When a criminal or civil appeal is fully briefed, it is identified on a computer-generated list indicating the case is ready for analysis and decision. The appeals are considered by the court after they are fully briefed. Decisions may be made and the opinions filed in a different order depending on factors such as the complexity of the litigation and whether oral argument is requested. The California Constitution requires the filing of a written opinion in every appeal.

1. Assignment of Cases

Assignment of cases to individual justices is generally made by rotation from the list of ready cases. The justice assigned to a particular case then has lead or primary responsibility for that case in the course of conference discussions, research and preparation of the opinion.

2. Preliminary Case Conferences

In the course of preparing an opinion, conferences are held at the request of the author or other panel members. In difficult or complex cases, more than one conference may be held. Conferences are generally not held in cases involving routine issues.

3. Oral Argument

When a case is ready for possible argument, the clerk will write and ask the parties whether they desire to exercise their right to appear personally for oral argument or to argue by teleconference. [The Sixth District Court of Appeal Teleconferencing Oral Argument Procedures Manual is available from the clerk's office upon request.] If oral argument is requested, the case is placed on an oral argument calendar.

After the case is scheduled for oral argument, any party or counsel for a party may contact the clerk's office and be informed of the names of the justices assigned to the case.

The order in which cases are to be argued is determined by the presiding justice. Because of the considerable investment of court time and resources necessary to prepare a case for oral argument, continuances are disfavored and will be granted only on a showing of good cause. Oral argument will not be continued by stipulation of counsel absent a showing of good cause. If no appearance is made, the case may be ordered submitted.

The order and the time allotted for counsel to make their presentations are specified in rule 8.256 of the California Rules of Court.

In most instances, the presiding justice will inform counsel at the beginning of each session that the court has reviewed the briefs and is familiar with the facts and issues. The court requests that counsel not merely reiterate the argument contained in his or her brief. Oral argument is generally most helpful and effective when reasonably brief and when counsel focuses on the decisive issues, succinctly clarifies the facts as they relate to a given issue, or clarifies the holding or reasoning of potentially applicable or controlling authority.

The court disfavors the submission of untimely citations of authority as it deprives the court and opposing counsel of sufficient opportunity to prepare for oral argument. The court retains discretion to strike or disregard such citations.

When oral argument has concluded in a given case, the justice presiding will declare the cause submitted, unless submission has been deferred for additional briefing.

4. Post-Oral Argument Conference

A post-oral argument conference is held in which the justices again discuss the case and finally determine the decision to be reached.

B. Preparation and Filing of Opinions

1. Signed Opinions

Unless the two other participating justices disagree with the disposition proposed by the assigned author, the justice assigned will prepare the majority opinion. When a proposed majority opinion has been drafted, it is circulated to the other participating justices. They indicate approval, disapproval, or proposed changes. Differences of opinion as to the language of the opinion or the ultimate disposition of the case may be taken up in conference. The opinion may then be modified in a manner acceptable to the justices. If two justices agree, a written opinion is filed.

2. Concurring or Dissenting Opinions

Where a difference of opinion exists among the justices participating in a case, a justice who agrees with the result reached but not with the reasoning of the majority may write a separate concurring opinion, or may merely indicate concurrence only in the judgment reached by the majority. Likewise, a justice who disagrees with the result reached by the majority may write a dissenting opinion. Each panel member has a full opportunity to consider the views of associates prior to the completion and filing of the opinion.

3. Publication of Opinions

A decision of the court is not published in the official reports unless it is certified for publication by a majority of the participating justices. The criteria for publication and publication requests are set forth in rules 8.1105 and 8.1120, respectively, of the California Rules of Court.

C. Rehearings

The procedure for filing a petition for rehearing is governed by rule 8.268 of the California Rules of Court. When a petition for rehearing is filed, the petition is routed to the justice who authored the opinion with copies to the participating justices. The authoring justice reviews the petition, and then indicates whether he or she votes to grant or deny the petition. The petition, along with any staff memorandum, is then circulated to the other two justices on the panel for their decisions. Two votes are necessary to grant or deny a petition for rehearing.

D. Original and Discretionary Proceedings

Petitions for writ of mandate, prohibition, certiorari, and habeas corpus, statutory review petitions, other miscellaneous applications to the original jurisdiction of the court, and applications for supersedeas or other relief pending appeal under Code of Civil Procedure section 923 or other statutory provisions are normally handled independently of the court's appellate caseload.

In original proceedings the court expects counsel to comply with the provisions of rules 8.486-8.488 of the California Rules of Court and all applicable time limitations, to explain any substantial delay in seeking relief in matters to which specific time limits do not apply, and to lodge with the court (and serve on adverse parties) a properly organized and indexed record sufficient to permit informed review. Any request for a stay of proceedings must be clearly labeled as such (Cal. Rules of Court, rule 8.116), and circumstances that require expedited consideration should be clearly identified in the petition or application and noted on its cover. Counsel should advise the clerk of the next trial court date at the time the petition or application is filed.

Parties to statutory writ review proceedings should comply with applicable briefing schedules (for example, Cal. Rules of Court, rules 8.495(b), 8.498(c)). The court will strictly apply those schedules, absent a timely application for exception supported by a showing of good cause.

In habeas corpus matters, the court in appropriate cases will request an informal response and provide for a reply to the response under rule 8.385(b) of the California Rules of Court.

In other original proceedings it is the court's policy not to grant affirmative relief (beyond a temporary stay) without first giving adverse parties an opportunity to submit a memorandum of points and authorities in opposition. Opposition need not be submitted in these matters unless expressly requested by the court. If requested, opposition must be submitted on or before the date stated in the request, unless an extension is obtained before that date.

Original proceedings are referred to the writ attorney for initial review. The writ attorney thereafter communicates with the court concerning the matter. The court will conduct a writ conference and meet specially when necessary. All written submissions by any party, and any written staff memoranda, are distributed to and reviewed by all participating justices.

If affirmative relief is to be granted, the Sixth District will issue an alternative writ of mandate or prohibition, which directs the relief prayed for in the petition or, in the alternative, that the respondent appear and show cause why the relief should not be granted. An order to show cause may be issued without the alternative writ. In limited circumstances, the court may issue a peremptory writ in the first instance without allowing oral argument.

Counsel seeking writ relief should carefully review the "Sixth District Court of Appeal Outline on Original Proceedings and Relief Ancillary to Appeal," which is available on request from the clerk's office or available for download in [.pdf](#) or [.doc](#) format.

E. Communications with Counsel or Parties

Except in oral argument, the justices do not communicate directly with counsel or parties concerning pending cases. Any necessary communications are handled by the clerk.

Attorneys employed by the court do not communicate with counsel or parties concerning pending cases.

F. Settlement

The parties must immediately notify the court of the settlement of any pending case (Cal. Rules of Court, rule 8.244).

Upon the request of all parties to a pending case, the court will schedule and conduct a settlement conference. The conference will be conducted before a justice of the court or an assigned judge. The settlement conference must be attended by the parties unless counsel or another authorized representative in attendance have full authority to settle.

No justice conducting a settlement conference will participate in deciding the case or discuss the case with any justice deciding the case if the case is not settled.