INTERNAL OPERATING PRACTICES AND PROCEDURES

STATE COURT OF APPEAL, FOURTH DISTRICT, DIVISION TWO

(2023 revision)

SECTION I. INTRODUCTION

To implement the rules governing appellate court procedure, each district and division of the Court of Appeal has developed local customs and practices that may be similar to or different from other districts and divisions. This statement of the internal operating procedures and practices describes the more important customs of this court. The purpose of the statement is to inform the public and the bar of the general manner in which this court conducts its business.

SECTION II. THE COURT

Division Two of the Fourth District is located in Riverside and operates with almost complete autonomy from Division One located in San Diego and Division Three located in Santa Ana. Division Two handles all appellate matters arising in Inyo, Riverside, and San Bernardino Counties. Additionally, cases originating in one division of the Fourth District may be transferred to another division by the Administrative Presiding Justice if required because of recusals or decision of an earlier case by a different division. (See Cal. Rules of Court, rule 10.1000(b).)

SECTION III. ORIGINAL PROCEEDINGS

Original proceedings are assigned to panels of three justices selected each month by rotation. The court's writ attorneys assist the justices by preparing written summaries. The justices review the summaries and meet informally or formally as necessary to decide the case.

More urgent writ matters, including those requesting immediate stays, are the subject of immediate action by the justices facilitated by oral summaries by writ attorneys. If an alternative writ or order to show cause is issued, the issuing justice normally prepares the tentative opinion (see Section VIII., below).

SECTION IV. CIVIL CASE INFORMATION STATEMENT

California Rules of Court, rule 8.100(f), requires the filing of a civil case information statement in the Court of Appeal with a copy of the judgment or order appealed in all civil appeals within 10 days after the clerk mails the notice to do so and the required form. Under the supervision of the Presiding Justice, a central staff attorney reviews the civil case information statement to determine appealability, timeliness, appellate case title and the parties to the appeal.

This court uses the civil case information statement to implement this court's policy to honor its jurisdictional limitations. Thus, this court will not construe a nonappealable ruling to include language of judgment or dismissal. (See *Shpiller v. Harry C's Redlands* (1993) 13 Cal.App.4th 1177, 1179-1181; *Passavanti v. Williams* (1990) 225 Cal.App.3d

1602, 1608-1610.) This court also uses the civil case information statement to initially screen cases for the court's settlement program. (See Section V., below.)

SECTION V. CIVIL APPELLATE SETTLEMENT PROGRAM

Division Two of the Fourth District began its civil appellate settlement program using volunteer attorney mediators in June 1991, the first program of its kind in California. The program helped dramatically in reducing backlog by freeing justices to work on cases that could not be settled. The program received the 1997 Kleps Award for court administration.

Volunteer attorney mediators chosen and scheduled by the Presiding Justice in cooperation with the court's settlement coordinator conduct most of the settlement conferences for civil appeals. On occasion, justices also act as mediators in selected cases. The volunteer mediators are experienced and respected attorneys from Riverside and San Bernardino Counties who are assigned cases for settlement according to their areas of expertise. The Settlement Coordinator selects cases for settlement based on settlement conference information forms filed by counsel and the availability of an appropriate mediator. Once a case has been selected by the court for settlement proceedings, participation is mandatory.

Settlement conferences may be held either before or after briefing is completed. Postbriefing settlement conferences were the rule when the court was using the program to reduce its backlog in the early and mid-1990's, but since the court has eliminated its backlog, prebriefing conferences are the rule and postbriefing conferences are rare and

generally discouraged. When cases are selected for a prebriefing settlement conference, generally the court permits a record produced by the superior court to be filed but stays filing of the briefs. Parties file a settlement conference statement within 10 days after notice that the case has been selected. Settlement conferences are held over a period of time before settlement is achieved or determined not to be possible. All documents relating to settlement proceedings are retained in a separate, confidential file for the case, and the proceedings and results are confidential and not revealed to the panel that decides the case if settlement is not achieved. Court of Appeal, Fourth District, Division Two, Local Rules of Court, rule 4 authorizes the program.

SECTION VI. EXTENSIONS TO FILE BRIEFS

Extensions to file briefs are granted or denied based on the factors listed in California Rules of Court, rule 8.63(b). When further extensions on the usual grounds (the existence of other time-limited commitments, the size of the record and number and complexity of the issues, and planned vacations) are no longer appropriate, counsel is so notified in an order granting the last extension on the usual grounds. Thereafter, no extensions will be granted except upon other factors listed in rule 8.63(b). If a further extension is obtained on one or more of those grounds, counsel is again notified that no further extensions will be granted on the usual grounds or the grounds stated in the application. A request for an extension on an excluded ground will be denied, and the clerk directed to issue a notice of default in failing to timely file the brief. (Cal. Rules of Court, rule 8.220(a)(1), (2).)

SECTION VII. CASE ASSIGNMENT

When a case is ready for assignment, the record is checked to see if any justice was involved in trial court proceedings or for other reasons should not be involved in deciding the case. The court maintains a confidential recusal list, which is reviewed prior to final case assignment. Cases are divided into six categories: unusually difficult chambers cases, chambers cases, "fast track" dependency cases (Cal. Rules of Court, rule 8.416(a)(1)(A)), dependency writs reviewing orders setting a hearing under Welfare and Institutions Code section 336.26 (Cal. Rules of Court, rules 8.450-8.452), death penalty habeas appeals and central staff cases. The cases are randomly assigned to a justice as author, and those in the categories of the unusually difficult, "fast track" dependency, death penalty habeas and rules 8.450-8.452 writs are assigned by a rotation. Assignments to authors are usually made monthly, except "fast track" cases and rules 8.450-8.452 writs are assigned immediately, and central staff cases are assigned weekly. When the author has prepared the tentative opinion (see Section VIII., below), the case is randomly assigned to a panel.

SECTION VIII. TENTATIVE OPINIONS AND ORAL ARGUMENT

A tentative opinion is the preliminary draft of the court's decision prepared by the author and reviewed by the panel members. The author circulates the tentative opinion with a cover sheet to the other two justices and notes a recommendation for or against oral argument. The two panel justices consider the briefs and record and note on the cover sheet their preliminary responses and evaluation of the need for oral argument.

Depending on the author's and panel justices' evaluation of the need for oral argument, one of two notices regarding oral argument is transmitted to counsel or self represented parties with the tentative opinion. The first notice invites participation in oral argument and informs counsel that a notice of the date and time of argument will be mailed at least 30 days in advance of the date and time of oral argument. The second notice informs counsel that, while "[t]he court is not unalterably bound by the tentative opinion and is willing to amend or discard the tentative opinion if counsel's arguments persuade the court that the tentative opinion is incorrect in any way," "*at present, in this case the court believes that the record and briefs thoroughly present the facts and legal arguments such that the court is prepared to rule as set forth in the tentative opinion without oral argument*." The notice advises the parties that oral argument will be deemed waived unless the clerk of the court receives a request for oral argument on the form attached to the notice on or before 12 days after the date of the notice.

Oral argument is held on the first Tuesday and Wednesday of each month, with slight adjustments occasionally made for holidays. If a party requests oral argument or the justices have decided that oral argument would be helpful, the clerk prepares the calendar and mails it to counsel at least 30 days in advance of the hearing. Two or three weeks before oral argument, the justices discuss the cases set for oral argument at a calendar conference.

SECTION IX. FILING OPINIONS

After oral argument, or waiver of oral argument, authors and panel justices develop the tentative opinions and preliminary responses into the opinions, concurrences, and dissents filed as the final decisions. If oral argument is deemed waived in a case, the opinion is circulated for approval and signature to the other panel members as soon as it is signed by the author. The opinion is filed as soon as it is signed by all members of the panel. Argued cases are deemed submitted on the date of oral argument, and the opinions are generally filed within the same month.

SECTION X. PRESIDING JUSTICE

In addition to the regular duties of an associate justice, the Presiding Justice handles the administrative operation of the court including the functions designated in California Rules of Court, rule 10.1012. In so doing, the Presiding Justice performs a number of tasks essential to the functioning of the court. These include without limitation policymaking, personnel, budgeting, oversight of facilities, grounds, furnishings, and equipment, case assignment, calendar preparation, case management, decision of all motions and applications until the case is assigned to an author, appointments of counsel, supervision and selection of cases for the settlement program, and supervision of the central staff and clerk's office. Staff assist in these tasks when necessary in the Presiding Justice's discretion.

SECTION XI. STAFF

Each justice has 2 research attorneys and a judicial assistant who work exclusively for the justice. In addition, the court has a central staff consisting of a managing attorney,

supervising attorney, writ attorneys, research attorneys and judicial assistants. All central staff personnel are under the supervision of the Presiding Justice, who assigns a research attorney to a particular justice to research and draft opinions.

The clerk's office includes an assistant clerk executive officer, supervising deputy clerks and a number of deputy clerks. A settlement coordinator manages the volunteer attorney mediator settlement conference program. Two systems administrators maintain the court's computer systems. A librarian organizes and updates a central library, distributes materials to the justices' and attorneys' libraries, assists justices and attorneys with legal research, and prepares a library budget for approval by the Presiding Justice. The judicial assistants facilitate case flow and perform secretarial services for the justices and attorneys.