CALIFORNIA COURTS OF APPEAL
INTERNAL OPERATING PRACTICES AND PROCEDURES
THIRD APPELLATE DISTRICT

I. Introduction
II. Structure of the Court
III. Filings
IV. Organization and Duties of Staff Attorneys
V. Writ Petitions, Motions and Other Applications
VI. Judicial Assignments in Appeals
VII. Preparation of a Draft Opinion
VIII. Oral Argument
IX. Calendar
X. Filing of the Court's Decision; Rehearing
XI. Mediation of Civil Appeals

I. INTRODUCTION

The purpose of this publication is to advise the bar and interested members of the public regarding the internal rules and general operating practices of this court. No attempt is made to restate or amplify the California Rules of Court or constitutional provisions and statutes governing the practices and procedures of a Court of Appeal. This publication supersedes previous statements of the court's Internal Operating Practices and Procedures.

II. STRUCTURE OF THE COURT

The Third Appellate District is authorized eleven justices: an administrative presiding justice and ten associate justices.

There are no divisions of this court. The court operates in three-justice panels selected at random on a rotational basis.

The courtroom, judicial offices, and Clerk's Office are located in the Stanley Mosk Library and Courts Building, 914 Capitol Mall, Sacramento, California 95814. The Clerk's Office is located on the fourth floor and is open to the public Monday through Friday, from 8:30 a.m. to 4:30 p.m., except for judicial holidays. Clerk's Office telephone hours for the public are Monday through Friday, from 9 a.m. to 4 p.m., except for judicial holidays.

III. FILINGS

All matters are filed with the Clerk's Office. The Clerk's Office processes and files the documents, distributing matters to the court when judicial action is required.

Routine motions or applications, such as requests for extensions of time, are referred to the Administrative Presiding Justice. More substantive motions and extraordinary writ petitions are referred to a three-justice panel.

Generally, upon the completion of briefing, appeals are evaluated and designated for handling by the court based on the number and apparent complexity of the issues raised, the subject matter, and the length of the record. In order to expedite certain proceedings, evaluation of an appeal may be done upon the filing of the last respondent's brief.

IV. ORGANIZATION AND DUTIES OF STAFF ATTORNEYS

Each justice is authorized two staff attorneys who work exclusively for the justice. Some of the justices also utilize law student externs who work under their direct supervision.

In addition, the court maintains a central staff of attorneys: a managing attorney who counsels the court and directs the work of the staff, attorneys who specialize in writs, attorneys who specialize in dependency cases, and other central staff attorneys. All central staff attorneys, including the managing attorney, work under the general supervision of the administrative presiding justice and are responsible to the entire court.

The primary responsibility of staff attorneys assigned to an individual justice is the preparation of memoranda for the appeals that are assigned to the justice's chambers. The attorney studies the record and the briefs, analyzes and researches the legal issues, discusses the issues with the justice, and then prepares a legal memorandum with guidance from the justice. The memorandum is prepared for the exclusive use of the court.

The central staff has two main functions. Some central staff attorneys study and familiarize themselves with nonroutine motions, writ petitions, and other extraordinary applications filed with the court. After analyzing and researching the matter, these attorneys present the motion, petition, or application to a three-justice panel of the court for its determination. The other central staff attorneys are assigned appeals that may be authored by any one of the eleven justices. These appeals are concurrently assigned to a central staff attorney and a panel with a designated author-justice. The central staff attorney studies the record and the briefs, analyzes and researches the legal issues,

confers with the author-justice, and then prepares a legal memorandum with guidance from the author-justice. The memorandum is prepared for the exclusive use of the court.

V. WRIT PETITIONS, MOTIONS AND OTHER APPLICATIONS

At the weekly writ conference, usually held on Thursdays, a three-justice panel rules on pending writ petitions, nonroutine motions, and other applications. The writ panel varies from week to week, with each justice participating approximately the same number of times during the year as the other justices.

Central staff attorneys make an oral presentation on each matter, and the writ panel considers the parties' written submissions as needed. The panel discusses each matter and decides what action to take. Unless it summarily denies a writ petition, the panel will issue an alternative writ, an order to show cause, or a writ of review, or the panel will notify the parties that it is considering issuing a peremptory writ in the first instance. If an alternative writ, an order to show cause, or a writ of review is issued, the matter is assigned to one of the justices on the writ panel and is thereafter handled much like the court does with an appeal (see discussion, *post*).

At times, the court is presented with a writ petition, motion, or application that purportedly requires urgent or immediate action. Such matters are promptly assigned to a central staff writ attorney for review. If immediate action is required, a panel of three justices is assembled to hear the matter.

VI. JUDICIAL ASSIGNMENTS IN APPEALS

Assignments of appeals to individual justices are not governed by fixed rules or set formula. Each appeal is evaluated and assigned a weight to reflect its relative complexity. Effort is made to fairly apportion the caseload so that no justice is assigned a disproportionate number of the more difficult or less difficult appeals. Subject matter is not a basis for assignment of an appeal to a particular justice, except that, where a justice has been assigned to the same case in an earlier appeal, a new appeal in that case often will be assigned to the same justice.

The three-justice panels are selected at random in order to vary their composition so that over a period of time each justice will participate with all other members of the court in the multiple combinations possible.

The initial designation of the author of the opinion in an appeal is done on a random basis at the time the case is assigned to chambers or to central staff. Each justice is initially designated to author approximately the same number of opinions that will be authored by

each of the other justices during the course of the year. Of course, whether the justice initially designated to author an opinion ultimately does so depends upon whether the justice obtains the concurrence of at least one other member of the panel. If the justice fails to do so, one of the other panel members will take over the responsibility of authoring the opinion of the court.

VII. PREPARATION OF A DRAFT OPINION

A legal memorandum prepared by a staff attorney is submitted to the justice initially designated to author the opinion in the appeal. After examining and evaluating the record, the parties' briefs, and the staff attorney memorandum, and after engaging in any necessary independent research and analysis, the justice prepares a draft opinion for the exclusive use of the court. A copy of the draft opinion, the briefs, and the record are then circulated, in order of seniority, to the other two participating justices. Each of the other participating justices indicates his or her tentative concurrence or dissent, or otherwise recommends changes to the draft opinion. All three justices also indicate their tentative positions on whether the ultimate opinion of the court should be certified for publication. The decision to publish the opinion requires approval by a majority of the three-justice panel.

VIII. ORAL ARGUMENT

When the draft opinion is circulated, each justice assigned to the case indicates whether he or she wants the case calendared for oral argument or whether a waiver of oral argument should be solicited by the court. At the request of one justice, the case will be calendared for oral argument.

If the justices agree to solicit a waiver of oral argument, the Clerk's Office sends the parties a letter indicating that the court is prepared to decide the case without oral argument and that oral argument will be waived unless it is requested by either counsel within ten days. If neither counsel requests oral argument within ten days, the court at that time approves the waiver of oral argument and the matter is deemed submitted for decision.

If either counsel requests oral argument, the case is placed on calendar. With the court's approval, a party may waive its appearance at oral argument requested by another party. Continuances are disfavored and will not be granted in the absence of a showing of unusually compelling circumstances. Oral argument will not be continued by stipulation of parties. The matter is deemed submitted for decision at the conclusion of oral argument or, if supplemental briefing is requested by the court, at the time the last brief is filed.

The panel holds a post argument conference, in most cases on the same day that the case is heard. Often the case is finally decided at this conference, and suggestions may be made to the assigned author concerning the content of the opinion. If there is not agreement at this stage, areas of disagreement may be identified and refined.

An opinion will be filed within ninety days of the date of submission.

IX. CALENDAR

The court sits twelve times a year, once each month. The calendar is usually set to begin on the third Monday or Tuesday of each month and generally lasts for five or six days. Special calendars, although rare, may be held by the court.

Each calendar consists of both civil and criminal appeals and other proceedings ready for decision. The administrative presiding justice is responsible for the final composition of the calendar.

X. FILING OF THE COURT'S DECISION; REHEARING

After oral argument or waiver of oral argument, a final draft opinion is circulated among the participating justices. A justice may indicate conditional approval if certain changes are made or otherwise forward comments on the draft to the author and the other participating justice. If there are to be separate concurring or dissenting opinions, they are circulated in final draft form among the participating justices. At the same time, the panel makes a final decision on publication.

Before the opinion is put in final form for filing, transcript references and citations are verified again.

When the opinion is signed, it is transmitted to the Clerk's Office, where it is filed as a decision and opinion of the court. Counsel of record are sent copies of the opinion on that same day. Copies also are available in the Clerk's Office for the news media and interested members of the public.

For sixty days, the Reporter of Decisions posts published opinions of the Court of Appeal, Third Appellate District, at:

http://www.courts.ca.gov/~~opinions-slip.htm?Courts=C~~opinions/publishedcitable-opinions

Unpublished opinions of the court are posted for sixty days at

http://www.courts.ca.gov/~~opinions-nonpub.htm?Courts=C~~opinions/unpublishednon-citable-opinions

Timely petitions for rehearing are immediately presented to the author of the opinion and the other panel members for review. If the petition lacks merit, it is denied. In some cases, the opinion may be modified and rehearing otherwise denied. The granting of a petition for rehearing may or may not result in a request by the court for additional briefing or oral argument.

XI. MEDIATION OF CIVIL APPEALS

In October 2006, the court initiated a mediation program for civil appeals governed by its Local Rule 1.

[Revised effective ~~March 24, 2023~~ January 1, 2027.]