

Judicial Council of California

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INVITATION TO COMMENT SPR15-04

Title	Action Requested
Appellate Procedure: Prehearing Conferences	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.248	January 1, 2016
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson,
Hon. Raymond J. Ikola, Chair	heather.anderson@jud.ca.gov, 415-865-7691

Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rule governing prehearing conferences in the Court of Appeal to limit the circumstances in which a prohibition on a justice's participation in determining the appeal would apply. The rule would be amended to provide that a justice may not participate in or influence the determination of the appeal only when the settlement of the case was addressed at the prehearing conference. This proposal is based on a suggestion received from the presiding justice of a Court of Appeal.

The Proposal

California Rules of Court, rule 8.248 currently allows the presiding justice of a Court of Appeal to order the parties/counsel on appeal to attend a conference to consider narrowing the issues on appeal, settlement, and other relevant matters. Subdivision (c) of this rule also currently provides that "[n]either the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal." This effectively means that any justice who participates in such a conference may not be on the panel that decides the matter.

Holding a prehearing conference for case management purposes can be helpful, particularly in large, complex appeals. A prehearing conference can provide an opportunity to discuss such procedural matters as consolidating or severing cases/issues, coordinating briefing schedules, and augmenting the record. This can save the parties and the appellate courts time and resources. However, the current prohibition on subsequent participation in the determination of the appeal appears to discourage the use of these conferences for these case management purposes.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

This proposal would make two changes to rule 8.248. First, to clarify the potential use of these conferences for case management purposes, it would replace the reference to using prehearing conferences to consider narrowing the issues with a broader reference to using such conferences to consider case management issues. Second, it would limit the prohibition on subsequent participation in the determination of the appeal to situations in which settlement was addressed at the prehearing conference. The committee notes that the California Code of Judicial Ethics Canon 3B(12) cautions judges to keep in mind the effect that the judge's participation in dispute resolution efforts, such as settlement conferences, may have on the judge's impartiality or the appearance of impartiality. At least two appellate districts have also adopted local settlement conference procedures that are designed to ensure that a justice who facilitates settlement discussions is not involved in any subsequent adjudication of a case.¹ In light of the caution in the Code of Judicial Ethics and these existing local procedures, the committee is not proposing a change in the current prohibition on a justice participating in or influencing the determination of the appeal if the justice participated in prehearing conference at which settlement was addressed.

Alternatives Considered

The committee considered proposing amendments that would have permitted parties to waive the prohibition on a justice who participated in prehearing conference involving settlement discussions from subsequent participation in the determination of an appeal. Ultimately, both because of the caution in the Code of Judicial Ethics discussed above and because, unlike in the trial court, waivers of potential disqualifications are not typically used in the appellate courts, the committee decided not to pursue such amendments.

The committee also considered not proposing these rule amendments at all. However, the committee concluded that narrowing the current prohibition could facilitate the use of prehearing conferences on appeal for case management purposes, which may reduce costs for litigants and the courts. Given these potential costs savings, the committee concluded that it should propose these rule amendments at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal will not impose any implementation requirements on the courts because holding these conferences is optional. This amendment should facilitate the use of prehearing conferences on appeal for case management purposes, which may reduce costs for litigants and the courts.

¹ The First Appellate District's local rule 3 relating to settlement conferences provides that "[a] justice selected by the court from outside the division to which the appeal is assigned shall preside over the settlement conference." The Fourth Appellate District's local rule 4(g) provides that "[a] justice or assigned justice who participates in a settlement conference that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits."

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Cal. Rules of Ct., rule 8.248

Rule 8.248 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 8.248. Prehearing conference**

2
3 **(a) Statement and conference**

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5 After the notice of appeal is filed in a civil case, the presiding justice may:

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7 (1) Order one or more parties to serve and file a concise statement describing the nature
8 of the case and the issues presented; and
9
10 (2) Order all necessary persons to attend a conference to consider ~~a narrowing of the~~
11 case management issues, settlement, and other relevant matters.
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13 **(b) Agreement**

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17 **(c) Proceedings after conference**

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19 (1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or
20 discussed in a conference under (a)(2) may be considered in any subsequent
21 proceeding in the appeal other than in another conference.
22
23 (2) If settlement is addressed at the conference, other than an inquiry solely about the
24 parties' interest in settlement, neither the presiding officer nor any court personnel
25 present at a conference may participate in or influence the determination of the
26 appeal.
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28 **(d) Time to file brief**

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