

Supreme Court of California

350 McAllister Street, San Francisco, California 94102-3688

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INVITATION TO COMMENT

W14-01

Title	Action Requested
Citation Procedure: Copies of Unpublished Decisions and Decisions Only Available in Computerized Databases	Review and submit comments by Friday, January 24, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.1115	July 1, 2014
Proposed by	Contact
Supreme Court of California	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

The California Supreme Court seeks comments on whether to amend or repeal the provision of the rule on citation of opinions that currently requires parties who cite any unpublished opinion or opinion that is available only in a computer-based source of decisional law to provide copies of that opinion to the court and other parties.

Background

The rules in title 8, division 5 of the California Rules of Court, which govern the publication and citation of appellate opinions, are adopted by the Supreme Court under section 14 of article VI of the California Constitution. Rule 8.1115, which is among the rules in this division, addresses citation of opinions. Subdivision (c) of this rule currently requires that if a party cites either an unpublished opinion or an opinion from any court that is available only in a computer-based source of decisional law, the party must furnish a copy of that decision to the court and to all parties.

Most California courts and attorneys now have subscriptions to one of the computerized legal information services through which they can obtain copies of any court opinions that rule 8.1115(c) currently requires be attached to filed documents. Attorneys who do not subscribe to these services and self-represented litigants can access these services through their local county law library. In addition, recent California appellate opinions can be accessed through the California Courts website, www.courts.ca.gov. All California courts have access to the internet and most, if not all, attorneys and self-represented litigants have such access through local libraries or internet cafes, if not at work or at home. It therefore typically is not necessary for a party to provide either the court or other parties with copies of these opinions. In addition,

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requiring copies of these opinions adds to the cost of litigation in the trial court, the cost of preparing records and other documents in appellate proceedings, and the size of court files and the costs associated with storing these files.

Prior Circulation

In spring 2011, the Supreme Court circulated a proposal to amend rule 8.1115(c) to provide that copies of these opinions need be provided only if requested by the court or a party. The intent of this proposed amendment was to reduce costs for both litigants and the courts while maintaining the ability of a court or party to obtain a copy of such an opinion from the citing party if necessary.

Two of the comments submitted at that time suggested that, rather than adopting the amendment that was circulated, the court should repeal rule 8.1115(c) altogether. These commentators suggested that because courts and litigants can now easily access materials that are available in electronic form, there does not appear to be a good reason to have a special rule requiring parties to provide copies of opinions available only in a computer-based source of decisional law; in fact, opinions only available in hard copy may now be harder to access than those online. It was also suggested that while unpublished opinions may not be so readily available online, because the circumstances in which these opinions may be cited are very narrow, there did not appear to be a good reason to impose a special requirement to provide copies of unpublished opinions that are cited. As an alternative to completely repealing rule 8.1115(c), one of these commentators suggested amending the rule to eliminate the requirement to provide copies of opinions available only in a computer-based source of decisional law and requiring copies of unpublished opinions be furnished only on request.

The Proposal

The Supreme Court is now seeking comments on the two options suggested by these commentators. Both of these potential rule changes are intended to reduce litigants' copying costs and the court costs associated with preparing and storing court records.

The first option below would amend rule 8.1115(c) to completely eliminate the requirement to provide copies of opinions available only in a computer-based source of decisional law and would modify the requirement to provide copies of unpublished opinions so that these would be furnished only on request. This option is intended to recognize that unpublished opinions may not be as readily available either from the California Courts Web site or from the major legal database providers as published opinions and therefore there may be circumstances in which other parties would like to receive a copy of an unpublished opinion cited by a party.

The second option below would completely repeal rule 8.1115(c); parties would no longer be required to provide copies of cited authorities under this rule. It should be noted, however, that there are several other California Rules of Court outside of the publication rules, including rule 3.1113(i) and rule 8.204(d) that specifically address providing copies of cited authorities to courts or other parties under certain circumstances or generally address attachments to filed

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documents, which may include copies of cited authorities. Under these other rules, parties may still be required or authorized to provide copies of some cited authorities.

The court would particularly appreciate comments on which of the options below is preferable.

Rule 8.1115 of the California Rules of Court would be amended, effective July 1, 2014, to read:

1 **Title 8. Appellate Rules**

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3 **Division 5. Publication of Appellate Opinions**

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5 OPTION 1

6
7 **Rule 8.1115. Citation of opinions**

8
9 **(a) Unpublished opinion**

10
11 Except as provided in (b), an opinion of a California Court of Appeal or superior
12 court appellate division that is not certified for publication or ordered published
13 must not be cited or relied on by a court or a party in any other action.

14
15 **(b) Exceptions**

16
17 An unpublished opinion may be cited or relied on:

- 18
19 (1) When the opinion is relevant under the doctrines of law of the case, res
20 judicata, or collateral estoppel; or
21
22 (2) When the opinion is relevant to a criminal or disciplinary action because it
23 states reasons for a decision affecting the same defendant or respondent in
24 another such action.

25
26 **(c) Citation procedure**

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28 On request of the court or a party, a copy of an opinion citable under (b) or of a
29 cited opinion of any court that is available only in a computer-based source of
30 decisional law must be promptly furnished to the court and all parties or the
31 requesting party by attaching it to the document in which it is cited or, if the
32 citation will be made orally, by letter within a reasonable time in advance of
33 citation.

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35 **(d) * * ***

1 OPTION 2

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3 **Rule 8.1115. Citation of opinions**

4
5 **Unpublished opinion**

6
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8 court appellate division that is not certified for publication or ordered published
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16 *judicata*, or collateral estoppel; or
17
18 (2) When the opinion is relevant to a criminal or disciplinary action because it
19 states reasons for a decision affecting the same defendant or respondent in
20 another such action.

21
22 ~~(e) Citation procedure~~

23
24 ~~A copy of an opinion citable under (b) or of a cited opinion of any court that is~~
25 ~~available only in a computer based source of decisional law must be furnished to~~
26 ~~the court and all parties by attaching it to the document in which it is cited or, if the~~
27 ~~citation will be made orally, by letter within a reasonable time in advance of~~
28 ~~citation.~~

29
30 ~~(d) (c) * * *~~