

RECOMMENDATIONS FOR CHANGES IN RULES OF COURT RE:  
PUBLICATION OF APPELLATE OPINIONS AND  
CITATION OF UNPUBLISHED OPINIONS

1. Rule 977 must be changed to allow citation of unpublished opinions.

a. Rule 977 is inconsistent with statutes Article Six, Section VI of the California constitution authorizes the Judicial Council to "adopt rules for court administration, practice and procedure, not inconsistent with statute..."

Section 22.2 of the Civil Code states that the common law of England (if not inconsistent with the U.S. or California Constitution) is the rule of decision of all courts of the state. Decisions of the courts constitute the best evidence of what the common law is. Application of Rule 977 violates this principle.

Section 451 and 453 of the Evidence Code require courts to take judicial notice of decisional law of this and other states. It would seem that a court must take judicial notice of an unpublished opinion if a party makes a request and provides a copy of the decision to his opponent and the court. Rule 977 is inconsistent.

RECOMMENDATION REGARDING RULE 977:

Rule 977 should be changed to allow a party to refer to an unpublished opinion, provided he makes a request that the court take judicial notice of the opinion and provides the court and the adverse party with a copy of the opinion. The limitations on the number of pages of appellate briefs should not apply to such requests for judicial notice of unpublished opinions.



2. Rule 976 must be substantially changed

- a. The presumption against publication should be reversed. There should be a presumption in favor of publication.
- b. The criteria used to determine whether an opinion should be published must be expanded considerably. A decision should be published if:
  - 1) it involves a substantial constitutional question, or
  - 2) it determines a new and important question of law, or
  - 3) it changes, reverses, seriously questions or criticizes the soundness of a principle of law, or
  - 4) the decision is of continuing public interest and importance. This requirement is satisfied if the legal issue is of continuing interest to a substantial group of the public, such as public officers or agencies, members of an economic class, business or professional group, or a recognized minority group, or
  - 5) one or more members of the court rendering the decision writes a dissenting opinion, or
  - 6) the decision, although not otherwise meriting publication, constitutes a significant contribution to the legal literature.
- c. If one member of the court rendering a decision is of the opinion that it meets one or more of the criteria set forth above, the opinion of the court ~~shall~~<sup>SHOULD</sup> be published.



3. Rule 978 should be amended.

a. Requests prior to finality of decision:

If a decision is not yet final as to the court which rendered the opinion, any person may submit a request to that court that the opinion be published because it meets one or more of the criteria for publication. If one or more members of the court rendering the decision is then of the opinion that said criteria are satisfied, the opinion shall be published.

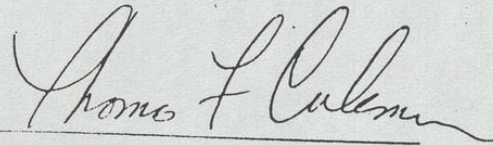
b. Requests after finality of decision:

Subsequent to finality of a decision, any person may submit a request to the Committee on Opinions that the opinion be published because it meets one or more of the criteria for publication. The opinion shall be published with the approval of a majority of the members of the Committee on Opinions.

RECOMMENDATION TO ESTABLISH A COMMITTEE ON OPINIONS:

The Supreme Court shall establish a Committee on Opinions. The Committee should consist of five members appointed by the Chief Justice.

Submitted by:



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THOMAS F. COLEMAN  
Coleman & Kelber  
A Law Partnership  
1800 N. Highland  
Los Angeles, CA 90028  
(213) 464-6666