



# California Rules of Court

## Rule 8.1115. Citation of opinions

### (a) Unpublished opinion

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

### (b) Exceptions

An unpublished opinion may be cited or relied on:

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

*(Subd (b) amended effective January 1, 2007.)*

### (c) Citation procedure

On request of the court or a party, a copy of an opinion citable under (b) must be promptly furnished to the court or the requesting party.

*(Subd (c) amended effective July 1, 2016.)*

### (d) When a published opinion may be cited

A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

### (e) When review of published opinion has been granted

#### (1) *While review is pending*

Pending review and filing of the Supreme Court's opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only. Any citation to the Court of Appeal opinion must also note the grant of review and any subsequent action by the Supreme Court.

#### (2) *After decision on review*

After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter, and any published opinion of a Court of Appeal in a matter in which the Supreme Court has ordered review and deferred action pending the decision, is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court.

#### (3) *Supreme Court order*

At any time after granting review or after decision on review, the Supreme Court may order that all or part of an opinion covered by (1) or (2) is not citable or has a binding or precedential effect different from that specified in (1) or (2).

*(Subd (e) adopted effective July 1, 2016.)*

*Rule 8.1115 amended effective July 1, 2016; repealed and adopted as rule 977 effective January 1, 2005; previously amended and renumbered as rule 8.115 effective January 1, 2007.*

#### Comment

**Subdivision (e)(1).** In two respects, this subdivision alters the effect of published Court of Appeal decisions after review is granted by the Supreme Court and while a decision on review is pending.

Under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, published "[d]ecisions of every division of the District Courts of Appeal are binding upon all the . . . superior courts of this state . . ." (*Id.*, at p. 455.) The nature of this binding effect changes when there are conflicting published Court of Appeal opinions: in that circumstance, the superior court is still bound, but it "can and must make a choice between the conflicting decisions." (*Id.*, at p. 456.) Because the practice and rule in effect before July 1, 2016, automatically depublished the decision under review, superior courts were not allowed to choose to be bound by the appellate court decision that was under review. Under new subdivision (e)(1) of this rule, if the Supreme Court grants review of a published Court of Appeal decision, that decision now remains published and citable while review is pending and yet - similar to the result under the former rule - it will not have binding or precedential effect on the superior courts, but will instead have a lesser status of "potentially persuasive value only." Accordingly, pursuant to the new rule (as before), when a decision that is pending review conflicts with another published Court of Appeal decision that is not under review, only that other published decision will continue to have binding or precedential effect on the superior court.

Subdivision (e)(1) also slightly alters practice with respect to the Court of Appeal pending decision after grant of review. It has long been the rule that no published Court of Appeal decision has *binding* effect on any other Court of Appeal (e.g., *In re Marriage of Hayden* (1981) 124 Cal.App.3d 72, 77, fn. 1; *Froyd v. Cook* (E.D.Cal. 1988) 681 F.Supp. 669, 672, fn. 9, and cases cited) or on the Supreme Court. Under prior practice and the former rule, because a grant of review automatically depublished the decision under review, the Court of Appeal was not allowed to cite or quote that review-granted decision concerning any substantive point. Under the new subdivision, a published Court of Appeal decision as to which review has been granted remains published and is citable, while review is pending, for any potentially persuasive value.

**Subdivision (e)(2).** The fact that a Supreme Court decision does not discuss an issue addressed in the prior Court of Appeal decision does not constitute an expression of the Supreme Court's opinion concerning the correctness of the result of the decision on that issue or of any law stated in the Court of Appeal decision with respect to any such issue.

**Subdivision (e)(3).** This subdivision specifically provides that the Supreme Court can order that an opinion under review by that court, or after decision on review by that court, have an effect other than the effect otherwise specified under this rule. For example, the court could order that, while review is pending, specified parts of the published Court of Appeal opinion have binding or precedential effect, rather than only potentially persuasive value.