CALIFORNIA CIVIL PROCEDURE HANDBOOK: RULES, SELECTED STATUTES AND CASES, AND COMPARATIVE ANALYSES

2015-2016 EDITION

California Civil Practice Statutory Provisions
Federal Rules of Civil Procedure
Selected California Cases
Author Commentary, Notes, and Questions

Walter W. Heiser



CALIFORNIA CIVIL PROCEDURE HANDBOOK

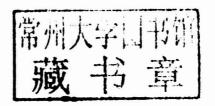
RULES, SELECTED STATUTES AND CASES, AND COMPARATIVE ANALYSIS

2015-16 EDITION

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SUPPLEMENTAL COURSE MATERIALS FOR USE WITH ALL FIRST-YEAR CIVIL PROCEDURE CASEBOOKS





California civil procedure handbook

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CALIFORNIA CIVIL PROCEDURE HANDBOOK

Rules, Selected Statutes and Cases, and Comparative Analysis

2015-16 Edition

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CALIFORNIA CIVIL PROCEDURE

Chapter I

INTRODUCTION TO CALIFORNIA CIVIL PROCEDURE

A. SOURCES OF CALIFORNIA PROCEDURAL LAWS

1. "Written Law"

According to section 1895 of the California Code of Civil Procedure, all laws in California are either "written" or "unwritten." The written law is contained in the California Constitution and statutes, and in the United States Constitution and statutes. CCP § 1897. Unwritten law is law "not promulgated and recorded . . . but which is, nevertheless, observed and administered in the courts. . . . It has no certain repository, but is collected from the reports of the decisions of the courts, and the treatises of learned men." CCP § 1899.

The United States Constitution and Laws. Although the origins of specific California procedural laws lie elsewhere, the United States Constitution is in one sense the ultimate source. Both as a conceptual proposition and an actual check when challenged, all state procedural laws must be consistent with the requirements of the Fourteenth Amendment. The federal Due Process Clause provides the ultimate "fairness" standard by which state procedural statutes, rules, and court actions are measured. See, e.g., Kulko v Superior Court, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978) (California state court's exercise of personal jurisdiction over a nonresident parent in child support action violated federal Due Process Clause); Randone v Appellate Department, 5 Cal. 3d 536, 96 Cal. Rptr. 709, 488 P.2d 13 (1971), cert. denied, 407 U.S. 924 (1972) (Then-existing California attachment statute, which authorized pre-judgment attachment without notice and an opportunity for a hearing, violated Due Process Clause).

The California Constitution. In addition to a general Due Process provision which mirrors that of the United States Constitution, the California Constitution contains a number of more specific sections which help define our civil litigation process. For example, Section 16 of Article I provides with respect to civil jury trials:

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. * * * In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

The California Code of Civil Procedure. The California Code of Civil Procedure (hereinafter, "CCP"), consisting of hundreds of statutes, is the primary source of procedural law for California state courts. This Code covers such topics as subject

matter jurisdiction, statutes of limitations, joinder of parties and claims, service of process, pleadings and motions, attachment, trial and pretrial motions, extraordinary writs, appeals, judgments, and enforcement of judgments.

Unlike the relatively succinct Federal Rules of Civil Procedure that apply in federal trial courts, the California Code is lengthy, comprehensive, and quite detailed. For example, Federal Rule 56 delineates the standards and procedures for summary judgment motions in less than one page, but CCP § 437c takes 2-1/2 pages of similar size type; Federal Rule 30 specifies the procedures for oral depositions in 2-1/4 pages, CCP §§ 2025.010–2025.620 require more than 10 pages to cover the same topic. The code approach employed by California usually means that most specific procedural questions can be answered by simply locating the relevant Code sections.

Other statutory codes also contain important procedural provisions, often limited to particular types of cases. See, e.g., Government Code § 900 et seq. (procedures for presentation of claims against public entities and officials under the California Tort Claims Act); Family Code §§ 200–291 (procedures relating to dissolution of marriage and related proceedings); Civil Code §§ 1780–1784 (remedies and procedures for actions under the Consumers Legal Remedies Act); Evidence Code §§ 450–460 (judicial notice); Business & Professions Code §§ 6146–6149 (limitations on contingent fee agreements).

California Rules of Court. Pursuant to the authority contained in the California Constitution and in various code sections, the Judicial Council of California has adopted numerous state-wide rules of practice and procedure. These Rules of Court supplement statutory and constitutional provisions, and have the force of law. The Rules of Court were reorganized and renumbered effective January 1, 2007.

The scope of the numerous and detailed California Rules of Court is difficult to characterize. Some rules govern procedures in the appellate courts, Rules 8.1–8.1125, Cal. Rules of Ct.; others fine-tune civil pretrial and trial procedures in the superior court, Rules 3.1–3.2120. Some specifically relate to family law proceedings, some to coordination of civil actions, and others to court-annexed arbitration and mediation. Rules 5.475–5.5, 3.500–3.550, 3.800–3.878, Cal. Rules of Ct. Some cover seemingly mundane topics, such as the form and size requirements of papers presented for filing specified in Rules 2.100–2.119; others provide essential information on important matters not covered elsewhere, such as the time deadlines for filing a notice of appeal in Rules 8.104 & 8.108. The criteria for publication of appellate opinions, for example, are found in Rules 8.1100–8.1125 and no place else.

You might think a detailed Code of Civil Procedure plus hundreds of state-wide Rules of Court would provide sufficient bases for the regulation of civil procedure. Unfortunately, the California courts do not. Pursuant to the authority provided by CCP § 575.1 and Government Code § 68070(a), each county has promulgated numerous local rules applicable to civil actions in its superior courts. Typically they govern such areas of local variation as the format and filing requirements for papers, the procedures for scheduling hearings, telephonic rulings, and special rules for specific departments. With the advent of the Trial Court Delay Reduction Act, local rules have taken on increased importance.

2. "Unwritten" Law

Judicial Decisions. Judicial decisions are a prevalent source of procedural law. The courts not only interpret the written law, but possess the inherent power to make procedural law. See, e.g., La Sala v. American Savings & Loan Assn., 5 Cal. 3d 864, 872, 97 Cal. Rptr. 849, 489 P.2d 1113 (1971) (Adopting procedures for class actions); Green v. Obledo, 29 Cal. 3d 126, 145–46, 172 Cal. Rptr. 206, 624 P.2d 256 (1981) (Same).

The general rule is that judicial decisions in civil actions are given retroactive effect. This means that a decision of the California Supreme Court overruling a former decision or announcing a new rule of law should normally apply to all actions that already have been filed or litigated but are not yet final. See, e.g., Newman v. Emerson Radio Corp., 48 Cal. 3d 973, 978, 258 Cal. Rptr. 592, 772 P.2d 1059 (1989) (Observing that the California courts have consistently applied tort decisions retroactively even when those decisions declared new causes of action); Peterson v. Superior Court, 31 Cal. 3d 147, 151–52, 181 Cal. Rptr. 784, 642 P.2d 1305 (1982) (Concluding new rule announced by Supreme Court that punitive damages are recoverable from intoxicated driver who causes personal injury should be applied retroactively).

However, the courts have recognized exceptions to the general rule when considerations of fairness and public policy precluded retrospective operation of judicial decisions. See, e.g., Newman v. Emerson Radio Corp., supra (Collecting cases); Moradi-Shalal v. Fireman's Fund Ins. Companies, 46 Cal. 3d 287, 250 Cal. Rptr. 116, 758 P.2d 58 (1988) (Judicial reinterpretation of a statute to preclude private third-party causes of action for unfair insurer practices not given retroactive effect; considerations of fairness and public policy required prospective application to permit those who had already embarked on litigation to receive the benefit of the court's express prior ruling on which they had relied).

Publication of Appellate Court Opinions. Decisions on the merits by the California Supreme Court and Courts of Appeal must be in writing with the court's reasons stated. Art. VI, § 14, Cal. Const. All such written opinions of the Supreme Court are published in the Official Reports (i.e., the multi-volume California Reports). Rule 8.1105(a), Cal. Rules of Ct.

An opinion of the Court of Appeal, however, is published in the Official Reports (i.e., the multi-volume California Appellate Reports) only if it satisfies one of the criteria for publication set forth in Rule 8.1105(c), (e.g., the opinion establishes a new rule of law, addresses or creates an apparent conflict in the law, involves a legal issue of continuing public interest, invokes a previously overlooked rule of law, etc.). Because these criteria discourage publication, only approximately 17% of the judicial opinions rendered by the various Courts of Appeal in civil appeals are published. See Judicial Council of California, 2014 Court Statistics Report, Courts of Appeal, Figure 30: Civil Appeals for 2012–13. Partial publication is also authorized and is frequently utilized. If the Court of Appeal determines that only portions of its opinion meet the standards for publication, it can order publication of only those portions. Rule 8.1110(a). The unpublished parts are treated as an unpublished opinion. Rule 8.1110(c).

The California Supreme Court has the power to change the publication status of a Court of Appeal opinion by ordering that an opinion certified for publication is not to be published or, more rarely, that an opinion not certified for publication is to be published. Rule 8.1105(e)(2). Also, the general rule is that an opinion of the Court of Appeal is no longer considered published if the Supreme Court grants review of the decision. Rule 8.1105(e)(1).

Citation of Unpublished Opinions Prohibited. What difference does it make whether or not an opinion is published? Plenty. Generally, subject to certain limited exceptions, an unpublished opinion cannot be cited or relied on by a court or a party in any other action or proceeding. Rule 8.1115, Cal. Rules of Ct. Because an unpublished or depublished opinion can not be cited, it has no precedential value. See, e.g., Nelson v. Justice Court, 86 Cal. App. 3d 64, 66, 150 Cal. Rptr. 39 (1978); Heaton v. Marin County Employees Retirement Bd., 63 Cal. App. 3d 421, 431, 133 Cal. Rptr. 809 (1976). Improper citation to an unpublished opinion in an appellate brief may result in the imposition of sanctions. See Alicia T. v. County of Los Angeles, 222 Cal. App. 3d 869, 885–86, 271 Cal. Rptr. 513 (1990) (Monetary sanctions imposed against appellant's counsel for repeatedly citing depublished cases).

Learned Treatises. The California courts often rely on legal treatises and secondary authorities to illuminate gray areas of the law. The most authoritative treatise by far is the ten-volume California Civil Procedure authored by Bernard E. Witkin, now in its fifth edition (2008) and supplemented annually. First published in 1954, Witkin's treatise has been cited thousands of times over the years in judicial opinions. Another influential treatise is Weil and Brown, Civil Procedure Before Trial, a loose-leaf service published by The Rutter Group and updated annually.

Secondary authorities, such as learned treatises, are not themselves law and do not have the binding force of statutes, court rules, or judicial precedents. Nevertheless, they can be quite persuasive. For example, when construing unclear procedural statutes, the California courts frequently rely on legislative histories contained in Judicial Council, California Law Revision Commission Official Comments, or legislative committee reports to ascertain legislative intent. See Bonanno v. Central Contra Costa Transit Authority, 30 Cal. 4th 139, 148, 132 Cal. Rptr. 2d 341, 65 P.3d 807 (2003) (Official Comments are "persuasive, albeit not conclusive, evidence" of legislative intent).

B. CALIFORNIA JUDICIAL SYSTEM

The following profile of the California judicial system is reproduced, in part, from California Judicial Branch and California Courts, with additions and modifications taken from 2014 Court Statistics Report, Statewide Case Load Trends 2003–2004 Through 2012–2013, published by the Judicial Council of California.

CALIFORNIA JUDICIAL BRANCH

The California court system — the largest in the nation, with more than 2000 judicial officers, 19,000 court employees, and more than 7 million cases — serves over 38 million people. The state Constitution vests the judicial power of California in the