

24TH ANNUAL
MCLE SPECTACULAR!
Friday, November 16, 2018

**The Contra Costa County Bar Association
proudly presents...**

Our 2018 Breakfast Kickoff Speaker

THE HONORABLE LEONDRA KRUGER

Associate Justice of the Supreme Court of California

***In Conversation with
Wendy McGuire Coats, CCCBA's President-Elect
of Fisher & Phillips***

Associate Justice Leondra R. Kruger

Immediately before joining the court, Justice Kruger served in the United States Department of Justice as a Deputy Assistant Attorney General for the Office of Legal Counsel. From 2007 to 2013, she served in the Department as an Assistant to the Solicitor General and as Acting Deputy Solicitor General. During her tenure in the Office of the Solicitor General, she argued 12 cases in the United States Supreme Court on behalf of the federal government. In 2013 and in 2014, she received the Attorney General's Award for Exceptional Service, the Department's highest award for employee performance.

Justice Kruger had previously been in private practice, where she specialized in appellate and Supreme Court litigation, and taught as a visiting assistant professor at the University of Chicago Law School.

A native of the Los Angeles area, Justice Kruger attended high school in Pasadena. She received her bachelor's degree with high honors from Harvard College, where she was elected to Phi Beta Kappa. She received her J.D. from Yale Law School, where she served as Editor-in-Chief of the Yale Law Journal. Following graduation, she served as a law clerk to Judge David S. Tatel of the United States Court of Appeals for the D.C. Circuit, and to Justice John Paul Stevens of the United States Supreme Court.



The SUPREME COURT of CALIFORNIA

Seventh Edition

Containing the
Internal Operating Practices and Procedures
of the
California Supreme Court



The Supreme Court of California

Seventh Edition

Containing the Internal Operating Practices and
Procedures of the California Supreme Court



Acknowledgments

This booklet concerning the court's history and operations initially was published in 1985. It has been revised periodically (in 1986, 1990, and 1995), and its current title, *The Supreme Court of California*, was adopted with the fifth edition. Minor changes were made in the sixth edition.

Substantial historical and archival material was added in the fifth edition and remains in the current edition. For this material, special thanks and credit are due to Jake Dear, who guided the entire revision project, inspired the section on history, and supplied invaluable archival detail. Edward W. Jessen and Edith V. Lavin provided research, organization, and drafting, and Thomas R. Reynolds made expert revisions. Suzanne Bean designed the booklet.

The seventh edition reflects changes in the court's composition, provides updated information and photographs, and includes the current version of the Internal Operating Practices and Procedures of the California Supreme Court. Christine Miklas and Sheila Ng handled production editing and graphic production. Jorge Navarrete managed the administrative and business details of printing. Finally, the deft touch of Jake Dear, the support of Frank McGuire, and the guidance of the Office of Communications are deeply appreciated.

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Cover: Mural by Willard Dixon, entitled *The Eastern Sierra in Fall*, 1998.





Internal Operating Practices and Procedures of the California Supreme Court (Revised October 22, 2003, November 24, 2003, August 25, 2004, January 1, 2007, and April 22, 2015)¹

The following internal operating practices and procedures are observed by the California Supreme Court in the performance of its duties.²

I. ACTING CHIEF JUSTICE

An Acting Chief Justice performs the functions of the Chief Justice when the Chief Justice is absent or unable to participate in a matter. The Chief Justice, pursuant to constitutional authority (Cal. Const., art. VI, § 6), selects on a rotational basis an associate justice to serve as Acting Chief Justice.

1. These practices and procedures may be amended from time to time, as needed, to facilitate the court's ability to discharge its duties. Amendments are reflected in updated versions of the practices and procedures on the California Courts Web site at www.courts.ca.gov/2962.htm. Section VIII.D was amended October 22, 2003; sections III.E, IX, X, and XII were amended November 24, 2003; sections IV.J and XIII.B were amended August 25, 2004; sections IV.J and XIII.A were amended April 22, 2015; and rules references throughout were amended effective January 1, 2007, to reflect the reorganization and renumbering of the California Rules of Court effective on that date.

2. Various provisions of the California Constitution, codes, and rules of court, as well as numerous provisions of the decisional law, bear on how the court functions. The court's internal operating practices and procedures should be considered in that context.



The California Supreme Court in 1850. Left to right: Associate Justice Henry A. Lyons, Chief Justice Serranus Clinton Hastings, Associate Justice Nathaniel Bennett.

II. TRANSFER OF CASES

A. All transfers to the Supreme Court of a cause in a Court of Appeal pursuant to article VI, section 12 of the California Constitution are accomplished by order of the Chief Justice made on a vote of four justices assenting thereto.

B. Unless otherwise ordered by the Chief Justice, all applications for writs of mandate and/or prohibition that have not previously been filed with the proper Court of Appeal are transferred to such court.

III. CONFERENCES

A. Unless otherwise directed by the Chief Justice, regular conferences are held each Wednesday, excluding the Wednesday of regular calendar sessions and the first Wednesday of July and August.

B. Special conferences may be called by the Chief Justice whenever deemed necessary or desirable.

C. Four justices constitute a quorum for any regular or special conference.

D. A judge assigned by the Chief Justice to assist the court, or to act in the place of a regular member of the court who is disqualified or otherwise unable to act, may be counted to obtain a quorum for a conference. A regular member of the court, present at a conference, who is not participating in a particular matter is not counted in determining a quorum for that matter.

E. A justice who has ascertained that he or she will not be present at a conference or will not be participating in a particular matter will notify the Chief Justice or the Calendar Coordinator, as specified by sections XII.A and XIII.A. The absent justice may communicate in writing to the Calendar Coordinator his or her votes on some or all of the matters on any given conference, and may be counted to constitute a quorum for each such conference matter on which a vote has been cast.

F. Matters in which time is of the essence may be considered by the court without a formal conference. In such matters, because time is of the essence, an order will be filed as soon as four justices vote for a particular disposition.

IV. CONFERENCE MEMORANDA

A. Unless otherwise directed by the Chief Justice, a conference memorandum is prepared for each petition requiring conference consideration or action.

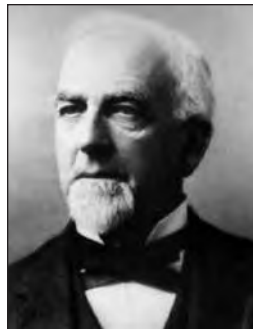
B. Upon the filing of a petition, motion, or application, the Calendar Coordinator, under the direction of the Chief Justice, assigns it a conference date and refers it to one of the central staffs or a member of the court for preparation of a conference memorandum as follows:

1. Petitions in civil cases, to the civil central staff.
2. Petitions in or derived from criminal cases, other than cases arising from judgments of death, to the criminal central staff.

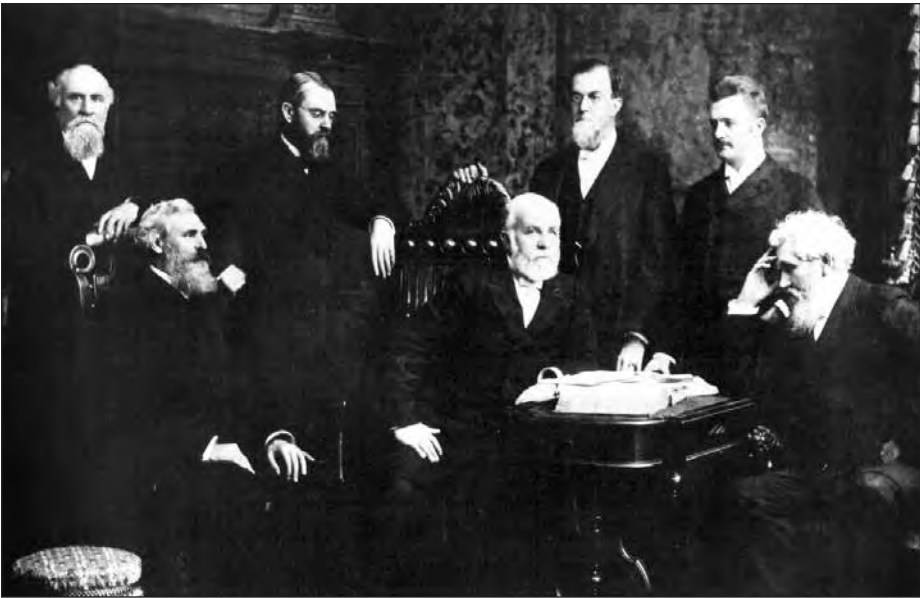


The California Supreme Court in 1857. Left to right: Associate Justice Peter H. Burnett, Chief Justice David S. Terry, Associate Justice Stephen J. Field.

3. Applications for writs of habeas corpus arising out of criminal proceedings, other than cases arising from judgments of death, to the criminal central staff.
4. Motions in criminal cases arising from judgments of death, to the six associate justices and the Chief Justice, or to the capital central staff.
5. Applications for writs of habeas corpus arising out of judgments of death, to the six associate justices and the Chief Justice, or to the capital central staff.
6. Applications to the Supreme Court pursuant to article V, section 8 of the California Constitution for a recommendation regarding the granting of a pardon or commutation to a person twice convicted of a felony, to the criminal central staff.
7. Petitions for review of State Bar proceedings pursuant to rule 9.13 et seq. of the California Rules of Court, to the civil central staff.



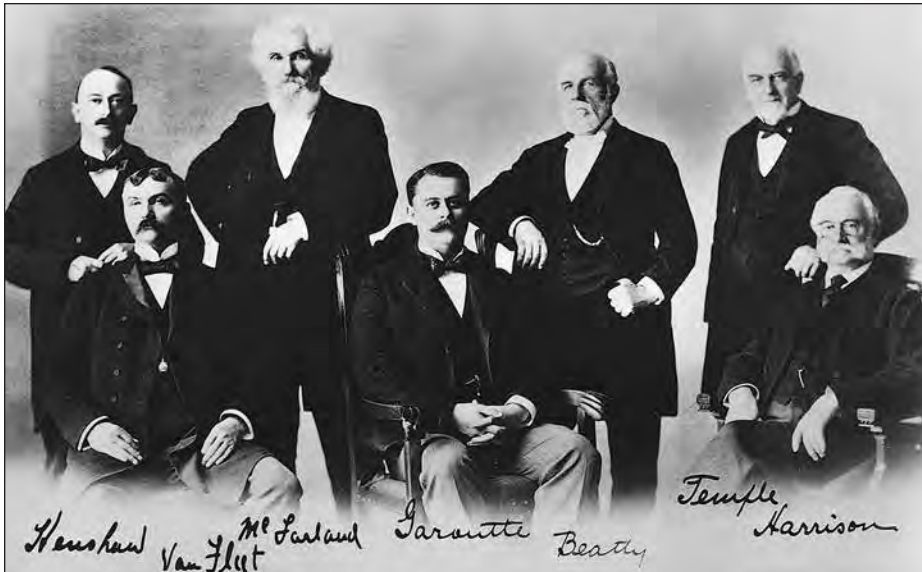
The California Supreme Court in 1870. Top, left to right: Associate Justice William T. Wallace, Associate Justice Royal T. Sprague, Chief Justice Augustus L. Rhodes. Bottom, left to right: Associate Justice Joseph B. Crockett, Associate Justice Jackson Temple.



The California Supreme Court in 1890. Left to right: Associate Justice John R. Sharpstein, Associate Justice Charles N. Fox, Associate Justice John D. Works, Chief Justice William H. Beatty, Associate Justice James D. Thornton, Associate Justice A. Van R. Paterson, Associate Justice Thomas B. McFarland.

8. All other petitions and applications, to the six associate justices and the Chief Justice in rotation so that, at the end of a given period of time, each justice will have been assigned an equal number of petitions. Petitions for rehearing after decision in the Supreme Court are referred to a justice, other than the author, who concurred in the majority opinion.

C. The recommendation set forth in a conference memorandum will generally be one of the following: (1) "Grant," (2) "Grant and Hold," (3) "Grant and Transfer," (4) "Deny," (5) "Submitted," (6) "Denial Submitted," and (7) "Deny and Depublish." The designation "submitted" is used when the author believes the case warrants special discussion. The designation "denial submitted" is used when the author believes the petition should be denied, but nevertheless believes some ground exists that could arguably justify a grant, or an issue is raised that otherwise warrants discussion by the court. The designation "deny and depublish" is used when the author does not believe the decision warrants review, but nevertheless believes the opinion is potentially misleading and should not be relied on as precedent.



The California Supreme Court in 1896. Left to right: Associate Justice Frederick W. Henshaw, Associate Justice W. C. Van Fleet, Associate Justice Thomas B. McFarland, Associate Justice Charles H. Garoutte, Chief Justice William H. Beatty, Associate Justice Jackson Temple, Associate Justice Ralph C. Harrison.

D. The author of the conference memorandum assigns it to either the “A” or the “B” list. Cases assigned to the A list include all those in which the recommendation is to grant or take affirmative action of some kind, e.g., “grant and transfer” or “deny and depublish,” in which a dissenting opinion has been filed in the Court of Appeal, or in which the author believes denial is appropriate, but that the case poses questions that deserve special attention. Cases assigned to the B list concern routine matters, or application of settled law.

E. Conference memoranda are delivered by the author to the Calendar Coordinator for reproduction and distribution to the justices no later than the Tuesday of the week before the conference, thus providing ample time for the justices and their staffs to review the petition and the court’s internal memoranda.

F. The court’s Calendar Coordinator divides the weekly conference agenda into an A and B list, based on the designation appearing on each conference memorandum.

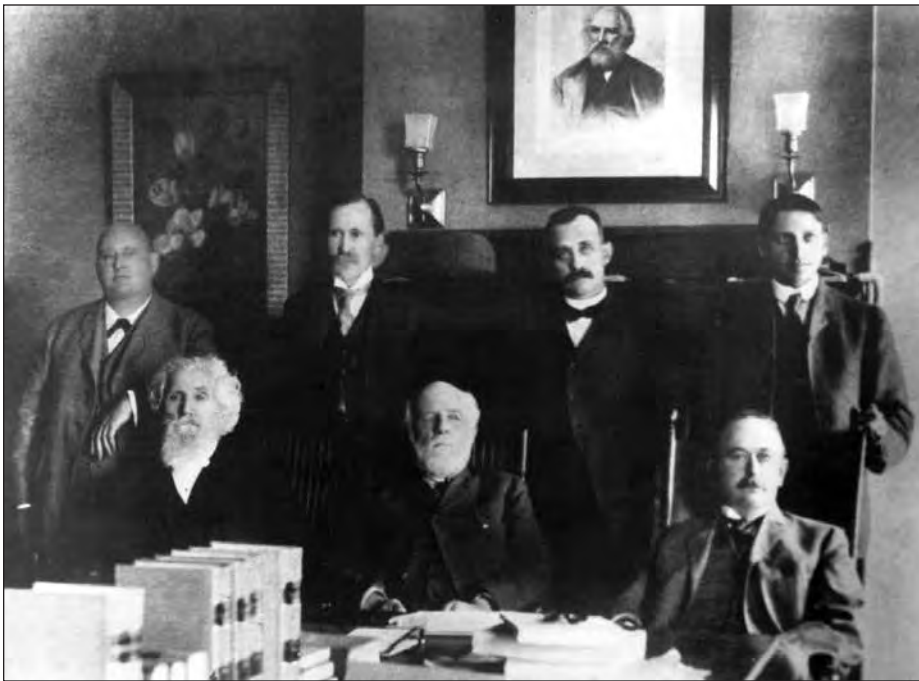
G. Matters appearing on the A list are called and considered at the conference for which they are scheduled. Before or after a vote is taken, any justice may request

that a case be put over to a subsequent conference within the jurisdictional time limit for further study, preparation of a supplemental memorandum, or both. The time within which action thereon must be taken will be extended pursuant to rules 8.264 and 8.500 of the California Rules of Court, if necessary.

H. Matters appearing on the B list will be denied in accordance with the recommendation of the memorandum, at the conference at which they are scheduled, unless a justice requests that a case be put over to a subsequent conference within the jurisdictional time limit for further study, preparation of a supplemental memorandum, or both.

I. In any case in which the petition, application, or motion is denied, a justice may request that his or her vote be recorded in the court minutes.

J. When a justice is unavailable or disqualified to participate in a vote on a petition for review or other matter (see, e.g., § XIII.A, *post*), and four justices cannot



The California Supreme Court, 1906–1908. Left to right: Associate Justice William G. Lorigan, Associate Justice Thomas B. McFarland, Associate Justice Lucien Shaw, Chief Justice William H. Beatty, Associate Justice Frank M. Angellotti, Associate Justice Frederick W. Henshaw, Associate Justice M. C. Sloss.



The California Supreme Court in 1914. Left to right: Associate Justice Henry A. Melvin, Associate Justice William G. Lorigan, Associate Justice Frederick W. Henshaw, Chief Justice William H. Beatty, Associate Justice Lucien Shaw, Associate Justice Frank M. Angellotti, Associate Justice M. C. Sloss.

agree on a disposition, the Chief Justice, pursuant to constitutional authority (Cal. Const., art. VI, § 6), assigns in alphabetical order (except as set forth below) a Court of Appeal justice as a pro tempore justice to participate in the vote on the petition or matter. The assigned justice is furnished all pertinent petitions, motions, applications, answers, briefs, memoranda, and other material. A newly appointed Court of Appeal justice will be assigned as a pro tempore justice of the Supreme Court only after he or she has served on the Court of Appeal for one year. If a Court of Appeal justice is unable to serve on a particular case, the next justice on the alphabetical list will be assigned, and the Court of Appeal justice who was unable to serve will be assigned in the next case in which a pro tempore appointment is required.

K. Either at the time review is granted, or at any time thereafter, the court may specify which of the issues presented should be briefed and argued.

L. Within 15 days after review is granted in a civil case or a criminal case in which a corporate entity is a party, each party must file a "Certification of Interested Entities or Persons" that lists any persons, associations of persons, firms, partnerships, corporations (including parent and subsidiary corporations), or other entities other than the parties themselves known by the party to have either (i) a financial interest in the subject matter of the controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. This requirement does not apply to any governmental entity or its agencies. The Clerk's Office shall notify all parties including real parties in interest in writing of this requirement at the time the parties are notified of the court's grant of review.

V. CALENDAR SESSIONS FOR ORAL ARGUMENT

Regular sessions of the court are held each year, on a day or days as determined by the Chief Justice, in San Francisco, Los Angeles, and Sacramento. Special sessions may be held elsewhere by order of the Chief Justice or by order on a vote of four justices assenting thereto.



The California Supreme Court in 1920. Left to right: Associate Justice William P. Lawlor, Associate Justice Thomas J. Lennon, Associate Justice Lucien Shaw, Associate Justice Curtis D. Wilbur, Chief Justice Frank M. Angellotti, Associate Justice Warren Olney, Jr., Associate Justice Henry A. Melvin.

Unless otherwise ordered by the Chief Justice, the court convenes at 9:00 a.m.

Unless otherwise ordered, only one counsel may be heard for each side. Counsel wishing to divide the time for oral argument must request permission from the court not later than ten days after the case has been set for oral argument. In no event shall oral argument be divided into segments of less than ten minutes, except that one counsel for the opening side (unless additional counsel are so authorized) may reserve a portion of his or her allotted time for rebuttal.

VI. CALENDARS AND CALENDAR MEMORANDA

A. The purpose of the calendar memorandum is to present the facts and legal issues and to propose a resolution of the legal issues.

B. At the request of the justice preparing a calendar memorandum, or on direction of the Chief Justice, or on the affirmative vote of a majority of the court, the Clerk's Office will request counsel for the parties to be prepared to argue and to submit additional briefs on any points that are deemed omitted or inadequately covered by the briefs or in which the court is particularly interested.

C. In assigning cases for the preparation of calendar memoranda, the Chief Justice takes into account the following considerations, but may depart from these considerations for the purpose of equalizing the workload of the justices or expediting the work of the court:

1. The case is assigned to one of the justices who voted for review. If a case involves substantially the same issues as one already assigned for preparation of a calendar memorandum, it may be assigned to the justice who has the similar case. Preference in case assignments may be given to a justice who authored the conference memorandum or supplemental conference memorandum on which the petition was granted, unless other factors, such as equalization of workload, suggest a different assignment.
2. Granted petitions in other matters and State Bar proceedings originally referred to the central staffs are generally assigned to the justices in such a manner as to equalize each justice's allotment of cases.
3. Appeals in cases in which the death penalty has been imposed are assigned in rotation as they are filed.
4. When a rehearing has been granted and a supplemental calendar memorandum is needed, the matter will ordinarily be assigned to the justice who prepared the prior opinion if it appears that he or she can present the views of the majority. Otherwise, the case will be assigned to a justice who is able to do so.



The California Supreme Court in 1922. Left to right: Associate Justice Charles A. Shurtleff, Associate Justice Thomas J. Lennon, Associate Justice William P. Lawlor, Chief Justice Lucien Shaw, Associate Justice Curtis D. Wilbur, Associate Justice William A. Sloane, Associate Justice William H. Waste.

D. The court's general procedures for circulation of calendar memoranda, etc., are as follows:

1. The justice to whom a case is assigned prepares and circulates a calendar memorandum within a prescribed time after the filing of the last brief. When the calendar memorandum circulates, the Calendar Coordinator distributes copies of the briefs to each justice. The record remains with the Calendar Coordinator, to be borrowed as needed by a justice or his or her staff.
2. Within a prescribed time after the calendar memorandum circulates, each justice states his or her preliminary response to the calendar memorandum (i.e., that he or she concurs, concurs with reservations, is doubtful, or does not concur). Each justice also indicates whether he or she intends to write a separate concurring or dissenting calendar memorandum in the case. If it appears from the preliminary responses that a majority of the justices concur in the original calendar memorandum, the Chief Justice places the case on a preargument conference (§ VI.D.4, *post*). If it appears from the preliminary responses that a majority of the justices will probably not concur in the original calendar memorandum or a modified version of that memorandum, the Chief Justice places the matter on a conference for discussion or reassigns the case.
3. Each justice who wishes to write a concurring or dissenting calendar memorandum does so and circulates that memorandum within a prescribed time after the original calendar memorandum circulates. Soon after any

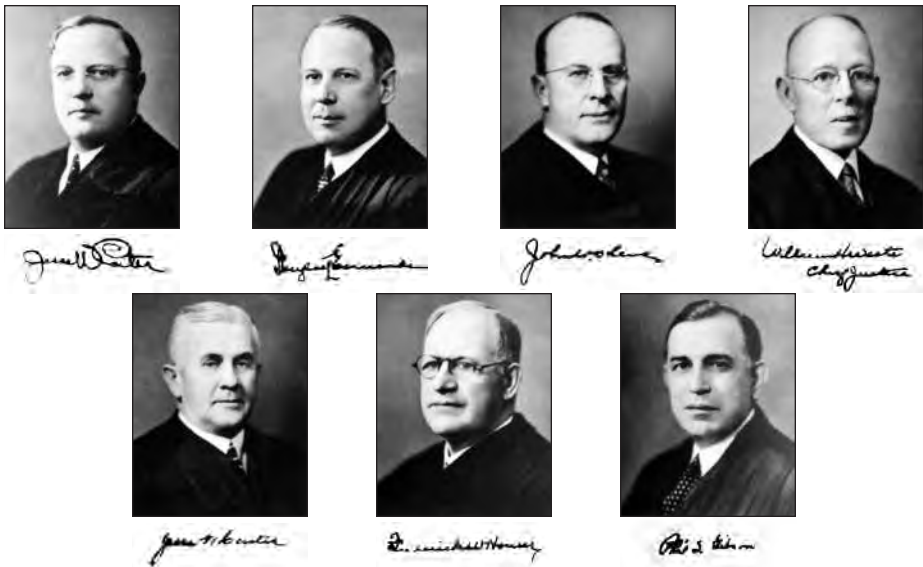


The California Supreme Court in 1927. Left to right: Associate Justice John W. Preston, Associate Justice John W. Shenk, Associate Justice Emmet Seawell, Chief Justice William H. Waste, Associate Justice John E. Richards, Associate Justice Jesse W. Curtis, Associate Justice William H. Langdon.

concurring or dissenting calendar memorandum circulates, each justice either confirms his or her agreement with the original calendar memorandum or indicates his or her agreement with the concurring or dissenting calendar memorandum. If the original calendar memorandum thereby loses its tentative majority, the Chief Justice places the matter on a conference for discussion or reassigns the case.

4. The Chief Justice convenes a preargument conference at least once each month. The purpose of the conference is to identify those cases that appear ready for oral argument. The Chief Justice constructs the calendars from those cases.

The Chief Justice places on the agenda of the conference any case in which all concurring or dissenting calendar memoranda have circulated and the “majority” calendar memorandum has been approved by at least four justices or is likely to be approved by four justices at the conference. The Chief Justice also includes on the agenda any case in which discussion could facilitate resolution of the issues.



The California Supreme Court in 1939. Top, left to right: Associate Justice Jesse W. Carter, Associate Justice Douglas L. Edmonds, Associate Justice John W. Shenk, Chief Justice William H. Waste. Bottom, left to right: Associate Justice Jesse W. Curtis, Associate Justice Frederick W. Houser, Associate Justice Phil S. Gibson.

VII. SUBMISSION

A. A cause is submitted when the court has heard oral argument or has approved a waiver of argument and the time has passed for filing all briefs and papers, including any supplementary brief permitted by the court.

B. Submission may be vacated only by an order of the Chief Justice stating in detail the reasons therefor. The order shall provide for prompt resubmission of the cause.

VIII. ASSIGNMENTS FOR PREPARATION OF OPINIONS

A. After argument the Chief Justice convenes a conference to determine whether the calendar memorandum continues to represent the views of a majority of the justices. In light of that discussion, the Chief Justice assigns the case for opinion.

B. The Chief Justice assigns the cases for preparation of opinions in the following manner:

1. If a majority of the justices agree with the disposition suggested in the calendar memorandum, ordinarily the case is assigned to the author of that memorandum.
2. If a majority of the justices disagree with the disposition reached in the memorandum, the case is reassigned to one of the majority.
3. When a case is argued on rehearing, it ordinarily remains with the justice who prepared the prior opinion or the supplemental calendar memorandum if it appears that he or she can express the majority view. If he or she does not agree with the majority view, the case is reassigned to a justice who is a member of the majority.
4. In making assignments pursuant to these guidelines, the Chief Justice takes several considerations into account, including the following: (a) the fair distribution of work among the members of the court; (b) the likelihood that a justice can express the view of the majority of the court in a particular case; (c) the amount of work he or she has done on that case or on the issues involved; and (d) the status of the unfilled cases theretofore assigned to him or her.

C. Every reasonable effort is made by the justices to agree on the substance of opinions, and whenever possible, dissents or special concurrence on minor matters are avoided. When a justice discovers that he or she objects to something in a proposed opinion, he or she will call it to the author's attention. In addition, the objecting justice may prepare and circulate a memorandum setting forth his or her concerns and suggestions for the purpose of giving the author an opportunity to conform to any proposed changes and to remove or meet the objections raised. These practices and filing policies (see § X, *post*) reflect the court's strong preference for assuring that each opinion author be allowed sufficient time to consider the views of every justice before the opinion is released for filing.

D. Unless otherwise ordered by the Chief Justice, all opinions in State Bar and Commission on Judicial Performance cases and all memorandum opinions are issued "By the Court." All other opinions identify the author and the concurring jus-



The California Supreme Court in 1949. Left to right: Associate Justice B. Rey Schauer, Associate Justice John W. Shenk, Associate Justice Jesse W. Carter, Chief Justice Phil S. Gibson, Associate Justice Roger J. Traynor, Associate Justice Douglas L. Edmonds, Associate Justice Homer R. Spence.



Charter Day, University of California, March 24, 1954. Left to right: Associate Justice B. Rey Schauer, Associate Justice Jesse W. Carter, Associate Justice John W. Shenk, Chief Justice of the United States Earl Warren, Chief Justice Phil S. Gibson, Associate Justice Douglas L. Edmonds, Associate Justice Roger J. Traynor, Associate Justice Homer R. Spence.

tices unless a majority of the court conclude that because substantial portions of the opinion have been drafted by a number of justices, or for other compelling reasons, the opinion should be issued “By the Court.”

E. The rules of the *California Style Manual* are consulted in the preparation of opinions as well as conference and calendar memoranda.

IX. CIRCULATION OF OPINIONS

Within a prescribed time after submission, the justice to whom the case is assigned circulates the proposed majority opinion. Within a prescribed time after the proposed majority opinion circulates, all concurring or dissenting opinions circulate. If the author of the proposed majority opinion wishes to respond by change or by memorandum to any concurring or dissenting opinion, he or she does so promptly after that opinion circulates. The author of the concurring or dissenting opinion thereafter has a prescribed time in which to respond.

All opinions are cite-checked and proofread before circulating. Only copies of an opinion circulate; the original remains in the Calendar Coordination Office.



The California Supreme Court in 1960 in the Library and Courts Building, Sacramento. Left to right: Associate Justice Thomas P. White, Associate Justice Marshall F. McComb, Associate Justice Roger J. Traynor, Chief Justice Phil S. Gibson, Associate Justice B. Rey Schauer, Associate Justice Raymond E. Peters, Associate Justice Maurice T. Dooling, Jr.

A justice may indicate his or her concurrence in an opinion (including an opinion authored by the justice) by signing the original that is retained in the Calendar Coordination Office or by transmitting to the Calendar Coordinator, by facsimile, a signed copy of the signature page of the opinion, indicating the justice's concurrence. When possible, it is preferred that a justice indicate his or her concurrence by signing the original that is retained in the Calendar Coordination Office.

X. FILING OF OPINIONS

When the circulation process has been completed, the Calendar Coordination Office shall notify the authoring justice of each proposed opinion that the matter appears ready for filing, and shall inquire whether each authoring justice is releasing his or her opinion for filing. When all opinions have been released for filing, the Calendar Coordination Office shall provide for the duplication of the opinion, and shall notify the Clerk of the Court and the Reporter of Decisions of the scheduled filing date. The Clerk of the Court shall file the opinion on the scheduled date at the San Francisco office of the Supreme Court.

Opinions are completed in time for reproduction and filing on a normal opinion-filing day. Unless good cause to vacate submission appears, the opinions are filed on or before the 90th day after submission. Internal circulation of an opinion after the 80th day following submission may result in the inability of the author of

the proposed majority or of another timely circulated opinion to afford the views contained in the late circulated opinion full consideration and response. Such late circulated opinions will not be filed until at least 10 days but in no event more than 20 days after the filing of the majority opinion. At any time before the majority or lead opinion is final, the court may modify or grant rehearing pursuant to the applicable rules of court.

XI. REVIEW OF DETERMINATIONS BY THE COMMISSION ON JUDICIAL PERFORMANCE

A petition for review of a determination by the Commission on Judicial Performance to retire, remove, censure, admonish, or disqualify a judge or former judge under subdivision (d) of section 18 of article VI of the California Constitution must address both the appropriateness of review and the merits of the commission's determination. The commission may file a response, and the petitioner a reply, within prescribed times. The petition is assigned by the Calendar Coordinator, under the



The California Supreme Court in 1964. Left to right: Associate Justice Stanley Mosk, Associate Justice Marshall F. McComb, Associate Justice Mathew O. Tobriner, Chief Justice Roger J. Traynor, Associate Justice Raymond E. Peters, Associate Justice B. Rey Schauer, Associate Justice Paul Peek.