

CCCBA proudly presents...

**Behind The Judicial Curtain and
In the Robing Room**

The Honorable Tani Cantil-Sakauye (Ret.)
Chief Justice of the California Supreme Court
President & CEO of The Public Policy Institute of
California Neutral, ADR Services, Inc.

AGENDA

From Deputy District Attorney to Superior Court Judge, then on to the Court of Appeals and the California Supreme Court, former Chief Justice Tani Cantil-Sakauye has engaged with the California courts in virtually every capacity possible. In this keynote presentation, she will share her unique insights into the judiciary and its overall position in relation to the other two branches of government. Practitioners of all levels can gain insight into specific considerations at the Superior, Appellate and Supreme Court levels. How are petitions for review received, handled, and discussed? What does the court want to hear in an oral argument? Gain actionable insight as the former Chief Justice gives her perspective on these questions, and more, in this peek behind the judicial curtain and in the robing room.

 Contra Costa County
Bar Association

**2023 MCLE
SPECTACULAR**

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PROGRAM MATERIALS



2023 CCCBA MCLE SPECTACULAR

Behind The Judicial Curtain and In the Robing Room

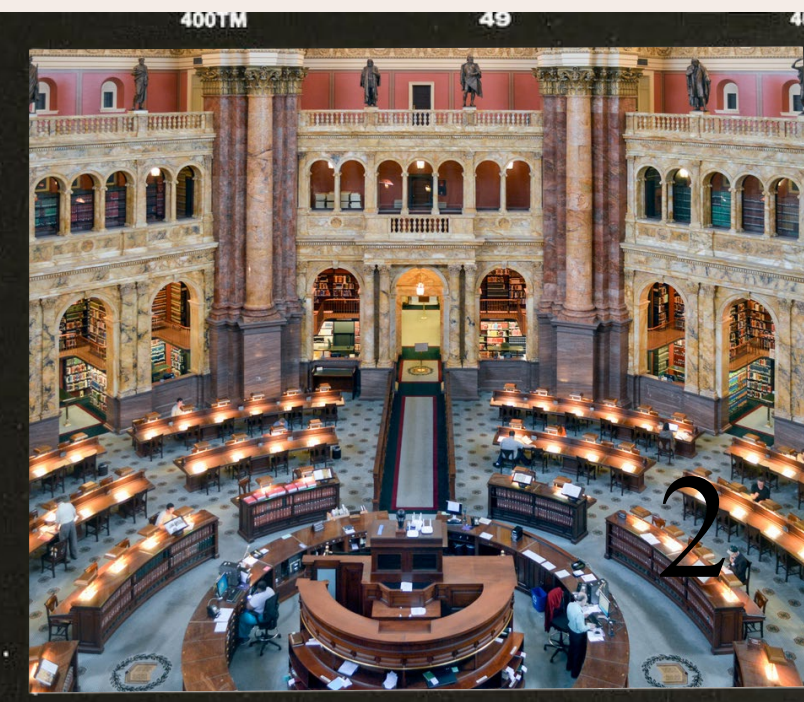


Hon. Tani Cantil-Sakauye (Ret.)



Observations on the Judiciary vs. Other Two Branches

- California Constitution Art VI (a)-(f)
- The Judicial Council



The Superior Court & Practitioner Considerations

58
Superior
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Local
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California
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The Appellate Court & Practitioner Considerations



6 Courts of Appeal



CRC title 8, Rule 8.104

The California Supreme Court

- The Code of Judicial Ethics
- CJEO, the Committee on Judicial Ethics Opinions, Title 9, Division 6, Rule 9.80
- The Commission on Judicial Performance
- The State Bar, Title 9, Rule 9.0 et al.
- Petitions for Review-CRC 8.500-8.544

Oral Argument

CRC Division 1, Title 8 (Court of Appeal and Supreme Court Rules)

CRC 8.256, oral argument

Court preparation; **it's not like Federal Court**

Questions?



Thank You

Hon. Tani Cantil-Sakauye (Ret.)

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Hon. Tani Cantil-Sakauye (Ret.)

Former California Supreme Court Chief Justice

A portrait of Tani Cantil-Sakauye, a woman with shoulder-length dark hair, wearing a black blazer over a light-colored top and a dark pearl necklace. She is smiling slightly and looking towards the camera. The portrait is set against a large, solid yellow circular background.

Chief Justice Tani Cantil-Sakauye, former leader of California's judicial branch, now mediator and appellate consultant with ADR Services, Inc. brings her over 30 years of legal expertise across virtually all levels of judicial service to the realm of dispute resolution. She made history as California's first woman of color Chief Justice, navigating the state through the Great Recession and COVID-19. An advocate for transparency and access to justice, she revitalized civic learning and improved public engagement with the courts.



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Hon. Tani Cantil-Sakauye (Ret.)

CCCBA MCLE Spectacular | November 3, 2023



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Available for Mediation, Moot Court Hearings & Appellate Consultation with ADR Services, Inc.

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Code Sections Referenced in Program

California Constitution Art VI (a)-(f)

- (a) The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; and one member of each house of the Legislature appointed as provided by the house.
- (b) Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.
- (c) The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.
- (d) To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.



(e) The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

(f) Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

CRC title 8, Rule 8.104
Rule 8.104. Time to appeal

(a) Normal time

- (1) Unless a statute or rules 8.108, 8.702, or 8.712 provides otherwise, a notice of appeal must be filed on or before the earliest of:
 - (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
 - (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
 - (C) 180 days after entry of judgment.
- (2) Service under (1)(A) and (B) may be by any method permitted by the Code of Civil Procedure, including electronic service when permitted under Code of Civil Procedure section 1010.6 and rules 2.250-2.261.
- (3) If the parties stipulated in the trial court under Code of Civil Procedure section 1019.5 to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a filed-endorsed copy of the judgment to start the time period under (1)(A) or (B).

(Subd (a) amended effective July 1, 2017, previously amended effective January 1, 2007, January 1, 2010, July 1, 2012, July 1, 2014, and January 1, 2016.)

b) No extension of time; late notice of appeal

Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 2005.)

(c) What constitutes entry

For purposes of this rule:

- (1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5, or the date it is entered in the judgment book.
- (2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order



be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

- (3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.
- (4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.
- (5) An order signed electronically has the same effect as an order signed on paper.

(Subd (c) amended effective January 1, 2017; adopted as subd (c); previously amended effective January 1, 2007; previously relettered as subd (d) effective January 1, 2005, and as subd (c) effective January 1, 2011.)

(d) Premature notice of appeal

- (1) A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.
- (2) The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment.

(Subd (d) relettered effective January 1, 2011; adopted as subd (d); previously relettered as subd (e) effective January 1, 2005.)

(e) Appealable order

As used in (a) and (d), "judgment" includes an appealable order if the appeal is from an appealable order.

(Subd (e) amended effective July 1, 2011; adopted as subd (f); previously amended effective January 1, 2005; previously relettered effective January 1, 2011.)

Rule 8.104 amended effective July 1, 2017; repealed and adopted as rule 2 effective January 1, 2002; previously amended and renumbered as rule 8.104 effective January 1, 2007; previously amended effective January 1, 2005, January 1, 2010, January 1, 2011, July 1, 2011, July 1, 2012, July 1, 2014, January 1, 2016, and January 1, 2017.

Advisory Committee Comment

Subdivision (a). This subdivision establishes the standard time for filing a notice of appeal and identifies rules that establish very limited exceptions to this standard time period for cases involving certain postjudgment motions and cross-appeals (rule 8.108), certain expedited appeals under the California Environmental Quality Act (rule 8.702), and appeals under Code of Civil Procedure section 1294.4 of an order dismissing or denying a petition to compel arbitration (rule 8.712).

Under subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment) must show the date on which the clerk served the document. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(A) begins to run.



Subdivision (a)(1)(B) requires that a notice of entry of judgment (or a copy of the judgment) served by or on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day period under subdivision (a)(1)(B) begins to run. Although the general rule on service (rule 8.25(a)) requires proof of service for all documents served by parties, the requirement is reiterated here because of the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

Subdivision (b). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates and patients from custodial institutions. Subdivision (b) is declarative of the case law, which holds that the reviewing court lacks jurisdiction to excuse a late-filed notice of appeal. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666-674; *Estate of Hanley* (1943) 23 Cal.2d 120, 122-124.)

In criminal cases, the time for filing a notice of appeal is governed by rule 8.308 and by the case law of "constructive filing." (See, e.g., *In re Benoit* (1973) 10 Cal.3d 72.)

Committee on Judicial Ethics Opinions, Title 9, Division 6, Rule 9.80

CRC Rule 9.80. Committee on Judicial Ethics Opinions

(a) Purpose

The Supreme Court has established the Committee on Judicial Ethics Opinions to provide judicial ethics advisory opinions and advice to judicial officers and candidates for judicial office.

(b) Committee determinations

In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, and all other entities. The committee must rely on the California Code of Judicial Ethics, the decisions of the Supreme Court and of the Commission on Judicial Performance, and may rely on other relevant sources in its opinions and advice.

(c) Membership

The committee consists of twelve members appointed by the Supreme Court, including at least one justice from a Court of Appeal and one member who is a subordinate judicial officer employed full-time by a superior court. The remaining members must be justices of a Court of Appeal or judges of a superior court, active or retired. No more than a total of two retired justices or judges may serve on the committee at one time, except that if an active justice or judge retires during his or her term, he or she will be permitted to complete his or her term. A retired justice or judge may only serve so long as he or she is not an active licensee of the State Bar of California and is not engaged in privately compensated dispute resolution activities.

(d) Terms

- (1) Except as provided in subdivision (d)(2), all full terms are for four years. Appointments to fill a vacancy will be for the balance of the term vacated. A member may apply to be reappointed by the Supreme Court at the end of a four-year term and renewal of the term is not a presumption.



- (2) To create staggered terms among the members of the committee, the Supreme Court appointed initial members of the committee as follows:
 - (A) Three members each to serve an initial term of five years. The court may reappoint these members to additional full terms.
 - (B) Three members each to serve an initial term of four years. The court may reappoint these members to additional full terms.
 - (C) Three members each to serve an initial term of three years. The court may reappoint these members to additional full terms.
 - (D) Three members each to serve an initial term of two years. The court may reappoint these members to additional full terms.
- (3) Committee members may not simultaneously serve as members of the Commission on Judicial Performance or the California Judges Associations Judicial Ethics Committee. If a member of the committee accepts appointment to serve on one of these entities, that member will be deemed to have resigned from the committee and the Supreme Court will appoint a replacement.

(Subd (d) amended effective January 1, 2021; adopted effective July 1, 2009; previously amended effective January 1, 2016 and January 1, 2019.)

(e) Powers and duties

The committee is authorized to provide ethics advice to judicial officers and candidates for judicial office, including formal written opinions, informal written opinions, and expedited written opinions. Specifically, the committee is authorized to:

- (1) Issue formal written opinions, informal written opinions, and expedited written opinions on proper judicial conduct under the California Code of Judicial Ethics, the California Constitution, statutes, and any other authority deemed appropriate by the committee.
- (2) Make recommendations to the Supreme Court for amending the Code of Judicial Ethics or these rules;
- (3) Make recommendations regarding appropriate subjects for judicial education programs; and
- (4) Make other recommendations to the Supreme Court as deemed appropriate by the committee or as requested by the court.

(Subd (e) amended effective January 1, 2021; adopted effective July 1, 2009.)

(f) Referrals to California Judges Associations Judicial Ethics Committee

The committee may adopt a revocable policy of referring requests for oral expedited advice, with conditions and exceptions as approved by the committee, to the California Judges Associations Judicial Ethics Committee.

(Subd (f) amended effective January 1, 2021; adopted effective July 1, 2009.)

(g) Chair and vice-chair



The Supreme Court will appoint a chair, and vice-chair from the members of the committee to serve a term of four years each. The chair and the vice-chair may be reappointed by the Supreme Court. When a members term as chair or vice-chair ends and the member is not reappointed as chair or vice-chair, that members committee membership term also ends unless the Supreme Court reappoints the member to the committee. The chair may call meetings as needed, and to otherwise coordinate the work of the committee.

(Subd (g) amended effective January 1, 2021; adopted effective July 1, 2009; previously amended effective January 1, 2016 and January 1, 2019.)

(h) Confidentiality

Communications to and from the committee are confidential except as described here. Encouraging judicial officers and candidates for judicial office to seek ethics opinions and advice from the committee will promote ethical conduct and the fair administration of justice. Establishing the confidentiality of committee proceedings and communications to and from the committee is critical to encourage judicial officers and candidates for judicial office to seek ethics opinions and advice from the committee. The necessity for preserving the confidentiality of these proceedings and communications to and from the committee outweighs the necessity for disclosure in the interest of justice. Therefore, to promote ethical conduct by judicial officers and candidates for judicial office and to encourage them to seek ethics opinions and advice from the committee, the following confidentiality requirements, and exceptions, apply to proceedings and other matters under this rule:

- (1) Notwithstanding any other provision of law, and with the exception of formal opinions, informal opinions, expedited opinions, and comments from the public on draft formal opinions posted on the committees website, all opinions, inquiries, replies, circulated drafts, records, documents, writings, files, communications with its staff, work product of the committee or its staff, and deliberations and proceedings of the committee are confidential. All communications, written or verbal, from or to the person or entity requesting an opinion or advice are deemed to be official information within the meaning of the Evidence Code. In addition, all communications and documents regarding opinions or advice of the California Judges Association forwarded by the California Judges Association to the committee are deemed to be confidential information.
- (2) Members of the committee and its staff may not disclose outside the committee or its staff any confidential information, including identifying information, obtained by the committee or its staff concerning an individual whose inquiry or conduct was the subject of any communication with the committee or its staff.
- (3) A judicial officer or candidate for judicial office may waive confidentiality; any such waiver must be in writing. If the judicial officer or candidate making the request for an opinion or advice waives confidentiality or asserts reliance on an opinion or advice in judicial or attorney discipline proceedings, such opinion or advice no longer is confidential under these rules. Notwithstanding any waiver, committee deliberations and records are confidential.
- (4) Members of the public and entities may submit comments on draft formal opinions for consideration by the committee members before deciding on whether to publish a final formal opinion. Such comments from the public are deemed not to be confidential communications and may be posted on the committees website for public review at the committees discretion.



(Subd (h) amended effective January 1, 2021; adopted effective January 1, 2019.)

(i) Opinion requests

- (1) The committee may issue formal written opinions, informal written opinions, or expedited written opinions on any subject it deems appropriate. Any person or entity may suggest to the committee, in writing, topics to be addressed in a formal written opinion.
- (2) Only judicial officers and candidates for judicial office may request informal written opinions and expedited written opinions.
- (3) A judicial officer or candidate for judicial office requesting a written opinion, formal or informal, must submit the request in writing, including by electronic mail. The request must be in a form approved by the committee and must describe the facts and discuss the issues presented in the request. The identity, organizational affiliation, and geographic location of persons requesting opinions are confidential.
- (4) A judicial officer or candidate for judicial office requesting an expedited written opinion may communicate in person, in writing, including by electronic mail, or by telephone to committee staff or any member of the committee.
- (5) A judicial officer or candidate for judicial office requesting an opinion or advice must disclose to the committee whether the issue that is the subject of the inquiry is also the subject of pending litigation involving the inquiring judicial officer or candidate or a pending Commission on Judicial Performance or State Bar disciplinary proceeding involving the inquiring judicial officer or candidate.

(Subd (i) amended effective January 1, 2021; adopted effective July 1, 2009.)

(j) Consideration of requests

The committee will determine whether a request for an opinion should be resolved with a formal written opinion, an informal written opinion, an expedited written opinion, or any combination or form of advice. The committee may decline to issue an opinion or advice.

Eight members must vote affirmatively to adopt a formal written opinion. After the committee authorizes a formal written opinion and before it becomes final, it will be posted in draft form on the committees website and made available for public comment for at least 45 days, unless the committee in its discretion decides such an opinion should be issued in final form in less time or with no prior notice. Public comments may be posted on the website following the public comment period at the committees discretion. After the public comment period has expired, eight members must vote affirmatively to publish the opinion in its original form, or to modify or withdraw the formal written opinion.

Informal written opinions and expedited written opinions must be approved by vote of the committee members. The committee must adopt procedures concerning the number of votes required to issue an informal written opinion or expedited written opinion.

The committee must adopt procedures concerning the handling and determination of requests for opinions or advice.

The committee will inform the inquiring judicial officer or candidate for judicial office that he or she must disclose all relevant information and that any opinion or advice issued by the



committee is based on the premise that the inquiring judicial officer or candidate has disclosed all relevant information.

The committee may confer in person, in writing, including by electronic mail, by telephone, or by videoconference as often as needed to conduct committee business and resolve pending requests.

(Subd (j) amended effective January 1, 2021; adopted effective July 1, 2009; previously amended January 1, 2019.)

(k) Opinion distribution

- (1) The committee will, upon final approval of a formal written opinion, ensure distribution of the opinion, including to the person or entity who requested the opinion, all California judicial officers, and other interested persons.
- (2) The committees informal written opinions and expedited written opinions will, upon approval by the committee, be provided to the inquiring judicial officer or candidate for judicial office.
- (3) The committee will post all formal written opinions on the committees website. The committee may post its informal written opinions and of expedited written opinions on the committees website.
- (4) The committee must maintain records of committee determinations and opinions at the committees office.

(Subd (k) amended effective January 1, 2021; adopted effective July 1, 2009; previously amended effective January 1, 2019.)

(l) Withdrawn, modified, and superseding opinions

The committee may withdraw, modify, or supersede an opinion or advice at any time.

(Subd (l) amended effective January 1, 2021; adopted effective July 1, 2009.)

(m) Internal operating rules

The committee must adopt procedures, subject to approval by the Supreme Court, to implement this rule.

(Subd (m) amended effective January 1, 2019.)

(n) Website, e-mail address, and toll-free telephone number

The committee must maintain a website, e-mail address, and toll-free telephone number.

(Subd (n) amended effective January 1, 2019.)

Rule 9.80 amended effective January 1, 2021; adopted effective July 1, 2009; previously amended effective January 1, 2016 and January 1, 2019.

The State Bar, Title 9, Rule 9.0 et al.

<https://www.courts.ca.gov/cms/rules/index.cfm?title=nine>

Petitions for Review

- [Rule 8.500. Petition for review](#)
- [Rule 8.504. Form and contents of petition, answer, and reply](#)
- [Rule 8.508. Petition for review to exhaust state remedies](#)
- [Rule 8.512. Ordering review](#)
- [Rule 8.516. Issues on review](#)
- [Rule 8.520. Briefs by parties and amici curiae; judicial notice](#)
- [Rule 8.524. Oral argument and submission of the cause](#)
- [Rule 8.528. Disposition](#)
- [Rule 8.532. Filing, finality, and modification of decision](#)
- [Rule 8.536. Rehearing](#)
- [Rule 8.540. Remittitur](#)
- [Rule 8.544. Costs and sanctions](#)

Rule 8.256. Oral argument and submission of the cause

(a) Frequency and location of argument

- (1) Each Court of Appeal and division must hold a session at least once each quarter.
- (2) A Court of Appeal may hold sessions at places in its district other than the court's permanent location.
- (3) Subject to approval by the Chair of the Judicial Council, a Court of Appeal may hold a session in another district to hear a cause transferred to it from that district.

(b) Notice of argument

The clerk/executive officer of the Court of Appeal must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk/executive officer must immediately notify the parties by telephone or other expeditious method.

(Subd (b) amended effective January 1, 2018.)

(c) Conduct of argument

Unless the court provides otherwise by local rule or order:

- (1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.
- (2) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae-on written request-is granted permission to argue, the court may apportion or expand the time.
- (3) Only one counsel may argue for each separately represented party.

(d) When the cause is submitted



- (1) A cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court.
- (2) If the Supreme Court transfers a cause to the Court of Appeal and supplemental briefs may be filed under rule 8.200(b), the cause is submitted when the last such brief is or could be timely filed. The Court of Appeal may order the cause submitted at an earlier time if the parties so stipulate.

(Subd (d) amended effective January 1, 2007.)

(e) Vacating submission

- (1) Except as provided in (2), the court may vacate submission only by an order stating its reasons and setting a timetable for resubmission.
- (2) If a cause is submitted under (d)(2), an order setting oral argument vacates submission and the cause is resubmitted when the court has heard oral argument or approved its waiver.

(Subd (e) amended effective January 1, 2007.)

Rule 8.256 amended effective January 1, 2018; repealed and adopted as rule 23 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.