Item SPR05-07 Response Form

Title: **Appellate Procedure: Opinions** (adopt. Cal. Rules of Court, rule 23.5; amend rule 24; repeal Cal. Stds. Jud. Admin., § 6)

☐ **Agree** with proposed changes

☐ **Agree** with proposed changes **only if modified**

☐ **Do not agree** with proposed changes

Comments: _____

_____

_____

_____

_____

Name:_____**Title:**_____

Organization:_____

Address:_____

City, State, Zip:_____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
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San Francisco, CA 94102
Fax: (415) 865-7664 Attention: Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action..

Invitation to Comment (SPR05-07)

Title	**Appellate Procedure: Opinions** (adopt. Cal. Rules of Court, rule 23.5; amend rule 24; repeal Cal. Stds. Jud. Admin., § 6)
Summary	Currently, section 6 of the California Standards of Judicial Administration urges the use of memorandum opinions in certain cases, and rule 24 of the California Rules of Court specifies information that must be included in opinions issued by Courts of Appeal. This proposal would consolidate these provisions into a single rule regarding opinions and recast the provisions of the current standard as an authorization to use memorandum opinions in appropriate circumstances.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	Section 6 of the California Standards of Judicial Administration urges the Courts of Appeal to use memorandum opinions to dispose of causes that raise no substantial issues of law or fact. However, some justices and practitioners may not be aware of this provision. A Judicial Council task force that previously considered appellate procedures recommended that this standard be replaced with a rule of court to highlight the fact that memorandum opinions can be used in appropriate cases. The task force also recommended that the new rule include additional provisions addressing the content of memorandum opinions and their use in criminal appeals. This proposal would make the changes recommended by that Task Force. In addition, the proposal would consolidate these provisions with another provision, currently in rule 24 of the California Rules of Court, specifying information that must be included in opinions issued by Courts of Appeal, so that all the provisions relating to the content of Court of Appeal opinions would be found in a single rule. Section 6 of the Standards of Judicial Administration would be repealed.
	Attachment

Invitation to Comment (SPR05-07)

Rule 23.5 of the California Rules of Court would be adopted and rule 24 would be amended, and section 6 of the California Standards of Judicial Administration would be repealed, effective January 1, 2006, to read:

Rule 23.5. Opinions

(a) Identification of participating justices

A decision by opinion must identify the participating justices, including the author of the majority opinion and of any concurring or dissenting opinion, or the justices participating in a "by the court" opinion.

(b) Memorandum opinions

(1) If an appeal or an issue in an appeal raises no substantial points of law or fact, the court may decide the matter by memorandum opinion. Such matters include but are not limited to:

(A) An appeal or issue that is clearly controlled by settled law;

(B) An appeal or issue that is factual and the evidence is clearly sufficient or clearly insufficient; or

(C) An appeal or issue that is a matter of judicial discretion and the decision was clearly within the discretion of the trial court or clearly an abuse of discretion.

(2) In criminal appeals, the court should consider the length of sentence imposed as a factor in determining whether to decide the matter by memorandum opinion.

(3) A memorandum opinion or the memorandum portion of an opinion must identify the issue presented and must include a concise statement of the relevant facts, controlling precedent if any, and rationale.

Rule 24. Filing, finality, and modification of decision

(a) Filing the decision

~~(1)~~ The Court of Appeal clerk must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

~~(2) A decision by opinion must identify the participating justices, including the author of the majority opinion and of any concurring or dissenting opinion, or the justices participating in a "by the court" opinion.~~

(b) – (d) * * *

~~**Section 6. Memorandum opinions**~~

~~The Courts of Appeal should dispose of causes that raise no substantial issues of law or fact by memorandum or other abbreviated form of opinion. Such causes could include:~~

~~**(a)** An appeal that is determined by a controlling statute which is not challenged for unconstitutionality and does not present any substantial question of interpretation or application.~~

~~**(b)** An appeal that is determined by a controlling decision which does not require a reexamination or restatement of its principles or rules.~~

~~**(c)** An appeal raising factual issues that are determined by the substantial evidence rule.~~