The Supreme Court *of* California

2007
Edition

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

The Supreme Court *of* California

2012 Addendum

Chief Justice
Tani G. Cantil-Sakauye

On January 3, 2011, Chief Justice Tani G. Cantil-Sakauye was sworn into office as the 28th Chief Justice of California, filling the vacancy created by the retirement of former Chief Justice Ronald M. George. Chief Justice Cantil-Sakauye was nominated to office in July 2010, unanimously confirmed by the Commission on Judicial Appointments in August 2010, and overwhelmingly approved by voters in the November 2010 general election. At the time she was nominated as Chief Justice, she had served more than 20 years on California trial and appellate courts, including 6 years on the Court of Appeal, Third Appellate District, in Sacramento.

Associate Justice
Goodwin Liu

Justice Goodwin Liu was sworn into office as an Associate Justice of the California Supreme Court on September 1, 2011. He was appointed to office in July 2011 and was confirmed less than a month later by a unanimous vote of the Commission on Judicial Appointments. Before joining the high court, Justice Liu was Professor of Law at UC Berkeley School of Law. His primary areas of expertise were constitutional law, education law and policy, and the U.S. Supreme Court.

California Supreme Court justices, from left to right: Associate Justice Carol A. Corrigan, Associate Justice Joyce L. Kennard, Associate Justice Kathryn M. Werdegar, Chief Justice Tani G. Cantil-Sakauye, Associate Justice Ming W. Chin, Associate Justice Marvin R. Baxter, and Associate Justice Goodwin Liu. *Photo by Wayne Woods.*

Public Access to the California Supreme Court's Work *(page 6)*

Supreme Court Opinions

All Supreme Court opinions are made available to the public at the clerk's office and on the California Courts Web site at *www.courts.ca.gov,** precisely at the time of filing.

Calendars, Notices, and Minutes

In addition to written opinions, other aspects of the Supreme Court's daily proceedings are documented on the court's Web page at *www.courts.ca.gov/supremecourt.htm,** which is updated throughout the day and is available at no charge to users.

* Note new Internet addresses for California Courts Web site, *www.courts.ca.gov*.

Photo of Supreme Court Headquarters *(page 16 & back cover)*

The Earl Warren Building and the Hiram W. Johnson State Office Building in San Francisco are now collectively known as the Ronald M. George State Office Complex. The Earl Warren Building, in the foreground, is the headquarters of the California Supreme Court. The Hiram W. Johnson State Office Building, the taller structure, houses the Administrative Office of the Courts and more than 20 other state offices and agencies.

APPENDIX I: CHIEF JUSTICES OF CALIFORNIA *(page 53)*

27.	Ronald M. George	May 1996–January 2011
28.	Tani G. Cantil-Sakauye	January 2011–present

APPENDIX II: JUSTICES OF THE CALIFORNIA SUPREME COURT *(page 59)*

107.	Ronald M. George*	May 1996–January 2011
111.	Carlos R. Moreno	October 2001–February 2011
113.	Tani G. Cantil-Sakauye**	January 2011–Present
114.	Goodwin Liu	September 2011–Present

* Served as Chief Justice of California (May 1996–January 2011) and as an Associate Justice of the California Supreme Court (September 1991–May 1996).

** Currently serves as 28th Chief Justice of California (January 2011–Present).

The Supreme Court of California

2007 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. The booklet has been revised periodically, and its current title, *The Supreme Court of California*, was adopted with the 2003 edition.

Substantial historical and archival material was added in the 2003 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 M. Reynolds made expert revisions.

The 2007 edition reflects changes in the court's composition, provides updated information and photographs, and includes the Internal Operating Practices and Procedures of the California Supreme Court as revised January 1, 2007. Jill Whelchel and Carolyn McGovern handled copyediting and production editing. Suzanne Bean designed the booklet. Carmen Kissinger managed the administrative and business details of printing. Finally, the deft touch of Lynn Holton, the support of Fritz Ohlrich, and the guidance of Alice Collins are deeply appreciated. Special thanks are due to Melissa Riess for coordinating the 2007 revision.

This booklet can be found in electronic format at *www.courtinfo.ca.gov/courts/supreme*.

Printed and bound in the United States of America.

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

Contents

Foreword

I am pleased to present *The Supreme Court of California, 2007 Edition*. Since the first printing in 1985 as *Supreme Court of California Practices and Procedures*, more than 30,000 copies of this publication have been distributed to attorneys, students, members of the press, visitors to the court, and many other segments of the public. In recent years, the booklet has also been posted on the California Courts Web site at *www.courtinfo.ca.gov/courts/supreme*.

This publication provides an overview of the Supreme Court's work, procedures, and membership. It describes the court's beginnings and early development and explains the procedures governing the movement of cases through the court today. Also highlighted are recent changes in technology that have contributed to more efficient operation and enhanced public access to information about the court's proceedings.

I hope this booklet will help you learn more about the Supreme Court and the judicial branch of government. An informed citizenry is vital to the preservation of our system of government.

Ronald M. George
Chief Justice of California


COURT ROOM

The California Supreme Court

The California Supreme Court sits at the apex of the state's court system, the largest court system in the world. In deciding which cases merit its review, the Supreme Court focuses on significant legal issues of statewide importance. Of the nearly 9 million lawsuits filed annually in the state, the Supreme Court issues opinions in an average of 105 to 115. These opinions deal with some of the most important and difficult issues of the day. The Supreme Court's decisions provide guidance to the lower courts and ultimately affect the lives of California's 36 million residents.

How a Case Reaches the Supreme Court

A California lawsuit begins in the trial courts, known as superior courts, which sit in each of the 58 counties. These courts hear both criminal and civil matters, including probate and juvenile cases. California's 58 superior courts have facilities in more than 450 locations, with about 1,600 judges.

At the next level up, the Courts of Appeal review the decisions of trial courts, when a party to a case seeks review. The Legislature has divided the state geographically into six appellate districts, each containing a Court of Appeal. There are 105

< The entrance to the courtroom, on the fourth floor of the Earl Warren Building, San Francisco.

justices apportioned among the six districts, which are headquartered in San Francisco, Los Angeles, Sacramento, San Diego, Fresno, and San Jose.

The California Supreme Court may review decisions of the Courts of Appeal to settle important questions of law and ensure that the law is applied uniformly in all six appellate districts. The Supreme Court has considerable discretion in deciding which decisions to review, but it must review all cases in which a trial court has imposed the death penalty. The Supreme Court also may review decisions of the Commission on Judicial Performance and the State Bar of California concerning the removal or suspension of judges and attorneys for misconduct and may review decisions of the Public Utilities Commission.

The public counter at the clerk's office, on the first floor of the Earl Warren Building, San Francisco.

All decisions of the Supreme Court are issued in writing and made public. The court's opinions are made accessible in various ways, including publication on the court's Web site and in the *Official Reports*. The *Official Reports* are broadly available to legal professionals and the public and are found in law libraries throughout the state.

Justices

The Supreme Court consists of a Chief Justice and six associate justices.

Members of the Supreme Court are appointed by the Governor after first being reviewed by the State Bar's Commission on Judicial Nominees Evaluation, and then being confirmed by the Commission on Judicial Appointments. To be eligible for appointment, a person must have been a member of the State Bar of California or a judge of a court in this state for at least 10 years.

A Supreme Court justice serves a 12-year term. A new justice filling a predecessor's unexpired term must stand for confirmation at the next gubernatorial election after his or her appointment.

Quarters

The Supreme Court has been headquartered since 1923 in the historic Earl Warren Building in San Francisco's Civic Center. After sustaining severe damage in the 1989 Loma Prieta earthquake, the building underwent substantial rehabilitation and careful restoration. The repair project, completed in 1998, preserved the building's original Beaux Arts architecture and historic character while producing a new facility that meets the needs of a modern court. Original works of art by contemporary California artists enhance the building's interior, and photographs on display depict the Supreme Court's former sites as well as historic local courthouses in all 58 counties.

An oil portrait of Earl Warren, Governor of California (1943–1953) and Chief Justice of the United States (1953–1969), by Irving Sinclair, 1954.

The court regularly hears arguments in San Francisco, Los Angeles, and Sacramento. Once a year, the court convenes for argument at other locations around the state and coordinates with the local bench and bar to provide educational outreach programs for high school students from the region, including the students' attendance at oral argument.

The Court's Staffs

Clerk

The clerk, appointed by the justices, is the Supreme Court's executive officer. The clerk oversees the administration and management of the court, including supervising and directing the clerk's office and the calendar coordination office; recruiting counsel in capital appeals and other cases; preparing the court's calendar; docketing the court's cases; maintaining the court's public records; and advising litigants, counsel, and the public of the status of matters before the court.

The clerk's office is headquartered in San Francisco, with a branch office in Los Angeles.

Justices' Staffs

Each justice is supported by a judicial assistant and five staff attorneys. Some justices augment their staffs with law student externs. The Chief Justice has additional attorney staff positions to assist with administrative and related legal work.

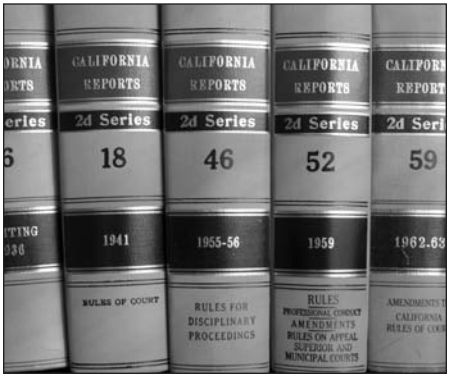
Central Staffs

The court has three "central staffs." The criminal central staff is composed of a director and 20 attorneys who prepare conference memoranda in all criminal matters except capital appeals, writs, and motions. The civil central staff is composed of a director and 15 attorneys who prepare conference memoranda in civil matters and State Bar proceedings. The capital central staff consists of a director and 9 attorneys who provide support and assistance to the court in matters pertaining to death penalty appeals and related habeas corpus proceedings.

All three central staffs are composed of career attorneys, and the criminal and civil staffs are assisted by law student externs.

Reporter of Decisions

The reporter of decisions, appointed by the court, supervises the editing and publication of Supreme Court and Court of Appeal opinions in the *Official Reports* and the *Official Appellate Reports* volumes. In addition to ensuring the editorial integrity, accuracy, and style of opinions printed in the *Official Reports*, the reporter is responsible for making all Supreme Court opinions available to the public on the California Courts Web site, at *www.courtinfo.ca.gov*. The reporter of decisions is assisted by a legal editorial assistant and a staff of five attorney-editors.



A sampling of *Official Reports*, Second Series.

Volumes in the library's rare book collection.

Law Library

The California Judicial Center Library provides research and information services to the justices and staffs of the California Supreme Court and the Court of Appeal, First Appellate District. Its collections include all major primary and secondary legal information resources in California and federal law. The library maintains a collection of more than 225,000 volumes, including extensive California and federal materials, law reviews, and legal periodicals. The library also maintains the archives of the California Supreme Court—a collection of writings, papers, and memorabilia of former justices.

Calendar Coordination Office

The calendar coordination office, headed by the calendar coordinator, manages the flow of internal court documents and circulating draft opinions. This office advises the justices of actions taken or scheduled to be taken on matters before the court, assists in setting the schedule for hearing oral arguments, supervises the circulation of internal documents, and maintains lists and records for tracking the status of pending matters. The calendar coordinator is assisted by three deputy clerks and a clerical staff.

Court Security

The California Highway Patrol provides protective services for the court and its justices. These services include maintaining order and decorum in the courtroom during oral argument, staffing security posts at the court's quarters, ensuring the confidentiality of court work and papers, and working with other law enforcement agencies to provide security for justices traveling on court business.


3511
STATE BUILDING

Public Access to the California Supreme Court's Work

In recent years, the Supreme Court has made increased use of the Internet and other advances in technology to make information about the court and the cases it is considering broadly and promptly available to the public and the press.

Supreme Court Opinions

All Supreme Court written opinions are made available to the public at the clerk's office and on the California Courts Web site at *www.courtinfo.ca.gov*, precisely at the time of filing.

In addition, the Public Information Office keeps the public and the press informed about the court's work by distributing a weekly summary of cases accepted for review as well as a list of cases to be considered by the court at its weekly petition conferences. The office also notifies the press of oral arguments in closely watched cases and arranges press seating in the courtroom and overflow viewing areas.

< The main doorway of the Earl Warren Building, San Francisco.

Calendars, Notices, and Minutes

In addition to written opinions, other aspects of the Supreme Court's daily proceedings are documented on the court's Web page at *www.courtinfo.ca.gov/courts/supreme*, which is updated throughout the day and is available at no charge to users. The information available there includes the following:

- The oral argument calendar lists the dates, times, and places at which pending cases will be argued before the court and summarizes the important issues involved in each case.
- Notices of forthcoming filings, posted the day before each opinion is filed, alert the public and press to upcoming decisions and identify the issues presented.
- A weekly summary lists the cases that the court has decided to review, with a description of the subject matter of each. The actions taken on all other matters submitted to the court are listed in tabular format.
- The minutes provide a day-by-day public record of all the court's orders and other proceedings.

One of three arched entrances to the Earl Warren Building, San Francisco.

Case Information System

Docket information on every case before the Supreme Court is available on the California Courts Web site at *www.appellatecases.courtinfo.ca.gov*, which is updated hourly. This searchable database provides case information such as procedural status, names of parties and attorneys, documents received, any disposition, dates on which the court will be hearing oral argument, links to opinions of the Court of Appeal, and other docket information. Additionally, anyone may register online to receive automatic e-mail notifications of case activity.

The view from the bench during oral argument in the San Francisco courtroom, on the fourth floor of the Earl Warren Building, 2002.

Special Sessions

In recent years, to commemorate historic occasions and other events, the Supreme Court has convened for oral argument in special sessions at the B. F. Hastings Building in Old Sacramento, and in Fresno, Orange, San Diego, Santa Barbara, Santa Clara, Shasta, and Sonoma Counties. These special sessions provide opportunities for students and other interested members of the general public to observe argument before the court.

A high school student addressing the court at a special preargument educational session in Fresno, 2002.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History of the California Supreme Court

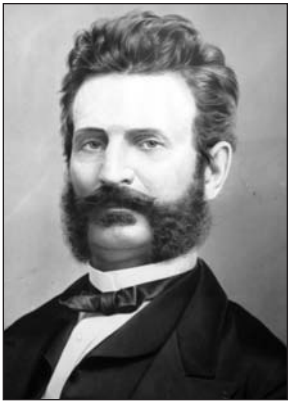
The history of the California Supreme Court reflects the history of California itself. After a long period of Spanish and Mexican rule, California was occupied by the United States in 1846 during the Mexican-American War. On February 2, 1848, Mexico officially ceded California to the United States in exchange for $15 million. That same year, gold was discovered in California. The tumultuous events of the ensuing Gold Rush shaped many of the issues that would later be decided by the California Supreme Court.

1849 Constitution

In September 1849, 48 delegates assembled at Colton Hall in Monterey to draft the state's first Constitution, which was completed in six weeks. Article VI of the new Constitution, covering the judicial branch, provided for a Supreme Court consisting of a Chief Justice and two associate justices. The Constitution provided that the first three justices would be elected by the state Legislature and that subsequent justices would be elected for six-year terms by the voters in contested elections.

< Early sites of the California Supreme Court. Top to bottom: Kearny Street, San Francisco, 1852–1853, 1850–1851, 1853–1854; San Jose, 1854; Sacramento, 1855–1857.

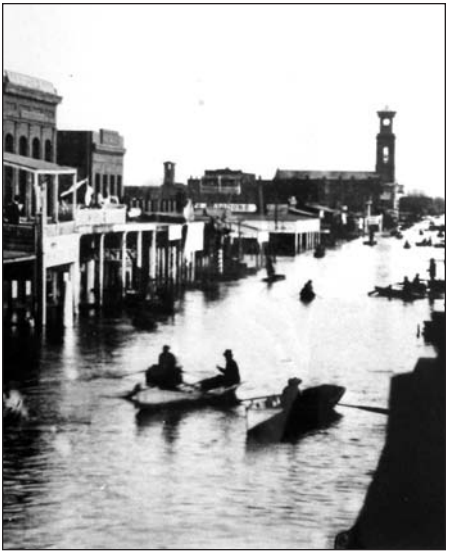
The First Justices



Serranus Clinton Hastings, the first Chief Justice of California (1850–1852).

In December 1849, the new Legislature elected Serranus Clinton Hastings as California's first Chief Justice and H. A. Lyons and Nathaniel Bennett as its first associate justices. Hastings, a former Iowa representative to Congress, had resigned his position as chief justice of that state's supreme court to come to California. After serving on the California Supreme Court, he became state Attorney General and later founded Hastings College of the Law in San Francisco.

In February 1850, the California Legislature authorized the clerk of the California Supreme Court to "rent a suitable room" in San Francisco for the court's quarters. The chronicles of the day record that the new clerk duly arrived and purchased court supplies including "1 bottle black ink," "3 gross Gillett's pens," and "24 sticks red tape." On March 4, 1850, the court convened for the first time in the Graham House, a former hotel on the northeast corner of Kearny Street and Pacific Avenue. It was housed there when California officially joined the Union in September 1850.



K Street in Sacramento, 1862, rowing east.

Much of the litigation during this early period dealt with the legal concerns of the people who flocked to the state during the Gold Rush. Many of their cases involved titles to property, mining and agricultural issues, and rights to water and minerals on public lands. Often those decisions were not published. In the early years of statehood, the number of opinions issued by the court filled less than one slim volume of the *Official Reports* annually.

The Court Grows

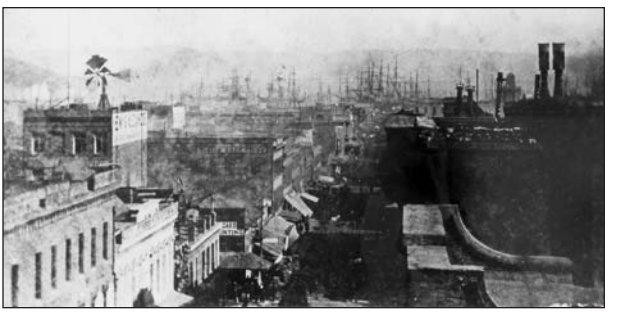
The California judiciary was reorganized in 1862 to meet the needs of a growing state. Article VI of the California Constitution was amended to expand the categories of cases the court could hear and to increase the number of Supreme Court justices from three to five. Terms of office were increased from 6 to 10 years.

The Constitution Is Revised

In 1877 the people of California voted to hold a state convention to revise the Constitution. The call for a convention grew largely out of the economic upheavals and political controversies of the time. The Workingmen's Party, a local version of the widespread Granger movement of the 1870s, played a major role in the demand for constitutional change.

California's population growth—from 100,000 in 1849 to 800,000 in 1877—reflected the state's new economic circumstances. The gold mining concerns that dominated the first Constitution had given way to agricultural, commercial, and manufacturing interests.

The California Legislature responded to the voters' mandate by passing an enabling act that authorized the election of 152 delegates to meet in Sacramento in September 1878.



The court was located at 640 Clay Street (left side), San Francisco, from 1874 to 1881. In the background are the masts of ships anchored in the bay.

When the convention finally adjourned seven months later, in March 1879, and after the voters adopted the new proposed Constitution in May of that year, major changes had been made in California's judicial system. The Supreme Court had been expanded again. It was now to consist of a Chief Justice and six associate justices, and terms of office were increased from 10 to 12 years. The categories of cases that the court was authorized to hear were once again augmented, and all opinions were required to be in writing.

The court was located at 305 Larkin Street, San Francisco, from 1890 to 1896.

A Home for the Court

The question of where to hold Supreme Court sessions was a topic of lively debate in early California. The first court convened in San Francisco and remained there until 1854. Subsequently the Legislature mandated its relocation to the state capital, still to be selected. After a separate legislative struggle, Sacramento was finally chosen as the official seat of government, but because the court initially held the Legislature's selection to be invalid, it spent most of 1854 in San Jose.

The court then moved to Sacramento, but it returned to San Francisco in the early 1870s. By 1874 this fluid arrangement was formalized. The Legislature directed the court to hear oral arguments two months each year in San Francisco and two months each year in Sacramento. In 1878 the Legislature directed the court to hear arguments twice yearly in each of those cities and twice in Los Angeles as well.

During the 1879 Constitutional Convention, the Judiciary Committee considered the pros and cons of a "court on wheels" holding sessions in different locations. Some delegates opposed the expense and inconvenience of such an arrangement; others debated the relative merits of the water, weather, and whisky of the respective locations. The committee decided to leave the matter unspecified in the Constitution.

The Emporium Building, 825 Market Street, San Francisco. The court was located here from 1896 to 1906, when it was evicted by the earthquake.

Coping With an Increasing Caseload

By 1882 the Supreme Court had a backlog of pending cases, with an average wait of two years for a case to be decided. In 1885 the Legislature directed the court to appoint three commissioners to help dispose of the backlog. Two more were added in 1889, but that did not sufficiently alleviate the court's workload.

The court was located in the Wells Fargo Building, 85 Second Street, San Francisco, from 1908 to 1923.

In 1904 three Courts of Appeal were created and the commissioners were eliminated. The new courts were to handle all appeals in the "ordinary current of cases," leaving appeals in the "great and important" cases to the Supreme Court.

The Supreme Court also was given the power to transfer a case from a Court of Appeal to itself, from itself to a Court of Appeal, and from one Court of Appeal to another. This provision gave the Supreme Court the power to rule on the most important legal questions and to resolve conflicts among the appellate districts.

Subsequent Constitutional Amendments

The court originally moved to its present location at 350 McAllister Street in 1923 and remained until it was temporarily displaced by the earthquake in 1989.

A 1926 amendment to article VI of the Constitution established the Judicial Council of California, chaired by the Chief Justice. The council's mandate is to improve the administration of justice and to enact rules of court practice and procedure.

The following year, another constitutional amendment created the State Bar, a public corporation to which all

Today's Supreme Court, the Judicial Council of California, and the Administrative Office of the Courts conduct business in the connected Hiram W. Johnson State Office Building (taller structure) and Earl Warren Building (foreground).

attorneys practicing in California must belong. Each year, candidates for admission to practice law are examined by the State Bar, which then certifies to the Supreme Court the applicants who meet admission requirements.

In 1934 uncontested judicial elections were adopted for the appellate courts, including the Supreme Court. Under this system, the Governor, subject to confirmation by the Commission on Judicial Appointments, fills vacancies in the appellate courts by appointment. At the next general election, voters decide whether the appointees should be confirmed to fill their predecessors' unexpired terms and whether justices whose terms have expired should be elected to new full terms.

Recent Structural Changes to the Court System

In 1998 the California voters amended the Constitution to allow each county's trial judges to unify their courts, if desired, into a single countywide superior court system. Until then, separate municipal courts in each county had handled the less serious matters, such as misdemeanors, infractions, and minor civil cases. All 58 counties have now consolidated their municipal courts with their respective superior courts. Legislation enacted the previous year shifted responsibility for trial court funding from the counties to the state. These two fundamental changes led to streamlined court operations and more stable and consistent judicial branch operations and funding, providing improved services to the public. In addition, transfer of ownership of court facilities to the state is now under way. This will help to ensure appropriate, safe, accessible courthouses across the state.

The California Supreme Court justices in the Stanley Mosk Library and Courts Building, Sacramento, July 2006. Left to right: Associate Justice Carlos R. Moreno, Associate Justice Joyce L. Kennard, Associate Justice Kathryn M. Werdegar, Chief Justice Ronald M. George, Associate Justice Ming W. Chin, Associate Justice Marvin R. Baxter, Associate Justice Carol A. Corrigan.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APPEAL
ADMINISTRATIVE PROCEEDINGS
Minutes Supreme Court.
January 3, 1916
February 1, 1916
Minutes Supreme Court.
February 7
MISSOURI APPEAL REPORTS.
VOL. 100.
MICHIGAN REPORTS.
FULLER
VOLS. 29 & 30
MASSACHUSETTS REPORTS
24
PICKERING.
VOL. VII.
MARYLAND REPORTS
52
1879
PERKINS'
MAINE REPORTS
74
SPAULDING
VOL. 4.

How the California Supreme Court Operates

The California Supreme Court is the court of last resort on questions of California law. Its function is to preside over the orderly and consistent development of the law, as applied by the state's trial courts and the appellate courts. Except in death penalty cases, the state Constitution affords no *right* to appeal to the Supreme Court: review by the Supreme Court is a matter of discretion. In exercising its discretion, the Supreme Court reviews cases that will enable it to settle important legal questions of statewide concern and to ensure that the law is applied uniformly throughout the state.

An appeal normally comes before the Supreme Court in the form of a petition asking the court to review a lower court's decision. The court either accepts the case or declines review. On each matter accepted for review, the court considers the merits, hears oral argument, and renders its decision in a written opinion that explains and resolves the legal issues raised and guides the lower courts in applying the law.

< Oral argument, June 2002, in the San Francisco courtroom. Remainder of page: Minute books (early 20th century); volumes from Bernard Witkin's treatise on California law; assorted early volumes of appellate reports from other states.

Weekly Conference

The Decision Whether to Accept a Case

The decision whether to accept a case for review is made by the justices at their weekly conference. When a party's petition for review is first received, the court's calendar coordinator schedules it for conference and immediately gives the case to the appropriate central staff for preparation of a "conference memorandum" concerning the matter.

The staff's conference memorandum is designed to assist the justices in assessing whether a case is appropriate for review. It summarizes the facts, the procedural history, and any pertinent rulings made by lower courts. It outlines the parties' arguments, assesses the merits of the underlying issues, and makes a recommendation concerning whether the case is of sufficient importance to be reviewed by the Supreme Court.

The weekly conferences are confidential and attended only by the justices. At a typical conference, the justices consider approximately 250 matters. The concurrence of at least four justices is needed for a decision to review a case or take other action.

Occasionally, a justice may request that a matter be "continued"—suspended for further consideration and taken up at a later conference—or may circulate a supplemental conference memorandum amplifying on or differing from the original conference memorandum's analysis or recommendations.

The justices at conference in the Chief Justice's chambers.

In cases in which it grants review, the court may specify which issues should be briefed and argued. The court also may direct the parties to address additional pertinent issues not covered in their petitions or briefs.

Many of the cases accepted by the court at its

weekly conferences are argued orally before the full court and decided by a full written opinion. There are exceptions, however. For example, a case appearing on conference may raise an issue that is already before the court in another case. In that event, the court may decide to "grant and hold" the new case until the "lead" case is decided. When the lead opinion is filed, cases that have been "held" for that opinion usually are transferred back to the Court of Appeal for reconsideration in light of the lead opinion.

A Supreme Court staff attorney conducting research in the law library's atrium.

If, in view of the lead case opinion, a held case appears to have been decided correctly by the Court of Appeal, review may simply be dismissed, thus reviving the lower court's judgment and precluding further appeal. In other instances, the Supreme Court, without hearing argument, may simply transfer a case back to the Court of Appeal for further consideration in light of an opinion filed after the lower court's decision.

In recent years, more than 5,500 petitions for review and more than 3,000 other proceedings have been filed annually in the Supreme Court. Five percent or fewer of the petitions for review are granted each year.

After a Case Has Been Accepted

The Calendar Memorandum and Oral Argument

After a case has been accepted for review, the Chief Justice assigns it to one of the justices who voted to grant review. The justice assigned to the case prepares and circulates within the court a "calendar memorandum." Each remaining justice then circulates, within the court, a "preliminary response" and indicates concurrence, dissent, or a request for changes in the memorandum. The authoring justice may make

changes, and concurring and dissenting memoranda may be circulated.

Supreme Court staff members consulting in an interior hallway.

After allowing the justices sufficient time to consider the matter, the Chief Justice holds a preargument conference. If a majority of the justices agree that the matter is ready to be heard, it is scheduled for oral argument. If, however, a majority indicate they tentatively dissent from the calendar memorandum, and if the author is unwilling to change the memorandum to accommodate the majority, the Chief Justice resets the matter for further discussion or reassigns it to a dissenting justice. Then, when a majority of the justices indicate they tentatively concur in the new or revised calendar memorandum, the Chief Justice sets the matter for oral argument.

The Supreme Court hears oral arguments during one week of each month, from September through June, in its courtrooms in San Francisco, Los Angeles, and Sacramento (and occasionally at additional locations). Throughout the year, the court remains open and engaged in its other work, which includes researching and drafting calendar memoranda and opinions and conducting weekly case conferences.

Oral argument presents the only opportunity for the justices to question the attorneys in person about issues raised in their briefs. Each side generally has 30 minutes to argue its case; in death penalty appeals that time may be extended to 45 minutes for each side.

After Oral Argument

Assignment, Preparation, and Circulation of Proposed Opinions

After oral argument, the case is discussed further at the court's private conference, and the justices take a tentative vote. If a majority of the justices still agree with the recommendations of the justice who prepared the calendar memorandum, that

justice drafts a proposed majority opinion. If the majority view is contrary to that of the calendar memorandum, however, the Chief Justice assigns one of the majority justices to write the proposed opinion.

The justice assigned to write the opinion circulates a proposed majority opinion. Justices who deem it appropriate may write and circulate concurring or dissenting opinions, and the majority opinion may be amended, in turn, to respond to points raised in a concurrence or dissent. The court files its written opinion within 90 days after oral argument.

The Final Step

Filing the Court's Decision

For the convenience of the public, litigants, and the press, Supreme Court decisions are normally filed at two set times each week—Mondays and Thursdays at 10 a.m. At that time, decisions are made available to the public in the clerk's office and on the California Courts Web site *(www.courtinfo.ca.gov/courts/supreme)*.

One of two public staircases in the Earl Warren Building.

A decision does not become final, however, until 30 days after filing. Up to 15 days after filing, the parties are allowed to petition for rehearing. The court may extend the 30-day finality period by up to 60 additional days to consider, on its own motion or a party's motion, whether to grant a rehearing or modify its decision.

After a decision is filed, the reporter of decisions reviews it and prepares it for official publication, first in softcover advance pamphlets and then in the bound volumes of the *Official Reports*. The *Official Reports* are also published as computer databases, available in standard formats.

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

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

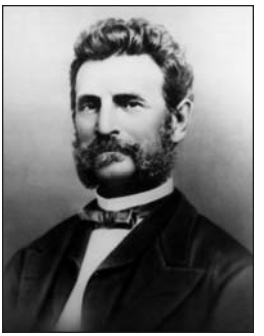
I. Acting Chief Justice

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.courtinfo.ca.gov/courts/supreme/iopp.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; 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.

< Looking skyward from the library's Larkin Street atrium.


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

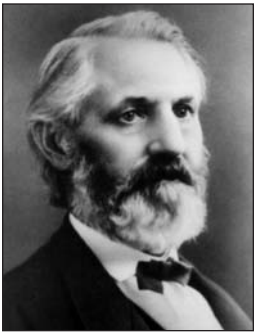
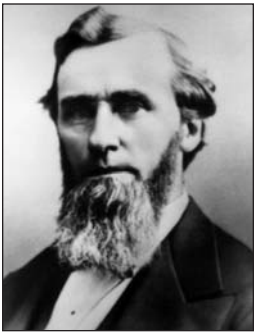
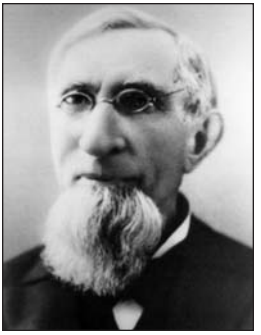
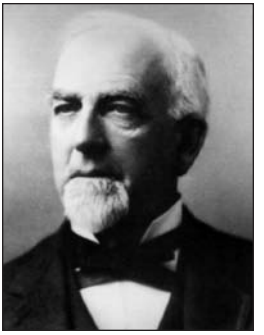
A. Unless otherwise directed by the Chief Justice, a conference memorandum is prepared for each petition requiring conference consideration or action.

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:

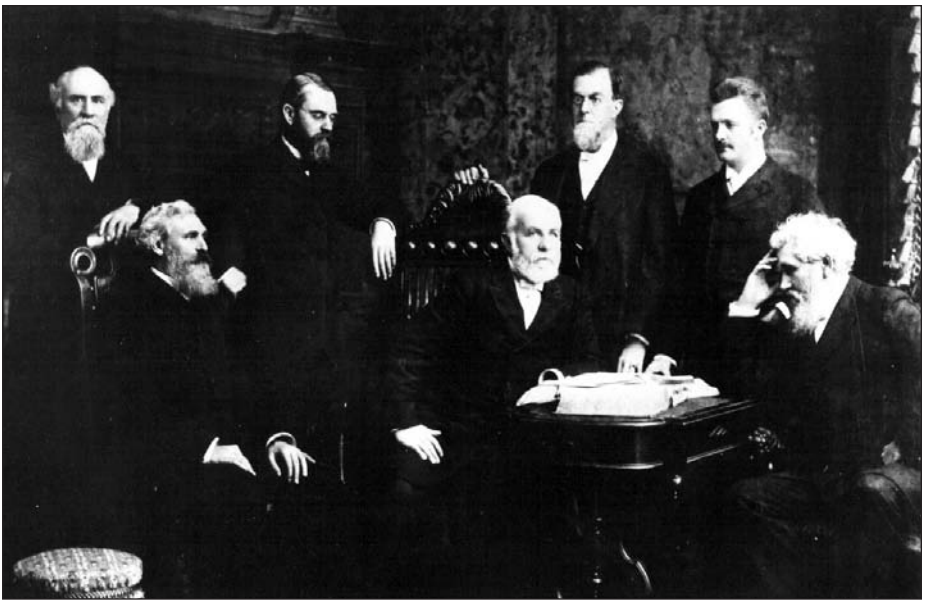
1. Petitions in civil cases, to the civil central staff.
2. Petitions in or derived from criminal cases, other than cases arising from judgments of death, to the criminal central staff.

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.

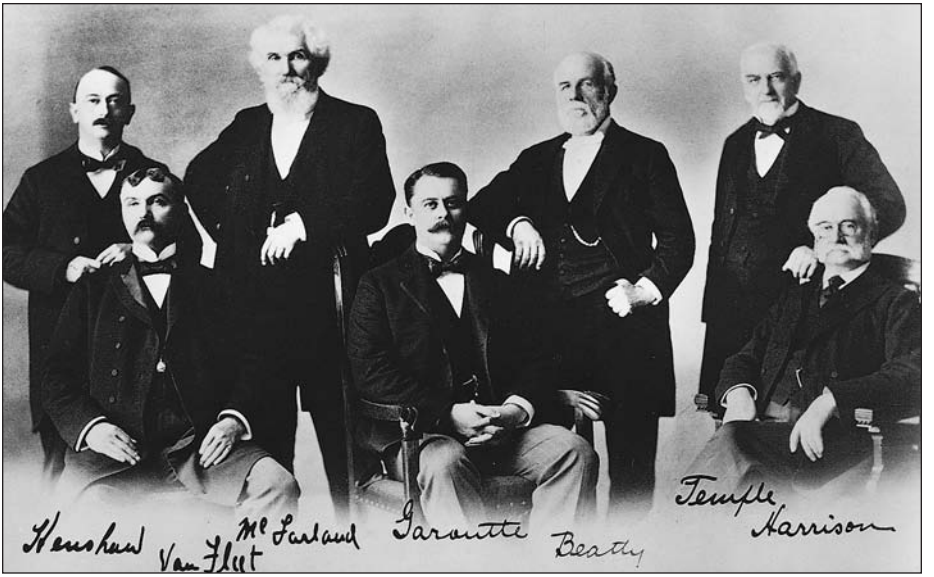
The California Supreme Court in 1870. Top, left to right: Associate Justice William T. Wallace, Associate Justice Royal T. Sprague, Chief Justice Augustus L. Rhodes. Bottom, left to right: Associate Justice Joseph B. Crockett, Associate Justice Jackson Temple.



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 rule 8.512 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 and four justices cannot agree on a disposition,

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.

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

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.

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.

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.

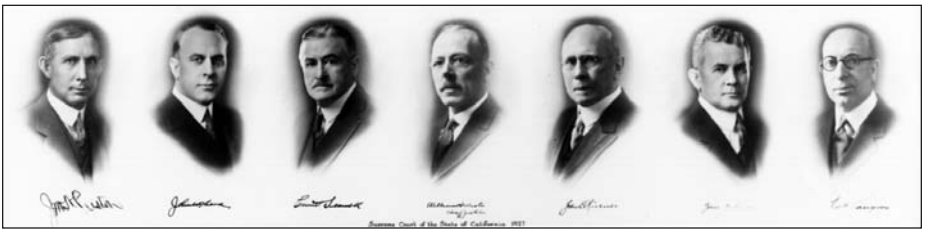
The California Supreme Court in 1922. Left to right: Associate Justice Charles A. Shurtleff, Associate Justice Thomas J. Lennon, Associate Justice William P. Lawlor, Chief Justice Lucien Shaw, Associate Justice Curtis D. Wilbur, Associate Justice William A. Sloane, Associate Justice William H. Waste.

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 unfiled 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

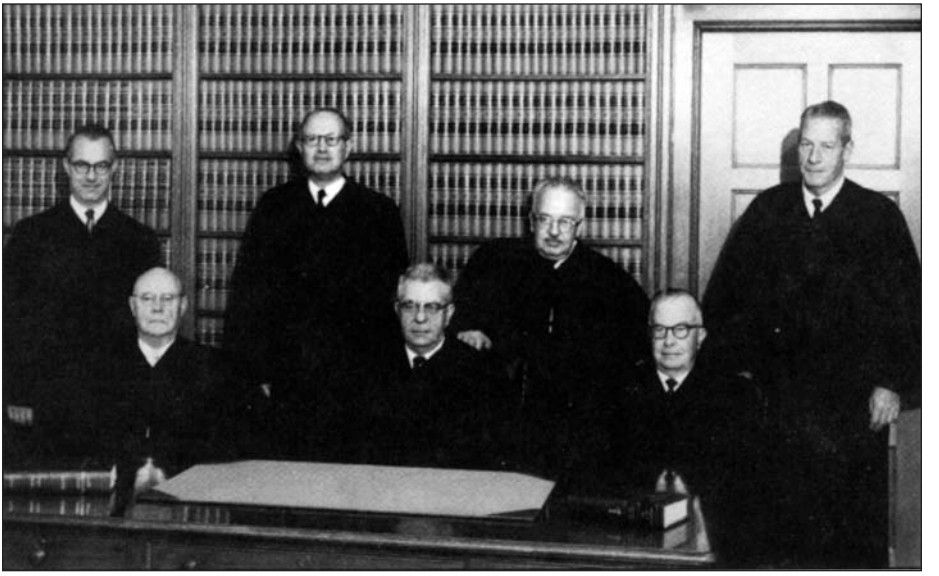
When the circulation process has been completed, the Calendar Coordination Office shall notify the authoring justice of each proposed opinion that the matter appears ready for filing, and shall inquire whether each authoring justice is releasing his or her opinion for filing. When all opinions have been 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.

direction of the Chief Justice, to the civil central staff. When briefing is complete, the staff prepares a conference memorandum in which the recommendation generally will be either to "Deny" or "Retain for Further Consideration." If a majority of the justices vote to "deny," the petition is denied, and an order to that effect is filed forthwith. If a majority vote to "retain for further consideration," the Chief Justice assigns the case to a justice who voted to retain.

This justice then prepares a memorandum on the merits, which will serve as a calendar memorandum if an order granting review subsequently is filed. The court's usual procedures for circulation of calendar memoranda then are followed. Once all concurring and dissenting memoranda have circulated, and it appears there is a majority for a particular disposition, the matter is considered at a conference. If a majority vote to deny review, an order to that effect is filed forthwith. If a majority vote to grant review, an order to that effect is filed, and the case is simultaneously set for oral argument at the soonest possible time under the court's usual scheduling rules. Because of the time limitations in subdivision (d) of section 18 of article VI of the California Constitution, continuance of oral argument rarely will be granted. Following oral argument and submission of the cause, the court's usual rules for preparation and circulation of opinions apply.

XII. Temporary Absence of Justices

A. As soon as a justice knows that he or she will not be attending a conference of the court, he or she will notify the Chief Justice. Any justice who will not be present at conference may communicate his or her votes on any given conference matter as set forth in section III.E. A justice may communicate such votes whether he or she is within or temporarily outside of California. A case may be assigned to a justice for the preparation of a calendar memorandum, under the procedures set forth in section VI, regardless of whether he or she is within or temporarily outside of California at the time the order granting review or issuing a writ or order to show cause is filed.

B. Any justice who is participating in the decision of a case, and who is temporarily outside of California, may communicate his or her concurrence in an opinion

(including an opinion authored by that justice) by transmitting to the Calendar Coordinator, by facsimile, a signed copy of the signature page of the opinion, indicating the justice's concurrence, as set forth in section IX. If an opinion is concurred in by four justices, it may be filed as provided above in section X, even though one or more of the concurring justices are temporarily absent from the state and regardless of whether an absent justice is the author of the opinion.

XIII. Disqualification of Justices and Assignment of Retired Justices

A. As soon as a justice discovers that he or she is disqualified in any case or, although not technically disqualified, deems it advisable not to participate, he or she will notify the Calendar Coordinator.

B. When it is known after a case is granted but before argument that a justice for any reason is unable to participate in a matter, the Chief Justice pursuant to constitutional authority (Cal. Const., art. VI, § 6) assigns on an alphabetical rotational basis (under the procedure described *ante*, section IV.J) a Court of Appeal justice to assist the court in place of the nonparticipating justice. The assigned justice is furnished all pertinent petitions, motions, applications, answers, briefs, memoranda, and other material.

A special session of the California Supreme Court in conjunction with the Old Monterey Bicentennial, Colton Hall, Monterey, May 1, 1970. Left to right: Associate Justice Louis H. Burke, Associate Justice Mathew O. Tobriner, Associate Justice Marshall F. McComb, Chief Justice Donald R. Wright, Associate Justice Raymond E. Peters, Associate Justice Stanley Mosk, Associate Justice Raymond L. Sullivan.

The California Supreme Court in 1974. Left to right: Associate Justice William P. Clark, Jr., Associate Justice Marshall F. McComb, Associate Justice Stanley Mosk, Chief Justice Donald R. Wright, Associate Justice Raymond L. Sullivan, Associate Justice Mathew O. Tobriner, Associate Justice Frank K. Richardson.

C. If an assigned justice has participated in the decision of a case before this court, that justice will also participate in any further proceedings—including requests for modification, petitions for rehearing, and rehearings—until such time as the decision has become final. This procedure is to be followed unless the original assignment was necessitated by the absence of a regular justice of this court, in which event a regular justice, if able to do so, will participate in lieu of the assigned justice in the consideration of any petition for rehearing and, if rehearing is granted, in any subsequent proceeding.

D. If a justice retires before a case in which he or she has heard oral argument is final, he or she may be assigned to continue to participate in the case. When a permanent replacement justice appointed to fill the vacancy created by the retirement of that justice has taken the oath of office, and the opinion has been filed, any petition for rehearing will be acted on by the permanent replacement justice.

The California Supreme Court in 1982. Left to right: Associate Justice Otto M. Kaus, Associate Justice Frank K. Richardson, Associate Justice Mathew O. Tobriner, Chief Justice Rose Elizabeth Bird, Associate Justice Stanley Mosk, Associate Justice Frank C. Newman, Associate Justice Allen E. Broussard.

XIV. Applications for Recommendations for Executive Clemency, Habeas Corpus, and Stays

A. An application for a recommendation for executive clemency comes before this court pursuant to article V, section 8, subdivision (a) of the California Constitution and Penal Code section 4851. When such applications are received by the Clerk's Office, they are given a file number, and the fact that they have been filed is a matter of public record. The papers and documents transmitted to the court by the Governor with the application often contain material that the Governor may have the right to withhold from the public. (See Gov. Code, § 6254, subds. (c), (f), & (l); Civ. Code, § 1798.40, subd. (c).) Accordingly, the court treats these files as confidential and does not make them available to the public.

Applications are denied unless four or more justices vote to recommend that clemency be granted. The Chief Justice informs the Governor by letter of the court's recommendation, and a copy of such letter is included in the court's file and considered a matter of public record. Pursuant to the provisions of Penal Code section 4852, the Clerk transmits the record to the office of the Governor if the court's recommendation is favorable to the applicant. Otherwise, the documents remain in the files of the court. (See Pen. Code, § 4852.)

B. When a defendant in a criminal case files a petition for review after denial without opinion by the Court of Appeal of a petition for prohibition or mandate attacking a Penal Code section 995 or section 1538.5 ruling, the matter will be placed

on the agenda of a regular conference and will not be accelerated. Absent extraordinary circumstances, no order staying the trial will issue. If the case goes to trial and the matter becomes moot before the regular conference, the memorandum need only so state, and the petition may then be denied as moot without the necessity of considering its merits.

When the Court of Appeal has denied such a writ petition with opinion, a request to stay the trial pending action by the Supreme Court on the petition for review will be granted when necessary to prevent the matter from becoming moot.

C. When a misdemeanor conviction has become final on appeal or a final contempt order has been filed by a trial court and the defendant or contemner files a petition for review following denial of a timely habeas corpus or certiorari petition by a Court of Appeal or files a timely original petition, a stay of execution of the judgment or order will issue pending determination of the petition. The Chief Justice may condition the stay on the filing of a bond or on the continuation of an appeal bond, if any, if he or she deems it appropriate to do so. If the petition appears

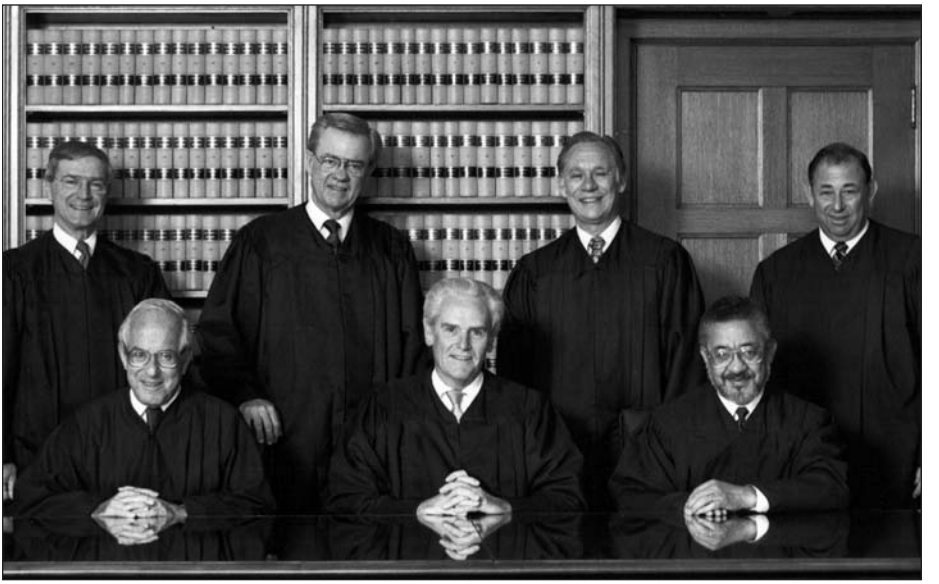
The California Supreme Court in 1986 in the Chief Justice's chambers. Left to right: Associate Justice Stanley Mosk, Associate Justice Malcolm M. Lucas, Associate Justice Cruz Reynoso, Chief Justice Rose Elizabeth Bird, Associate Justice Joseph R. Grodin, Associate Justice Edward A. Panelli (standing), and Associate Justice Allen E. Broussard (seated).

to lack merit, however, expedited consideration will be given to deny the petition in preference to releasing an incarcerated petitioner.

D. Pending disposition of a petition for writ of habeas corpus to review an order permitting extradition, the Chief Justice may stay extradition on behalf of the court. If the petition appears to lack merit, however, expedited consideration will be given to deny the petition in preference to staying the extradition proceedings.

E. In cases not covered by subdivisions B and C of this section, and when not precluded by subdivision G of this section, the Chief Justice may, in his or her discretion, grant applications for stays of judicial proceedings or orders pending regular conference consideration of the matters involved.

F. Except as provided in subdivisions B through E of this section and except in emergencies, petitions for habeas corpus, applications for stays of judicial proceedings or orders, and applications for stays of execution are to be resolved at the weekly case conference.



The California Supreme Court in 1987 at the Chief Justice's conference table. Left to right: Associate Justice Edward A. Panelli, Associate Justice Stanley Mosk, Associate Justice David N. Eagleson, Chief Justice Malcolm M. Lucas, Associate Justice John A. Arguelles, Associate Justice Allen E. Broussard, Associate Justice Marcus M. Kaufman.

G. Stays governed by special provisions of statutes or rules of court will be issued only in compliance with such provisions. (See, e.g., Pub. Util. Code, §§ 1761–1766; Cal. Rules of Court, rule 8.112.)

H. Applications to stay actions by public agencies or private parties pending consideration of petitions for writs of mandate (i.e., *Emeryville*-type stays [see *People ex rel. S. F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533]) are to be resolved at the weekly case conference.

I. Upon receipt of a proper notice of bankruptcy relating to a pending petition for review in a creditor's action or an action that would diminish the relevant estate, the court will file an order noting the stay of proceedings and suspending the operation of the applicable rule 8.500(e) time period. (See 11 U.S.C., § 362(a)(1).) Thereafter, the parties will be directed to file quarterly status reports to apprise the court of the current status of the bankruptcy proceedings. Upon receipt of a proper notice terminating the bankruptcy stay, the court shall enter an order terminating the stay of proceedings and indicating that the applicable time period of rule 8.500(e) shall begin running anew from the date of the order.

XV. Appointment of Attorneys in Criminal Cases

A. In criminal matters, upon a verified or certified statement of indigency, the court, acting through the Clerk's Office, will appoint an attorney for a party in the following instances:

1. In a pending case in which the petition for review has been granted;
2. In a pending automatic appeal and/or related state habeas corpus/executive clemency proceedings;
3. In an original proceeding in which an alternative writ or an order to show cause has been issued;
4. In capital cases in the following proceedings:
   (a) Proceedings for appellate or other postconviction review of state court judgments in the United States Supreme Court, subject however to the power of that court to appoint counsel therein; and

(b) Conduct of sanity hearings when indicated.

B. At or after the time the court appoints appellate counsel to represent an indigent appellant on direct appeal, the court also shall offer to appoint habeas corpus/executive clemency counsel for each indigent capital appellant. Following that offer, the court shall appoint habeas corpus/executive clemency counsel unless the court finds, after a hearing if necessary (held before a referee appointed by the court), that the appellant rejected the offer with full understanding of the legal consequences of the decision.

C. The court's Automatic Appeals Monitor is responsible for recruiting, evaluating, and recommending the appointment of counsel on behalf of indigent appellants in capital appeals and/or related state habeas corpus/executive clemency proceedings.

The California Supreme Court in 1996 in the Sacramento courtroom. Left to right: Associate Justice Ming W. Chin, Associate Justice Stanley Mosk, Associate Justice Marvin R. Baxter, Chief Justice Ronald M. George, Associate Justice Kathryn M. Werdegar, Associate Justice Joyce L. Kennard, Associate Justice Janice R. Brown.

D. Counsel in automatic appeals and/or related state habeas corpus/executive clemency proceedings are compensated by one of two alternative methods: Under the "time and costs" method, counsel are compensated on an hourly basis and reimbursed for necessary expenses that were reasonably incurred. The court makes partial payments on counsel's fee claims while these claims are pending full review. Under the alternative optional "fixed fee and expenses" method, counsel are paid a fixed amount at regular stages of a case, according to a predetermined assessment of its difficulty.

E. Habeas corpus petitions in capital cases are governed by the timeliness and compensation standards set out in the "Supreme Court Policies Regarding Cases Arising From Judgments of Death." Habeas corpus counsel appointed in capital cases have the duty to investigate factual and legal grounds for the filing of a petition for a writ of habeas corpus, as delineated in those policies.

The California Supreme Court justices in the Stanley Mosk Library and Courts Building, Sacramento, April 2002. Left to right: Associate Justice Janice R. Brown, Associate Justice Joyce L. Kennard, Associate Justice Kathryn M. Werdegar, Chief Justice Ronald M. George, Associate Justice Ming W. Chin, Associate Justice Marvin R. Baxter, Associate Justice Carlos R. Moreno.

XVI. Communications From Counsel in Pending Cases

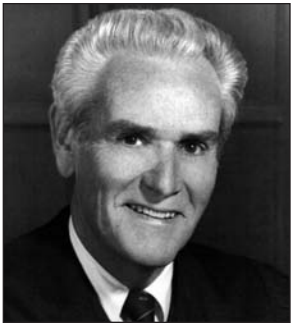
Whenever a matter is pending before the court, any communication to the court from counsel is to be addressed to the Clerk's Office, with copies to all counsel.

XVII. Suspension of Procedures

Whenever exceptional or emergency conditions require speedy action, or whenever there is other good cause for special action regarding any matter, the operation of these procedures may be temporarily suspended by affirmative vote of four justices.

The Chief Justice may extend any applicable time limit (except that stated in section X) on written request by a justice stating good cause and the date by which he or she expects to comply.

Ronald M. George
Chief Justice of California
1996–present



Malcolm M. Lucas
Chief Justice of California
1987–1996

Rose Elizabeth Bird
Chief Justice of California
1977–1987

Donald R. Wright
Chief Justice of California
1970–1977

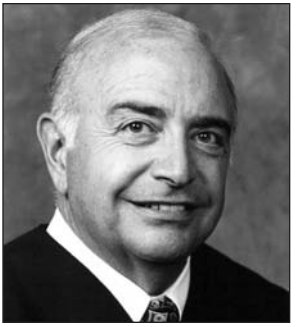
Roger J. Traynor
Chief Justice of California
1964–1970

Appendix I: Chief Justices of California*

1.	Serranus Clinton Hastings	January 1850–January 1852
2.	Henry A. Lyons	January 1852–March 1852
3.	Hugh C. Murray	March 1852–September 1857
4.	David S. Terry	October 1857–September 1859
5.	Stephen J. Field	September 1859–May 1863
6.	W. W. Cope	May 1863–January 1864
7.	Silas W. Sanderson	January 1864–January 1866
8.	John Currey	January 1866–January 1868
9.	Lorenzo Sawyer	January 1868–January 1870
10.	Augustus L. Rhodes	January 1870–January 1872
11.	Royal T. Sprague	January 1872–February 1872
12.	William T. Wallace	February 1872–November 1879
13.	Robert F. Morrison	November 1879–March 1887
14.	Niles Searls	April 1887–January 1889
15.	William H. Beatty	January 1889–August 1914
16.	Matt I. Sullivan	August 1914–January 1915
17.	Frank M. Angellotti	January 1915–November 1921
18.	Lucien Shaw	November 1921–January 1923
19.	Curtis D. Wilbur	January 1923–March 1924
20.	Louis W. Myers	March 1924–January 1926
21.	William H. Waste	January 1926–June 1940
22.	Phil S. Gibson	June 1940–August 1964
23.	Roger J. Traynor	September 1964–February 1970
24.	Donald R. Wright	April 1970–February 1977
25.	Rose Elizabeth Bird	March 1977–January 1987
26.	Malcolm M. Lucas	February 1987–April 1996
27.	Ronald M. George	May 1996–Present

* Because of the lack of uniformity in various historical sources, only the month and year that each justice assumed and left office are used in appendixes I and II. Since 1977, the *Official Reports* have listed the date of the oath of office as the beginning of each justice's tenure.

Joyce L. Kennard
Associate Justice
1989–present



Marvin R. Baxter
Associate Justice
1991–present

Kathryn M. Werdegar
Associate Justice
1994–present

Ming W. Chin
Associate Justice
1996–present

Carlos R. Moreno
Associate Justice
2001–present

Carol A. Corrigan
Associate Justice
2006–present

Appendix II: Justices of the California Supreme Court

1.	Serranus Clinton Hastings*	January 1850–January 1852
2.	Henry A. Lyons*	December 1849–March 1852
3.	Nathaniel Bennett	December 1849–October 1851
4.	Hugh C. Murray*	October 1851–September 1857
5.	Solomon Heydenfeldt	January 1852–January 1857
6.	Alexander Anderson	April 1852–January 1853
7.	Alexander Wells	January 1853–October 1854
8.	Charles H. Bryan	November 1854–November 1855
9.	David S. Terry*	November 1855–September 1859
10.	Peter H. Burnett	January 1857–October 1858
11.	Stephen J. Field*	October 1857–May 1863
12.	Joseph G. Baldwin	October 1858–January 1862
13.	W. W. Cope*	September 1859–January 1864
14.	Edward Norton	November 1861–January 1864
15.	E. B. Crocker	May 1863–January 1864
16.	Silas W. Sanderson*	January 1864–January 1870
17.	John Currey*	January 1864–January 1868
18.	Lorenzo Sawyer*	January 1864–January 1870
19.	Augustus L. Rhodes*	January 1864–January 1872
20.	Oscar L. Shafter	January 1864–December 1867
21.	Royal T. Sprague*	January 1868–February 1872
22.	Joseph B. Crockett	December 1867–January 1880
23.	William T. Wallace*	December 1869–November 1879
24.	Jackson Temple	January 1870–January 1872 December 1886–June 1889 January 1895–December 1902
25.	Addison C. Niles	January 1872–January 1880
26.	Isaac S. Belcher	March 1872–January 1874
27.	E. W. McKinstry	January 1874–October 1888
28.	Robert F. Morrison*	November 1879–March 1887
29.	Erskine M. Ross	January 1880–October 1886

The Supreme Court bench in the Capitol building, Sacramento. The court was housed here from 1869 to 1874.

105 Stockton Street, San Francisco. The court was located on the right side of this block from 1881 to 1883.

30.	John R. Sharpstein	January 1880–December 1892
31.	Samuel Bell McKee	January 1880–December 1887
32.	Milton H. Myrick	January 1880–January 1887
33.	James D. Thornton	January 1880–January 1891
34.	A. Van R. Paterson	January 1887–April 1894
35.	Thomas B. McFarland	January 1887–September 1908
36.	Niles Searls*	April 1887–January 1889
37.	John D. Works	October 1888–January 1891
38.	William H. Beatty*	January 1889–August 1914
39.	Charles N. Fox	June 1889–January 1891
40.	John J. De Haven	January 1891–January 1895
41.	Charles H. Garoutte	January 1891–January 1903
42.	Ralph C. Harrison	January 1891–January 1903
43.	William F. Fitzgerald	January 1893–January 1895
44.	W. C. Van Fleet	April 1894–January 1899
45.	Frederick W. Henshaw	January 1895–January 1918
46.	Walter Van Dyke	January 1899–December 1905

The damaged entrance to the Emporium Building, 825 Market Street, San Francisco, 1906. The court was located here during the great earthquake and fire.

47.	Frank M. Angellotti*	January 1903–November 1921
48.	Lucien Shaw*	January 1903–January 1923
49.	William G. Lorigan	January 1903–January 1919
50.	M. C. Sloss	February 1906–February 1919
51.	Henry A. Melvin	September 1908–April 1920
52.	Matt I. Sullivan*	August 1914–January 1915
53.	William P. Lawlor	January 1915–July 1926
54.	Curtis D. Wilbur*	January 1918–March 1924
55.	Thomas J. Lennon	January 1919–August 1926
56.	Warren Olney, Jr.	March 1919–July 1921
57.	William A. Sloane	May 1920–December 1922
58.	Charles A. Shurtleff	July 1921–December 1922
59.	William H. Waste*	November 1921–June 1940
60.	Terry W. Ward	December 1922–January 1923
61.	Frank H. Kerrigan	January 1923–February 1924
62.	Emmet Seawell	January 1923–July 1939
63.	Louis W. Myers*	January 1923–January 1926
64.	John E. Richards	February 1924–June 1932
65.	John W. Shenk	April 1924–August 1959
66.	Jesse W. Curtis	January 1926–January 1945

67.	Frank G. Finlayson	October 1926–December 1926
68.	Jeremiah F. Sullivan	November 1926–January 1927
69.	John W. Preston	December 1926–October 1935
70.	William H. Langdon	January 1927–August 1939
71.	Ira F. Thompson	December 1932–August 1937
72.	Nathaniel P. Conrey	October 1935–November 1936
73.	Douglas L. Edmonds	November 1936–December 1955
74.	Frederick W. Houser	September 1937–October 1942
75.	Jesse W. Carter	September 1939–March 1959
76.	Phil S. Gibson*	September 1939–August 1964
77.	Roger J. Traynor*	August 1940–February 1970
78.	B. Rey Schauer	December 1942–September 1964
79.	Homer R. Spence	January 1945–June 1960
80.	Marshall F. McComb	January 1956–May 1977
81.	Raymond E. Peters	March 1959–January 1973
82.	Thomas P. White	August 1959–October 1962
83.	Maurice T. Dooling, Jr.	June 1960–June 1962
84.	Mathew O. Tobriner	July 1962–January 1982
85.	Paul Peek	December 1962–December 1966
86.	Stanley Mosk	September 1964–June 2001
87.	Louis H. Burke	November 1964–November 1974
88.	Raymond L. Sullivan	December 1966–January 1977
89.	Donald R. Wright*	April 1970–February 1977
90.	William P. Clark, Jr.	March 1973–March 1981
91.	Frank K. Richardson	December 1974–December 1983
92.	Wiley W. Manuel	March 1977–January 1981
93.	Rose Elizabeth Bird*	March 1977–January 1987
94.	Frank C. Newman	July 1977–December 1982
95.	Otto M. Kaus	July 1981–October 1985
96.	Allen E. Broussard	July 1981–August 1991
97.	Cruz Reynoso	February 1982–January 1987
98.	Joseph R. Grodin	December 1982–January 1987

99.	Malcolm M. Lucas*	April 1984–April 1996
100.	Edward A. Panelli	December 1985–January 1994
101.	John A. Arguelles	March 1987–March 1989
102.	David N. Eagleson	March 1987–January 1991
103.	Marcus M. Kaufman	March 1987–January 1990
104.	Joyce L. Kennard	April 1989–Present
105.	Armand Arabian	March 1990–February 1996
106.	Marvin R. Baxter	January 1991–Present
107.	Ronald M. George*	September 1991–Present
108.	Kathryn M. Werdegar	June 1994–Present
109.	Ming W. Chin	March 1996–Present
110.	Janice R. Brown	May 1996–June 2005
111.	Carlos R. Moreno	October 2001–Present
112.	Carol A. Corrigan	January 2006–Present

* Served as Chief Justice of California. See appendix I for each individual's length of service as Chief Justice. Some justices have served as both Chief Justice and associate justice.

Left: 303 Second Street, San Francisco. The court was located on the top two floors of the foreground building from 1991 to 1999.

Below: The Hiram W. Johnson State Office Building (taller structure) and the Earl Warren Building (foreground), at the San Francisco Civic Center, 1999.

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California State Library: Page 56 (left).

California Supreme Court Archives: Pages 3 (photo by Suzanne Bean), 12 (top; photo by Suzanne Bean), 14 (top and bottom), 15 (top and bottom), 26–36, 38–41, 43–47, 52, 54, 57, 59 (left).

William A. Porter: Front cover; pages 9 (top), 16, 18 (top), 20, 59 (right); back cover.

Paul Sakuma: Page 9 (bottom).

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Supreme Court *of* California

350 McAllister Street, San Francisco, California 94102-4797

www.courtinfo.ca.gov/courts/supreme