

**ADMINISTRATIVE ORDER SUPPLEMENTS RULE 8.111.5(e)  
TO MAKE REVIEW-GRANTED OPINIONS CITABLE TO ILLUSTRATE A  
CONFLICT IN AUTHORITY AND TO DEPUBLISH WHEN MATTER  
REMANDED WITH ORDERS TO VACATE OPINION AND RECONSIDER**

In 2016, the Supreme Court amended California Rules of Court, rule 8.1115(e) to eliminate the practice of automatically "depublishing" published Court of Appeal decisions when the Supreme Court grants review. Under amended rule 8.1115(e), effective July 1, 2016, a review-granted published opinion remains citable for its persuasive force unless the Supreme Court orders otherwise. Of course, counsel must note the review-granted status of the cited opinion prominently each time it is cited, as well as any subsequent action taken by the Supreme Court. (Rule 8.1115(e)(1), eff. Jul. 1, 2016.)

The amended rule also provided that during the review period a published Court of Appeal opinion will have no binding precedential effect under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450. It may be cited for its persuasive force only. (Rule 8.1115(e)(1).) After the review period, the Court of Appeal opinion is citable and has whatever binding precedential effect it would have had without the grant of review, to the extent it is not inconsistent with the Supreme Court decision. (Rule 8.1115(e)(2), eff. Jul. 1, 2016.)

Recently, by standing Administrative Order 2021-04-21, issued on April 4, 2021, the Supreme Court has exercised its authority, under rule 8.1115(e)(3) of the California Rules of Court, to modify Rule 8.1115(e).

Section A of the standing order modifies the rule with respect to how a published opinion may be used while review of the opinion is pending. Under existing rule 8.1115(e)(1), a published opinion may be cited while review is pending only for potentially persuasive value (i.e. it has no precedential or binding effect). Under the standing order, the published opinion may also be cited for the purpose of showing a conflict in Court of Appeal authority such that a trial court might choose between sides under *Auto Equity Sales Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456.

Section B of the standing order addresses the status of a published opinion when the Supreme Court has transferred the matter back to the Court of Appeal with directions to vacate the opinion and reconsider the matter. This is a circumstance not specifically addressed in existing rule 8.1115(e). The standing order clarifies that in this circumstance, the published opinion must be considered depublished if it has not yet been published in the bound volumes of the Official Appellate Reports. If the opinion has already been published in the bound volumes of the Official Appellate Reports, it may remain there but is deemed not citable.