



Litigation Section Executive Committee

LEGISLATIVE SUBCOMMITTEE REPORT

October 8, 2014

1. FEDERAL

A. Federal Rules of Civil Procedure

1. Newly proposed amendments (comments due February 17, 2015).

FRCP 4(m) – Proposed amendment clarifies that the 90-day time limit for service of summons after a complaint is filed will not apply to service on a corporation, partnership, or other unincorporated association in a foreign country by reference to Rule 4(h)(2).

FRCP 6(d) - Proposed amendment would remove electronic service under Rule 5(b)(2)(E) from forms of service that allow three added days to any period of time for any party to respond after being served.

FRCP 82 – Proposed amendment clarifies that admiralty and maritime claims under Rule 9(h) are governed by 28 U.S.C. 1390, not repealed §1392.

2. No civil rules amendments will go into effect on Dec. 1, 2014.

3. Amendments Pending Supreme Court Review: Rules 1, The proposed amendments are largely unchanged from those published for comment – except for withdrawal of amendments that would have reduced the presumptive length and number of depositions under Rules 30 and 31, the presumptive numerical limit of interrogatories under Rule 33, and would have established a presumptive numerical limit to requests for admission under Rule 36. If approved by the Supreme Court and Congress, the earliest effective date of these amendments will be December 1, 2015.

FRCP 1 - Amended to emphasize that the parties along with the court share the responsibility to construe, administer, and employ the civil rules to secure the just, speedy, and inexpensive determination of every action.

FRCP 4 — Amended to shorten the presumptive time limit for service of Complaint to 90 days (from 120).

FRCP 16 — Time to issue scheduling order is reduced to earlier of 90 days (not 120 days) after any defendant has been served, or 60 days (not 90 days) after any defendant has appeared. List of permitted contents of scheduling order is expanded.

FRCP 26(b)(1) — The amendment reorganizes the criteria to be considered for limits of discovery set forth under Rule 26(b)(2)(C) into Rule 26(b)(1)'s discussion of scope. Accompanied by extensive committee note.

FRCP 26(c)(1)(B) — Expressly allows court to allocate expenses of discovery in protective order.

FRCP 26(d)(2) — Re timing and sequence of discovery: Allows RFPs to be “delivered” 21 days or more after summons and complaint are served on a party; RFPs are considered to have been served at first Rule 26(f) conference.

FRCP 34(A)(2)(B) & (C): Amended to state explicitly that production must be completed by the time for inspection specified in the request, or by “another reasonable time specified” in the response. Objections must state whether any responsive materials are being withheld on the basis of the objection.

FRCP 37(e): Significant amendments to provisions regarding sanctions for failure to preserve electronically stored information. Eliminates current language prohibiting sanctions where a party fails to preserve ESI because of the “routine, good faith operation of an electronic information system.” Makes clear that the party must take reasonable steps to preserve ESI. Clarifies the standards for sanctions. Accompanied by detailed committee note.

FRCP 84 and Appendix of Forms: Abrogated.

B. Federal Rules of Evidence

Amendments approved by Supreme Court and presented to Congress for approval; effective date Dec. 1, 2014

FRE 801(d)(1): Expands circumstances in which prior statements of declarant witness are not hearsay. Provides that prior statements by witness declarant are not hearsay where witness testifies about prior statement, prior statement is consistent with testimony, and prior statement s offered (1) to rebut an express or implied charge of recent fabrication; or (2) to rehabilitate the declarant’s credibility when attacked on another ground.

FRE 803(6), (7), and (8): Minor amendments to business records and public records exceptions to hearsay rules.

C. Central District of California Local Rules

Local Civil Rule Amendments effective June 1, 2014:

- 5-4.5 [Mandatory Chambers Copies]
- 7-12 [Failure to File Required Documents]
- 11-3.1.1 [Typeface]
- 11-3.9.3 [(Citations) Cases]
- 11-4.1 [(Copies) In General]
- 40-3 [(Continuances, Notice of Settlement) Failure to Comply – Sanctions]
- 45-1 [Motions Relating to Discovery Subpoenas]
- 83-2.3.2 [Motion for Withdrawal]

2. CALIFORNIA

A. Legislation of note affecting the courts or civil procedure

1. Newly enacted legislation of note

AB 1945 (Enforcement of Money Judgments; exemptions): Under Code of Civil Procedure section 703.020, certain property is exempted from enforcement of money judgments, including the community property of a spouse of a judgment debtor, whether or not the spouse is also a judgment debtor under the judgment. The amendment permits a domestic partner to also claim an exemption in the case of community property.

AB 2494 (Courts; frivolous actions or proceedings): Amends Code of Civil Procedure section 128.5 by deleting the December 31, 1994 proceeding commencement date limitation on a trial court's authorization to award reasonable expenses, including attorney's fees, incurred as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, as well as punitive damages against a plaintiff on a determination that the plaintiff's action was maintained by a person convicted of a felony against the person's victim for injuries arising from the acts for which the person was convicted, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action. Also defines "actions or tactics" to include the filing and serving of an answer or other responsive pleading, and excludes from that definition disclosures and discovery requests, responses, objections, and motions. Adds a requirement to provide the California Research Bureau with copies of the motion, opposition, petitions for writs or notices of appeal, and orders, so that the Bureau may maintain these items as public records for three years.

AB 1657 (Courts: interpreters): Repeals Evidence Code section 755 and adds Evidence Code section 756 to authorize the courts to provide interpreters in all civil actions, regardless of party's income. Sets order of priorities in the event the court has insufficient funds to provide interpreters in all civil cases.

B. Judicial Council Activities

SP14-09 (Revision of Conflict of Interest Code for the JC): The proposal would adopt amendments to the JC Conflict of Interest Code and bring the Code up to date with its current organization that, after a recent consolidation, now includes the former AOC. In accordance with Government Code sections 87303 and 87306, the Code must be updated "when change is necessitated by changed circumstances" (id., § 87306). The council must review proposed amendments to the Code and approve the Code as amended or direct that it be further revised and resubmitted for approval.

Individual comments are encouraged. The report can be accessed at:
www.courts.ca.gov/documents/SP14-09.pdf.