

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Discovery and Rules Reform Subcommittee  
Hon. Andrew P. Banks, Chair  
Patrick O'Donnell, Committee Counsel, 415-865-7665,  
patrick.o'donnell@jud.ca.gov

DATE: October 31, 2006

SUBJECT: Discovery Objections and Responses (Code Civ. Proc., §§ 2031.210,  
2031.270, and 2031.280) (Action Required)

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Issue Statement

The Discovery Act does not clearly specify the date when documents must be produced pursuant to a demand for production. The statutes should be amended to clarify when documents must be produced.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend three discovery statutes to clarify the time for production of documents.

The text of the proposed amendments to the Civil Discovery Act is attached at page 3.

Rationale for Recommendation

The statutes on demands for production of documents are currently silent on the time for production. These statutes imply, but do not state, that the date for production is the date specified in the demand for production. The statutes should be amended to expressly provide that the date for production is the date specified in the demand for production under section 2031.030(c)(2) of the Code of Civil Procedure. (See amended Code Civ. Proc., §§ 2031.210(a)(1) and 2031.280(b).) The statutes should also be amended to

provide that parties may agree to extend the date for inspection. (See amended Code Civ. Proc., § 2031.270(a)–(b).)

### Alternative Actions Considered

The discovery statutes could be left unchanged; however, the recommended amendments should improve the discovery process by clarifying when documents must be produced.

### Comments From Interested Parties

Twelve comments were received when this legislative proposal was circulated for comment in spring 2006. The commentators included a commissioner, an attorney, six court administrators, the State Bar’s Committee on Administration of Justice, the president of the California Defense Counsel, the president of the Association of Defense Counsel of Northern California and Nevada, and a local bar association.

Most of the comments were on the portions of the proposal concerning boilerplate objections, which are not being pursued at the present time. Attached at pages 4–6 is a chart summarizing the comments on the portions of the proposed legislation that concern timing of production. As the comments indicate, the proposal to amend the statutes to clarify that the date for production is the date specified in the demand was not controversial. The committees recommend that the Judicial Council sponsor legislation to amend the statutes as proposed.

The Civil and Small Claims Committee agreed with the comment of the State Bar’s Committee on Administration of Justice that, if the statutes on timing are amended, Code of Civil Procedure section 2031.270(a) should be amended to provide that the parties may agree to extend the “date for inspection,” just as they currently can agree to extend the time “for service of a response.” Hence, the proposal to amend section 2031.270 has been added.

### Implementation Requirements and Costs

The statutory amendments should not impose any additional requirements or costs in the courts. The new requirements should improve the discovery process and promote compliance with the Discovery Act.

Attachments

Code of Civil Procedure sections 2031.210, 2031.270, and 2031.280 would be amended, effective January 1, 2008, to read:

1 **§ 2031.210.**

2  
3 (a) The party to whom an inspection demand has been directed shall respond  
4 separately to each item or category of item by any of the following:

5  
6 (1) A statement that the party will comply with the particular demand for  
7 inspection by the date set for inspection pursuant to Section  
8 2031.030(c)(2) and any related activities.

9  
10 (2)–(3) \* \* \*

11  
12 (b) \* \* \*

13  
14 (c) \* \* \*

15  
16 **§ 2031.270.**

17  
18 (a) The party demanding an inspection and the responding party may agree to  
19 extend the date for inspection or the time for service of a response to a set of  
20 inspection demands, or to particular items or categories of items in a set, to a  
21 date or dates beyond that those provided in Sections 2031.030, 2031.210,  
22 2031.260, and 2031.280.

23  
24 (b) This agreement may be informal, but it shall be confirmed in a writing that  
25 specifies the extended date for inspection or service of a response.

26  
27 (c) \* \* \*

28  
29 **§ 2031.280.**

30  
31 (a) \* \* \*

32  
33 (b) The documents shall be produced on the date specified in the inspection  
34 demand pursuant to Section 2031.030(c)(2), unless an objection has been  
35 made as to the date.

36  
37 ~~(b)~~ (c) If necessary, the responding party at the reasonable expense of the  
38 demanding party shall, through detection devices, translate any date  
39 compilations included in the demand into reasonably usable form.

**LEG06-01**  
**Civil Discovery: Objections and Responses**  
**(Code Civ. Proc., §§ 2030.240, 2031.210, 2031.240, and 2031.280)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Committee on Administration of Justice State Bar of California San Francisco	N/AM	Y	<p>The Committee on the Administration of Justice (CAJ) submits the following comments: ....</p> <ul style="list-style-type: none"> <li>• Response time clarification</li> </ul> <p>CAJ supports the proposed amendments to the statutes governing a response to an inspection demand that would explicitly provide for the date of the inspection. Although the requirement may already be implicit, an explicit provision would assist. To be consistent with the other statutory provisions that refer to the demand for “inspection,” the proposed language should be modified to refer to the date set for “inspection” instead of the date set for “production.”</p> <p>If the statutes are amended along the proposed lines, CAJ recommends that Code of Civil Procedure Section 2031.270(a) also be amended to provide explicitly that the parties may agree to extend the “date set for inspection” just as they can agree, under the current statute, to “extend the time for service of a response.”</p>	<p>The committee agreed that the amendments would be of assistance.</p> <p>The committee agreed that this additional amendment should be supported. It has added amendments to section 2031.270 to the proposal.</p>
2.	Ms. Janet Garcia	A	N	No comments.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles				
3.	Mr. Peter O’Glaessner President Association of Defense Counsel of Northern California and Nevada Sacramento	N/A	N	The Association of Defense Counsel of Northern California and Nevada (ADC) strongly disagrees with this proposed legislation, except for that portion of the legislation clarifying that documents must be produced on the date specified in the demand....	Only the portion of the legislation clarifying that documents must be produced on the date specified in the demand is being pursued at this time. It is anticipated that there will be future discussions regarding the other recommendations cited in the report.
4.	Mr. Thomas M. Holsinger Research Attorney Superior Court of California, County of Stanislaus Modesto	A	N	No comments.	No response required.
5.	Ms. Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	A	N	No comments.	No response required.
6.	Mr. Wayne Maire	N	Y	[Comments objected to the portion of the	[This portion is not being

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	President California Defense Counsel Sacramento			proposal regarding discovery objections.]	pursued at this time.]
7.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	No comments.	No response required.
8.	Ms. Kimberly Ringer Research Attorney Superior Court of California, County of Stanislaus Modesto	A	N	No comments.	No response required.
9.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego	A	Y	No additional comments.	No response required.