JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
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SUBJECT: Judicial Council–Sponsored Legislation on Electronic Discovery, Court Operations, and Bail Collection by the Franchise Tax Board (Code Civ. Proc., §§ 116.820, 1985.8, 2016.020, 2031.010–2031.060, 2031.210–2031.280, 2031.285, 2031.290–2031.320; Gov. Code, §§ 68085.1, 68565; Welf. & Inst. Code, § 903.1; Rev. & Tax. Code, § 19280 (Action Required)

Issue Statement

The Judicial Council sponsored legislation in 2008 dealing with electronic discovery and miscellaneous court operations matters. Unfortunately, the Governor vetoed these proposals. However, the Governor's veto of the electronic discovery proposal was not based on substantive concerns, and the veto of the court operations measure was related to a proposal not being recommended for reintroduction in 2009. The Governor's 2008 veto percentage was higher than that of any Governor in the past 40 years. Of the 415 bills vetoed, roughly one-third contained the following veto message:

> The historic delay in passing the 2008–2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time.

The electronic discovery legislation was one of those bills that received this veto message. The court operations matters proposed for reintroduction were not highlighted in the Governor's veto message as problematic. These provisions should be reintroduced in the 2009-2010 Legislative Session.

The Judicial Council also proposed legislation in 2008 clarifying that courts may refer unpaid bail amounts to the Franchise Tax Board Court-Ordered Debt Program for collection where bail is due and delinquent and the defendant has failed to appear. That bill was approved by the Legislature and signed by the Governor but was inadvertently chaptered out. This legislation also should be reintroduced in 2009.

Recommendation

The Policy Coordination and Liaison Committee and staff recommend the Judicial Council sponsor and resubmit the following proposals to the Legislature:

1. Electronic discovery;
2. Postjudgment fees in small claims proceedings;
3. Court Interpreter Advisory Panel membership—American Sign Language interpreters;
4. Reimbursement of the costs associated with providing minor's counsel in dependency cases; and
5. Collection of unpaid bail amounts by the Franchise Tax Board.

Rationale for Recommendation

Electronic discovery

The discovery of electronically stored information is an important part of civil discovery because a significant amount of information is currently stored in electronic form. However, California discovery law currently does not expressly address issues relating to the discovery of electronically stored information. To modernize the civil discovery law and improve the procedures for handling the discovery of electronically stored information, the Judicial Council, the Consumer Attorneys of California, and the California Defense Counsel cosponsored legislation in 2008 that was the end product of a two-year working group. The proposal was sent out for public comment, and a consensus proposal was approved by the Judicial Council for sponsorship in April 2008. (See report to the Judicial Council, dated April 16, 2008, which contains a detailed summary of the proposal: *www.courtinfo.ca.gov/jc/documents/reports/042508item4.pdf*.)

This proposal received no "no" votes in the Legislature. The Governor vetoed the bill but not on substantive grounds. This bill was one of 136 measures to receive the veto message stating that, because of the delay in the enactment of the 2008–2009 State Budget, the Administration signed only those bills that it deemed to be of the highest priority. Discussions with the Administration have made clear that such a veto message should not discourage the Judicial Council from pursuing the measure in 2009. The Judicial Council should, jointly with the Consumer Attorneys of California and the California Defense Counsel, again sponsor legislation in 2009 to amend the Code of Civil Procedure to expressly address issues relating to electronic discovery. The proposal would add sections 1985.8 and 2031.285 to the Code of Civil Procedure and amend Code

of Civil Procedure sections 2016.020, 2031.010–2031.060, 2031.210–2031.280, and 2031.290–2031.320.

The text of the proposed legislation is attached at pages 6–19.

Postjudgment fees in small claims proceedings
The Small Claims Act states that small claims judgments may be enforced like other judgments as provided in title 9 (commencing with section 680.010) of the Code of Civil Procedure. However, the act specifies postjudgment fees only with regard to the issuance of a writ of execution, an application for an order of examination of a judgment debtor, and an issuance of an abstract of judgment. The fee charged in such matters is the same as that charged for the enforcement of any civil judgment.

The act does not identify a fee for a variety of postjudgment motions that occur routinely in the enforcement of small claims judgments, including a motion opposing a claim of exemption and a motion to "reset," or continue, examination of a judgment debtor. Because these postjudgment motions are similar to motions for the enforcement of any other civil judgment, the fee for such a motion in a general civil case would also be the appropriate fee to be charged in small claims cases. As a result of the statute's lack of clarity, practices differ from court to court. The council sponsored legislation in 2008 to clarify that a court is authorized to charge the same fees for postjudgment motions related to the enforcement of a small claims judgment as that charged for the enforcement of a regular civil judgment under title 9. This provision was included in Assembly Bill 1873 (Lieu), which was vetoed by the Governor. The veto message attached to the bill expressed concern about a new fee for postponements in small claims cases but not about the postjudgment fees provision.

The text of the proposed legislation is attached at page 20.

Court Interpreters Advisory Panel membership—American Sign Language (ASL) interpreters
The Judicial Council has established the Court Interpreters Advisory Panel (CIAP) under Government Code section 68565 to assist the council in improving the availability and quality of interpreter services provided in California courts and promoting access both to spoken-language interpreters and interpreters for deaf or hearing impaired persons. However, the current definition of "court interpreter," for purposes of membership on this panel, excludes individuals who interpret for deaf or hearing impaired persons, thereby placing an unnecessary obstacle to the panel's performance of its duties. By including ASL interpreters in the definition of "court interpreters" the Judicial Council will be able to include a key provider of court services for an important segment of California's population. This provision was reviewed and approved by the union representing interpreters in the courts and was included in AB 1873 (Lieu), which was vetoed. As

noted above, the veto message did not relate to this provision. The Judicial Council should resubmit this proposal to clarify the membership of the CIAP.

The text of the proposed legislation is attached at page 21.

Minor's counsel costs
Current law (Welf. & Inst. Code, § 903.1) provides the ability to seek reimbursement for counsel provided to a child in either a juvenile delinquency or dependency action. The county is responsible for providing counsel in juvenile delinquency cases, but, since state trial court funding, the court is responsible for providing counsel in dependency cases. Because of the way the statute is currently worded, however, the courts cannot seek reimbursement for the costs they incur in providing the services in dependency cases. The proposed amendment will not affect the county's authority or collections in any way but will allow the court to seek reimbursement, in limited cases, for the services they provide. This provision was reviewed and approved by the California State Association of Counties and was included in AB 1873 (Lieu), which was vetoed. As noted above, the veto message did not relate to this provision. The Judicial Council should resubmit this proposal to clarify the courts' authority to obtain reimbursement for expenses related to the provision of dependency counsel.

The text of the proposed legislation is attached at page 22.

Collection of unpaid bail amounts
Currently, courts have explicit statutory authority to send unpaid bail amounts to the Franchise Tax Board's Tax Intercept Program (FTB-TIP), but the statute is silent regarding whether courts may send similar amounts to the Franchise Tax Board's Court-Ordered Debt Program (FTB-COD).[1] Both programs are intended to authorize courts to send cases to the Franchise Tax Board for collection, and there is no apparent basis (either in legislative history or court practice) for allowing certain debts to be collected by FTB-TIP but not FTB-COD. Most courts currently refer failure-to-appear (FTA) cases to either FTB-TIP or FTB-COD, and the amount owed as bail is collected by either program. Recently, however, some courts have questioned the statutory authority for sending FTA cases to the Franchise Tax Board. The Policy Coordination and Liaison Committee and staff believe the Legislature's intent was to permit courts to send FTA cases to either FTB-TIP or FTB-COD; an amendment to the statute authorizing referral to the FTB-COD program to collect unpaid bail amounts will clarify that intent. This amendment was included in AB 1389 (Committee on Budget), which was passed by the Legislature and signed by the Governor but was inadvertently chaptered out by the subsequent enactment of AB 2928 (Spitzer). Interestingly, because AB 1389 was urgency legislation that took effect immediately upon signing by the Governor and AB 2928 does

[1] Amounts collected by FTB-TIP are collected by intercepting an individual's tax refund. Amounts collected by FTB-COD are collected from wages or bank accounts.

not take effect until January 1, the Judicial Council–sponsored clarification is in effect from September 30 to December 31, 2008. The council should resubmit this proposal.

The text of the proposed legislation is attached at page 23.

Alternative Actions Considered
N/A

Comments From Interested Parties
N/A

Implementation Requirements and Costs
No implementation requirements or costs are associated with these proposed sections and amendments.

Attachments

Electronic Discovery

Code of Civil Procedure sections 1985.8 and 2031.285 would be added, and sections 2016.020, 2031.010–2031.060, 2031.210–2031.280, 2031.285, and 2031.290–2031.320 would be amended, to read:

§ 1985.8

(a) (1) A subpoena in a civil proceeding may require that electronically stored information, as defined in Section 2016.020, be produced and that the party serving the subpoena, or someone acting on the party's request, be permitted to inspect, copy, test, or sample the information.

(2) Any subpoena seeking electronically stored information shall comply with the requirements of this chapter.

(b) A party serving a subpoena requiring production of electronically stored information may specify the form or forms in which each type of information is to be produced.

(c) Unless the subpoenaing party and the subpoenaed party otherwise agree or the court otherwise orders, the following shall apply:

(1) If a subpoena requiring production of electronically stored information does not specify a form or forms for producing a type of electronically stored information, the person subpoenaed shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A subpoenaed person need not produce the same electronically stored information in more than one form.

(d) The subpoenaed person opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the person from whom discovery of electronically stored information is subpoenaed establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the subpoenaing party shows good cause, subject to any limitations imposed under subdivision (h).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the

discovery of the electronically stored information, including allocation of the expense of discovery.

(g) If necessary, the subpoenaed person, at the reasonable expense of the subpoenaing party, shall, through detection devices, translate any data compilations included in the subpoena into a reasonably usable form.

(h) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(i) If a subpoenaed person notifies the subpoenaing party that electronically stored information produced pursuant to a subpoena is subject to a claim of privilege or of protection as attorney work product, as described in Section 2031.285, the provisions of Section 2031.285 shall apply.

(j) A party serving a subpoena requiring the production of electronically stored information shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.

(k) An order of the court requiring compliance with a subpoena issued under this section shall protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(l) (1) Absent exceptional circumstances, the court shall not impose sanctions on a subpoenaed person or any attorney of a subpoenaed person for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good-faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

§ 2016.020

As used in this title:

(a)–(c) * * *

(d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) "Electronically stored information" means information that is stored in an electronic medium.

§ 2031.010

(a) Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by inspecting*, copying, testing, or sampling* documents, tangible things, ~~and~~ land or other property ~~that are~~*, and electronically stored information* in the possession, custody, or control of any other party to the action.

(b)–(d) * * *

(e) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect, copy, test, or sample electronically stored information in the possession, custody, or control of the party on whom the demand is made.

§ 2031.020

(a) A defendant may make a demand for inspection*, copying, testing, or sampling* without leave of court at any time.

(b) A plaintiff may make a demand for inspection*, copying, testing, or sampling* without leave of court at any time that is 10 days after the service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.

(c) Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make a demand for inspection*, copying, testing, or sampling* without leave of court at any time that is five days after service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make ~~an inspection~~ a demand *for inspection, copying, testing, or sampling* at an earlier time.

§ 2031.030

(a) *(1)* A party demanding ~~an~~ inspection*, copying, testing, or sampling* shall number each set of demands consecutively.

(2) A party demanding inspection, copying, testing, or sampling of electronically stored information may specify the form or forms in which each type of electronically stored information is to be produced.

(b) * * *

(c) Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

(1) Designate the documents, tangible things, ~~or~~ land or other property*, or electronically stored information* to be inspected*, copied, tested, or sampled* either by specifically describing each individual item or by reasonably particularizing each category of item.

(2) Specify a reasonable time for the inspection*, copying, testing, or sampling* that is at least 30 days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date. In an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the demand shall specify a reasonable time for the inspection*, copying, testing, or sampling* that is at least five days after service of the demand, unless the court, for good cause shown, has granted leave to specify an earlier date.

(3) Specify a reasonable place for making the inspection, copying, *testing, or sampling* and performing any related activity.

(4) Specify any *inspection, copying, testing, sampling, or* related activity that is being demanded ~~in addition to an inspection and copying~~, as well as the manner in which that ~~related~~ activity will be performed, and whether that activity will permanently alter or destroy the item involved.

§ 2031.040

The party ~~demanding an~~ *making a demand for* inspection*, copying, testing, or sampling* shall serve a copy of the ~~inspection~~ demand on the party to whom it is directed and on all other parties who have appeared in the action.

§ 2031.050

(a) In addition to the ~~inspection~~ demands *for inspection, copying, testing, or sampling* permitted by this chapter, a party may propound a supplemental demand to inspect*, copy, test, or sample* any later acquired or discovered documents, tangible things, ~~or~~ land or other property ~~that are~~*, or electronically stored information* in the possession, custody, or control of the party on whom the demand is made.

(b) A party may propound a supplemental ~~inspection~~ demand *for inspection, copying, testing, or sampling* twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010), once after the initial setting of a trial date.

(c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental demands for inspection*, copying, testing, or sampling*.

§ 2031.060

(a) When an inspection*, copying, testing, or sampling* of documents, tangible things, ~~or~~ places*, or electronically stored information* has been demanded, the party to whom the demand has been directed, and any other party or affected person or organization, may promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That all or some of the items or categories of items in the ~~inspection~~ demand need not be produced or made available at all.

(2) That the time specified in Section 2030.260 to respond to the set of ~~inspection~~ demands, or to a particular item or category in the set, be extended.

(3) That the place of production be other than that specified in the ~~inspection~~ demand.

(4) That the inspection*, copying, testing, or sampling* be made only on specified terms and conditions.

(5)–(6) * * *

(c) The party or affected person who seeks a protective order regarding the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(d) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f).

(e) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(f) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

~~(c)~~ *(g)* If the motion for a protective order is denied in whole or in part, the court may order that the party to whom the demand was directed provide or permit the discovery against which protection was sought on terms and conditions that are just.

~~(d)~~ *(h) Except as provided in subdivision (i), the* ~~The~~ court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i) (1) Notwithstanding subdivision (h) and absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good-faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

§ 2031.210

(a) The party to whom ~~an~~ *a demand for* inspection ~~demand~~*, copying, testing, or sampling* has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection*, copying, testing, or sampling* by the date set for *the* inspection*, copying, testing, or sampling* pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A representation that the party lacks the ability to comply with the demand for inspection*, copying, testing, or sampling* of a particular item or category of item.

(3) An objection to the particular demand *for inspection, copying, testing, or sampling*.

(b)–(c) * * *

(d) If a party objects to the discovery of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the responding party will not search the source in the absence of an agreement with the demanding party or a court order, the responding party shall identify in its response the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that is not reasonably accessible, the responding party preserves any objections it may have relating to that electronically stored information.

§ 2031.220

A statement that the party to whom ~~an inspection~~ *demand for inspection, copying, testing, or sampling* has been directed will comply with the particular demand shall state that the production, inspection, *copying, testing, or sampling,* and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded

category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.

§ 2031.230

A representation of inability to comply with the particular demand for inspection, *copying, testing, or sampling* shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

§ 2031.240

(a) If only part of an item or category of item in ~~an inspection~~ a demand *for inspection, copying, testing, or sampling* is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.

(b) If the responding party objects to the demand for inspection*, copying, testing, or sampling* of an item or category of item, the response shall do both of the following:

(1) Identify with particularity any document, tangible thing, ~~or~~ land*, or electronically stored information* falling within any category of item in the demand to which an objection is being made.

(2) * * *

§ 2031.250

(a) The party to whom the demand for inspection*, copying, testing, or sampling* is directed shall sign the response under oath unless the response contains only objections.

(b)–(c) * * *

§ 2031.260

(a) Within 30 days after service of ~~an inspection~~ *a* demand *for inspection, copying, testing, or sampling,* the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the

demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom ~~an inspection~~ *a* demand *for inspection, copying, testing, or sampling* is directed shall have at least five days from the date of service of the demand to respond, unless on motion of the party making the demand, the court has shortened the time for the response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

§ 2031.270

(a) The party demanding ~~an~~ inspection*, copying, testing, or sampling* and the responding party may agree to extend the date for *the* inspection*, copying, testing, or sampling,* or the time for service of a response to a set of ~~inspection~~ demands, or to particular items or categories of items in a set, to a date or dates beyond those provided in Sections 2031.030, 2031.210, 2031.260, and 2031.280.

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

(c) * * *

§ 2031.280

(a) Any documents produced in response to ~~an inspection~~ *a* demand *for inspection, copying, testing, or sampling* shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand.

(b) The documents shall be produced on the date specified in the ~~inspection~~ demand pursuant to paragraph (2) of subdivision (c) of Section 2031.030, unless an objection has been made to that date. If the date for inspection has been extended pursuant to Section 2031.270, the documents shall be produced on the date agreed to pursuant to that section.

(c) If a party responding to a demand for production of electronically stored information objects to a specified form for producing the information, or if no form is specified in the demand, the responding party shall state in its response the form in which it intends to produce each type of information.

(d) Unless the parties otherwise agree or the court otherwise orders, the following shall apply:

(1) If a demand for production does not specify a form or forms for producing a type of electronically stored information, the responding party shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

~~(c)~~ *(e)* If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form.

§ 2031.285

(a) If electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(b) After being notified of a claim of privilege or of protection under subdivision (a), a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim.

(c) (1) Prior to the resolution of the motion brought under subdivision (d), a party shall be precluded from using or disclosing the specified information until the claim of privilege is resolved.

(2) A party who received and disclosed the information before being notified of a claim of privilege or of protection under subdivision (a) shall, after that notification, immediately take reasonable steps to retrieve the information.

(d) (1) If the receiving party contests the legitimacy of a claim of privilege or protection, he or she may seek a determination of the claim from the court by making a motion within 30 days of receiving the claim and presenting the information to the court conditionally under seal.

(2) Until the legitimacy of the claim of privilege or protection is resolved, the receiving party shall preserve the information and keep it confidential and shall be precluded from using the information in any manner.

§ 2031.290

(a) The ~~inspection~~ demand *for inspection, copying, testing, or sampling* and the response to it shall not be filed with the court.

(b) The party demanding an inspection*, copying, testing, or sampling* shall retain both the original of the ~~inspection~~ demand, with the original proof of service affixed to it, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

§ 2031.300

If a party to whom ~~an inspection~~ *a* demand *for inspection, copying, testing, or sampling* is directed fails to serve a timely response to it, the following rules *shall* apply:

(a) The party to whom the ~~inspection~~ demand *for inspection, copying, testing, or sampling* is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1)–(2) * * *

(b) The party making the demand may move for an order compelling response to the ~~inspection~~ demand.

(c) *Except as provided in subdivision (d), the* court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to ~~an inspection~~ *a* demand *for inspection, copying, testing, or sampling,* unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(d) (1) Notwithstanding subdivision (c) and absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good-faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

§ 2031.310

(a) On receipt of a response to ~~an inspection~~ *a* demand *for inspection, copying, testing, or sampling*, the *demanding* party ~~demanding an inspection~~ may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:

(1)–(3) * * *

(b) A motion under subdivision (a) shall comply with both of the following:

(1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the ~~inspection~~ demand.

(2) * * *

(c) Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the ~~inspection~~ demand.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the party or affected person objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (g).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(g) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

~~(d)~~ *(h) Except as provided in subdivision (j), the* court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to ~~an inspection~~ *a* demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

~~(e)~~ (*i) Except as provided in subdivision (j), if* a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(j) (1) Notwithstanding subdivisions (h) and (i) and absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good-faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

§ 2031.320

(a) If a party filing a response to a demand for inspection*, copying, testing, or sampling* under ~~Section~~ *Sections* 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter

fails to permit the inspection*, copying, testing, or sampling* in accordance with that party's statement of compliance, the *demanding* party ~~demanding the inspection~~ may move for an order compelling compliance.

(b) *Except as provided in subdivision (d), the* court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with ~~an inspection~~ *a* demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(c) *Except as provided in subdivision (d), if* a party then fails to obey an order compelling inspection*, copying, testing, or sampling*, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(d) (1) Notwithstanding subdivisions (b) and (c) and absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good-faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

Postjudgment fees in small claims proceedings

Code of Civil Procedure section 116.820 would be amended to read:

§ 116.820

(a) * * *

(b) ~~The fees specified in subdivision (a) of Section 70626 of the Government Code shall be charged and collected by the clerk for the issuance of a writ of execution, or an abstract of judgment. The fee specified in Section 70617 of the Government Code shall be charged for an application for an order of examination of a judgment debtor.~~ *The clerk of the court shall charge and collect all fees associated with the enforcement of judgments under Title 9*. The clerk shall immediately deposit all the fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts. The money shall be remitted to the State Treasury under rules adopted by, or trial court financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The Controller shall distribute the fees to the Trial Court Trust Fund as provided in Section 68085.1 of the Government Code.

(c) * * *

Court Interpreter Advisory Panel membership—American Sign Language interpreters
Government Code section 68565 would be amended to read:

§ 68565

(a) The Judicial Council may establish a court interpreters advisory panel to assist the council in performing its duties under this article. The panel shall include a majority of court interpreters and may include judges and court administrators, members of the bar, and others interested in interpreter services in the courts. The panel shall develop operating guidelines and procedures for Judicial Council approval.

(b) The panel shall seek the advice of judges, attorneys, court administrators, court interpreters, providers of legal services, and individuals and organizations representing the interests of foreign language users.

(c) Panel members shall receive no compensation for their services but shall be allowed necessary expenses for travel, board, and lodging incurred in the discharge of their duties under the rules adopted by the California Victim Compensation and Government Claims Board.

(d) Notwithstanding section 68560.5(b), for purposes of subdivision (a) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or persons shall be included in the definition of court interpreter.

Minor's counsel costs

Government Code section 68085.1 and Welfare and Institutions Code section 903.1 would be amended to read:

§ 68085.1

(a) This section applies to all fees and fines that are collected on or after January 1, 2006, under all of the following:

(1)–(8) * * *

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, ~~and~~ Section 1513.1 of the Probate Code, *and Section 903.1 of the Welfare and Institutions Code*, if the reimbursement is for expenses incurred by the court.

(10) * * *

(b)–(k) * * *

§ 903.1

(a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the cost to the county *or to the cour*t of legal services rendered to the minor by ~~the public defender or other public~~ an attorney pursuant to an order of the juvenile court, ~~or for the cost to the county for the legal services rendered to the minor by an attorney in private practice appointed pursuant to an order of the juvenile court,~~ *whichever entity incurred the expenses*. The father, mother, spouse, or other person liable for the support of a minor and the estate of that person shall also be liable for any cost to the county *or to the court* of legal services rendered directly to the father, mother, or spouse, of the minor or any other person liable for the support of the minor, in a dependency proceeding by ~~the public defender or other public~~ *an* attorney appointed pursuant to an order of the juvenile court~~, or by an attorney in private practice appointed pursuant to order of the juvenile court~~. The liability of those persons (in this article called relatives) and estates shall be a joint and several liability.

(b) * * *

Collection of unpaid bail amounts

Revenue and Taxation Code section 19280 would be amended to read:

§ 19280

(a) (1) Fines, state or local penalties, *bail*, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars ($100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon,

including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).