



# NEWS RELEASE

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JUDICIAL COUNCIL OF  
CALIFORNIA  
ADMINISTRATIVE OFFICE  
OF THE COURTS  
Public Information Office  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

415-865-7740

Lynn Holton  
Public Information Officer

## **Judicial Council Votes to Sponsor Legislation on Electronic Discovery**

San Francisco – By a unanimous vote, the Judicial Council of California today approved proposed legislation that would modernize civil discovery law and improve the procedures for handling the discovery of electronically stored information in California civil cases.

The discovery of electronically stored information is an issue of growing importance because a significant amount of information is now stored electronically rather in traditional paper form.

However, California's Code of Civil Procedure does not currently address this issue. The proposed legislation is designed to include new e-discovery provisions that will be integrated into the framework of the state's civil discovery law.

A draft of the proposed e-discovery legislation was circulated widely for comment among judicial officers, attorney organizations, business groups, and others. The comments were carefully considered and some significant changes have been made to the version of the proposal that was circulated for comment.

The proposed Judicial Council-sponsored legislation will amend California's Civil Discovery Act to expressly authorize the discovery of electronically stored information. The amended act will authorize the copying, testing, and sampling of such information.

Also, under the proposed legislation, a party may specify the form in which electronically stored information is to be produced. A responding party may object and indicate the form in which it intends to produce the information. A party will not need to produce the same electronically stored information in more than one form.

The proposed legislation will establish procedures for motions to compel and motions for protective orders relating to the discovery of electronically stored information. The legislation also will establish a procedure for handling disputes over the production of electronically

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stored information that is subject to claims of privilege or attorney work-product protection.

Finally, several sanctions statutes in the Civil Discovery Act will be amended to include "safe harbor" provisions. These will provide that, "absent exceptional circumstances, the court shall not impose sanctions on a party or its attorneys for failure to provide electronically stored information lost, damaged, altered, or overwritten as a result of the routine, good-faith operation of an electronic information system." However, these safe harbor provisions "shall not be construed to alter any obligation to preserve discoverable information."

The Judicial Council will cosponsor the legislation with the Consumer Attorneys of California and the California Defense Counsel. Assembly Member Noreen Evans has agreed to author the legislation. Assembly Bill 926 will be used for this purpose. AB 926 is currently pending in the Senate Judiciary Committee. The report is available at [www.courtinfo.ca.gov/jc/documents/reports/042508item4.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/042508item4.pdf).

## OTHER ACTIONS

The Judicial Council today took other actions, including the following:

**Judicial Branch Planning:** The council adopted a revised three-year operational plan. The plan represents a concerted effort by the council and other judicial branch stakeholders to establish high-priority objectives and desired outcomes for achieving the six overarching goals and 53 policies of *Justice in Focus: The Strategic Plan for California's Judicial Branch*, adopted by the council in December 2006.

**Court Interpreters Testing Standards:** The council approved a report by the Court Interpreters Advisory Panel that recommends (1) the adoption of specific knowledge, skills, and abilities (KSAs) as the essential standards for court interpreter certification and registration; (2) the approval of oral bilingual proficiency screening for candidates in designated languages and in nondesignated languages whenever possible; and (3) prioritization of the development of any new exams according to language use in the court and need. These changes are designed to ensure uniform statewide standards and excellence of service for the growing number of court users who require court interpretation.

**Deadline for Court Interpreters:** The council approved a recommendation by the Court Interpreters Advisory Panel that the February 1, 2009, grace period for registered interpreters of Eastern and Western Armenian, Mandarin, and Russian to become certified be modified to allow a one-year exemption (to February 1, 2010) for those interpreters who meet certain conditions, including participation in test preparation training and sitting for the certification exam.

**Trial Court Facilities:** The council approved the adoption of an updated Trial Court Capital-Outlay Plan, reflecting projects now already funded and those planned to start in the near future. The updated plan will be incorporated into the Judicial Branch AB 1473 Five-Year Infrastructure Plan for FY 2009–2010.

*The Judicial Council is the policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts carries out the official actions of the council and promotes leadership and excellence in court administration.*