

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR13-12

Title	Action Requested
Civil Practice and Procedure: Clerk's Addition of Interest to Judgments	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.1802	January 1, 2014
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

This proposal would amend Cal. Rules of Court, rule 3.1802, which currently provides that a clerk must include in a judgment any interest awarded by a court *and* the interest accrued since the entry of the verdict. The proposal deletes the latter provision because it is ambiguous in light of Code of Civil Procedure section 685.020 (interest commences to accrue on a judgment from date of entry of judgment).

The Proposal

The proposal amends Cal. Rules of Court, rule 3.1802¹, to delete the provision that a clerk must add interest to a judgment accruing from the time of verdict. Because rule 3.1802 mandates a ministerial action to be taken by a clerk, it should be particularly clear and unambiguous. This proposal is intended to remove any ambiguity caused by the provision that a clerk must include in a judgment the interest accruing from the time of verdict. The rule will continue to provide that a clerk is to include in a judgment any interest awarded by the court.

The Judicial Council adopted rule 3.1802 in 1987. At the same time it adopted a series of rules and forms for claiming and contesting prejudgment costs, which the council was mandated to adopt by the Legislature in an act that reorganized the provisions in the Civil Code and Code of Civil Procedure relating to costs. The rule was developed in response to a comment on the proposed rules regarding costs. This comment noted that the reorganization of the statutes had

¹ All further references to rules are to California Rules of Court unless otherwise indicated.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

included the repeal of the provisions in Code of Civil Procedure section 1033 which provided that interest be included in a judgment.²

The rule-making history does not include any discussion of what kinds of interest (continuing prejudgment interest, post-verdict interest based on a fixed amount of damages, or what is now regularly thought of as postjudgment interest) the rule was meant to address. The fact that it was intended to replace the recently repealed provision of Code of Civil Procedure section 1033 cited above, however, can lead to an interpretation that the rule was intended to provide that a clerk must calculate and add to any judgment—whether arising from liquidated or unliquidated damages—interest at the legal rate which accrues between verdict and judgment. Such a result, however, appears to be inconsistent with Code of Civil Procedure section 685.020(a), which provides that post-judgment interest commences on entry of judgment.

At least two recent appellate decisions have discussed objections to the rule on the ground that rule 3.1802 was inconsistent with statute and both found that it was *not*, but each decision was based on somewhat different interpretations of the provision.

- The Sixth Appellate District of the Court of Appeals, in *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 532-33, disagreed with the contention that under rule 3.1802 interest should accrue before the date of entry of judgment, stating that such an interpretation of the rule would be inconsistent with the provision in Code of Civil Procedure section 685.020(a). That court therefore construed the rule as directing the clerk to calculate only the continuation of any prejudgment interest that may have been awarded by the court, calculating the amount from the date of the verdict through the date of the judgment. The court noted that postjudgment interest on the award would not commence to accrue until the date of the entry of judgment.
- The Second Appellate District of the Court of Appeal rejected a defendant's objection that rule 3.1802 conflicted with Code of Civil Procedure section 685.020(a) in *Holdgrafer v. Unocal Corp.*, (2008) 160 Cal.App.4th 907, 935 on two different grounds. First, the appellate court noted that the same argument had been expressly rejected in *Ehret v. Congoleum Corp.*, 87 Cal.App.4th 202 (2001).³ Second, the appellate court held

² At that time, the pertinent part of the recently repealed section 1033 read as follows:

The clerk or judge shall include in the judgment, or any part of a judgment, entered up by him based upon a cause of action in contract where the claim was unliquidated, interest on the verdict or decision of the court from the date prior to the entry of judgment as may have been fixed by the court pursuant to subdivision (b) of Section 3287 of the Civil Code, and the costs, if the same have been taxed or ascertained. In any other case, **and where the court determines that interest should not be recovered from a date prior to the entry of judgment under subdivision (b) of Section 3287 of the Civil Code, the clerk or judge shall include in the judgment entered up by him, any interest on the verdict or decision of the court, from the time it was rendered or made**, and the costs, if the same have been taxed or ascertained. [Emphasis added.]

³ It should be noted, however, that in *Ehret v. Congoleum Corp.*, the issue was not whether interest accrues between verdict and judgment, but whether interest ran from the date of entry of the *original* judgment, or from the date of entry of judgment following remittitur after the first appeal. The appellate court held that post-judgment interest runs

that because the trial court had found that the damages were fixed at the time the jury's verdict was entered, it was valid for the trial court to determine that interest was to accrue beginning at that point under Civil Code section 3287 and thus, on that ground also, rule 3.1802 was consistent with statute.

The conflicts between the interpretations of rule 3.1802 in *Pellegrini*—that the provision mandating that a clerk add interest accrued from verdict to judgment applies only to the continuation of any prejudgment interest that has been awarded—and *Holdgrafer*—that the provision applies to interest that accrues immediately post-verdict because the amount of damages is fixed at that time—result in ambiguity as to exactly what a clerk is to do under the rule.

Moreover, while interpreting the rule in different ways, both the *Pellegrini* and *Holdgrafer* opinions interpret the rule as addressing some kind of *prejudgment* interest. However, even in cases in which it is clear that a party is entitled to prejudgment interest (which is not true in all cases), the award of such interest is not automatic. (See *North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824, 829.) A request for such interest must be made to the trial court, as an element of damages requested before judgment or in a motion for new trial. (*Id.* at 829-830.) Current rule 3.1802, however, could be interpreted as mandating a clerk to include this prejudgment interest in *all* cases, without any request by a party or any decision by the court on the issue.

Because of this ambiguity in the rule, the advisory committee recommends that the provision providing that a clerk must include in a judgment “the interest accrued since the entry of the verdict” be stricken, leaving in place the provision that the clerk must add to the judgment interest awarded by the court. Eliminating the language from the rule of court would not preclude a court from awarding prejudgment, post-verdict interest in appropriate cases, and would not run afoul of any statutes or case law.

Alternatives Considered

The advisory committee considered the alternative of taking no action and leaving the rule as is. However, the group concluded that the rule as it stands is not sufficiently clear as to what ministerial action a clerk is to take regarding prejudgment interest.

Implementation Requirements, Costs, and Operational Impacts

The proposed rule amendment may require a one-time cost to train clerks and judicial officers regarding the clarification of the rule, but would have no ongoing financial or operational impact on the courts.

from the date of the original *judgment*. The *Ehret* court's analysis of section 685.020 and repealed section 1033 concerned that issue; it did not concern whether interest should be computed from date of entry of the verdict as opposed to entry of judgment. In fact, the *Ehret* court noted, in dicta, that the language of the rule of court deviated from the operative statute, but the court concluded that the deviation was immaterial because original judgment was entered on the same day as the verdict.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

Proposed rule 3.1308, at page 5

Rules 3.1308 of the California Rules of Court would be amended, effective January 1, 2014 , to read:

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Title 3. Civil Rules

Division 18. Judgments

Rule 3.1802. Inclusion of Interest in Judgment

The clerk must include in the judgment any interest awarded by the court ~~and the interest accrued since the entry of the verdict.~~