

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR13-11

Title	Action Requested
Civil Practice and Procedure: Discovery Motions	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 3.1112 and 3.1345	January 1, 2014
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Executive Summary and Origin

This proposal would streamline the separate statement required for discovery motions. California Rules of Court, rule 3.1345, requires that most discovery motions contain a separate statement that includes, among other things, “[a] statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute.” Because the rule also prohibits any incorporation of material by reference, it often results in separate statements that contain duplicative and repetitive content, with the same legal and factual arguments repeated for multiple discovery requests. This proposal, which was developed at the suggestion of a member of the advisory committee, would eliminate unnecessary repetitiveness, resulting in shorter and more concise motion papers for parties and courts to review.

The Proposal

This proposal would amend California Rules of Court, rule 3.1345,¹ which governs discovery motions and requires all such motions to be accompanied by separate statements. The proposal would amend subdivision (c) to eliminate its general prohibition on incorporating any material in the separate statement by reference and to allow incorporation by reference of (1) responses to discovery requests identical to others set out in the separate statement, and (2) the factual and legal reasons for compelling responses if identical to the reasons included elsewhere in the separate statement.

¹ All further references to rules are to the California Rules of Court.

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 These proposals are circulated for comment purposes only.

All discovery motions require detailed factual and legal statements and arguments in two different documents: the memorandum and the separate statement. Streamlining the requirements of the separate statement by allowing incorporation by reference within that document would reduce the quantity of papers to be filed while still providing in the statement the complete information needed for the responding party to prepare opposition papers and the judge to decide the motion. This proposal is intended to provide cost savings and efficiencies by reducing the length of papers filed and served and reviewed by a judicial officer and opposing parties.

The advisory committee also recommends a technical correction to rule 3.1112(a), which provides that papers filed in support of a motion must include a memorandum. Because motions under rule 3.1114 do not require a memorandum, rule 3.1112(a) should be amended to make an exception for these motions. Motions listed in rule 3.1114 are motions, applications, and petitions filed on Judicial Council forms. Current rule 3.1113 already provides that motions listed in rule 3.1114 do not require a memorandum, but this exception was not carried over to rule 3.1112.

Alternatives Considered

The committee considered several alternatives.

- Initially, the committee considered and rejected eliminating the requirement of a memorandum under rule 3.1112 for discovery motions while retaining the detailed requirements for a separate statement in rule 3.1345(c). Most members concluded that a memorandum was the superior means for providing legal arguments in many circumstances, such as in discussing the attorney-client privilege.
- The committee next considered recommending repealing rule 3.1345 altogether, leaving discovery motions to be governed by the general rule for motions, rule 3.1112. The committee concluded, however, that amending rule 3.1345 to streamline its requirements would be preferable and could achieve the goal of reducing redundancy in discovery motions.
- In deciding how to streamline the requirements for the separate statement, in addition to the amendment ultimately recommended, the committee separately considered alternative amendments that would:
 - Eliminate all legal and factual reasoning from the separate statement, requiring that it contain only the discovery requests and responses at issue.
 - Permit grouping of two or more discovery requests for which the factual and legal reasons for compelling responses are common.

The committee ultimately rejected these alternatives because some members strongly value the benefits of having a separate statement that contains for each discovery request at issue all the information necessary to make a decision about that request or the response made to it, without having to refer to another document to review the pertinent

legal or factual arguments. Similarly, the committee did not favor the amendments that would permit grouping because, in their experience, by the time of the hearing on a discovery motion, disputes about some responses would often be resolved, and if requests were grouped, it would be more difficult to locate within the separate statement the reasons for compelling the remaining responses.

In addition, the committee considered recommending no change to the rules, leaving the potential for duplicative arguments in the separate statement. Some members opined that the proposed amendment will provide only modest benefits, but ultimately the committee concluded that it would be beneficial and recommends that it be circulated for comment.

Implementation Requirements, Costs, and Operational Impacts

The proposal should not result in significant costs or place operational burdens on the courts. Rather, the proposed amendments should result in cost and time savings with parties' filing shorter and more concise papers relating to discovery motions.

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?
- Does the proposal go far enough in eliminating redundancy in papers that must be filed in support of a discovery motion? Would one of the other alternatives considered be more beneficial to courts or parties?

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 California Rules of Court, rules 3.1112 and 3.1345, at pages 4–6

Rules 3.1112 and 3.1345 of the California Rules of Court would be amended, effective January 1, 2014, to read:

1 **Division 11. Law and Motion**

2
3 **Chapter 2. Format of Motion Papers**

4
5
6 **Rule 3.1112. Motions—and other pleadings**

7
8 **(a) Motions required papers**

9
10 Unless otherwise provided by the rules in this division, the papers filed in support of a
11 motion must consist of at least the following:

12
13 (1)–(2) * * *

14
15 (3) A memorandum in support of the motion or demurrer, except for a motion listed in
16 rule 3.1114.

17
18 **(b)–(f) * * ***

19
20 **Chapter 6. Particular Motions**

21
22 **Article 4. Discovery Motions**

23
24
25 **Rule 3.1345. Format of discovery motions**

26
27 **(a) Separate statement required**

28
29 Any motion involving the content of a discovery request or the responses to such a request
30 must be accompanied by a separate statement. The motions that require a separate
31 statement include a motion:

32
33 (1) To compel further responses to requests for admission;

34
35 (2) To compel further responses to interrogatories;

36
37 (3) To compel further responses to a demand for inspection of documents or tangible
38 things;

- 1
2 (4) To compel answers at a deposition;
3
4 (5) To compel or to quash the production of documents or tangible things at a
5 deposition;
6
7 (6) For medical examination over objection; and
8
9 (7) For issue or evidentiary sanctions.

10
11 **(b) Separate statement not required**

12
13 A separate statement is not required when no response has been provided to the request for
14 discovery.

15
16 **(c) Contents of separate statement**

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18 A separate statement is a separate document filed and served with the discovery motion
19 that provides ~~all the information necessary to understand each discovery request and all the~~
20 ~~responses to it that are at issue~~ the factual and legal reasons for compelling further
21 responses, answers, or production as to each matter in dispute. ~~The separate statement must~~
22 ~~be full and complete so that no person is required to review any other document in order to~~
23 ~~determine the full request and the full response. Material must not be incorporated into the~~
24 ~~separate statement by reference.~~ The separate statement may incorporate by reference the
25 factual and legal reasons for compelling responses, answers, or production to particular
26 discovery requests if those reasons are identical to the reasons for compelling responses,
27 answers, or production to other discovery requests included elsewhere in the separate
28 statement. The separate statement must also include—for each discovery request (e.g.,
29 each interrogatory, request for admission, deposition question, or inspection demand) to
30 which a further response, answer, or production is requested—the following:

- 31
32 (1) The text of the request, interrogatory, question, or inspection demand;
33
34 (2) The text of each response, answer, or objection, and any further responses or
35 answers, except that those that are identical need not be repeated and may be
36 incorporated by reference;
37
38 ~~(3) A statement of the factual and legal reasons for compelling further responses,~~
39 ~~answers, or production as to each matter in dispute;~~
40
41 (4)(3) If necessary, the text of all definitions, instructions, and other matters required to
42 understand each discovery request and the responses to it; and
43

1 ~~(5)~~(4) If the response to a particular discovery request is dependent on the response given
2 to another discovery request, or if the reasons a further response to a particular
3 discovery request is deemed necessary are based on the response to some other
4 discovery request, the other request and the response to it must be set forth; ~~and,~~

5
6 ~~(6) — If the pleadings, other documents in the file, or other items of discovery are relevant~~
7 ~~to the motion, the party relying on them must summarize each relevant document.~~

8
9 **(d) Identification of interrogatories, demands, or requests**

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11 A motion concerning interrogatories, inspection demands, or admission requests must
12 identify the interrogatories, demands, or requests by set and number.
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