

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W11-03

Title	Action Requested
Civil Motions: Lodging of Copies of Authorities	Review and submit comments by January 24, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.1113	July 1, 2011
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne M. Ronan, Office of General Counsel, 415-865-8933, anne.ronan@jud.ca.gov

Summary

Rule 3.1113(i) of the California Rules of Court currently mandates that if any non-California authority or new California case not yet published in the Official Reports is cited in papers supporting or opposing a motion in a civil action, a copy of the authority must be provided to the court along with the papers that cite it. To eliminate the waste of resources caused by filing unnecessary papers, the proposed amendment would eliminate this mandate except when a judicial officer has directed parties to provide paper copies. This proposal is being recirculated for public comment with modifications to reflect comments received in response to a prior proposal.

Discussion

Rule 3.1113(i) of the California Rules of Court currently requires parties who cite any non-California cases, statutes, constitutional provisions, or state or local rules in memoranda filed in civil law and motion matters to lodge paper copies of those authorities with the court. Parties are also required to lodge copies of California cases that have not yet been published in the advance sheets of the Official Reports. While these authorities may be important to the court's consideration of the case, courts can obtain such authorities online, making the provision of paper copies generally unnecessary. In addition, recent California cases are posted on the California Courts web site at www.courtinfo.ca.gov. This proposal would eliminate the requirement to provide paper copies except when expressly directed by a judicial officer.

The requirement of providing paper copies in all cases is contrary to the judicial branch's goal of reducing unnecessary consumption of paper, as evidenced by the rules requiring use of recycled

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paper and standard 10.5 of the California Standards of Judicial Administration requiring courts to take part in waste reduction programs. In addition to wasting resources, this practice imposes an additional burden on court staff, who must lodge, distribute, and sometimes even scan potentially large quantities of unneeded paper.

A proposed amendment to the rule, originally circulated in spring 2010, left in place the mandate for lodging paper copies of authorities as the general rule, but provided an exception to allow judicial officers the discretion to lift the mandate. While none of the commentators objected to the exception that permitted a judge to waive the lodging of paper copies, several commentators objected that the proposal did not go far enough. They asserted that the default rule should be, as the committee now recommends in this proposal, that no paper copies are required, and that a party will have to lodge paper copies only if the judicial officer expressly requires it. This change would save resources and relieve court staff from processing stacks of papers not needed by the court.

The proposed amendment does not specify by what method a court may require that paper copies be provided. The committee is not proposing that a court order must issue in all such cases, but rather leaves the method of communicating any requirement for paper copies to the individual courts. The committee envisioned several possible means of communicating such a requirement, including discussions at a case management conference, adoption of local rules identifying departments in which copies are required, and telephonic requests to the parties following the filing of papers on a particular motion.

In addition to comments on this particular proposal, comments are requested on the following:

- Whether the rule should be retained as it currently exists, with paper copies always required;
- Whether the proposed rule circulated in Spring 2010, which left in place the requirement for lodging paper copies unless a judicial officer lifted the requirement, would be preferable;
- Whether the rule should include a provision that requires a party to provide paper copies to other parties upon request, even if paper copies are not required by the court;
- Whether the rule should, in addition to the current Advisory Committee Note referring to the rule regarding format of citations, expressly provide how a party should cite authorities of the type covered by the rule and, if so, what that provision should state;
- Whether the rule should state specifically that a court may, by local rules, require paper copies to be lodged in all civil proceedings in a particular department.

Rule 3.1113 of the California Rules of Court would be amended, effective July 1, 2011, to read as follows:

Title 3. Civil Rules

Division 11. Law and Motion

Chapter 2. Format of Motion Papers

Rule 3.1113. Memorandum

(a) Memorandum in support of motion

A party filing a motion, except for a motion listed in rule 3.1114, must serve and file a supporting memorandum. The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial and, in the case of a demurrer, as a waiver of all grounds not supported.

(b) Contents of memorandum

The memorandum must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.

(c) Case citation format

A case citation must include the official report volume and page number and year of decision. The court must not require any other form of citation.

(d) Length of memorandum

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 15 pages. In a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

(e) Application to file longer memorandum

A party may apply to the court ex parte but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application must state reasons why the argument cannot be made within the stated limit.

Rule 3.1113 of the California Rules of Court would be amended, effective July 1, 2011, to read as follows:

1 **(f) Format of longer memorandum**

2
3 A memorandum that exceeds 10 pages must include a table of contents and a table
4 of authorities. A memorandum that exceeds 15 pages must also include an opening
5 summary of argument.

6
7 **(g) Effect of filing an oversized memorandum**

8
9 A memorandum that exceeds the page limits of these rules must be filed and
10 considered in the same manner as a late-filed paper.

11
12 **(h) Pagination of memorandum**

13
14 Notwithstanding any other rule, a memorandum that includes a table of contents
15 and a table of authorities must be paginated as follows:

- 16
17 (1) The caption page or pages must not be numbered;
18
19 (2) The pages of the tables must be numbered consecutively using lower-case
20 roman numerals starting on the first page of the tables; and
21
22 (3) The pages of the text must be numbered consecutively using Arabic numerals
23 starting on the first page of the text
24

25 **(i) Copies of ~~non-California~~ authorities**

26
27 (1) A judge may require that, if any authority other than California cases,
28 statutes, constitutional provisions, or state or local rules is cited, a copy of the
29 authority must be lodged with the papers that cite the authority and tabbed as
30 required by rule 3.1110(f).

31
32 (2) If a California case is cited before the time it is published in the advance
33 sheets of the Official Reports, the party must include the title, case number,
34 date of decision, and district of the Court of Appeal in which the case was
35 decided. A judge may require that a copy of that case must also be lodged
36 and tabbed as required by rule 3.1110(f).

37
38 **(j)–(m) * * ***

39
40 **Advisory Committee Comment**

41 See also rule 1.200 concerning the format of citations.

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Item W11-03 Response Form

Title: Civil Motions: Lodging of Copies of Authorities (amend Cal. Rules of Court, rule 3.1113)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, January 24, 2011

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