



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013:

Title	Agenda Item Type
Civil Procedure: Clerk's Addition of Interest to Judgments	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 3.1802	January 1, 2014
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	July 31, 2013
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends amending California 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 amendment deletes the latter provision because it is ambiguous in light of Code of Civil Procedure section 685.020, which states that interest commences to accrue on a judgment from date of entry of judgment). The amendment will conform the rule to statute and eliminate any confusion about what action clerks are required to take vis-à-vis these judgments.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 3.1802 to delete the provision that a clerk must add interest to a judgment accruing from the time of verdict.

The text of the amended rule is attached at page 6.

Previous Council Action

The Judicial Council adopted California Rules of Court, rule 3.1802¹ (previously numbered rule 875) in 1987. At the same time the council 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. Rule 3.1802 was developed in response to a comment on the proposed rules regarding costs, which noted that the reorganization of the statutes had included the repeal of the provisions in Code of Civil Procedure section 1033 that provided that interest be included in a judgment.²

The rule has not been changed—except for being renumbered during the rules reorganization that took effect January 1, 2007—since 1987.

Rationale for Recommendation

The proposal would amend rule 3.1802 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 amendment 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 rule 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 that 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 postjudgment interest commences on entry of judgment.

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

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.]

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 Appeal, in *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 532–533, 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 Further, the appellate court held 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 about 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

³ It should be noted, however, that in *Ehret*, the issue was not whether interest accrues between verdict and judgment, but whether interest runs 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 postjudgment interest runs 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 the original judgment in that case was entered on the same day as the verdict.

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 stating 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 any 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.

Comments, Alternatives Considered, and Policy Implications

Five comments were received on the proposed amendment.⁴ Two were from individual attorneys; the others came from Orange County Bar Association, the Committee on Administration of Justice (CAJ) of the State Bar, and the Superior Court of San Diego County. Except for one of the attorneys, all commentators agreed with the proposal.

The attorney opposing the amendment expressed concern that the amendment would shift financial costs away from defendants and onto plaintiffs who succeeded on appeal. (See comment of David Hicks.) The committee considered this comment, but determined that the recommended amendment does not affect who can receive interest or in what circumstances, but only clarifies that a clerk is not to automatically add interest to a judgment as a ministerial act.

The State Bar’s CAJ, while agreeing that the ministerial actions of the clerk should be clarified as proposed, requested that the committee also consider clarifying the procedure by which a party can seek continuation of prejudgment interest after the verdict. As acknowledged by the CAJ in its comment, this request is outside the scope of the current proposal. The committee will consider it in the future as resources allow.

In addition to considering the comments received, the committee considered the alternative of taking no action and leaving the rule as is. However the group concluded that the current rule is not sufficiently clear about exactly what ministerial action a clerk is to take regarding prejudgment interest, and so should be amended.

Implementation Requirements, Costs, and Operational Impacts

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

⁴ A chart summarizing the comments received and responses from the committee is attached beginning at page 7.

Attachments

1. Cal. Rules of Court, rule 3.1802, at page 5.
2. Chart of comments, at page 6.

Rule 3.1802 of the California Rules of Court would be amended, effective January 1, 2014, to read:

1 **Title 3. Civil Rules**

2 **Division 18. Judgments**

3 **Rule 3.1802. Inclusion of interest in judgment**

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

Civil Practice and Procedure: Clerk’s Addition of Interest to Judgments (amend Cal. Rules of Court, rules 3.1802)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Proposed Committee Response
1.	David Hicks Attorney Dunsmuir, California	N	More of the pro-defendant creep. Why shift the financial cost onto victims who survive the gauntlet of trial/appeals and away from tortfeasors, crooks, thieves and contract breakers?	The committee notes that the recommended amendment would not change who may receive interest on an award of damages or under what circumstances, but only clarifies that a clerk is not to automatically include such interest as a ministerial function.
2.	Adam Jaffe Law Office of Adam Jay Jaffe San Diego	A	No further comment.	The committee appreciates the comment; no response required.
3.	Orange County Bar Association By: Wayne Gross President	A	This proposal reasonably achieves its stated purpose of eliminating ambiguities and conforming to the statutory authority for imposing prejudgment interest damages. This proposal would not impact the public’s access to the courts.	The committee appreciates the comment; no response required.
4.	State Bar of California Committee on Administration of Justice By: Saul Bercovitch	A	CAJ agrees with this proposal, to the extent that it would clarify the role of the clerk. At the same time, CAJ notes the following statement in the Invitation to Comment: “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.” Although raising issues beyond the scope of this proposal, CAJ believes the precise procedural and mechanical way to deal with prejudgment, post-verdict interest is not clear, and should be clarified.	The committee notes the commentator’s agreement with the circulated proposal. The committee will consider the further proposal as time and resources permit.

SPR13-12

Civil Practice and Procedure: Clerk's Addition of Interest to Judgments (amend Cal. Rules of Court, rules 3.1802)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Proposed Committee Response
5.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	No further comment.	The committee appreciates the comment; no response required.