

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR19-10

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<b>Title</b>	<b>Action Requested</b>
Civil Practice and Procedure: Separate Statements for Discovery Motions	Review and submit comments by June 10, 2019
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 3.1345	January 1, 2020
<b>Proposed by</b>	<b>Contact</b>
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Anne M. Ronan, 415-865-8933 <a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee recommends that California Rules of Court, rule 3.1345, be amended, effective January 1, 2020, to reflect the change in law regarding separate statements in discovery motions enacted in Assembly Bill 2230 (Stats. 2018, ch. 317). That bill amends three sections of the Code of Civil Procedure to expressly provide that courts, for certain types of discovery, may allow the moving party to submit an outline of the discovery requests and responses in dispute rather than the separate statement currently required by rule. The rule reflects those changes and expands them to additional types of discovery.

### The Proposal

Currently, rule 3.1345(a)<sup>1</sup> requires that in almost all motions involving the content of a discovery request or the responses to such a request, the moving party must include with the motion a separate statement containing the text of the request; the response, including any objections thereto; a statement of the factual and legal reasons for compelling further responses; and the text of any definition or instructions necessary for the court to understand the discovery requests or responses at issue. The intent of the rule is to ensure that the separate statement accompanying a discovery motion is “full and complete so that no person is required to review any other document in order to determine the full request and the full response.” (Rule 3.1345(c).) In some instances, parties have believed that the rule results in unnecessary repetition, and so have asked courts for leave to submit alternative documents in place of the separate statement. Assembly

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<sup>1</sup> Unless otherwise noted, all rule references hereafter are to the California Rules of Court, and all statutory references are to the Code of Civil Procedure.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

Bill 2230 now expressly authorizes courts to accept an alternative to the separate statement for motions to compel further responses to the three most common types of discovery requests: interrogatories (§ 2030.300(b)(2)), demands for inspection or copying, etc. (§ 2031.310(b)(3)); and requests for admissions (§ 2033.290(b)(2)). The new statutes provide that, in those motions, the court may now allow the parties to instead submit a concise outline of the discovery request and each response in dispute rather than a separate statement.

This proposal amends rule 3.1345(b) to provide that a separate statement is not required in discovery motions for which a court has allowed the moving party to submit—in place of a separate statement—a concise outline of the discovery request and each response in dispute. The new statutes become operative on January 1, 2020, so the advisory committee is recommending that the amended rule take effect that same date.

### **Alternatives Considered**

Because AB 2230 amends provisions regarding motions to compel only as to three types of discovery motions, the advisory committee considered the alternative of amending the rule only as to those three types. However, it decided that to amend the rule as to all motions for which separate statements are required was more logical and efficient.

Currently, rule 3.1345 applies to and requires separate statements to be filed in discovery motions:

- (1) To compel further responses to requests for admission;
- (2) To compel further responses to interrogatories;
- (3) To compel further responses to a demand for inspection of documents or tangible things;
- (4) To compel answers at a deposition;
- (5) To compel or to quash the production of documents or tangible things at a deposition;
- (6) For medical examination over objection; and
- (7) For issue or evidentiary sanctions.

(Cal. Rules of Court, rule 3.1345(a).)

Although the new statutory provisions expressly provide courts with authority to allow for other types of support (specifically, a concise outline of the requests and disputed responses) for the first three types of motions in the rule, the committee believes that the exception should be extended to all the discovery motions subject to the separate statement rule.<sup>2</sup> If this discretion will be useful to judicial officers on motions to compel further responses to interrogatories, for example, would it not be similarly useful on motions to compel answers at a deposition? The committee sees no reason to limit this judicial discretion to only a few discovery types. The

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<sup>2</sup> Because the requirement for separate statements is embodied in the California Rules of Court, not statute, its application can be modified by rule.

legislative history does not appear to indicate that the Legislature saw any need to require separate statements in the discovery types *not* addressed by the new law.<sup>3</sup>

## **Fiscal and Operational Impacts**

The amended rule should have no impact on the courts beyond the training that judicial officers and clerks may require regarding the statutory change.

### **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 appropriately address the stated purpose?
- Should the rule extend to all discovery motions in the rule, as proposed?

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

- Would the proposal provide cost savings? If so, please quantify.
- 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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

## **Attachments and Links**

1. Cal. Rules of Court, rule 3.1345, at page 4
2. Link A: Assembly Bill 2230,  
[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2230](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2230)

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<sup>3</sup> See, for example, Concurrence in Senate Amendments, Assem. Floor Analysis of Assem. Bill 2230 (2017–2018 Reg. Sess.) (Aug. 23, 2018)  
[http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB2230](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB2230).

Rule 3.1345 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 3.1345. Format of discovery motions**

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3 **(a) Separate statement required**

4  
5 Any motion involving the content of a discovery request or the responses to such a  
6 request must be accompanied by a separate statement. The motions that require a  
7 separate statement include a motion:

- 8  
9 (1) To compel further responses to requests for admission;  
10  
11 (2) To compel further responses to interrogatories;  
12  
13 (3) To compel further responses to a demand for inspection of documents or  
14 tangible things;  
15  
16 (4) To compel answers at a deposition;  
17  
18 (5) To compel or to quash the production of documents or tangible things at a  
19 deposition;  
20  
21 (6) For medical examination over objection; and  
22  
23 (7) For issue or evidentiary sanctions.

24  
25 **(b) Separate statement not required**

26  
27 A separate statement is not required under the following circumstances:

- 28  
29 (1) ~~When~~ no response has been provided to the request for discovery; or  
30  
31 (2) With a motion for which a court has allowed the moving party to submit—in  
32 place of a separate statement—a concise outline of the discovery request and  
33 each response in dispute.

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35 **(c)–(d) \* \* \***