



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Civil Practice and Procedure: Separate Statements for Discovery Motions

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 3.1345

Effective Date

January 1, 2020

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Date of Report

August 13, 2019

Contact

Anne M. Ronan
415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

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 proposed rule reflects those changes and expands them to several additional types of discovery as well.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 3.1345, effective January 1, 2020, to implement the provisions of Assembly Bill 2230.

The text of the amended rule is attached at page 5.

Relevant Previous Council Action

The Judicial Council adopted the rule that separate statements be included with certain discovery motions in 1984. The council has made minor modifications over the years, most recently in 2001 when the rule was reorganized and expanded to include all motions involving the content of a discovery request or the response to such a request.

Analysis/Rationale

Currently, rule 3.1345(a)¹ requires that in 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).) The rules also require that any motion (including motions to compel discovery) be accompanied by a memorandum, which must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the relevant law. (Rule 3.1113.)

In some instances, parties have believed that the rule requiring the separate statement in addition to the memorandum results in unnecessary repetition, and so have asked courts for leave to submit alternative documents in place of the separate statement. Assembly Bill 2230 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 that currently require such a statement if 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.” This expands somewhat the impact of AB 2230 to cover all motions in which separate statements are currently required, rather than just the three types addressed in the statute.² The committee concluded that the exception should be extended to all the types of

¹ 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.

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

discovery motions subject to the separate statement rule.³ The committee concludes that if this discretion will be useful to judicial officers on, for example, motions to compel further responses to interrogatories, it would 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 legislative history does not indicate that the Legislature saw any need to require separate statements in the discovery types *not* addressed by the new law,⁴ and neither does the committee.

Policy implications

The committee is not aware of any policy implications from this rule amendment.

Comments

The proposal was circulated in spring 2019 for public comment, and seven comments were received, all generally favorable. A chart containing all the comments and the proposed responses is attached following the proposed rule.

The Committee on the Administration of Justice (CAJ) of the California Lawyers Association, Orange County Bar Association, and the Superior Courts of Los Angeles and San Diego Counties all fully agreed with the amendments as proposed. In relation to expanding the impact of AB 2230, CAJ noted that it “believes there is no logical difference between the categories of discovery motions addressed by AB 2230 and those not covered by the statute. Not revising the rule of court risks confusion if some but not all discovery motions are subject to the standard set forth in AB 2230.”

Two commenters, a judge from Superior Court of San Bernardino County and a chief deputy from the Superior Court of Riverside County, agreed with the proposal generally but sought modification, particularly as to the phrase “a concise outline.” The language in the amendment comes directly from the statute. The committee considered the comments and concluded that the statutory language was appropriate and that more detailed requirements are not necessary in the rule.

³ Currently, rule 3.1345 applies to and requires separate statements to be filed in all motions involving the content of a discovery request or the response to such a request, and lists the following discovery motions as being included in the application of the rule:

- (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).)

⁴ 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.

The commenter from Superior Court of Riverside County proposed that the rule should require that for a motion to compel answers at deposition, the exact language of the deposition questions and objections should be required because the court would not have easy access to the transcripts. The committee disagrees that the rule should include different requirements as to the outlines for particular types of discovery requests. It is up to the court's discretion as to whether the exception from requirement of a separate statement—which does require the text of the questions—is appropriate for a particular motion.

There were also minor nonsubstantive textual changes made to the rule in response to comments received.

Alternatives considered

In light of the change in law, the committee had no option but to amend rule 3.1345 in some way. 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, and not inconsistent with AB 2230.

Fiscal and Operational Impacts

The amended rule should have little impact on the courts beyond the training that judicial officers and clerks may require regarding the statutory change. One court commented that it anticipated minor cost savings due to judicial officers and research attorneys spending less time reviewing discovery requests.

Attachments and Links

1. Cal. Rules of Court, rule 3.1345, at page 5
2. Chart of comments, at pages 6–10
3. Link A: Assembly Bill 2230 (Stats. 2018, ch. 317),
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2230

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

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

2
3 **(a) Separate statement required**

4
5 Except as provided in (b), Any motion involving the content of a discovery
6 request or the responses to such a request must be accompanied by a separate
7 statement. The motions that require a 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~~ When no response has been provided to the request for discovery; or
30
31 (2) When a court has allowed the moving party to submit—in place of a separate
32 statement—a concise outline of the discovery request and each response in
33 dispute.

34
35 **(c)–(d) * * ***

SPR19-10**Civil Practice and Procedure: Separate Statements for Discovery Motions** (Amend Cal. Rules of Court, rule 3.1345)

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

	Commenter	Position	Comment	Committee Response
1.	Committee on Administration of Justice (CAJ) of the Litigation Section of California Lawyers Association by Jordanna G. Thigpen, Chair, and Saul Bercovitch Director of Governmental Affairs California Lawyers Association	A	<p>CAJ agrees with this proposal.</p> <p>Assembly Bill 2230 (effective January 1, 2020), authorizes courts to accept an outline of the discovery requests and responses in dispute in lieu of a separate statement for motions to compel further responses to interrogatories, demands for inspection, and requests for admission. The proposed revisions to Rule of Court 3.1345 would expand the categories of discovery motions for which the courts may accept an outline of the dispute to include all motions for which a separate statement is currently required.</p> <p>CAJ believes there is no logical difference between the categories of discovery motions addressed by AB 2230 and those not covered by the statute. Not revising the Rule of Court risks confusion if some but not all discovery motions are subject to the standard set forth in AB 2230. Further, CAJ questions the utility of separate statements in discovery motions in any event. They are often repetitive and lengthy documents that simply repeat arguments made in the body of the motion itself. That view has essentially been acknowledged by AB 2230 and should be extended to other motions to compel.</p>	The committee acknowledges the commenters agreement with the proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
2.	Hon. Janet Frangie Judge of the Superior Court of California, County of San Bernardino	AM	<p>I do not understand clearly what you are trying to change. Are you proposing that just the questions and answers be submitted in outline form and then the "Argument" portion is omitted? It is true that these Separate Statements are repetitive in the Argument section and could use some revision but it is more a function of the attorneys not taking the time to be specific in their arguments about why a response should be compelled. Clarification is needed as to what you mean by "Outline" or is this meant to be intentionally vague to allow the court to decide what format it wants.</p> <p>My next question is how is this implemented - by a courtroom rule? Thank you for your consideration.</p>	<p>The committee intends to implement AB 2230, which provides that, in lieu of the separate statement currently required by this rule to be filed along with any motion to compel, a court may allow a party to submit a concise outline of the request and response in dispute. The motion to compel itself, would still be required, and the legal argument would go in the memorandum required to accompany the motion. (See Cal. Rules of Court, rule 3.113).</p> <p>The committee has used the terminology used in the statute.</p> <p>The statute gives the authority to the court to make the exception. Implementation may be by direction of the judicial officer or by local rule.</p>
3.	Julie Goren Lawdable Press Sherman Oaks, California	AM	<p>Insert "Except as provided in (b)(2)," at the beginning of (a).</p> <p>In (b)(2), delete "With a motion for which" and replace it with "When".</p>	<p>The rule has been revised to reflect this suggestion</p> <p>The rule has been revised to reflect this suggestion.</p>
4.	Orange County Bar Association by Deirdre Kelly President	A	No specific comment.	The committee acknowledges the commenters agreement with the proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
5.	Superior Court of Los Angeles	A	<p>Request for Specific Comments</p> <p>Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose.</p> <p>Should the rule extend to all discovery motions in the rule, as proposed? Yes, the rule should extend to all discovery motions.</p> <p>Would the proposal provide cost savings? If so, please quantify. We anticipate minor cost savings due to judicial officers and research attorneys spending less time reviewing discovery requests.</p> <p>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? The proposed bill does not impact clerical operations; however, judicial officers and research attorneys may need additional training.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	<p>The committee acknowledges the commenters agreement with the proposal.</p> <p>The committee appreciates the court’s providing information regarding implementation.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			Yes, three months would be sufficient.	
6.	Superior Court of Riverside County By Susan Ryan Chief Deputy, Legal Services	AM	<p>Concerning Rule 3.1345(b)(2), the phrase “a concise outline of the discovery request and each response in dispute” is unclear – whether this is intended to be a streamlined version of a separate statement or something else. Without some guidance as to the format required, it appears that it is open to interpretation by attorneys, who will potentially create an unlimited number of their own versions of the outline.</p> <p>Also, the change to Rule 3.1345 is proposed to be applied to all discovery that currently requires separate statements. As to motions to compel answers at deposition, an outline should still require the exact language of the deposition questions and objections since the precise wording of the question is critical to a correct resolution of the issue and the deposition transcript does not provide immediate access to the wording in the way that special interrogatories or other forms written discovery constitute an easy reference material.</p>	<p>The committee has used the terminology used in the statute.</p> <p>The committee disagrees that the rule should include different requirements for particular types of discovery requests. It is up to the court’s discretion as to whether the exception from requirement of a separate statement (which does require the text of the questions) is appropriate for a particular motion.</p>
7.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<p>Q: Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p>	The committee acknowledges the commenters agreement with the proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			<p>Q: Should the rule extend to all discovery motions in the rule, as proposed?</p> <p>Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify.</p> <p>No.</p> <p>Q: 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?</p> <p>Notification to judicial officers and courtroom staff.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>No additional comments.</p>	<p>The committee appreciates the court's providing information regarding implementation.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated