RESOLUTION 08-01-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 2033.410 and 2033.420, to read as follows:

§ 2033.410

(a) Any matter admitted in response to a request for admission is conclusively established against the party making the admission in the pending action, unless the court has permitted withdrawal or amendment of that admission under Section 2033.300.

(b) Notwithstanding subdivision (a), any admission made by a party under this section is binding only on that party and is made for the purpose of the pending action only. It is not an admission by that party for any other purpose, and it shall not be used in any manner against that party in any other proceeding.

(c) Notwithstanding the provisions of Section 2033.290, where the responding party has provided a response notwithstanding objections to a request for admission, the propounding party may request that the Court rule on the objections to the request for admission at time of trial in determining whether a conditional admission will be deemed admitted.

§ 2033.420

(a) If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

(b) The court shall make this order unless it finds any of the following:

(1) An objection to the request was sustained or a response to it was waived under Section 2033.290. Notwithstanding the provisions of Section 2033.290, where the responding party has raised objections to a request for admission and denied the request for admission notwithstanding the objections, the propounding party may request that the Court rule on the objection in conjunction with a motion made under this section. If an objection is overruled, an award under this section shall be made by the Court, unless another exception under this subdivision is established.

(2) The admission sought was of no substantial importance.

(3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter.

(4) There was other good reason for the failure to admit.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Requests for admissions are intended to eliminate the need to prove matters at time of trial or to establish the genuineness of documents, thus facilitating the efficiency of trials. Under current practice, parties often object to requests for admissions and then provide responses "notwithstanding" or "without waiving" the objections raised. This creates a problem under current law because Code of Civil Procedure section 2033.290 requires the propounding party to bring a motion to compel further responses within 45-days to obtain rulings on the objections otherwise there is a potential waiver. This forces parties to move to compel, rather than being able to wait until trial when the need for an admission becomes apparent, or a matter has been proven and the propounding party seeks to recover the costs of proof. This problem also requires the use of judicial resources to address motions to compel at early stages in the proceedings.

The Solution: This resolution amends Code of Civil Procedure sections 2033.410 and 2033.420 to preserve rights to obtain rulings on objections to requests for admissions. Where the responses admit a matter without waiving or notwithstanding objections, the propounding party would be allowed to obtain a ruling on the objections at time of trial and have the matter deemed admitted upon an overruling of the objection(s). Similarly, where the responses deny a matter without waiving or notwithstanding objections, and the propounding party subsequently proves the matter at trial, then the propounding party can seek a ruling on the objections in conjunction with a motion to recover the costs of proving the matter that was conditionally denied. This would improve judicial efficiency by streamlining the ruling on objections at times when they become of consequence to an admission at trial or become of consequence to a denial after the matter denied has been proven.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
No known prior similar legislation or CCBA resolutions.

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RESPONSIBLE FLOOR DELEGATE
Darin L. Wessel

RESOLUTION 08-02-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1294, to read as follows:

§ 1294

An aggrieved party may appeal from:

(a) An order granting, dismissing or denying a petition to compel arbitration.

(b) An order dismissing a petition to confirm, correct or vacate an award.

(c) An order vacating an award unless a rehearing in arbitration is ordered.

(d) A judgment entered pursuant to this title.

(e) A special order after final judgment

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Existing law makes denials of petitions to compel arbitration immediately appealable, while an order granting a motion to compel arbitration is not appealable until after final judgment. The practical effect of this is to favor parties seeking to compel arbitration, as they may appeal any denial of their petition by the court, while parties seeking to resist arbitration must expend significant resources arbitrating the entire case to a decision before they can appeal. This is inequitable and should be remedied so that both sides are treated equally.

The Solution: This resolution solves the problem by simply making both a denial and a grant of a petition to compel arbitration immediately appealable. There should be no impact under the FAA as state law principles are involved that are not preempted by the FAA. This resolution evens the playing field regarding arbitration. Any party disagreeing with the trial court's decision on a petition to compel arbitration will now have the same remedy available: an immediate appeal. This will help redress the inequities already inherent in the arbitration system that tend to favor parties with greater bargaining power. The impact of this may even be felt beyond mere procedural concerns, as business entities who seek to impose unfair or coercive arbitration agreements may be less likely to do so if they know that any order granting their petition to compel arbitration will not force the other party to litigate the matter fully in an arbitral forum before it can seek review of the order. Instead, any order granting a petition can be reviewed in the same manner as an order of denial.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

No known prior or similar pending legislation. Similar to resolution 01-03-2020 but extends right of appeal rather than making all orders reviewable by writ.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Matthew J. Norris.

RESOLUTION 08-03-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procure sections 2030.300, 2031.310, 2033.290, to read as follows:

§ 2030.300

(a) On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply:

(1) An answer to a particular interrogatory is evasive or incomplete.

(2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate.

(3) An objection to an interrogatory is without merit or too general.

(b) (1) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040.

(2) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within ~~45~~ 60 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories. For good cause shown by motion or other application, the court may extend this deadline at any time before, or within 60 days after, its expiration.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party then fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

§ 2031.310

(a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:

(1) A statement of compliance with the demand is incomplete.

(2) A representation of inability to comply is inadequate, incomplete, or evasive.

(3) An objection in the response is without merit or too general.

(b) A motion under subdivision (a) shall comply with each of the following:

(1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the demand.

(2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(3) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within ~~45~~ (60) days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the demand. For good cause shown by motion or other application, the court may extend this deadline at any time before, or within 60 days after, its expiration.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the party or affected person objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (g).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(g) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(h) Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i) Except as provided in subdivision (j), if a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing

with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(j) (1) Notwithstanding subdivisions (h) and (i), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

§ 2033.290

(a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply:

(1) An answer to a particular request is evasive or incomplete.

(2) An objection to a particular request is without merit or too general.

(b) (1) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040.

(2) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within ~~45~~ 60 days of the service of the verified response, or any supplemental verified response, or any specific later date to which the requesting party and the responding party have agreed in writing, the requesting party waives any right to compel further response to the requests for admission. For good cause shown by motion or other application, the court may extend this deadline at any time before, or within 60 days after, its expiration.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party then fails to obey an order compelling further response to requests for admission, the court may order that the matters involved in the requests be deemed admitted. In lieu of, or in addition to, this order, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Existing law provides that a party receiving responses to interrogatories, demands for inspection or requests for admission has only 45 days to file a motion to compel further responses. Moreover, the 45-day deadlines have been held to be jurisdictional; if the party misses the deadline, all motions to compel further responses are waived. Parties can agree in writing to extend the deadline, but if it is missed, there is nothing the court can do about it.

(*Sexton v. Superior Court* (1987) 58 Cal.App.4th 1403, 1410.) First, the 45-day period is too short given rampant discovery abuse. Second, if the propounding party misses the 45-day deadline, there should be an avenue for relief, just as there is for many other instances of inadvertence under the Code of Civil Procedure.

The Solution: This resolution solves the problem by first enlarging the 45-day deadlines to a more sensible 60 days. Second, the resolution explicitly allows the court to grant an extension of the deadline for good cause, as long as the motion is brought within 60 days of the deadline having passed. This relieves parties of the current draconian consequences if the deadline is missed, allows additional time for meet and confer efforts, while still ensuring that requests for extensions of time to bring a motion to compel have good cause.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
No known prior similar or pending legislation. Similar to Resolution 02-09-2011.

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RESPONSIBLE FLOOR DELEGATE
Matthew J. Norris

RESOLUTION 08-04-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b), ~~on and after July 1, 2000,~~ the fee for jurors in the superior court, in civil and criminal cases, is the base pay they would have received if they had attended their regular work hours for the day ~~fifteen dollars ($15)~~ a day for each day's attendance as a juror after the first day.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, may not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of thirty-four cents ($0.34) per mile for each mile actually traveled in attending court as a juror after the first day, in going only.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Four problems exist with current law. First, people are conscripted to perform a public service and are forced to take a pay cut for the day, or if available, use any paid time off from employers. Second, because many people who live paycheck-to-paycheck cannot afford the time off work, the parties to a lawsuit are deprived of a jury of diverse parts of the population. Third, employers are forced to go without the person's labor for however many days, and either have to find someone else to cover those hours, or accept reduced productivity. Fourth, insofar as a replacement cannot be found, consumers for those days are stuck with a company less responsive to their requests.

As long as we have juries and the need to conscript people to serve on them, the latter two problems are inevitable. The first two problems are avoidable. Although not directly applicable, the spirit of the Fifth Amendment's "nor shall private property be taken for public use without just compensation" applies here. In this case, it is the most inalienable type of private property: ourselves. Each person is their own private property, and if one is taken for public use, one should be justly compensated. Just compensation here would be an amount as if the conscription never occurred: the amount they would have made going into work that day. Failure to justly compensate jurors leads to the second problem of a non-diverse jury.

The Solution: By compensating jurors the amount they would have made if they had worked those days, we can ensure those who serve are not economically harmed, and that fewer

prospective jurors will need to be excused due to economic hardship. This not only ensures jurors are made whole, but ensures a more diverse jury is available to the parties of the lawsuit

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE
Ben Rudin

RESOLUTION 08-05-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b), on and after July 1, 2000,~~-~~the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars ($15) a day for each day's attendance as a juror after the first day.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, may not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the Internal Revenue Service's business standard mileage rate~~ of thirty-four cents ($0.34)~~ per mile for each mile actually traveled in attending court as a juror after the first day minus the number of miles the juror would have traveled in going to and from work that day if the juror had not been assigned to jury service.~~, in going only~~

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The mileage reimbursement rate for jurors was last raised in 2002, back when $2 per gallon was high, oil changes and maintenance costed less, and other prices were lower. Back in 2002, the IRS business standard mileage rate, or the amount one could deduct on taxes for business miles driven, was 34.5 cents per mile. The increase to 34 cents back then made sense. What does not make sense is how the rate has stayed at 34 cents and has not been adjusted since. Another part that makes no sense is jurors are reimbursed for miles driven only when going to court, not when going home. Miles in both directions are the result of their conscription and should be reimbursed. Having said that, because the point is to make them whole as if the conscription has not occurred, it's reasonable to deduct from the reimbursed miles the number that the juror would have driven anyway to and from work.

The Solution: By providing that jurors are reimbursed for extra miles driven due to their conscription into jury service, and at the IRS rate (now 58.5 cents per gallon), this resolution will ensure that jurors are covered for any additional vehicle costs that arise.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
AB 2925 (2001-2002).

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RESPONSIBLE FLOOR DELEGATE
Ben Rudin

RESOLUTION 08-06-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 2016.040, 2023.010, and 2023.050, to read as follows:

§ 2016.040

A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. This reasonable and good faith attempt shall include an in-person, telephone, or videoconference conversation with the opposing party or attorney.

§ 2023.010

Misuses of the discovery process include, but are not limited to, the following:

(a) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.

(b) Using a discovery method in a manner that does not comply with its specified procedures.

(c) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

(d) Failing to respond or to submit to an authorized method of discovery.

(e) Making, without substantial justification, an unmeritorious objection to discovery.

(f) Making an evasive response to discovery.

(g) Disobeying a court order to provide discovery.

(h) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.

(i) Failing to confer in person, by telephone, or by videoconference ~~or by letter~~ with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.

§ 2023.050

(a) Notwithstanding any other law, and in addition to any other sanctions imposed pursuant to this chapter, a court shall impose a two hundred and fifty dollar ($250) sanction, payable to the requesting party, upon a party, person, or attorney if, upon reviewing a request for a sanction made pursuant to Section 2023.040, the court finds any of the following:

(1) The party, person, or attorney did not respond in good faith to a request for the production of documents made pursuant to Section 2020.010, 2020.410, 2020.510, or 2025.210, or to an inspection demand made pursuant to Section 2031.010.

(2) The party, person, or attorney produced requested documents within seven days before the court was scheduled to hear a motion to compel production of the records pursuant to Section 2025.450, 2025.480, or 2031.320 that is filed by the requesting party as a result of the other party, person, or attorney's failure to respond in good faith.

(3) The party, person, or attorney failed to confer in person, by telephone, or by videoconference ~~letter, or other means of communication in writing, as defined in Section 250 of the Evidence Code~~, with the party or attorney requesting the documents in a reasonable and good faith attempt to resolve informally any dispute concerning the request.

(b) Notwithstanding paragraph (3) of subdivision (o) of Section 6068 of the Business and Professions Code, the court may, in its discretion, require an attorney who is sanctioned pursuant to subdivision (a) to report the sanction, in writing, to the State Bar within 30 days of the imposition of the sanction.

(c) The court may excuse the imposition of the sanction required by subdivision (a) if the court makes written findings that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) Sanctions pursuant to this section shall be imposed only after notice to the party, person, or attorney against whom the sanction is proposed to be imposed and opportunity for that party, person, or attorney to be heard.

(e) For purposes of this section, there is a rebuttable presumption that a natural person acted in good faith if that person was not represented by an attorney in the action at the time the conduct that is sanctionable under subdivision (a) occurred. This presumption may only be overcome by clear and convincing evidence.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Current law requires the parties to meet and confer in good faith to resolve discovery disputes before seeking court intervention. Under current law, the meet and confer requirement may be satisfied by sending lengthy emails and letters. However, this written correspondence is often more harmful than productive, especially when attorneys use inflammatory language they would not use in a face-to-face conversation. This resolution would add a requirement to the that a reasonable and good faith attempt to informally resolve a discovery disputes necessitates a conversation with the opposing party or counsel either in person, telephonically, or via video conference. As courts that conduct Informal Discovery Conferences have learned, often a simple conversation with the opposing counsel would have cleared up any miscommunications and resolved the discovery dispute.

The Solution: Requiring the parties to confer in person, telephonically, or by videoconference will aid in the resolution of discovery disputes without resorting to the courts. In addition, the pandemic accelerated the remote practice of law. With most court appearances, and many depositions, mediations, settlement conferences proceeding remotely, counsel and parties have fewer opportunities to talk with one another informally before hearings and during breaks in various proceedings. These lost opportunities may contribute to the breakdown in communication and civility in the practice of law, as counsel and the parties do not et to know each other personally and instead view the other side solely as the opponent. Requiring conversations as part of the discovery meet and confer procedure will provide an opening for the kinds of informal conversations that used to take place in courthouse hallways. This legislation

is supported by CJA and will give bench officers that already require an actual conversation as part of the meet and confer process legal authority to back up their orders.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESOLUTION 08-07-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 430.41, 435.5, and 439, to read as follows:

§ 430.41

(a) Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person ~~or~~ by telephone, or by video conference with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading.

(1) As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency.

(2) The parties shall meet and confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

(4) A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

(b) A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer.

(c) If a court sustains a demurrer to one or more causes of action and grants leave to amend, the court may order a conference of the parties before an amended complaint or cross-complaint or a demurrer to an amended complaint or cross-complaint, may be filed. If a

conference is held, the court shall not preclude a party from filing a demurrer and the time to file a demurrer shall not begin until after the conference has concluded. This section does not prohibit the court from ordering a conference on its own motion at any time or prevent a party from requesting that the court order a conference to be held.

(d) This section does not apply to the following civil actions:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(e)

(1) In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. The three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed.

(2) Nothing in this section affects the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) Nothing in this section affects appellate review or the rights of a party pursuant to Section 430.80.

(g) If a demurrer is overruled as to a cause of action and that cause of action is not further amended, the demurring party preserves its right to appeal after final judgment without filing a further demurrer.

§ 435.5

(a) Before filing a motion to strike pursuant to this chapter, the moving party shall meet and confer in person, ~~or~~ by telephone, or by videoconference with the party who filed the pleading that is subject to the motion to strike for the purpose of determining if an agreement can be reached that resolves the objections to be raised in the motion to strike. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion to strike the amended pleading.

(1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to being stricken and identify with legal support the basis of the deficiencies. The party who filed the pleading shall provide legal support for its position that the pleading is legally sufficient, or, in the alternative, how the pleading could be amended to cure any legal insufficiency.

(2) The parties shall meet and confer at least five days before the date a motion to strike must be filed. If the parties are unable to meet and confer at least five days before the date the motion to strike must be filed, the moving party shall be granted an automatic 30-day extension of time within which to file a motion to strike, by filing and serving, on or before the date a motion to strike must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion to strike was previously due, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The moving party shall file and serve with the motion to strike a declaration stating either of the following:

(A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion to strike, and that the parties did not reach an agreement resolving the objections raised by the motion to strike.

(B) That the party who filed the pleading subject to the motion to strike failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith.

(4) A determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike.

(b) A party moving to strike a pleading that has been amended after a motion to strike an earlier version of the pleading was granted shall not move to strike any portion of the pleadings on grounds that could have been raised by a motion to strike as to the earlier version of the pleading.

(c)

(1) If a court grants a motion to strike and grants leave to amend, the court may order a conference of the parties before an amended pleading, or a motion to strike an amended pleading, may be filed. If the conference is held, the court shall not preclude a party from filing a motion to strike and the time to file a motion to strike shall not begin until after the conference has concluded.

(2) This section does not prohibit the court from ordering a conference on its own motion at any time or prevent a party from requesting that the court order that a conference be held.

(d) This section does not apply to any of the following:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(3) A special motion brought pursuant to Section 425.16.

(4) A motion brought less than 30 days before trial.

(e)

(1) In response to a motion to strike and before the case is at issue, a pleading shall not be amended more than three times, absent an offer to the trial court of additional facts to be pleaded that, if pleaded, would result in a reasonable possibility that the defect can be cured. The three-amendment limit does not include an amendment made without leave of the court pursuant to Section 472, if the amendment is made before a motion to strike as to the original pleading is filed.

(2) This section does not affect the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) This section does not affect appellate review or the rights of a party pursuant to Section 430.80.

(g) If a motion to strike is denied and the pleading is not further amended, the moving party preserves its right to appeal after final judgment without filing a further motion to strike.

§ 439

(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person, ~~or~~ by telephone, or by videoconference with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the

purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading.

(1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. The party who filed the pleading shall provide legal support for its position that the pleading is not subject to judgment, or, in the alternative, how the pleading could be amended to cure any claims it is subject to judgment.

(2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a motion for judgment on the pleadings, by filing and serving, on or before the date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion for judgment on the pleadings was previously filed, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following:

(A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings.

(B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith.

(4) A determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion for judgment on the pleadings.

(b) A party moving for judgment on a pleading that has been amended after a motion for judgment on the pleadings on an earlier version of the pleading was granted shall not move for judgment on any portion of the pleadings on grounds that could have been raised by a motion for judgment on the pleadings as to the earlier version of the pleading.

(c)

(1) If a court grants a motion for judgment on the pleadings and grants leave to amend, the court may order a conference of the parties before an amended pleading, or a motion for judgment on an amended pleading, may be filed. If the conference is held, the court shall not preclude a party from filing a motion for judgment on the pleadings and the time to file a motion for judgment on the pleadings shall not begin until after the conference has concluded.

(2) This section does not prohibit the court from ordering a conference on its own motion at any time or prevent a party from requesting that the court order that a conference be held.

(d) This section does not apply to any of the following:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(3) A special motion brought pursuant to Section 425.16.

(4) A motion brought less than 30 days before trial.

(e)

(1) In response to a motion for judgment on the pleadings and before the case is at issue, a pleading shall not be amended more than three times, absent an offer to the trial court of additional facts to be pleaded that, if pleaded, would result in a reasonable possibility that the defect can be cured. The three-amendment limit does not include an amendment made without leave of the court pursuant to Section 472, if the amendment is made before a motion for judgments on the pleadings as to the original pleading is filed.

(2) This section does not affect the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) This section does not affect appellate review or the rights of a party pursuant to Section 430.80.

(g) If a motion for judgment on the pleadings is denied and the pleading is not further amended, the moving party preserves its right to appeal after final judgment without filing a further motion for judgment on the pleadings.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Current law requires the parties to meet and confer in person or by telephone prior to filing a demurrer, motion to strike, and motion for judgment on the pleadings. However, the statutes do not specify that a meet and confer may occur by video conference.

The Solution: This resolution amends the statutes to expressly provide that the meet and confer may take place by video conference. Since many litigation activities have been successfully taking place via video conference in the last two years, these are common sense additions to the Code to expressly provide that the parties may meet and confer by video.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

SB 383 (2015-2016 Reg. Sess.) added this statute requiring the parties to meet and confer and was enacted into law and became effective on 1/16/2021. There was a sunset provision where the statute would have expired on 1/1/2021 but AB 3364 (2019-2020 Reg. Sess.) was enacted into law in 2020 and repealed the sunset provision.

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RESPONSIBLE FLOOR DELEGATE

Shaun Dabby Jacobs

RESOLUTION 08-08-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1710.50, to read as follows:

§ 1710.50

(a) The court shall grant a stay of enforcement where:

(1) An appeal from the sister state judgment is pending or may be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the proceedings on appeal have been concluded or the time for appeal has expired.

(2) A stay of enforcement of the sister state judgment has been granted in the sister state. Under this paragraph, enforcement shall be stayed until the sister state stay of enforcement expires or is vacated.

(3) The judgment debtor has made a motion to vacate pursuant to Section 1710.40. Under this paragraph, enforcement shall be stayed until the judgment debtor's motion is determined.

(4) A money judgment was obtained against a person or entity for exercising a right guaranteed under the United States Constitution as interpreted by United States Supreme Court precedent at the time the right was exercised, or a right guaranteed under the California Constitution, or against a person or entity for aiding and abetting the exercise of said rights.

~~(4)~~ (5) Any other circumstance exists where the interests of justice require a stay of enforcement.

(b) The court may grant a stay of enforcement under this section on its own motion, on ex parte motion, or on a noticed motion.

(c) The court shall grant a stay of enforcement under this section on such terms and conditions as are just including but not limited to the following:

(1) The court may require an undertaking in an amount it determines to be just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim.

(2) If a writ of execution has been issued, the court may order that it remain in effect.

If property of the judgment debtor has been levied upon under a writ of execution, the court may order the levying officer to retain possession of the property capable of physical possession and to maintain the levy on other property.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Existing law provides for enforcing sister state judgments in California. (Code of Civ. Proc. §§ 1710.10, et seq.) Efforts by some states to restrict rights recognized by the Supreme Court, and to weaponize private parties to enforce the restriction, potentially puts California courts in the position of enforcing a sister state judgment obtained against someone acting lawfully under the constitution. Abortion is an example. In 2021, Texas enacted a ban on abortions after about six weeks of pregnancy. Even if the Texas law conflicts with existing

Supreme Court precedent, it authorizes private citizens, whether or not residing in Texas, to sue anyone who performs or aids and abets an abortion in violation of Texas law. If the abortion was protected by the federal constitution at the time, those involved still may face a civil judgment. At least 16 states passed laws in 2021 restricting reproductive rights. California is a potential safe haven for women seeking to exercise abortion rights and those aiding them. But someone who travels to California after violating another state's law may suffer a money judgment enforceable in California courts.

The Solution: This proposal would allow California courts to decline to enforce an out-of-state money judgment seeking assets in California if the judgment was obtained against a person or entity for exercising or aiding in the exercise of a constitutional right as interpreted by the United States Supreme Court at the time of the act on which the money judgment is based, or a right that California recognizes under the California Constitution. The proposal is not limited to reproductive rights, but the right to abortion is an example currently subject to efforts to authorize private citizens to sue for money damages as a way to curtail the exercise of that right.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE
Mark Alan Hart

RESOLUTION 08-09-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2016.080, to read as follows:

§ 2016.080

(a) If an informal resolution is not reached by the parties, as described in Section 2016.040, the court may conduct an informal discovery conference upon request by a party or on the court's own motion for the purpose of discussing discovery matters in dispute between the parties.

(b) If a party requests an informal discovery conference, the party shall file a declaration described in Section 2016.040 with the court. Any party may file a response to a declaration filed pursuant to this subdivision. If a court is in session and does not grant, deny, or schedule the party's request within 10 calendar days after the initial request, the request shall be deemed denied.

(c)

(1) If a court grants or orders an informal discovery conference, the court may schedule and hold the conference no later than 30 calendar days after the court granted the request or issued its order, and before the discovery cutoff date.

(2) If an informal discovery conference is granted or ordered, the court may toll the deadline for filing a discovery motion or make any other appropriate discovery order.

(d) If an informal discovery conference is not held within 30 calendar days from the date the court granted the request, the request for an informal discovery conference shall be deemed denied, and any tolling period previously ordered by the court shall continue to apply to that action.

(e) The outcome of an informal discovery conference does not bar a party from filing a discovery motion or prejudice the disposition of a discovery motion.

(f) This section does not prevent the parties from stipulating to the timing of discovery proceedings as described in Section 2024.060.

~~(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2023, deletes or extends that date.~~

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 2016.080 enables trial courts to require informal discovery conferences prior to filing motions to compel. In jurisdictions that conduct informal discovery conferences the courts and parties report that the conference often resolves the discovery dispute and eliminates the need to file motions to compel saving the parties time and

money and conserves judicial resources. However, the statute is set to expire on January 1, 2023.

The Solution: This resolution eliminates the sunset provision, expiration date, making the statute a permanent part of the Discovery Act in the Code of Civil Procedure and allows the courts to continue to enact rules requiring informal discovery conferences if they so desire.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
AB 383 (2017-2018 Reg. Sess.); SB 1289 (2017-2018 Reg. Sess.)

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RESPONSIBLE FLOOR DELEGATE
Shaun Dabby Jacobs

RESOLUTION 08-10-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b), on and after July 1, ~~2000~~2023, the fee for jurors in the superior court, in civil and criminal cases, is ~~fifteen~~ one hundred dollars ($~~15~~100) a day for each day's attendance as a juror ~~after the first day~~.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, may not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of thirty-four cents ($0.34) per mile for each mile actually traveled in attending court as a juror after the first day, in going only.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: The current payment of fifteen dollars ($15) per day, which only begins on the second day of jury service, is insufficient. As a result, many people who earn more than $15 per day and whose employers refuse to pay for their time off from work cannot afford to serve on a jury. In addition, although Labor Code section 230(a) prohibits employers from discharging or discriminating against employees, there are no requirements for private-sector employers to pay employees while they are serving on juries. (For information about the payment of wages for public sector employees who serve on juries, see Code of Civil Procedure section 215(b)).

The Solution: This resolution proposes a payment of one hundred dollars ($100) per day. This amount would match the amount in the San Francisco Superior Court pilot program that was authorized by AB 1452 (Ting, 2021-2022 Reg. Sess.), effective January 1, 2022 (and to sunset on January 1, 2025) – for criminal trials only.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

AB 1452 (Ting, 2021-2022 Reg. Sess.) effective Jan. 1, 2022, and will sunset Jan. 1, 2025. AB 1452 adds Code of Civil Procedure section 240 to create a pilot program in the Superior Court of San Francisco to pay low-income people one hundred dollars ($100) per day for jury service, for criminal trials only. In addition, see SB 1102 (Committee on Budget and Fiscal Review, Reg. Sess. 2003-2004; amended by Stats, 2004, Ch. 227, Sec. 9. Effective August 16, 2004 (which

amended Code of Civil Procedure section 215). See also SB 14 (Calderon, Reg. Sess. 1995-1996), which proposed juror fees of $16 per day after the first day of service.

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RESPONSIBLE FLOOR DELEGATE:
Catherine Rucker

RESOLUTION 08-11-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 215, to read as follows:

§ 215

(a) Except as provided in subdivision (b), on and after July 1, 2000, the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars ($15) a day for each day's attendance as a juror after the first day.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, may not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of ~~thirty-four cents ($0.34) per mile~~ the current Internal Revenue Service (IRS) mileage rate for the use of a car for "business use," for each mile actually traveled in attending court as a juror ~~after the first~~ for each day, ~~in going only~~ round-trip.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: The current travel reimbursement for jurors, at thirty-four cents ($0.34) per mile, for a one-way trip only and only after the first day of service, is not reasonable. As a result, many potential jurors, who are low-income, simply cannot afford to travel to and from the courthouse.

The Solution: Because jurors are performing a public service, the State of California should reimburse them for their actual, round-trip travel expenses. As of January 1, 2022, the IRS standard mileage rate for the use of a car driven "for business" is $0.585 per mile. See IR-2021-251 (Dec. 17, 2021) (Standard Mileage Rates for 2022).

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

AB 1452 (Ting, 2021-2022 Reg. Sess.), effective Jan. 1, 2022, and will sunset Jan. 1, 2025, established a "pilot program" for the San Francisco Superior Court to pay low-income jurors one hundred dollars ($100) per day for jury service, for criminal trials only. However, AB 1452 did not address the issue of reasonable travel reimbursements for jurors. In addition, see SB 1102 (Committee on Budget and Fiscal Review, 2003-2004 Reg. Sess.; amended by Stats, 2004, Ch. 227, Sec. 9. Effective August 16, 2004 (which amended Code of Civil Procedure section 215).

See also SB 14 (Calderon, 1995-1996 Reg. Sess.), which had proposed a mileage reimbursement of $0.28 per mile one-way for jurors traveling more than 50 miles.

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RESOLUTION 08-12-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 372.1, to read as follows:

§ 372.1

Assignees, Manner of Appearing

When a party appears in an action as an assignee, the assignee shall identify itself as assignee and identify its direct assignor and every other assignor in the chain of assignment, in the title of the case on each initial complaint or cross-complaint.

Failure to comply with this section shall be grounds for a demurrer, as a defect of parties under Section 430.10(d) of Code of Civil Procedure, or a motion to amend pleadings under Section 473 of the Code of Civil Procedure to correct a mistake in the name of a party.

"Title of the case" as used herein is described in Cal. Rules of Court, Rule 2.111(4).

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: For a host of reasons, a party may wish to remain anonymous during litigation. Some of these reasons are legitimate privacy concerns; some may be to avoid liability or to hide assets. This party may be a debtor, a spouse, or another person who has not made a full disclosure of assets to a creditor, an ex-spouse, or another interested person. This party may be entitled to recover certain assets from another person. This party can now form a shell entity, which it owns and controls, in a State that does not disclose the owners' names, and then assign/transfer its recovery rights to that shell entity. The shell entity may then pursue a lawsuit and make a recovery, without the debtor's creditors or the ex-spouse ever discovering the indirect recovery made by the assignor, the shell entity's alter ego.

Currently, public search engines capture only party names from the title of a case. Such engines do not capture assignor information, buried within a pleading's allegations. This allows the assignors to recover and move assets, under the radar, without getting noticed or discovered.

The Solution: To add transparency to the assignment, an assignee should be required to identify its assignor (and the assignor of that assignor in the chain of assignment), in the title of the case on the initial pleading. This would allow the public to search court records and uncover an assignor's identity and its litigation activities.
Many plaintiffs appear in an action "as the trustee" of a trust, or as the person "doing business as" a fictitious business name (e.g., Jane Doe doing business as JD and Associates), or as one's Guardian Ad Litem. Requiring an assignee to identify itself, on the initial pleading only, "as the assignee of John Doe, assignor" is not unreasonable nor cumbersome.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known

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RESPONSIBLE FLOOR DELEGATE
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RESOLUTION 08-13-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the legislation be sponsored to amend Code of Civil Procedure section 473, to read as follows:

§ 473

(a) (1) The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

(2) When it appears to the satisfaction of the court that the amendment renders it necessary, the court may postpone the trial, and may, when the postponement will by the amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of any costs as may be just.

(b)The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. However, in the case of a judgment, dismissal, order, or other proceeding determining the ownership or right to possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, dismissal, order, or other proceeding has been taken, and upon his or her attorney of record, if any, notifying that party and his or her attorney of record, if any, that the order, judgment, dismissal, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of the notice, then the application shall be made within 90 days after service of the notice upon the defaulting party or his or her attorney of record, if any, whichever service shall be later. No affidavit or declaration of merits shall be required of the moving party. Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made <u>to relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her and is made</u> no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. However, this

section shall not lengthen the time within which an action shall be brought to trial pursuant to Section 583.310.

(c) (1) Whenever the court grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may do any of the following:

(A) Impose a penalty of no greater than one thousand dollars ($1,000) upon an offending attorney or party.

(B) Direct that an offending attorney pay an amount no greater than one thousand dollars ($1,000) to the State Bar Client Security Fund.

(C) Grant other relief as is appropriate.

(2) However, where the court grants relief from a default or default judgment pursuant to this section based upon the affidavit of the defaulting party's attorney attesting to the attorney's mistake, inadvertence, surprise, or neglect, the relief shall not be made conditional upon the attorney's payment of compensatory legal fees or costs or monetary penalties imposed by the court or upon compliance with other sanctions ordered by the court.

(d) The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under established law, the time limit for filing a motion for discretionary relief is six months "after the judgment, dismissal, order, or proceeding was taken," and the time limit for filing a motion for mandatory relief is six months after "entry of judgment." (Cal. Civ. Proc. § 473(b).) Nevertheless, the wording of the statute has caused some confusion among parties and/or attorneys regarding when a motion for mandatory relief may be made. Since the statute refers to the "application for relief" being made no more than six months "after" the "judgment" is entered, some parties and/or attorneys have interpreted the statute to mean that relief pursuant to the mandatory provision cannot be granted before any judgment had been entered. However, this interpretation is erroneous because relief is mandatory. Therefore, the result would be the same regardless of whether the relief is sought before or after judgment. Consequently, this proposal seeks to clarify a potential ambiguity in the statute.

The Solution: The proposed new language would clarify the timeframe in which a motion for relief based on attorney fault may be made. Under the new proposed language, the motion for relief under the mandatory provisions can be made any time before entry of judgment, but no more than six months after judgment.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known

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