

AMENDMENT TO RESOLUTION 04-01-05

Dismissal for Inconvenient Forum: Requirement of Written Order

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 904.1 as follows:

- 1 § 904.1
2 (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other
3 than in a limited civil case, may be taken from any of the following:
4 [Subdivisions (a)(1) and (2) remain unchanged.]
5 (3) From an order granting a motion to quash service of summons or an order granting a
6 motion to stay ~~or dismiss~~ the action on the ground of inconvenient forum, or a written order of
7 dismissal under Code of Civil Procedure § 581d following an order granting a motion to dismiss the
8 action on the ground of inconvenient forum.
9 [Subdivisions (a)(4) through 13 and (b) remain unchanged.]
10
11 § 904.2
12 An appeal in a limited civil case is to the appellate division of the superior court. An appeal in
13 a limited civil case may be taken from any of the following:
14 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt
15 that is made final and conclusive by Section 1222.
16 (b) From an order made after a judgment made appealable by subdivision (a).
17 (c) From an order changing or refusing to change the place of trial.
18 (d) From an order granting a motion to quash service of summons or granting a motion to
19 stay ~~or dismiss~~ the action on the ground of inconvenient forum, or a written order of dismissal under
20 Code of Civil Procedure § 581d following an order granting a motion to dismiss the action on the
21 ground of inconvenient forum.
22 (e) From an order granting a new trial or denying a motion for judgment notwithstanding the
23 verdict.
24 (f) From an order discharging or refusing to discharge an attachment or granting a right to
25 attach order.
26 (g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an
27 injunction.
28 (h) From an order appointing a receiver.
29

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

RESOLUTION 04-01-05

DIGEST

Dismissal for Inconvenient Forum: Requirement of Written Order

Amends Code of Civil Procedure section 904.1 to require a written order of dismissal after granting a motion to dismiss on forum non conveniens grounds.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 904.1 to require a written order of dismissal after granting a motion to dismiss on forum non conveniens grounds. This resolution should be approved in principle because it clarifies the requirement for a written order of dismissal as a prerequisite to an appeal.

Code of Civil Procedure section 581d requires that all dismissals by the court be in the form of a written order. A dismissal on the basis of forum non conveniens is not exempted from this requirement.

By its ruling, the court in *Quest Intern., Inc. v. Icode Code* (2004) 122 Cal.App.4th 745, found ambiguity in the requirement that a written order of dismissal is required as a prerequisite for appeal. Indeed, the Court noted: "One final comment: As readers might (hopefully) garner from this opinion, California's law of appellate procedure is *just too complicated*. In cases of subsequent motions and attacks on appealable decisions the chances of innocent miscalendaring are too great. There are too many counterintuitive results (today's is one, as was the result in *Hollister Convalescent Hosp v. Rico* (1975) 15 Cal.3d 660)), obscure statutes waiting to jump out of the dark, and common law doctrines with all sorts of unexpected implications. . . . We therefore call upon the Legislature to consider revising the rules of access to the appellate courts . . ." Review was granted in *Quest* on January 19, 2005, and it is still being briefed.

While the appellate court reluctantly dismissed the appeal, it expressly requested the legislature to remove the ambiguities. This resolution does that.

SECTION/COMMITTEE REPORTS

COMMITTEE ON APPELLATE COURTS

APPROVE IN PRINCIPLE

This position is only that of the State Bar of California's Committee on Appellate Courts. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 904.1 as follows:

- 1 § 904.1
- 2 (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other
- 3 than in a limited civil case, may be taken from any of the following:
- 4 [Subdivisions (a)(1) and (2) remain unchanged.]
- 5 (3) From an order granting a motion to quash service of summons or an order granting a
- 6 motion to stay ~~or dismiss~~ the action on the ground of inconvenient forum, or a written order of

7 dismissal under Code of Civil Procedure § 581d following an order granting a motion to dismiss the
8 action on the ground of inconvenient forum.
9 [Subdivisions (a)(4) through 13 and (b) remain unchanged.]

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

Existing Law: Code of Civil Procedure section 904.1(a)(3) permits an appeal from an order granting a motion to dismiss an action on the ground of inconvenient forum.

This Resolution: Would amend section 904.1(a)(3) to require the court to enter a signed, written order of dismissal after granting a motion to dismiss on forum non conveniens grounds before an appeal could be taken.

The Problem: Under Code of Civil Procedure section 581d, “[a]ll dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action,” and the signed order of dismissal is an appealable judgment. An order granting a dispositive defense motion—for example, an order sustaining a demurrer without leave to amend—is not, itself, immediately appealable. The court must enter a written order of dismissal under section 581d, which then becomes the appealable judgment. (*White v. Ostly* (1959) 173 Cal.App.2d 636, 639.)

Recently, however, a court of appeal held that, under Code of Civil Procedure section 904.1(a)(3), an unsigned minute order granting a motion to dismiss on the ground of inconvenient forum was immediately appealable without entry of a formal, signed order of dismissal. Therefore, an appeal taken from the signed order of dismissal in that case was too late because, by the time that the court entered the signed, formal order, the time had run to appeal from the unsigned minute order. (*Quest Intern., Inc. v. Icode Corp.* (2004) 122 Cal.App.4th 745.) The court reached that conclusion despite the unequivocal requirement of section 581d that *all* dismissals ordered by the court be in the form of a signed, written order. The California Supreme Court has granted review in *Quest*.

This resolution would amend section 904.a(a)(3) to clarify that, as with all other motions seeking dismissal, when the court grants a motion to dismiss on the ground of forum non conveniens, the judge must still sign and file a written order of dismissal, and that the appeal can be taken from the formal order, rather than an unsigned minute order granting the motion.

IMPACT STATEMENT

This resolution does not affect any other laws.

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