

RESOLUTION 03-01-06

DIGEST

Rules of Court: Eliminate Requirement for Paper Copies of Out-of-State Authorities

Amends California Rules of Court, rule 313(h) to eliminate the need to attach paper copies of non-California authorities to motions or demurrers.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 313(h) to eliminate the need to attach paper copies of non-California authorities to motions or demurrers. This resolution should be approved in principle because these citations are available electronically and adoption of this resolution would reduce the need for unnecessary paper copies.

This section of the California Rules of Court was amended as recently as 2000 with the provision intact as quoted. However, the specific subdivision is no longer necessary in an electronic age when virtually everyone, especially the court, has access to electronic copies of non-California authorities and California not-yet published decisions by electronic services.

Nothing in this resolution would prohibit counsel from attaching such authority if counsel chose to do so.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Judicial Council amend California Rule of Court 313 to delete subdivision (h) as follows:

- 1 Rule 313
- 2 (a) [Memorandum in support of motion or demurrer] A party filing a demurrer or
- 3 motion, except for a motion listed in rule 314, must serve and file therewith a memorandum
- 4 of points and authorities in support. The court may construe the absence of a memorandum
- 5 as an admission that the motion or special demurrer is not meritorious and cause for its
- 6 denial and, in the case of a demurrer, as a waiver of all grounds not supported.
- 7 (b) [Contents of memorandum] A memorandum of points and authorities shall
- 8 contain a statement of facts, a concise statement of the law, evidence and arguments relied
- 9 on, and a discussion of the statutes, cases, and textbooks cited in support of the position
- 10 advanced.
- 11 (c) [Case citation format] A case citation shall include the official report volume and
- 12 page number and year of decision. No other citations shall be required.

13 (d) [Length of memorandum] Except in a summary judgment or summary
14 adjudication motion, no opening or responding memorandum may exceed 15 pages. In a
15 summary judgment or summary adjudication motion, no opening or responding
16 memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10
17 pages. The page limit does not include exhibits, declarations, attachments, the table of
18 contents, the table of authorities, or the proof of service.

19 (e) [Application to file longer memorandum] A party may apply to the court ex parte
20 but with written notice of the application to the other parties, at least 24 hours before the
21 memorandum is due, for permission to file a longer memorandum. The application must
22 state reasons why the argument cannot be made within the stated limit. A memorandum that
23 exceeds 10 pages must include a table of contents and a table of authorities. A memorandum
24 that exceeds 15 pages must also include an opening summary of argument. A memorandum
25 that exceeds the page limits of these rules must be filed and considered in the same manner
26 as a late-filed paper.

27 (f) [Pagination of memorandum] Notwithstanding any other rule, the pagination of a
28 memorandum that includes a table of contents and a table of authorities is governed by this
29 rule. In the case of such a memorandum, the caption page or pages must not be numbered;
30 the pages of the tables must be numbered consecutively using lower-case Roman numerals
31 starting on the first page of the tables; and the pages of the text must be numbered
32 consecutively using Arabic numerals starting on the first page of the text.

33 (g) [Use of California Style Manual] The style used in a memorandum must be that
34 stated in the California Style Manual or The Bluebook: Uniform System of Citation, at the
35 option of the party filing the document. The same style must be used consistently throughout
36 the memorandum.

37 ~~(h) [Copies of non-California authorities] If any authority other than California~~
38 ~~eases, statutes, constitutional provisions, or state or local rules is cited, a copy of the~~
39 ~~authority must be lodged with the papers that cite the authority and tabbed as exhibits as~~
40 ~~required by rule 311(e). If a California case is cited before the time it is published in the~~
41 ~~advance sheets of the Official Reports, a copy of that case must also be lodged and tabbed as~~
42 ~~required by rule 311(e).~~

43 (i) [Attachments] To the extent practicable, all supporting memorandums,
44 declarations, and affidavits must be attached to the notice of motion.

45 (j) [Exhibit references] All references to exhibits or declarations in supporting or
46 opposing papers must reference the number or letter of the exhibit, the specific page, and, if
47 applicable, the paragraph or line number.

48 (k) [Requests for judicial notice] Any request for judicial notice must be made in a
49 separate document listing the specific items for which notice is requested and must comply
50 with rule 323(c).

51 (l) [Proposed orders or judgments] If a proposed order or judgment is submitted, it
52 must be lodged and served with the moving papers but must not be attached to them.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Requires copies of non-California authorities and new California decisions cited in every memorandum in support of a motion, opposition or reply.

This Resolution: Eliminates the requirement for paper copies of non-California authorities and new California decisions.

The Problem: Rule 313(h), requiring reproduction of non-California authorities, is overbroad and outdated. It can require pounds of totally unnecessary paper. It should be repealed.

The rule is outdated because it harkens back to a time when folks needed reporter subscriptions to get cases, and so citations to courts of states outside California could be hard to come by. Now that virtually everyone has Lexis, Westlaw or FindLaw access, including the courts, this is not the issue it once was. And the not-yet-published decisions are also nevertheless available, usually the next day, on the same services.

The rule is overbroad because it includes even Federal authorities, not just those from other states. Technically, one has to attach the relevant portions of the United States Constitution in any case raising a Constitutional issue. That hardly seems necessary or productive; presumably those portions would be quoted in the brief, and no counsel or court is likely to be unable to check the accuracy of the quote. Other Federal materials are also readily available to courts and practitioners. If there is an “authority” that counsel suspects the Court may not have (an old Wigmore on Evidence, for example), counsel is always free to attach a copy. Just as counsel often attach a copy of a case particularly on point, whether or not from California.

It would be acceptable if, in particular cases, the Court ordered such a compendium filed and served. There might be good reason to so order in a particular case -- e.g., one heavy with out-of-state authorities, or one party without resources to spend on Westlaw. Such an order is well within the court’s power to control the proceedings before it. And counsel may choose to attach such exhibits as a matter of emphasis or an abundance of caution. But to make this the rule in every case wastes paper to no discernible end.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

IMPACT STATEMENT

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

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