

RESOLUTION 08-11-2013

DIGEST

Discovery: Exchange of Electronic Separate Statements on Motions to Compel

Amends California Rules of Court, rule 3.1345 to require the moving party to provide an electronic separate statement in a motion to compel upon request from an opposing party.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No prior similar resolutions found.

Reasons:

This resolution amends California Rules of Court, rule 3.1345 to require the moving party to provide an electronic separate statement in a motion to compel upon request from an opposing party. This resolution should be approved in principle because the same change was made to the statute regarding motions for summary judgment.

Separate statements can be very long and detailed and the requirement that clerical staff retype the entire separate statement so that the opposing party can properly reply is a waste of resources. The resolution would avoid this by requiring a party to provide an electronic version of the separate statement upon request.

The proponent's statement of reasons is in conflict with the changes proposed. The change proposed indicates that the electronic version be served within 3 days following the request. The statement of reasons however indicates that the requested change is that the statement be provided within one court day following the request. The recommendation of approve in principle is based on the proposed statutory language and not the language in proponent's statement of reasons.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that the Judicial Council of California amend California Rules of Court, rule 3.1345, to read as follows:

- 1 § 3.1345
- 2 (a) Separate statement required
- 3 Any motion involving the content of a discovery request or the responses to such a request
- 4 must be accompanied by a separate statement. The motions that require a separate statement
- 5 include a motion:
- 6 (1) To compel further responses to requests for admission;
- 7 (2) To compel further responses to interrogatories;
- 8 (3) To compel further responses to a demand for inspection of documents or tangible things;
- 9 (4) To compel answers at a deposition;
- 10 (5) To compel or to quash the production of documents or tangible things at a deposition;

11 (6) For medical examination over objection; and

12 (7) For issue or evidentiary sanctions.

13 (b) Separate statement not required

14 A separate statement is not required when no response has been provided to the request for
15 discovery.

16 (c) Contents of separate statement

17 A separate statement is a separate document filed and served with the discovery motion that
18 provides all the information necessary to understand each discovery request and all the responses
19 to it that are at issue. The separate statement must be full and complete so that no person is
20 required to review any other document in order to determine the full request and the full
21 response. Material must not be incorporated into the separate statement by reference. The
22 separate statement must include--for each discovery request (e.g., each interrogatory, request for
23 admission, deposition question, or inspection demand) to which a further response, answer, or
24 production is requested--the following:

25 (1) The text of the request, interrogatory, question, or inspection demand;

26 (2) The text of each response, answer, or objection, and any further responses or answers;

27 (3) A statement of the factual and legal reasons for compelling further responses, answers, or
28 production as to each matter in dispute;

29 (4) If necessary, the text of all definitions, instructions, and other matters required to
30 understand each discovery request and the responses to it;

31 (5) If the response to a particular discovery request is dependent on the response given to
32 another discovery request, or if the reasons a further response to a particular discovery request is
33 deemed necessary are based on the response to some other discovery request, the other request
34 and the response to it must be set forth; and

35 (6) If the pleadings, other documents in the file, or other items of discovery are relevant to
36 the motion, the party relying on them must summarize each relevant document.

37 (d) Identification of interrogatories, demands, or requests

38 A motion concerning interrogatories, inspection demands, or admission requests must
39 identify the interrogatories, demands, or requests by set and number.

40 (e) Request for electronic version of separate statement

41 On request, a party must within three days provide to any other party or the court an
42 electronic version of its separate statement. The electronic version may be provided in any form
43 on which the parties agree. If the parties are unable to agree on the form, the responding party
44 must provide to the requesting party the electronic version of the separate statement that it used
45 to prepare the document filed with the court. Under this subdivision, a party is not required to
46 create an electronic version or any new version of any document for the purpose of transmission
47 to the requesting party.

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: As the law stands now, when a party does a motion to compel further responses to discovery, the moving party is required to submit a separate statement listing out each discovery

equest, the responses, and the reasons to compel a further response. As all litigators know, this document is often very lengthy. Although there is no requirement, sometimes when a party opposes the motion to compel, they want to do a responsive/opposing separate statement listing out the reasons why the court should not compel a further response. There is currently no requirement that the moving party exchange the electronic version of the separate statement with the opposing party as there is for motions for summary judgment. (See, e.g., Cal. Rules of Court, rule 3.1354(i).)

This Solution: The resolution would amend California Rules of Court, rule 3.1345 by adding a subdivision (e) to require a moving party to exchange an electronic version of its separate statement in support of a motion to compel further responses to discovery, thereby eliminating the need to retype the separate statement. The language is identical to California Rules of Court, rule 3.1354(i) (relating to the exchange of an electronic version of a separate statement in support of a motion for summary judgment), except that the amount of time a party has to exchange an electronic separate statement is one court day instead of three days because a motion to compel further responses may be brought on much shorter time period than a motion for summary judgment, 16 court days for a motion to compel, as opposed to 75 days for a motion for summary judgment and the opposition is due only one week later on a motion to compel as opposed to almost one month later on a motion for summary judgment.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

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

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