

## RESOLUTION 02-08-2018

### DIGEST

#### Discovery: Electronic Exchange of Written Discovery

Adds California Rules of Court, rule 3.1005, to require a party to electronically exchange written discovery upon request.

### STATEMENT OF REASONS

The Problem: Currently there is no requirement that the parties electronically exchange the discovery requests or responses. Thus, the attorney or his or her staff must retype all of the questions and answers, which is often very time consuming where there are voluminous discovery requests and responses, either when responding to discovery or in preparing a separate statement in anticipation of filing a motion to compel. Although when a party responds to written discovery it is not required to include the discovery requests (interrogatories, requests for production, requests for admissions) in the body of the responses, many practitioners do include the requests in the responses for ease of reading. Where the requests are included in the responses, it is also helpful to the courts in deciding discovery disputes, particularly during informal discovery responses where there is no separate statement filed.

The Solution: This resolution would add a new Rule of Court to address the issue and require that parties represented by an attorney exchange electronic versions of written discovery demands upon request of the responding party. This will save the parties time and money by not retyping the discovery requests and responses. In addition, if the discovery requests are included in the response, it will aid the reader and the courts if the questions and the answers are in one document. This resolution is modeled after California Rule of Court, rule 3.1350(i), which requires the electronic exchange of separate statements relating to motions for summary judgment on request of a party.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that the Judicial Council add California Rules of Court, rule 3.1005, to read as follows:

1 Rule 3.1005: Request for Electronic Version of Written Discovery

2 A party represented by an attorney that has propounded or responded to written discovery  
3 on another party must, within five (5) court days of receiving a written request from the  
4 responding party, provide to the responding party an electronic version of that written discovery.  
5 The electronic version may be provided in any form on which the parties agree. If the parties are  
6 unable to agree on the form, the responding party must provide to the requesting party the  
7 electronic version of the discovery that it used to prepare the document. Under this rule, a party  
8 is not required to create an electronic version or any new version of any document for the  
9 purpose of transmission to the requesting party.

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

**PROPONENT:** Women Lawyers Association of Los Angeles

**IMPACT STATEMENT**

This resolution does not affect any other statute, law or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

**APPROVE IN PRINCIPLE**

History:

Similar to Resolution 01-08-2003, which was approved in principle as amended and Resolution 04-01-2007, which was approved in principle.

Reasons:

This resolution adds California Rules of Court, rule 3.1005, to require a party to electronically exchange written discovery upon request. This resolution should be approved in principle because it eases the technical burdens in responding to discovery and in preparing discovery related motions and is consistent with past resolutions approved by the Conference.

Current law only requires service of a paper version of written discovery and responses to discovery. This requires parties responding to discovery to re-type the written discovery if they want to have the question precede the responses given. Likewise, the propounding party must retype the responses as part of their separate statements in the event a motion to compel is brought. This often adds costs to the litigants. These costs can easily be avoided by electronic exchange of the discovery requests and responses upon request of the parties as proposed by this rule change.

The resolution also facilitates the preparation of the statutorily required separate statement in the event of any discovery motions. Discovery and discovery disputes are already costly. This is a simple solution towards reducing those costs.

This resolution is related to Resolution 02-03-2018.