Studies J-505, J-506 October 13, 2006

Memorandum 2006-40

Time Limits for Discovery in an Unlawful Detainer Case (Comments on Tentative Recommendation)

The comment period has ended for the tentative recommendation on *Time Limits for Discovery in an Unlawful Detainer Case* (2006). The Commission received the following comments:

The Commission needs to consider these comments, determine whether to make any changes in its proposal, and decide whether to finalize a recommendation in time to introduce legislation in early 2007.

GENERAL NATURE OF THE COMMENTS

The Commission received comments from the State Bar Committee on Administration of Justice ("CAJ"), the Volunteer Legal Services Program of the Bar Association of San Francisco ("VLSP"), and Bay Area Legal Aid, which is "the Legal Services Corporation funded civil legal services program serving the lowest income households in the seven counties of the San Francisco Bay Area." Exhibit p. 13. Bay Area Legal Aid strives to preserve affordable housing; unlawful detainer defense is a significant portion of its practice. *Id*. The Commission also received comments from the California Apartment Association ("CAA"), which is "an organization of 50,000 rental property owners and managers who are responsible for nearly 2 million rental units throughout the State of California." Exhibit p. 3. In addition, the Commission received comments from Lawrence Jensen, a San Francisco attorney who has "handled in excess of

100 unlawful detainer cases in [his] 18+ years of practice, nearly all on the landlords' side," both residential and commercial. Exhibit p. 12. We are grateful to these organizations and to Mr. Jensen for taking the time to review the Commission's proposal, share their views, and offer suggestions.

In general, the comments on the tentative recommendation are supportive. All of VLSP's comments about the proposed reforms are positive. See Exhibit pp. 1-2. "CAJ supports the proposed statutory changes, subject to one comment." Exhibit p. 16. Mr. Jensen offers a number of suggestions, but otherwise "substantially agree[s] with the proposed changes." Exhibit p. 12. Bay Area Legal Aid extends its "support to the proposed changes and other clarifications to reconcile the Civil Discovery Act to the expedited proceedings of unlawful detainer and forcible entry and detainer actions." Exhibit p. 14. The organization suggests one new reform that is not included in the tentative recommendation. Exhibit pp. 13-15. Similarly, CAA's comments are generally supportive, but it offers several suggestions for additional reforms. Exhibit pp. 3-11.

Comments on specific aspects of the tentative recommendation are discussed below. We then turn to the suggestions for additional reforms.

COMMENTS ON SPECIFIC ASPECTS OF THE TENTATIVE RECOMMENDATION

Four aspects of the tentative recommendation were specifically discussed in comments: (1) the proposed revisions to separate language establishing a special unlawful detainer time limit from language establishing the normal time limit, (2) the proposed clarification of the statute governing the time of taking an oral deposition, (3) the proposed revisions relating to forcible entry and forcible detainer cases, and (4) the proposed new provision establishing a five day notice requirement for a discovery motion in a summary proceeding for possession of real property.

Separation of Special Time Limit From General Time Limit

A number of provisions in the Civil Discovery Act establish a special time limit for a particular discovery event in an unlawful detainer case. In most of these provisions, the statutory language establishing the special time limit is mixed with language establishing the time limit for other types of cases. As is more fully discussed in the tentative recommendation, this drafting technique creates ambiguities.

The tentative recommendation proposes to eliminate these ambiguities by amending each provision to separately state the special time limit for an unlawful detainer case. See the proposed amendments to Code of Civil Procedure Sections 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, and 2033.250.

VLSP comments that the proposed legislation "will simply separate the shortened time limits for unlawful detainers from the general civil litigation discovery time limits so as to prevent any ambiguities ...." Exhibit p. 1. VLSP "wholeheartedly support[s] these revisions which will result in clarity for unlawful detainer practitioners." *Id*.

Similarly, CAA endorses the proposed revisions to separately state the special unlawful detainer discovery time limits. Exhibit p. 4. CAA "appreciates the Commission's efforts to clarify and make consistent code provisions pertaining to the unlawful detainer process." *Id*. at 3. According to CAA, "[a]mbiguous or inconsistent provisions are often exploited by attorneys who provide eviction defense services." *Id*. CAA says the result, "even when the owner prevails in the action, is generally several months lost rent, which, as a practical matter, is unrecoverable." *Id*.

From these specific comments, as well as the general support expressed by CAJ, Bay Area Legal Aid, and Mr. Jensen, it appears that the revisions to separately state the special unlawful detainer time limits are uncontroversial. The Commission should **proceed with those revisions.**

Time of Taking an Oral Deposition

Code of Civil Procedure Section 2025.270 governs the time of taking an oral deposition. Subdivision (a) says that such a deposition is to be scheduled at least ten days after service of the deposition notice. If the witness is required to produce personal records of a consumer pursuant to a deposition subpoena, the deposition is to be scheduled at least twenty days after issuance of the subpoena.

Subdivision (b) establishes a special rule for an unlawful detainer case. In such a case, an oral deposition is to be scheduled "for a date at least five days after service of the deposition notice, but not later than five days before trial." It is unclear whether this special rule is meant to apply when a witness in an unlawful detainer case is required to produce personal records of a consumer pursuant to a deposition subpoena.

The tentative recommendation proposes to amend Section 2025.270 to clarify that the normal twenty day notice period, not the special five day rule, applies

when a witness in an unlawful detainer case is required to produce personal records of a consumer pursuant to a deposition subpoena. This twenty day notice period and related deadlines can be shortened upon a showing of good cause, so long as the consumer's constitutional right to privacy is adequately protected. See pp. 7-8 of the tentative recommendation & sources cited.

The proposed amendment of Section 2025.270 is accompanied by a Note indicating that "[w]hen a party subpoenas personal records pertaining to a consumer in an unlawful detainer case or other summary proceeding for possession of real property, there is tension between (1) the interest in protecting the consumer's right to privacy by giving the consumer adequate notice and an opportunity to object before producing the personal records, and (2) the interest in expeditiously resolving disputes over possession of real property." The Note solicits comment on whether the proposed amendment is the best means of accommodating those competing interests.

CAA comments that the Commission is correct in "acknowledg[ing] the tension between (1) the interest in protecting the consumer's right to privacy by giving the consumer adequate notice and an opportunity to object, and (2) the interest in expeditiously resolving disputes over the possession of real property." Exhibit p. 4. While CAA "is concerned that 20 days is too long for any aspect of the unlawful detainer process, closer examination reveals this provision will rarely be applicable in an unlawful detainer action." *Id*. CAA says this is because the definition of "personal records" in Code of Civil Procedure Section 1985.3 only encompasses records pertaining to a consumer that are held by certain types of professionals, such as medical personnel, attorneys, accountants, banks, insurance companies, and the like. *Id*. CAA's position thus appears to be one of grudging neutrality.

Mr. Jensen "believe[s] that the notice requirements for production of consumer and employment records can be shortened to 10 days in these expedited proceedings without offending the state constitution's privacy guarantee." Exhibit p. 12. Such an approach would constitute a change in existing law, as opposed to a clarification of which existing rule (twenty days or five days) applies when consumer records are subpoenaed in an unlawful detainer case.

None of the other comments specifically refer to the proposed clarification of Section 2025.270. From the general support expressed by CAJ, VLSP, and Bay

Area Legal Aid, we infer that they see no problem with the Commission's proposed approach.

Based on the input thus far, the staff recommends that the Commission **proceed with the proposed amendment of Section 2025.270.** It may be necessary to revisit this matter if other persons express views similar to those of Mr. Jensen.

Forcible Entry and Forcible Detainer

The tentative recommendation proposes that the provisions establishing special time limits for discovery in an unlawful detainer case be amended to expressly apply those limits to a proceeding for forcible entry or forcible detainer. VLSP "support[s] such a revision as it makes sense to give litigators and parties in all summary proceedings the same ability to conduct discovery as in general civil litigation." Exhibit p. 1. According to VLSP, "[w]ithout this revision, practitioners in other summary proceedings for possession of real property would not get the benefit of obtaining critical discovery on 5 days notice." *Id*.

None of the other comments specifically refer to the revisions relating to forcible entry and forcible detainer cases. Given VLSP's specific support and the general support expressed by others, the Commission should **proceed with the revisions relating to forcible entry and forcible detainer cases.**

Notice Period for a Discovery Motion

The tentative recommendation proposes to add a new provision to the Code of Civil Procedure, which would establish a five day notice requirement for a discovery motion in an unlawful detainer case or other summary proceeding for possession of real property. The proposed new provision is modeled on Code of Civil Procedure Section 1170.7, which establishes a five day notice requirement for a summary judgment motion in such a case.

Mr. Jensen "think[s] that law & motion departments (and opposing parties) have a very difficult time dealing with any motion filed on a mere 5 days of notice." Exhibit p. 12. He suggests that in an unlawful detainer case "discovery motions should be filed on 10 days notice." *Id*.

In contrast, VLSP wholly supports the five day notice period proposed in the tentative recommendation. Exhibit p. 2. VLSP says the change "would eliminate the need for practitioners to make ex parte applications for orders shortening time for every discovery dispute that arises in an unlawful detainer procedure or

other summary proceeding for possession of real property." *Id*. VLSP further explains:

> It has never made sense to allow practitioners to propound discovery with responses due in 5 days, but require practitioners who did not receive responses or received inadequate responses to have their motions heard on a regularly noticed 21 day period or seek through an ex parte application an order shortening time to have the motion heard on a more timely basis and before the trial date in the case. By adding this new section, practitioners will be able to eliminate one court appearance (the ex parte appearance) that in the long run will benefit both plaintiffs and defendants in these cases.

Id.

Likewise, Bay Area Legal Aid says "the recommendation to establish a shortened five day notice requirement for discovery motions is a needed change to expedite the resolution of discovery disputes in these summary proceedings." Exhibit p. 14. Similarly, CAA "approves of the Commission proposed new section, which would shorten the notice period for a discovery motion from 16 to 5 days." Exhibit p. 3. CAA states that "[t]his shorter time period is appropriate considering the expedited nature of the process." *Id*.

CAA also says that the proposed legislation "should further direct the Judicial Council to set a briefing schedule and other procedural details for the motion, in order to eliminate any ambiguity." *Id*. Mr. Jensen makes the same point. Exhibit p. 12. He further says that service of the notice of motion "should be expressly permitted by overnight courier service, etc., as is permitted for oppositions and reply briefs in regular motions (See CCP 1005(c))." *Id*.

The suggestions regarding a briefing schedule could easily be implemented by revising the proposed new section as shown in strikeout and underscore below:

> **Code Civ. Proc. § 1170.8 (added). Time for discovery motion**
>
> SEC. ____. Section 1170.8 is added to the Code of Civil Procedure, to read:
>
> 1170.8. (a) In any action under this chapter, a discovery motion may be made at any time upon giving five days notice.
>
> (b) The Judicial Council shall promulgate a rule, not inconsistent with statute, prescribing the time for filing and service of opposition and reply papers, if any, relating to a motion under this section.
>
> **Comment.** Section 1170.8 is new. ~~The section~~ Subdivision (a) provides for an expedited hearing on a discovery motion in a

forcible entry or forcible or unlawful detainer case, consistent with the precedence for such cases expressed in Section 1179a. The ~~section~~ provision is modeled on Section 1170.7 (five days notice required for summary judgment motion in action under this chapter).

Subdivision (b) is added to prevent confusion and disputes regarding the briefing schedule for a motion under this section. For general guidance on means of service, including service by overnight delivery, see Sections 1010-1020.

This would help to prevent confusion and disputes over the proper briefing schedule. The staff recommends **revising proposed Section 1170.8 as indicated.**

It does not seem necessary to add any language about service by overnight courier service. See Code of Civil Procedure Section 1013(c), which details how to accomplish service by Express Mail or overnight delivery, and provides for a time extension of two court days when service is made by this method. To assist unlawful detainer litigants, the proposed Comment to Section 1170.8 would draw attention to this portion of the code.

SUGGESTIONS REGARDING OTHER REFORMS TO INVESTIGATE

Several of the comments suggest reforms that are not included in the tentative recommendation. Some of these suggestions relate to civil discovery; others do not.

Reforms Relating to Discovery

The following suggestions would fall within the scope of the Commission's ongoing study of civil discovery.

Service of a Response to Interrogatories

The tentative recommendation includes the following amendment of Code of Civil Procedure Section 2030.260:

Code Civ. Proc. § 2030.260 (amended). Service of response to interrogatories

SEC. ____. Section 2030.260 of the Code of Civil Procedure is amended to read:

2030.260. (a) Within 30 days after service of interrogatories, ~~or in unlawful detainer actions within five days after service of interrogatories~~ the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of

the responding party the court has extended the time for response. ~~In unlawful detainer actions,~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the interrogatories are propounded shall have five days from the date of service to respond, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

~~(b)~~ (c) The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

Comment. Section 2030.260 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to interrogatories in an unlawful detainer case.

CAJ notes that current subdivision (b) (to be relabeled as subdivision (c)) is "a separate provision that does not exist in the parallel statutes governing responses to inspection demands and requests for admission." Exhibit p. 16.

CAJ "believes the provisions of Section 2030.260 that govern service of copies should be amended to be the same as those in Sections 2031.260 and 2033.250." *Id*. It explains:

> There does not appear to be any reason to include the requirement to serve copies in a stand-alone subdivision. Moreover, a responding party could presumably file a motion in *any* case (whether responding to interrogatories, inspection demands, or requests for admission), seeking relief from the general requirement of serving copies on the other parties. Including the specific provision in Section 2030.260 therefore seems unnecessary, and also suggests that the relief is not available, absent the specific statutory authority.

Id.

This seems a sensible suggestion, but the staff would be reluctant to incorporate it in a final recommendation without first circulating the proposed revisions for comment. The language now in subdivision (b) originated in former

Code of Civil Procedure Section 2030(h), the predecessor of Section 2030.260. See 1986 Cal. Stat. ch. 1334, § 2. But the language was not included in the version of Section 2030(h) proposed by the State Bar-Judicial Council Joint Commission on Discovery. This suggests that the language was added in the legislative process, in response to a concern raised. The Commission should therefore seek input before deciding whether to delete the language.

That could be done in a couple of ways. One approach would be to seek input on CAJ's suggested revision before approving a final recommendation. Another approach would be to approve a final recommendation now (consisting of the reforms already circulated for comment), seek enactment of that recommendation, and then investigate CAJ's suggestion for possible inclusion in another recommendation.

For a number of reasons, the staff is **inclined to finalize a recommendation now and investigate CAJ's suggestion later.** First, if the Commission finalizes a recommendation now, the proposed legislation could be introduced in the Legislature in early 2007. Second, CAJ's suggestion is but one of several suggestions for additional reforms relating to discovery in an unlawful detainer case, which would make a nice package of ideas to study. Third, the matter may be more complex than it initially appears. The Civil Discovery Act is not as clear about service of copies as it could be. A more global solution may be warranted, not just revisions of Section 2030.260. **It would be better to examine the matter thoroughly than to rush ahead with a particular approach.**

Timetable for Other Forms of Discovery

CAA "recommends that the Commission's proposal be expanded to clarify whether the following types of discovery are even available in an unlawful detainer action, and if so, to specify an accelerated timetable for these methods that is comparable to those for other forms of discovery: (1) Deposition of a non-party (CCP §§ 2020.010-2020.510); (2) Oral Deposition outside California (§§ 2026.010, 2027.010); (3) Deposition by written questions (§§ 2028.010-2028.080); (4) Physical or Mental Examinations (§§ 2032.010-2032.650); (5) Exchange of Expert Witness Information (§§ 2034.010-2034.730); (6) Discovery Before an Action is filed (§§ 2036.010-2036.050); and (7) Discovery Pending Appeal (§§ 2036.010-2036.050)." Exhibit p. 4.

This is an excellent suggestion. The Civil Discovery Act should provide clear guidance on the availability and use of the enumerated discovery methods in an

unlawful detainer case. **The Commission should look into this matter, without delaying the reforms in the tentative recommendation.**

Interrelationship Between Discovery Cutoff and Hearing Date

Bay Area Legal Aid points out that an unlawful detainer case must be set for trial no later than the 20th day after a trial date is requested, yet the discovery cutoff date is only five days before trial. Consequently, "cases are typically set for trial before discovery is completed." Exhibit p. 14. In many jurisdictions, any discovery motion will be heard in the law and motion department or before a discovery commissioner. Bay Area Legal Aid points out, however, that "it is the presiding judge who controls the trial calendar." *Id*. Thus, if a judicial officer grants a discovery motion, that officer lacks authority to continue the trial date. The successful litigant must instead make a separate motion to the presiding judge to obtain a continuance. *Id*.

Bay Area Legal Aid suggests three ways in which this process could be improved:

- Amend the provision on setting a trial date (Code of Civil Procedure Section 1170.5) to "require certification by the requesting party that all outstanding discovery to date has been responded to." Exhibit p. 15.
- Alternatively, amend that provision to require certification by the requesting party that "the parties have agreed to a discovery schedule for already noticed depositions or other discovery matters so the trial date will allow for completion of discovery." *Id*.
- "[A]llow the court granting a discovery motion to continue the trial date without a separate motion to another department." *Id*.

Again, the Commission should **investigate these suggestions as part of a new study, without delaying the reforms in the tentative recommendation.**

Law and Motion Calendars

Mr. Jensen reports that "[e]ven with a shortened notice period for motions in unlawful detainer (and similar cases), it is [his] experience that the trial courts' law & motion calendars are often 'full' several weeks in advance, and the clerks' offices won't permit filing of motions exceeding the number already calendared, except on an ex parte application to specially set the hearing." Exhibit p. 12. He says that the Code of Civil Procedure "should specify that trial courts must permit these motions to be filed on statutory notice in these cases without needing leave of court to do so." *Id*. He also says that the trial courts "should be

advised to save a little time on their law & motion calendars for such matters." *Id*.

This suggestion is not limited to the context of discovery; Mr. Jensen's concern extends to any motion made on an accelerated basis in a summary proceeding for possession of real property. Nonetheless, the Commission could study the full scope of the matter, as long as it informs the Judiciary Committees and no objection is raised. In addition to its authority to study civil discovery, the Commission has authority to study real property, which would include unlawful detainer cases and other proceedings for summary possession of real property.

The staff therefore recommends that the Commission **add Mr. Jensen's suggestion to the list of unlawful detainer suggestions warranting future investigation.** It is possible that his concerns about calendaring would be better addressed by a court rule or policy, rather than by legislation. But the Commission should investigate the situation and assess the necessity of legislation. It might be appropriate, for instance, to propose legislation directing the Judicial Council to promulgate a rule on calendaring a motion in a summary proceeding for possession of real property.

Reforms Unrelated to Discovery

The suggestions discussed below are unrelated to civil discovery but would fall within the Commission's authority to study real property. They essentially amount to new topic suggestions and **perhaps should be considered in conjunction with the Commission's annual review of new topics and priorities** (Memorandum 2006-36). As with other new topic suggestions, the Commission needs to be careful not to overtax its limited resources. If it decides to investigate any of these ideas, the Commission should first inform the Judiciary Committees.

Timetable for a Demurrer or a Motion to Strike

CAA encourages the Commission to investigate the possibility of establishing a shortened time period for a demurrer or a motion to strike in an unlawful detainer case. Exhibit pp. 3-4. Currently, a notice period of 16 court days is required under Code of Civil Procedure Section 1005. CAA says that demurrers and motions to strike "are often used by unscrupulous attorneys solely to delay the return of possession to the owner." Exhibit pp. 3-4. CAA reports that the "end result, even when the owner prevails, is months of free rent for the resident." *Id.*

A bill on this subject was introduced in the Legislature just this year. See AB 2008 (Haynes). The bill proposed a shortened notice period for a demurrer or a motion to strike in an unlawful detainer case that does not involve a dwelling unit. After receiving a negative analysis, the bill died in the Assembly Judiciary Committee without being put to a vote.

It is thus clear that the concept of shortening the notice period for a demurrer or motion to strike is controversial. The staff recommends that the Commission **leave this matter to the Legislature to handle.**

Unlawful Detainer Delays Due to Amended Answers

CAA also "respectfully requests that the Commission review the provisions of the Code of Civil Procedure that operate to allow a tenant 10 days to amend his or her answer to the unlawful detainer complaint." Exhibit p. 5. CAA says that in effect, this rule "gives unlawful detainer defendants 15 days to file an answer to the complaint, which directly contradicts the Legislature's intent to provide an adequate, expeditious and summary procedure for redeeming possession of real property unlawfully withheld by a tenant." *Id*. According to CAA, "[t]his 'loophole' is often exploited by certain eviction defense attorneys who help tenants file amended answers with a host of affirmative defenses (and often a demand for jury trial) that were not even hinted at in the original answer filed by the tenant." *Id*.; see also Exhibit pp. 6-11.

Again, this topic appears to be controversial. It is easy to predict that landlords would favor reform and tenant organizations would oppose it. As before, the staff recommends that the Commission **leave this matter to the Legislature to handle.**

Notice Period for a Summary Judgment Motion

Consistent with his observation that law and motion departments have difficulty handling motions filed on only five days notice, Mr. Jensen believes that "5 days notice is inadequate both for the opponent and the court to properly consider and respond to a motion for summary judgment" in an unlawful detainer case. Exhibit p. 12. He thinks that "10 days notice for such a motion should be required." *Id*. He also suggests directing the Judicial Council to promulgate a rule establishing a briefing schedule for such a motion. *Id*.

Five days is certainly a short time for a summary judgment motion to go from start to finish. There is little time to prepare an opposition, much less a reply. The court also has little time to consider the merits of the motion, particularly if

courtesy copies of the papers are not delivered directly to chambers and there is a delay in transmitting papers from the clerk's office.

The staff suspects, however, that the five day time period was controversial when it was established in 1982 and would be difficult to change. We could check the legislative history at State Archives if the Commission is interested. Our recommendation is to **leave the 5-day notice period alone unless there are more widespread indications of dissatisfaction with that period.**

It probably would be less controversial to propose legislation directing the Judicial Council to promulgate a rule establishing a briefing schedule for a summary judgment motion in a summary proceeding for possession of real property. That might not be necessary, however, if the Commission proposes legislation directing the Judicial Council to promulgate a rule establishing a briefing schedule for a discovery motion in such a proceeding. In determining the briefing schedule for a discovery motion, the Judicial Council probably will notice the lack of such a schedule for a summary judgment motion and fill that gap without a statutory directive. The Commission could simply wait to see if this happens.

However, there is also another, similar gap in the same part of the code. Code of Civil Procedure Section 1167.4 governs a motion to quash in a summary proceeding for possession of real property. It says that "the time for making the motion shall be not less than three days nor more than seven days after the filing of the notice." Like the summary judgment provision, it does not provide any guidance regarding opposition or reply papers.

Again, the Judicial Council might fill the gap without a statutory directive if it is directed to promulgate a briefing schedule for a discovery motion in a summary proceeding for possession of real property. There might be no need for the Commission to take action.

Alternatively, the Commission could take steps to ensure that a briefing schedule is promptly developed for all three types of motions. Instead of revising proposed new Section 1170.8 as shown earlier in this memorandum, it could propose to add another new section, along the following lines:

> **Code Civ. Proc. § 1170.9 (added). Judicial Council rules**
>
> SEC. ____. Section 1170.9 is added to the Code of Civil Procedure, to read:
>
> 1170.9. The Judicial Council shall promulgate rules, not inconsistent with statute, prescribing the time for filing and service

of opposition and reply papers, if any, relating to a motion under Section 1167.4, 1170.7, or 1170.8.

Comment. Section 1170.9 is new. To prevent confusion and disputes, it directs the Judicial Council to establish briefing schedules for a motion to quash, summary judgment motion, and discovery motion in a summary proceeding for possession of real property. For general guidance on means of service, including service by overnight delivery, see Sections 1010-1020.

The staff has mixed feelings about whether this is a good idea. On the one hand, the reform would address matters besides civil discovery and it has not been circulated for comment, even to the Judicial Council. On the other hand, the provision is likely to be uncontroversial, and it could result in needed guidance for many people. The reason it would affect matters besides civil discovery is because the need for other briefing schedules became apparent on considering whether to set a briefing schedule for a discovery motion.

On balance, we find the latter arguments more persuasive, but we do not feel strongly about this. **If the Commission agrees with the idea of addressing all three types of motions, it should add proposed Section 1170.9 to its recommendation,** rather than revising proposed Section 1170.8 as shown on pages 6-7.

NEXT STEP

Because the tentative recommendation was favorably received, it seems advisable to proceed with the proposed legislation in 2007. The Commission should **approve the proposal as a final recommendation**, subject to the revisions of Section 1170.8 shown on pages 6-7, or addition of proposed Section 1170.9 as shown on pages 13-14.

When time permits, the Commission should study the new ideas that were raised relating to civil discovery. These might eventually result in a second proposal focusing on civil discovery in summary proceedings for possession of real property.

Respectfully submitted,

Barbara Gaal
Staff Counsel

THE BAR ASSOCIATION OF
SAN FRANCISCO

vlsp VOLUNTEER LEGAL SERVICES PROGRAM
of The Bar Association of San Francisco
Changing Lives

September 27, 2006

California Law Revision Commission
4000 Middlefield Rd., Room D-1
Palo Alto, CA 94303-4739

Re: Tentative Recommendation for Revisions to Time Limits for Discovery in Unlawful Detainer Cases

To Whom It May Concern:

The California Law Revision Commission has made a tentative recommendation in favor of the suggested revisions to Code of Civ. Proc. Sections 2030.020, 2030.260, 2031.020, 2031.230, 2031.260, 2033.020, 2033.250, and 2025.270. These sections relate to discovery time limits generally and for unlawful detainer actions. The revisions attempt to eliminate ambiguity by setting forth the time limits for discovery in unlawful detainer actions separate from time limits in general civil litigation.

Unlawful detainer actions are summary proceedings, and the legislature has already seen fit to shorten discovery time limits to better meet the needs of plaintiffs and defendants in these matters. This legislation will simply separate the shortened time limits for unlawful detainers from the general civil litigation discovery time limits so as to prevent any ambiguities and we wholeheartedly support these revisions which will result in clarity for unlawful detainer practitioners.

In addition, the revisions also call for applying these special time limits to other types of summary proceedings for possession of real property (forcible entry and forcible detainer). Again, we support such a revision as it makes sense to give litigators and parties in all summary proceedings the same ability to conduct discovery as in general civil litigation. Without this revision, practitioners in other summary proceedings for possession of real property would not get the benefit of obtaining critical discovery on 5 days notice.

Finally, the Commission is giving its tentative recommendation to adding a provision to the Code of Civil Procedure that would establish a

shortened five day notice requirement for a discovery motion in summary proceedings for possession of real property. Such a change would eliminate the need for practitioners to make ex parte applications for orders shortening time for every discovery dispute that arises in an unlawful detainer procedure or other summary proceeding for possession of real property.

It has never made sense to allow practitioners to propound discovery with responses due in 5 days, but require practitioners who did not receive responses or received inadequate responses to have their motions heard on a regularly noticed 21 day period or seek through an ex parte application an order shortening time to have the motion heard on a more timely basis and before the trial date in the case. By adding this new section, practitioners will be able to eliminate one court appearance (the ex parte appearance) that in the long run will benefit both plaintiffs and defendants in these cases. We wholly support such a change to the Code of Civil Procedure.

Very truly yours,

Carolyn A. Gold
Supervising Attorney
VLSP Progam of the
Bar Association of San Francisco

California

The CAA Network
- California Apartment Association
- Apartment Association Greater Inland Empire
- CAA Central Coast
- CAA Central Valley
- CAA Contra Costa
- CAA Greater Fresno
- CAA Los Angeles
- CAA Merced
- CAA Solano/Napa
- Income Property Association of Kern
- Marin Income Property Association
- North Coast Rental Housing Association
- Rental Housing Association of Northern Alameda County
- Rental Housing Association of Sacramento Valley
- Rental Housing Owners Association of Southern Alameda County
- San Diego County Apartment Association
- San Francisco Apartment Association
- San Joaquin County Rental Property Association
- South Coast Apartment Association
- Tri-County Apartment Association

September 29, 2006

Law Revision Commission
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File:

Ms. Barbara Gaal, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Time Limits for Discovery in an Unlawful Detainer Case - Tentative Recommendation of June 2006

Dear Ms. Gaal:

The California Apartment Association is an organization of 50,000 rental property owners and managers who are responsible for nearly 2 million rental units throughout the State of California. CAA offers the following comments to assist the California Law Revision Commission's preparation of recommendations to the Legislature.

CAA appreciates the Commission's efforts to clarify and make consistent code provisions pertaining to the unlawful detainer process. Ambiguous or inconsistent provisions are often exploited by attorneys who provide eviction defense services. The result, even when the owner prevails in the action, is generally several months lost rent, which, as a practical matter, is unrecoverable. While the nature of an individual case may warrant longer deadlines for discovery and other matters, CAA believes the Commission's proposed revisions take an appropriate approach, by setting abbreviated deadlines, while at the same time, allowing the court the discretion to extend (or shorten) those deadlines when necessary. CAA further suggests that these accelerated timetables be extended to all aspects of the unlawful detainer process, including all forms of discovery, pleadings and motion practice. CAA's specific comments on the proposal follow:

Time for Discovery Motion (CCP §1170.8):

CAA approves of the Commission proposed new section, which would shorten the notice period for a discovery motion from 16 to 5 days. This shorter time period is appropriate considering the expedited nature of the process. The legislation should further direct the Judicial Council to set a briefing schedule and other procedural details for the motion, in order to eliminate any ambiguity. CAA suggests that due to the summary nature of the proceeding, the response to the motion should be due at the hearing.

Timetables for Other Motions:

The Commission's proposal to shorter=n the notice period for a motion to compel discovery is modeled on the accelerated timetable for a summary judgment motion. A summary judgment motion in an unlawful detainer case requires five days' notice, rather than the 75 days required in other cases. This accelerated notice period is equally appropriate for motions to strike and demurrer, which currently require 16 days' notice. These motions are often used by unscrupulous

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attorneys solely to delay the return of possession to the owner. The end result, even when the owner prevails, is months of free rent for the resident. In individual cases where there are complex issues requiring additional time to brief, the court should be authorized, for good cause, to extend the deadlines. CAA also requests that the statute direct the Judicial Council to specify a briefing schedule and other procedural details for these motions, taking into account the expedited nature of the unlawful detainer process.

Time of Taking Oral Deposition/Personal Records of a Consumer (CCP §2025.270):

In allowing the existing 20 day response time to continue to apply to unlawful detainer actions, the Committee acknowledges the tension between (1) the interest in protecting the consumer's right to privacy by giving the consumer adequate notice and an opportunity to object, and (2) the interest in expeditiously resolving disputes over the possession of real property. While CAA is concerned that 20 days is too long for any aspect of the unlawful detainer process, closer examination reveals this provision will rarely be applicable in an unlawful detainer action. Section 2025.270 applies only to records about the consumer held by witnesses who are medical personnel, attorneys, accountants, phone companies, psychotherapists, or education facilities with whom the consumer has transacted business. (See definition of 'Personal Records' at CCP 1985.3).

Timetables for Propounding and Responding to Interrogatories, Demands for Inspection, and Requests for Admission (CCP §§ 2030.020. 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, 2033.250):

CAA endorses the Commission's revision, which breaks out the deadlines for these forms of discovery into a separate subpart of each provision and that authorizes the court to adjust the five-day deadlines, if necessary.

Timetable for other Forms of Discovery:

CAA recommends that the Commission's proposal be expanded to clarify whether the following types of discovery are even available in an unlawful detainer action, and if so, to specify an accelerated timetable for these methods that is comparable to those for other forms of discovery: (1) Deposition of a non-party (CCP §§ 2020.010-2020.510); (2) Oral Deposition outside California (§§2026.010, 2027.010; (3) Deposition by written questions (§§2028.010-2028.080); (4) Physical or Mental Examinations (§§2032.010-2032.650); (5) Exchange of Expert Witness Information(§§2034.010-2034.730); (6) Discovery Before An Action is filed (§§2036.010-2036.050); and (7) Discovery Pending Appeal (§§2036.010-2036.050).

Unlawful Detainer Delays Due to Amended Answers

While it is beyond the scope of the issues currently before the Commission, CAA respectfully requests that the Commission review the provisions of the Code of Civil Procedure that operate to allow a tenant 10 days to amend his or her answer to the unlawful detainer complaint. This is another area where the deadlines applicable to civil litigation generally need to be modified for the purpose of unlawful detainer actions. This "loophole" is often exploited by certain eviction defense attorneys who help tenants file amended answers with a host of affirmative defenses (and often a demand for jury trial) that were not even hinted at in the original answer filed by the tenant.

Under existing law, an answer to an unlawful detainer action must be filed within 5 days. (CCP §1167) Currently, unlawful detainer defendants have the same right to amend their answers as in ordinary civil actions. If the plaintiff has demurred to the answer, the defendant may amend at any time before the hearing on the demurrer. (CCP § 4720) Otherwise, if the plaintiff did not demur, the answer may be amended "as of right" only during the time that a demurrer could have been interposed. (CCP § 430.40(b); *Bank of America v. Goldstein,* (1938) 25 CA2d 37, 45; 76 P2d 545, 549) There is no special deadline for a landlord's demurrer to a tenant's answer in unlawful detainer actions. The provision that a plaintiff may file a demurrer within 10 days after service of the answer in ordinary civil actions (CCP § 430.40(b)), prejudices plaintiffs in unlawful detainer cases. In effect, it gives unlawful detainer defendants 15 days to file an answer to the complaint, which directly contradicts the Legislature's intent to provide an adequate, expeditious and summary procedure for redeeming possession of real property unlawfully withheld by a tenant. Further elaboration of this point may be found in the attached brief, prepared by an attorney member of CAA.

Thank you for the opportunity to assist the California Law Revision Commission. Please contact me if you have any questions.

Sincerely,

California Apartment Association

By
Heidi Palutke
Research and Legislative Counsel

JANE L. CREASON (SBN 189094)
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Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA, BAY JUDICIAL DISTRICT

Plaintiff, vs. , Defendants. DOES 1 TO 10 INCLUSIVE	Case No.: PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' AMENDED ANSWER Date: Time: Dept:

I. STATEMENT OF FACTS

This is an action for unlawful detainer based upon a 3 Day Notice to Pay Rent or Quit. Plaintiff filed this action on April 26, 2006, seeking restitution of the premises, forfeiture of the lease agreement, holdover damages, attorneys' fees and related court costs. Plaintiff served Defendants on May 1, 2006.

Defendants filed an Answer on May 8, 2006, and admitted that all of the statements in the complaint were true. [Exhibit A] Further, Defendants wrote that they were requesting:

> "PLAINTIFF ACCEPTS MONEY DUE AND ALLOWS COMPLETION OF LEASING AGREEMENT ENDING JUNE 1, 2006." [*Id.*]

On May 17, 2006, nine days later, Defendants filed a First Amended Answer to Complaint, alleging 11 affirmative defenses, and demanding a jury trial. [Exhibit B]

Plaintiff has filed the instant motion because Defendants' First Amended Answer to the Complaint is untimely and in violation of California Code of Civil Procedure.

II. ARGUMENT

A. Defendants Should Not be Allowed to Circumvent the Summary Proceeding the California Legislature Enacted for Unlawful Detainers by Manipulating CCP 1167 into a 15 Day Answer; Defendants' Amended Answer is Untimely and Should be Stricken.

It is the most fundamental principle of unlawful detainer law that unlawful detainers are summary proceedings. Thus, an answer to an unlawful detainer action must be filed within 5 days. [CCP § 1167] Generally, unlawful detainer defendants have the right to amend their answers the same as in ordinary civil actions. If Plaintiff has demurred to the answer, defendant may amend any time before hearing on the demurrer. [CCP § 472] Otherwise, if Plaintiff did not demur, the answer may be amended "as of right" only during the time that a demurrer could have been interposed. [CCP § 430.40(b); *Bank of America v. Goldstein,* (1938) 25 CA2d 37, 45; 76 P2d 545, 549]

There is no special deadline for a landlord's demurrer to a tenant's answer in unlawful detainer actions. Thus, whether or not Defendant can file an Amended Answer lies with the discretion of the Court. Applying CCP § 430.40(b)), (the provision for general civil litigation which states that Plaintiff may file a demurrer within 10-days after service of the answer in ordinary civil actions), prejudices Plaintiffs in unlawful detainer cases.

The California Legislature enacted the Unlawful Detainer Statutes (CCP § 1160 et. seq.) in order to provide an adequate, expeditious and summary procedure for redeeming possession of real property unlawfully withheld by a tenant. [*De La Vara v. Municipal Court of Los Angeles*

(1979) 98 Cal.App.3d 638] Based on the related legislative intent for a summary proceeding, **and the CCP § 1167 five day deadline for filing the answer itself**, it would not be proper for Defendants to be allowed to file Amended Answers **another 9 days after the original answer was filed**, or CCP § 1167's requirement for a five day answer is rendered superfluous and Defendants will have perverted that statutes and manipulated for themselves a "fourteen day answer period" which the legislature never intended.

Certain "legal advisory groups for tenants" regularly disregard CCP § 1167 by filing Amended Answers with a veritable spate of affirmative defenses and demand for jury trial after simple, accurate, original Answers have been filed by the tenants themselves. This practice clearly circumvents the California Legislature's intent that unlawful detainers be summary proceedings. Attached hereto as Exhibit C are other examples of original Answers and First Amended Answers. A comparison of these Answers and First Amended Answers show the parlaying of what would be a straightforward and economical (for the Courts and parties) unlawful detainer proceeding into a seemingly complex case with horrendous habitability allegations.

There are other prejudicial repercussions from Defendants' filing amended answers 9 days after CCP's § 1167 five day requirement has passed. Based upon Defendants' first Answer in pro per, Plaintiff begins preparing for a simple unlawful detainer trial (as statistics show that indeed most pay or quit cases are). Then comes the First Amended Answer with the boilerplate affirmative defenses and jury trial demand prepared by the "legal advisory group." The new affirmative defenses raise wholly new matters. Plaintiff must now propound discovery within unlawful detainer's very tight time frames (discovery must be completed 5 days before trial, which is often set on 10 – 12 days notice). Plaintiff is forced to sacrifice investigation of the facts in order to obtain the summary proceeding that the legislature intended unlawful detainers to be.

Unlawful detainer proceedings are not general civil litigation, subject to multiple delays in getting to trial. Therefore, what is *a timely filed motion for leave to amend answer* in a general civil action cannot be timely in an unlawful detainer case; especially when new matters are raised. The damages, and unique nature of unlawful detainer actions, are why the legislature shortened the time within which to respond to an unlawful detainer to five (5) days rather than the thirty (30) days of a general civil action (CCP section 1167.3), provided for a Motion to Quash Service of Summons and Complaint to be heard three (3) to seven (7) days after serving notice (CCP section 1167.4), and provided through statute that a Motion for Summary Judgment may be heard upon five (5) days notice (CCP section 1170.7).

Demurrers should not be allowed after five days either, in keeping with the unlawful detainer statutes. Thus no Amended Answers 'as of right' should be allowed after 5 days of the first Answer.

B. Defendants Failed to Properly Notice an Ex Parte Hearing Applying for Leave of the Court to File an Amended Answer.

Since this Answer was filed nine days after what must be a shortened period for demurrer in unlawful detainer proceedings, it is untimely, and Defendants must file for Leave to Amend their Answer. The Court has discretion over whether or not to allow Defendants' leave to amend. In this case, Defendants failed to notice an ex parte hearing for leave to amend their answer; and instead, merely served an Amended Answer on May 17, 2006. [Exhibit C] It was postmarked May 17, 2006, and was received by Plaintiff's counsel on May 19, 2006. Defendants' cannot file an amended answer without leave of the court and they did not seek leave of the court to do so in this case.

There are no facts in the First Amended Answer that were not solely within Defendants' knowledge and available to them without any investigation when the Answer was filed. [Exhibit C]

Defendants' First Amended Answer violates CCP § 472, thus their First Amended Answer should be stricken.

C. DEFENDANTS' PROPOSED AMENDED ANSWER CONTRADCITS HARMFUL FACTS PLEAD IN THE ORIGINAL PLEADING AND LEAVE TO AMEND SHOULD BE DENIED BECAUSE IT IS A SHAM PLEADING.

The Court has discretion to deny leave where the proposed amendment omits or contradicts harmful facts plead in the original pleading, unless a showing is made of mistake or other sufficient excuse for changing the facts. Absent such a showing, the amended pleading may be treated as a sham. [*Vallejo Develop. Co. v. Beck Develop Co.* (1994) 24 CA4th 929, 946; *Amid v. Hawthorne Comm. Med. Grp., Inc.* (1989) 212 CA3d 1383, 1390]

An amended pleading that contradicts facts alleged in an earlier pleading is subject to challenge. Unless the contradiction is satisfactorily explained (e.g., new information discovered), the rule requiring truthful pleading may result in denial of leave to amend. In ruling on such challenges, the Court can take judicial notice of pleadings already on file. [*Id.,* 1390]

The contradiction between Defendants' May 8, 2006, Answer (which do not have any habitability or affirmative defenses), and their proposed Amended Answer filed May 17 (fraught with habitability and eleven other affirmative defenses), cannot be explained by new information discovered. The original Answer presents a clear non-payment of rent case; then the Amended Answer alleges habitability and eleven other affirmative defenses, with no allegation of how these defenses (or the underlying facts for them) could possibly be a result of new information discovered when Defendants themselves were at all times in possession and control of the premises. Plaintiff requests that this Court take judicial notice of the contradiction under California Evidence Code § 452(d) and deny Defendants' motion for leave to amend. [*See also, Amid v. Hawthorne,* 212 CA3d 1383, 1390]

III. CONCLUSION

The Amended Answer fails to allege any facts that would not have been known to Defendants when their initial Answer was filed. Defendant Tenants should not be allowed to manipulate the California Code of Civil Procedure to obtain 5 more days to perfect their pleadings than Plaintiff Landlords are allowed. Defendants' First Amended Answer to Complaint should be stricken because it is untimely and they failed to comply with California Code of Civil Procedure in Amending their Answer.

Date: May 25, 2006

By: _____

KIMBALL, TIREY & ST. JOHN
JANE L. CREASON
Attorneys for Plaintiff

COMMENTS OF LAWRENCE JENSEN

From: L.R. Jensen <ljensen@ix.netcom.com>
Date: September 20, 2006
To: <commission@clrc.ca.gov>
Re: Comment: Time limits for discovery in an unlawful detainer case - #J505 & #J506

Dear Law Review Commission:

The undersigned practices in the San Francisco Bay Area. I have handled in excess of 100 unlawful detainer cases in my 18+ years of practice, nearly all on the landlords' side. I have handled a mix of residential and commercial unlawful detainers. I am hereby submitting comments regarding the proposed alterations to the Civil Discovery Act regarding unlawful detainer (and similar) case.

Comment 1: I believe that the notice requirements for production of consumer and employment records can be shortened to 10 days in these expedited proceedings without offending the state constitution's privacy guarantee.

Comment 2: I think that law & motion departments (and opposing parties) have a very difficult time dealing with any motion filed on a mere 5 days of notice. Therefore, I think that discovery motions should be filed on 10 days notice. Service of the notice of motion should be expressly permitted by overnight courier service, etc., as is permitted for oppositions and reply briefs in regular motions (See CCP 1005(c)).

Comment 3: It is my belief that 5 days notice is inadequate both for the opponent and the court to properly consider and respond to a motion for summary judgment, and that 10 days notice for such a motion should be required.

Comment 4: The statute should direct the judicial council to promulgate a briefing schedule for all motions in such cases, omitting the filing of a reply.

Comment 5: Even with a shortened notice period for motions in unlawful detainer (and similar cases), it is my experience that the trial courts' law & motion calendars are often "full" several weeks in advance, and the clerks' offices won't permit filing of motions exceeding the number already calendared, except on an ex parte application to specially set the hearing. The CCP should specify that trial courts must permit these motions to be filed on statutory notice in these cases without needing leave of court to do so. The trial courts should be advised to save a little time on their law & motion calendars for such matters.

Comment 6: Excepts as discussed above, I substantially agree with the proposed changes.

Sincerely,

Lawrence R. Jensen
Attorney at Law
95 S. Market St., 3rd Flr.
San Jose, CA 95113
Tel.: (408) 995-3250

Ramón P. Arias
Executive Director

BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

September 27, 2006

BARBARA GAAL, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Request for Public Comment,
Time Limits for Discovery in Unlawful Detainer Cases

Dear Ms. Gaal:

Bay Area Legal Aid is the Legal Services Corporation funded civil legal services program serving the lowest income households in the seven counties of the San Francisco Bay Area. Our program priorities include the preservation of affordable housing. As such, a significant portion of our practice is devoted to the provision of eviction defense in Unlawful Detainer actions. We write in response to your request for public comment on the California Law Revision Commission's proposal relating to time limits for discovery in Unlawful Detainer cases.

Presently, Unlawful Detainer actions have far more at stake than in the past. Long gone are the days when month to month tenancies were the rule, landlords could terminate a tenancy for no stated reason and where parties had no expectation to remain in their homes. Today, in San Francisco, Oakland, Berkeley and other parts of California we have rent control ordinances and just cause for termination of tenancies that provide limitations on dispossession. Practically all forms of state and

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federally assisted housing require a good cause reason to terminate tenancies. In today's tight housing market with exorbitant rents, once a low income tenant family is evicted from a rent controlled apartment or assisted housing, the result in far too many cases is homelessness.

First of all, we wish to extend our support to the proposed changes and other clarifications to reconcile the Civil Discovery Act to the expedited proceedings of unlawful detainer and forcible entry and detainer actions. In particular, the recommendation to establish a shortened five day notice requirement for discovery motions is a needed change to expedite the resolution of discovery disputes in these summary proceedings.

In addition, we wish to point out a continuing problem that the proposed amendments do not address. California Code of Civil Procedure Section 1170.5 requires that the case be set for trial (both to the court or to a jury) "no later than the 20th day following the date that the request to set the time of trial is made." Presently, the cut off for completion of discovery in an Unlawful Detainer action is five days before trial. See California Code of Civil Procedure Sections 2030.020, 2031.020, 2033.020. The result is that a party seeking discovery has a window of about 14 days to complete discovery and make all necessary discovery motions including protective orders and motions to compel.

At present, cases are typically set for trial before discovery is completed. In light of the clear language of CCP 1170.5, Courts are arguably required to set the case for trial even though there is outstanding discovery or where the discovery responses are overdue. As a result, filing a counter-memorandum in opposition to the setting of the case for a trial date is typically unsuccessful.

In many jurisdictions, discovery is heard in a "law and motion" department or before a discovery commissioner. However, it is the presiding judge who controls the trial calendar. When a motion to compel discovery is granted, the successful party is then required to make a separate motion to the judge controlling the calendar and a separate motion advancing the hearing in order to continue the trial date.

To remedy this, we propose that additional language to CCP1170.5 be added to clarify that a request for a trial date require certification by the requesting party that all outstanding discovery to date has been responded to. Alternatively, that the parties have agreed to a discovery schedule for already noticed depositions or other discovery matters so the trial date will allow for completion of discovery. A party may file a counter-memorandum to dispute this certification.

In addition, we propose that language be added to allow the court granting a discovery motion to continue the trial date without a separate motion to another department.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact me.

Sincerely,

Phillip R. Morgan,
Staff Attorney

THE STATE BAR OF CALIFORNIA

— COMMITTEE ON ADMINISTRATION OF JUSTICE

180 Howard Street
San Francisco, CA 94105-1639
Telephone: (415) 538-2306
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TO: The California Law Revision Commission

FROM: The State Bar of California's Committee on Administration of Justice

DATE: September 29, 2006

SUBJECT: Time Limits for Discovery in an Unlawful Detainer Case – Tentative Recommendation

The State Bar of California's Committee on Administration of Justice ("CAJ") has reviewed and analyzed the June 2006 Tentative Recommendation of the California Law Revision Commission, *Time Limits for Discovery in an Unlawful Detainer Case*, and appreciates the opportunity to submit these comments.

CAJ supports the proposed statutory changes, subject to one comment.

Code of Civil Procedure Section 2030.260, governing service of a response to interrogatories, contains a separate provision that does not exist in the parallel statutes governing responses to inspection demands and requests for admission. Specifically, current subdivision (b) provides: "The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome." In contrast, the other statutes simply require the responding party to serve an original of the response on the requesting party and a copy of the response on all other parties who have appeared. (Sections 2031.260 and 2033.250).

CAJ believes the provisions of Section 2030.260 that govern service of copies should be amended to be the same as those in Sections 2031.260 and 2033.250. There does not appear to be any reason to include the requirement to serve copies in a stand-alone subdivision. Moreover, a responding party could presumably file a motion in *any* case (whether responding to interrogatories, inspection demands, or requests for admission), seeking relief from the general requirement of serving copies on the other parties. Including the specific provision in Section 2030.260 therefore seems unnecessary, and also suggests that the relief is not available, absent the specific statutory authority.

DISCLAIMER

This position is only that of the State Bar of California's Committee on Administration of Justice. 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.