

Memorandum 2007-3

2007 Legislative Program: Status of Bills

This memorandum outlines the status of the Commission's 2007 legislative program. The staff will update this report orally at the meeting.

RESOLUTION OF AUTHORITY

The Commission's resolution of authority will be introduced by Assembly Member Noreen Evans. We do not yet know the bill number.

REVOCABLE TRANSFER ON DEATH DEED

Legislation implementing the Commission's recommendation on the *Revocable Transfer on Death (TOD) Deed* (October 2006) has been introduced by Assembly Member Chuck DeVore as Assembly Bill 250. It has been referred to the Assembly Committee on the Judiciary for hearing.

Issues relating to the bill will be discussed separately in CLRC Memorandum 2007-6.

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING

This recommendation continues the Commission's work to identify and correct statutes made obsolete as a result of trial court unification, the Lockyer-Isenberg Trial Court Funding Act (1997 Cal. Stat. ch. 850), and the Trial Court Employment Protection and Governance Act (2000 Cal. Stat. ch. 1010). See *Statutes Made Obsolete by Trial Court Restructuring* (December 2006).

The Senate Committee on the Judiciary has introduced implementing legislation as Senate Bill 649.

TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

This recommendation would make a variety of technical and minor substantive improvements to the law generally. See *Technical and Minor Substantive Statutory Corrections*, 35 Cal. L. Revision Comm'n Reports 219 (2006).

Assembly Member Jim Silva has introduced implementing legislation as Assembly Bill 310. It has been referred to the Assembly Committee on the Judiciary for hearing.

TIME LIMITS FOR DISCOVERY IN AN UNLAWFUL DETAINER CASE

This recommendation would make technical and minor substantive improvements to the law governing discovery in an unlawful detainer case. See *Time Limits for Discovery in an Unlawful Detainer Case* (October 2006).

Assembly Member Mike Eng has agreed to introduce implementing legislation. We do not yet know the bill number.

In the course of searching for an author, the staff was asked to solicit input from Bet Tzedek, Western Center on Law and Poverty, and the California Association of Realtors. All three of these organizations received the tentative recommendation in mid-2006, but did not submit comments.

We recently received comments from Bet Tzedek (Exhibit pp. 1-3) and Western Center on Law and Poverty (Exhibit p. 4). We have not yet received input from the California Association of Realtors.

Comments of Bet Tzedek

Bet Tzedek "support[s] the proposed legislation." Exhibit p. 1. The organization "commends the Commission for attempting to eliminate ambiguities and provide clarity." *Id.* at 2.

Bet Tzedek has also pointed out an omission in the Commission's preprint recommendation. *Id.* at 2. The proposal includes numerous amendments clarifying that various time requirements for discovery in an unlawful detainer case also apply to discovery in other summary proceedings for possession of real property (forcible entry and forcible detainer). See the proposed amendments of Code of Civil Procedure Sections 205.270, 2030.020, 2030.260, 2031.030, 2031.260, and 2033.020. A similar change should be made in Code of Civil Procedure Section 2033.250. The preliminary part of the preprint recommendation correctly notes as much, as does the Comment to Section 2033.250, but the change was not

incorporated into the proposed amendment of Section 2033.250. The staff regrets this error.

To correct this oversight, **the proposed amendment of Section 2033.250 should be revised as shown in boldface italics below:**

Code Civ. Proc. § 2033.250 (amended). Service of response to requests for admission

SEC. _____. Section 2033.250 of the Code of Civil Procedure is amended to read:

2033.250. (a) Within 30 days after service of requests for admission, ~~or in unlawful detainer actions within five days after service of requests for admission,~~ the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting 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 request is directed shall have at least five days from the date of service to respond, unless on motion of the requesting 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.

Comment. Section 2033.250 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 requests for admission in an unlawful detainer case.

Section 2033.250 is further amended to make a stylistic revision.

This change should be incorporated into the bill at the earliest opportunity.

Comments of Western Center on Law and Poverty

Western Center on Law and Poverty makes three points in its communication:

- (1) Code of Civil Procedure Section 2024.040(b)(1) requires that all discovery in an unlawful detainer case be completed on or before the fifth day before trial. That cutoff date is unnecessary and should be eliminated.

- (2) Code of Civil Procedure Section 2025.270 requires that a deposition in an unlawful detainer case be taken “not later than five days before trial.” That cutoff date is unnecessary and should be eliminated.
- (3) Code of Civil Procedure Section 2025.270 should be revised to specify a 10 day time period for responding to a subpoena for personal records of a consumer in an unlawful detainer case.

The first two points are suggestions for additional reforms of existing law, not comments on what the Commission is proposing. The Commission should **add these suggestions to the list of discovery-related, unlawful detainer issues it plans to investigate in the future.** See CLRC Minutes (Oct. 2006), p. 13.

Western Center’s third point conflicts with an aspect of the Commission’s proposal. The Commission is proposing to revise Section 2025.270 to clarify that if a deponent is required to produce personal records of a consumer in an unlawful detainer case, the deposition must be scheduled at least 20 days after issuance of the subpoena. That is the normal period for responding to a subpoena for personal records of a consumer. The way the statute is currently worded, it is unclear whether the normal 20-day period applies, or the special 5-day period under Section 2025.270(b) for noticing a deposition in an unlawful detainer case. The Commission’s proposal is intended to eliminate that ambiguity. Western Center’s proposed 10-day period would represent a change in existing legislative policy. If adopted, tinkering with various related deadlines would also be necessary. See Code Civ. Proc. §§ 1985.3(b)(2), (b)(3) & (d), 2020.410(c).

Before making a recommendation on how to respond to Western Center’s input on this point, **the staff wishes to discuss this matter further with Western Center, other stakeholders, and Assembly Member Eng or his staff.**

Respectfully submitted,

Brian Hebert
Executive Secretary

Bet Tzedek Legal Services

THE HOUSE OF JUSTICE

145 South Fairfax Avenue • Suite 200 • Los Angeles • California 90036-2172

Telephone (323) 939-0506 • Litigation Facsimile (323) 549-5880 • Administration Facsimile (323) 939-1040 • www.betztedek.org



Mitchell A. Kamin
President/CEO

Michelle Williams Court
Director of Litigation

Grant R. Specht
Deputy Director of Litigation

Wendy Marantz Levine
Deputy Director of Litigation

Gus T. May
Director of Valley Bet Tzedek

Jose D. Alarcon
Staff Attorney

Erikson R. Albrecht
Kinship Care Attorney

Kirsten W. Albrecht
Kinship Care Attorney

Deborah J. Baldwin
Public Benefits Director

Elissa D. Barrett
Sydney Irmas Housing
Conditions Project Director

Marc L. Bender
Litigation & Training Supervisor

Anna V. Burns
Consumer Protection Attorney

Alla Chasnik
West Hollywood Staff Attorney

Matthew E. DeCarolis
Jewish Federation Law Fellow

Edward J. Elsner
Litigation & Training Supervisor

Yolande P. Erickson
Conservatorship Attorney

Connie K. Huang
Staff Attorney

Pegah Kamrava
Consumer Protection Attorney

Kevin R. Kish
Skadden Fellow

Carolina Krawiec
Social Justice Fellow

Janet R. Morris
Long Term Care Project
Director

Becky L. Monroe
Employment Rights Project
Director

César Noriega
Eviction Defense Attorney

Jody L. Spiegel
Nursing Home Advocacy
Project Director

Debra Zimmerman
Consumer Protection Attorney

Eric M. Carlson
Of Counsel

Writer's Direct Line: (323) 549-5837
Writer's E-mail: cnoriega@betztedek.org

**Sent via e-mail to: bgaal@clrc.ca.gov
Hard copy to follow via U.S. Mail**

February 15, 2007

California Law Revision Commission
c/o Barbara Gaal, Chief Deputy Counsel
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Law Revision Commission
RECEIVED

FEB 20 2007

File: _____

Re: Unlawful Detainer Discovery

Dear Commissioners and Ms. Gaal:

Thank you for sending us the proposed legislation dealing with time limits for discovery in unlawful detainer cases. We are especially gratified that you seek our comments regarding the proposals.

We have had an opportunity to review all of the proposals that you sent us [California Law Revision Commission, Preprint Recommendation, "Time Limits for Discovery in an Unlawful Detainer Case, October 2006 (with 12/6/06 and 12/18/06 Preprint Recommendations; copy attached)]. We have consulted with all attorneys at Bet Tzedek Legal Services who handle unlawful detainer cases and have found no opposition to the proposed legislation. We support the proposed legislation.

PROPOSED ADDITIONS OF CCP §§1170.8 and 1170.9:

Bet Tzedek and the other Legal Aid firms in Los Angeles that represent indigent defendants in eviction cases routinely propound discovery in good faith and oftentimes the plaintiff landlords, or their attorneys, fail to respond timely, or provide incomplete and evasive responses, and/or they make improper objections. Landlords rarely propound discovery.

The proposed addition of CCP Section 1170.8 ("In any action under this chapter, a discovery motion may be made at any time upon giving five days notice") would assist litigants who propound discovery by speeding up the remedies for noncompliance. This change would promote uniformity and avoid confusion. The Commission notes that this change "would help promote expeditious resolution of landlord-tenant disputes." We agree.

Bet Tzedek Legal Services provides free legal services to needy persons without regard to race, religion or national origin. Bet Tzedek is funded in part by the Jewish Federation Council of Los Angeles, United Way, the State Bar of California, the City and County of Los Angeles, the City of West Hollywood, and private donations. Bet Tzedek (The House of Justice) is a non-profit organization. Contributions are tax deductible.

As for the proposed addition of CCP Section 1170.9, we agree that the Judicial Council should promulgate rules prescribing the time for filing and service of opposition and reply papers relating to motions brought under Section 1167.4, 1170.7, or 1170.8.

PROPOSED AMENDMENTS TO THE CCP:

In regards to proposed legislation to amend the following sections of the Code of Civil Procedure, Bet Tzedek does not oppose their passage and commends the Commission for attempting to eliminate ambiguities and provide clarity:

- CCP §1987.1: Motion to Quash...**
- CCP §2020.510: Subpoena for production of tangible items...**
- CCP §2025.240: Service of deposition notice...**
- CCP §2025.270: Time of taking oral deposition.**
- CCP §2030.020: Time of propounding interrogatories.**
- CCP §2030.260: Service of response to interrogatories.**
- CCP §2031.020: Time of making inspection demand.**
- CCP §2031.030: Form of inspection demand.**
- CCP §2031.260: Service of response to inspection demand.**
- CCP §2033.020: Time of making request for admissions.**
- CCP §2033.250: Service of response to requests for admission.**

One further comment: We believe that the proposed amended version of CCP Section 2033.250 (service of response to requests for admission) contains an accidental omission. Specifically, subsection (b) of that proposed amendment reads:

“(b) Notwithstanding subdivision (a), in an unlawful detainer action the party . . .”

It should read:

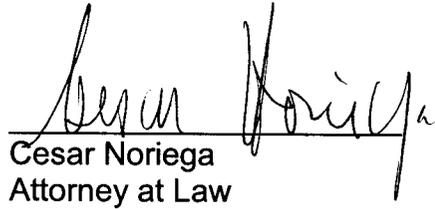
“(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party . . .”

That additional language is contained in the other two proposed amendments regarding service of response to interrogatories [see amended CCP Section 2030.260(b)] and service of response to inspection demand [see amended CCP Section 2031.260(b)], the idea being to include forcible entry and forcible detainer actions. We are indebted to our colleague at Public Counsel, David Daniels, for pointing this out.

We apologize profusely for delaying our response. The volume of our legal work sometimes hampers our speedy response to important requests such as yours.

Thank you for seeking our input.

Sincerely yours,



Cesar Noriega
Attorney at Law

COMMENTS OF WESTERN CENTER ON LAW AND POVERTY

From: Michael Moynagh
Subject: Re: Preprint UD Recommendation
Date: January 17, 2007
To: Barbara Gaal

Barbara:

Thank you for the opportunity to respond to your proposal.

After checking with various Legal Services programs, our only major concern is the clarification to CCP 2025.270. We believe the time limit in subdivision (c) should be 10 days, rather than 20 days. While we recognize the privacy concerns, the accelerated nature of these processes (e.g., the 20-day requirement to set trails, as was noted) means that the tenant (and the landlord, in some cases) will be disadvantaged to a great degree. Tenants often do not come in for representation right away, and thus the subpoenas may also be delayed. We believe a 10-day period strikes a good balance of the competing concerns. We also believe these subpoenas are extremely rare in unlawful detainer actions.

We did identify other concerns that may have been considered last summer, but are still of interest to us. CCP 2024.040(b)(1) provides for all discovery to be completed 5 days before the trial. There is no need for this cut-off date. Tenants should be able to obtain discovery responses until the date of the trial. Even if the tenant is diligent in serving discovery with the filing of the answer, it is likely that the responses to discovery will not be due five days before trial. For example: UD served 2/1; Answer filed and discovery served by mail 2/6; Trial requested 2/7; Discovery responses due 2/16; Trial date 2/20. The landlord would not have to respond to the discovery because it was due 4 days before trial. To insure that discovery is completed timely, the discovery will have to be served in person.

In a similar vein, the cut-off date for depositions (CCP 2025.270(b)) should also be eliminated.

I apologize that your earlier correspondence was misdirected. Thank you for considering our comments.

Mike