

2011 Year End Report

Committee on Administration of Justice Committee on Alternative Dispute Resolution Committee on Appellate Courts Committee on Federal Courts

(The four Administration of Justice Committees)

Committee on Administration of Justice

The Committee on Administration of Justice ("CAJ") is composed of up to thirty-six members appointed by the Board of Trustees. It is a diverse group of attorneys concerned with aspects of civil procedure, court rules and administration, rules of evidence, and other matters having an impact on the administration of justice in the civil courts. The charge of the committee is as follows:

- a. Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.
- b. Draft proposals relating to its area of concern for consideration by the Board of Trustees.
- c. Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.

The following is a summary of CAJ's activities in 2011 that furthered its charge:

A. Judicial Council Proposals

In 2011, CAJ reviewed and analyzed numerous Judicial Council proposals, and submitted comments on the following:

1. Lodging of Copies of Authorities
2. Several new and revised civil jury instructions
3. Telephonic appearances in connection with hearing and motions
4. Civil Law: Proposed Clean-Up Legislation on the Discovery of Electronically Stored Information
5. Civil Law: Subpoena Forms for the Discovery and Production of Electronically Stored Information

6. Alternative Dispute Resolution: Judicial Arbitration
7. Civil Practice and Procedure: Revisions to Request for Dismissal to Address Class Actions and Waived Court Fees
8. Civil Practice and Procedure: Service of Double-Sided Papers
9. Civil Cases: Vexatious Litigants Forms
10. Small Claims: Forms to Request Dismissal and Give Notice of Entry of Dismissal
11. Small Claims: Forms to Address Default in Payment of Judgment in Installments
12. Civil Forms: Writ of Execution
13. Civil Forms: Notice of Entry of Dismissal and Proof of Service
14. Civil Trials: Proposed Consent Order for Expedited Jury Trials
15. Civil Trials: Jury Questionnaire for Expedited Jury Trials
16. Citation Procedure: Copies of Decisions Only Available in Computerized Databases

State Bar staff to CAJ and the other Administration of Justice Committees is an advisory member of the Judicial Council's Civil and Small Claims Advisory Committee. Ongoing input from the Administration of Justice Committees greatly enhances the consideration and development of numerous proposals at various stages, as well as the relationship between the State Bar Committees and the Judicial Council's Civil and Small Claims Advisory Committee.

B. Conference of California Bar Associations (CCBA) resolutions

CAJ considered the CCBA resolutions and submitted comments on the following:

1. Demurrers: Mandatory Meet and Confer
2. Deadline For Motion To Compel Further Responses to Requests For Admission
3. Enlarging Time to Compel Further Responses to Document Demand

4. Discovery: Deadline For Motion To Compel Further Responses to Interrogatories
5. Civil Procedure: Elimination of Separate Statements in Motions for Summary Judgment

C. Legislation and Other Miscellaneous Proposals

1. CAJ considered potential amendments to Code of Civil Procedure Section 418.10(b) concerning notice for a motion to quash based on lack of personal jurisdiction.
2. CAJ considered potential amendments to the California statutory provisions governing an award of sanctions.
3. CAJ provided ongoing input on legislation governing the production of privilege logs in connection with civil discovery.
4. CAJ considered legislation amending the statutory provisions relating to a conditional order granting a new trial.
5. CAJ considered legislation relating to the ability to appeal from an order denying a motion for reconsideration
6. CAJ monitored legislation that was introduced in 2011, for potential comment.

D. California Law Revision Commission Proposals

CAJ continues to monitor the work of the California Law Revision Commission, for potential comment.

Committee on Alternative Dispute Resolution

The Committee on Alternative Dispute Resolution (“ADR Committee”) is composed of twenty-one persons appointed by the Board of Trustees. Its membership consists of a diverse group of attorneys and public members with expertise or an interest in ADR, including ADR neutrals, consumers of ADR services and those who reflect the experience and expertise of State Bar sections. The charge of the committee is as follows:

- a. Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.
- b. Draft proposals relating to alternative dispute resolution for consideration by the Board of Trustees.
- c. Identify issues concerning the relationship of ADR to the practice of law, the administration of justice and improving access to justice.
- d. Plan and administer educational programs relating to alternative dispute resolution.
- e. Encourage attorneys involved in alternative dispute resolution to become active participants in the State Bar.
- f. Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.

The following is a summary of the ADR Committee's activities in 2011 that furthered its charge:

A. Judicial Council Proposals

In 2011, the ADR Committee submitted comments on the following proposals:

1. Mediator's Statement of Agreement or Nonagreement and Statistical Reports to Judicial Council
2. Judicial Arbitration
3. Ethics Standards for Neutral Arbitrators in Contractual Arbitration

The ADR Committee also considered rules and statutory provisions governing expedited jury trials, and potential connections between that process and mediation.

B. Conference of California Bar Associations (CCBA) resolutions

The ADR Committee considered the CCBA resolutions and submitted comments on the following:

1. Random Assignment of Arbitrators in Consumer Arbitration
2. Deletion of Arbitration Requirement in Small Claims Cases
3. Mandatory Settlement Conferences: Confidentiality of Proceedings

C. Legislation and Regulatory Proposals

1. The ADR Committee monitored ADR-related legislation for potential comment, including the following bills:
 - a. AB 456 (Wagner) - self-executing arbitration agreements
 - b. AB 993 (Wagner) - mediation and counseling services: discipline and immunity
 - c. AB 1062 (Dickinson) - arbitration: appeals
 - d. SB 684 (Corbett) - workers' compensation insurance: dispute resolution: arbitration clauses

D. California Law Revision Commission Proposals

The ADR Committee continues to monitor the work of the California Law Revision Commission as it relates to ADR.

D. MCLE Programs

The ADR Committee sponsored or co-sponsored the following MCLE programs at the 2011 State Bar Annual Meeting:

1. Armistice or Armageddon? Arbitration Wars
2. Ethical and Malpractice Traps in Settlement Negotiations
3. Don't Lie to Me: Uncovering Untruths in the Negotiation Process
4. Elimination of Bias in the Legal Profession as Good Business and a Moral and Ethical Imperative

E. Other

1. The ADR Committee considered potential revisions to the State Bar Consumer Pamphlet - How Can I Resolve My Dispute Without A Trial?
2. The ADR Committee considered potential work relating to the California Education and the Environment Initiative.

Committee on Appellate Courts

The Committee on Appellate Courts is composed of sixteen attorneys appointed by the Board of Trustees. Its members may be drawn from such diverse sources as law firms, solo practitioners, defense and prosecution offices handling criminal appeals, appellate court research staff, and law school faculty. The subject area of the committee concerns appellate court operation and appellate practice. In furtherance of the administration of justice, the charge of the committee is as follows:

- a. Analyze, report to the Board of Trustees and comment as authorized by the Board of Trustees on proposed court rules, legislation and other proposals affecting the committee's subject area.
- b. Draft proposals relating to its area of concern for consideration by the Board of Trustees.
- c. Plan and administer educational programs designed to foster improvement in appellate practice and awareness of issues affecting the committee's subject area.
- d. Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.

The following is a summary of the Committee's activities in 2011 that furthered its charge:

A. Judicial Council

1. In 2011, the Committee on Appellate Court reviewed and analyzed numerous Judicial Council proposals, and submitted comments on the following:
 - a. Electronic Recordings Offered Into Evidence
 - b. Time For Filing Applications To File Amicus Curiae Briefs
 - c. Addresses and Telephone Numbers of Parties and Attorneys
 - d. Time to Appeal
 - e. Clerk's Transcript and Civil Case Information Statement
 - f. Respondent's Election to Use Appendix
 - g. Briefs
 - h. Judicial Notice

- i. Bringing New Authorities to the Attention of the Court of Appeal
 - j. When to Use Initials to Identify Parties in Juvenile Proceedings
 - k. Juvenile Law: Ensuring Tribal Receipt of Appellate Records
 - l. Premature or Late Notice of Intent to File Writ Petition in Juvenile Dependency Proceeding
 - m. Filing, Modification, and Finality of Decisions in Proceedings for Writs of Review of Certain State Agency Decisions
 - n. Court Technology: Electronic Filing and Service in the Supreme Court and the Courts of Appeal
 - o. Citation Procedure: Copies of Decisions Only Available in Computerized Databases
2. The Committee on Appellate Courts considered the following proposals:
- a. Potential statutory or rule changes to address the timing of objections to a Statement of Decision and related issues
 - b. A proposal to amend the appellate rules to address double-sided copies of the record and briefs
3. The Committee on Appellate Courts considered making proposals to change appellate rules and forms, including the following:
- a. Amendment to Notice of Appeal form (APP-002) to add a section on fees
 - b. Amendment to rule 8.212 to clarify when the reply brief is due in cases with multiple respondents' briefs
 - c. Amendment to Judicial Council form for Request for Dismissal of Appeal (Form APP-007) to add language concerning costs and issuance of the remittitur
 - d. A new form for stipulated extensions
 - e. Amendment to Judicial Council form for Memorandum of Costs on Appeal (Form MC-013)
 - f. Amendment to rule 8.278 concerning the deadline to file a memorandum of costs following issuance of the remittitur

B. California Law Revision Commission Proposals

The Committee on Appellate Courts continues to monitor the work of the California Law Revision Commission as it relates to appellate issues.

C. Federal proposals

The Committee on Appellate Courts discussed potential Committee comments on proposed amendments to the Federal Rules of Appellate Procedure, but ultimately decided not to submit comments.

D. MCLE programs

The Committee on Appellate Courts sponsored or co-sponsored the following MCLE programs at the 2011 State Bar Annual Meeting:

1. Inside the Appellate Courts: Insights from Research Attorneys
2. Appellate Ethics, Sanctions, and Malpractice Traps
3. Punitive Damages: What Every Litigator Should Know
4. U.S. Supreme Court Update
5. Key Developments In Ninth Circuit Practice And Procedure
6. The Joys of Solo Appellate Practice

E. Other

1. The Committee discussed potential comments on proposed amendments to the Code of Judicial Ethics.
2. The Committee discussed potential changes to the standards for appellate specialization.

Committee on Federal Courts

The Committee on Federal Courts is composed of fifteen members appointed by the Board of Trustees. A representative of the Circuit Executive of the United States Court of Appeals for the Ninth Circuit is eligible to participate ex officio. The charge of the committee is as follows:

- a. Generally enhance the lines of communication between the Federal Bench in California and the State Bar, including the attorney discipline system.
- b. Bring to the attention of the Federal Bench in California, State Bar issues that have an impact on Federal Court practice in California.
- c. Make the State Bar Board aware of Federal Court issues that may have an impact on the State Bar.
- d. Review and make recommendations on proposals that affect California Federal Court practice and the Federal Courts in California.
- e. Make recommendations to improve legal services in California's Federal Courts.
- f. Organize and sponsor educational programs on Federal Court practice.
- g. Perform such other functions relevant to the committee's subject area as the Board of Trustees may from time to time assign.

The following is a summary of the Committee's activities in 2011 that furthered its charge:

A. Federal Rules

The Committee on Federal Courts considered a set of proposed amendments to the federal rules, but ultimately decided not to submit any comments.

B. MCLE Program

The Committee on Federal Courts sponsored an MCLE program at the 2011 State Bar Annual Meeting entitled "Key Developments In Ninth Circuit Practice And Procedure."

C. Various District Courts

The Committee on Federal Courts continued to monitor and report on changes to the local rules and other matters of interest from the four districts.

D. Communication with the Federal District Courts in California

The Committee on Federal Courts continues to enhance the lines of communication between the Federal Bench in California and the State Bar, primarily through annual in-person meetings with Judges in the different district courts in California.