

**Invitation to Comment**

Title	Civil Practice and Procedure: Response to Amended Complaint (amend California Rules of Court, rule 3.1320).
Summary	This proposal would amend one provision of the rule governing demurrers by eliminating its applicability to an amended complaint.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Susan R. McMullan, Counsel, 415-865-7990, susan.mcmullan@jud.ca.gov

An apparent conflict exists between rule and statute concerning the time to respond to an amended complaint. Rule 3.3120, which governs demurrers, provides that a defendant has 10 days to plead to a complaint after the complaint is amended or the time to amend has expired if a demurrer was sustained with leave to amend. (Cal. Rules of Court, rule 3.1320(j)(2).) Code of Civil Procedure section 471.5 requires a defendant to answer<sup>1</sup> an amended complaint within 30 days after service. A law firm calendar manager asked that this matter be addressed, stating that it causes significant confusion.

The 10-day period to plead in response to an amended complaint in rule 3.1320(j)(2) is inconsistent with the 30-day period within which to answer an amended complaint in Code of Civil Procedure section 471.5. Because of this inconsistency, it is not clear by what date a defendant must answer after being served with an amended complaint after a demurrer was sustained with leave to amend. Under section 471.5, a defendant has 30 days to respond: “The defendant shall answer the amendments, or the complaint as amended, within 30 days after service thereof.” Under rule 3.1320(j)(2), a defendant has 10 days to respond: “[D]efendant has 10 days to move to strike, demur, or otherwise plead to the complaint or the remaining causes of action following the amendment of the complaint.”

Under the proposed amendment of rule 3.1320(j)(2), the subdivision’s 10-day requirement to plead would apply only to a responsive pleading following (1) the overruling of a demurrer, (2) the expiration of time to amend if a demurrer was sustained with leave to amend, and (3) the sustaining of a demurrer without leave to amend. Because the 10-day requirement to plead would no longer apply to an amended complaint, there would be no inconsistency with section 471.5.

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<sup>1</sup> Section 471.5 uses only the word “answer” and does not address any other type of responsive pleading.

Rule 3.1320 of the California Rules of Court would be amended by the Judicial Council effective January 1, 2011, to read:

1 **Rule 3.1320. Demurrers**

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3 **(a)–(i) \* \* \***

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5 **(j) Time for motion to strike, demur, or otherwise plead after demurrer**

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7 Unless otherwise ordered, defendant has 10 days to move to strike, demur, or  
8 otherwise plead to the complaint or the remaining causes of action following:

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(1) The overruling of the demurrer;

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(2) ~~The amendment of the complaint or~~ The expiration of the time to amend if the  
demurrer was sustained with leave to amend; or

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13

(3) The sustaining of the demurrer if the demurrer was sustained without leave to  
amend.

## Item SPR10-15 Response Form

**Title:** **Civil Practice and Procedure: Response to Amended Complaint** (amend Cal. Rules of Court, rule 3.1320)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*