



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 29, 2011

Title	Agenda Item Type
Civil Motions: Lodging of Copies of Authorities	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 3.1113	July 1, 2011
Recommended by	Date of Report
Civil and Small Claims Advisory Committee	March 1, 2011
Hon. Dennis M. Perluss, Chair	Contact
	Anne M. Ronan, 415-865-8933
	anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend rule 3.1113(i) of the California Rules of Court. That rule currently mandates that if any non-California authority or new California case not yet published in the Official Reports is cited in papers supporting or opposing a motion in a civil action, a copy of the authority must be provided to the court along with the papers that cite it. The proposed amendment would eliminate this mandate except when a judicial officer has directed parties to provide paper copies.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend rule 3.1113(i) of the California Rules of Court to provide that parties need only lodge paper copies of non-California authorities and California authorities not yet in the official reports if directed to do so by a judge.

The text of amended rule 3.1113 is attached at page 6.

Previous Council Action

The Judicial Council initially adopted the requirement in rule 3.1113 for submitting paper copies of non-California authorities and of unpublished California cases with a different rule number in 1992. The requirement has been moved into its own subdivision and renumbered several times since then, but has not been substantively changed since its adoption.

Rationale for Recommendation

Rule 3.1113(i) currently requires parties who cite any non-California cases, statutes, constitutional provisions, or state or local rules in memoranda filed in civil law and motion matters to lodge paper copies of those authorities with the court. Parties are also required to lodge copies of California cases that have not yet been published in the advance sheets of the Official Reports. While such authorities may be important to the court's consideration of the case, most, if not all, courts have access to online services by which they can obtain such authorities, making the provision of paper copies unnecessary. In addition, recent California appellate opinions can be obtained from the California Courts website, www.courts.ca.gov.

The requirement of providing paper copies in all cases is out of step with the modernization of the court system and is contrary to the judicial branch's goal of reducing unnecessary consumption of paper.¹ In addition to wasting resources, the lodging of unnecessary papers imposes an added burden on court staff, who must lodge, distribute, and sometimes even scan potentially large volumes of unneeded papers.

The proposed rule would allow judges who choose to review paper copies to direct the parties to provide them but would otherwise eliminate the requirement that non-California authorities be provided to the court. (Proposed rule 3.1113(i)(1).) The proposed rule would also require that a party citing a California opinion that has not yet been published in the Official Reports provide specific identifying information that would permit a court to easily locate the opinion online. (Proposed rule 3.1113(i)(2).) A judicial officer would also be able to direct that paper copies of such opinions be lodged with the court. (*Ibid*) A party would be able to obtain copies of the authorities cited upon request to the citing party. (Proposed rule 3.1113(a)(3).)

Comments, Alternatives Considered, and Policy Implications

An alternative version of this proposal was circulated for public comment in spring 2010 (spring proposal). Under the spring proposal, the default would have remained the same as in the current rule, with parties required to lodge paper copies with the court of all non-California or recently published authorities. The change recommended in the spring proposal would have provided courts with the discretion to waive the requirement, if they were willing to review the cited authorities electronically rather than in paper form. Several commentators, while not disagreeing

¹ This policy is evidenced by the rules requiring use of recycled paper and by standard 10.5 of the California Standards of Judicial Administration, requiring courts to take part in waste reduction programs. (Cal. Stds. Jud. Admin., Std. 10.5.)

with the concept of allowing for a waiver of the requirement, noted that the spring proposal did not go far enough to truly assist courts and parties and proposed instead that the default rule be that no paper copies of authorities be required.

Overall comments on current proposal

In light of those comments, the advisory committee further modified the proposed rule to eliminate the burden on courts and parties of providing unnecessary paper copies of materials available on the internet. The modified proposal, providing that paper copies need only be provided if a judicial officer directs they be lodged, was circulated for public comment from December 13, 2010 through January 24, 2011 (current proposal).

The current proposal received 11 comments: 3 from attorneys, 3 from bar organizations (including two committees of the State Bar—the Committee on the Administration of Justice (CAJ) and the Litigation Section’s Rules and Legislation Committee (Litigation Section Committee), 1 from a judge, and 4 from courts (Superior Courts of Los Angeles County, Monterey County, San Mateo County, and San Diego County).² Except for two of the courts (Superior Courts of Los Angeles County and San Mateo County), the commentators generally agree with the proposal as currently circulated.

The Superior Court of Los Angeles County supports the spring proposal, making the default be that copies be lodged with the court unless the judge tells counsel otherwise. If the rule is left as currently proposed, the court wants a further distinction drawn between cases and non-case authorities from other states, requiring that copies of the latter always be provided.

The Superior Court of San Mateo County, a master calendar court with a law and motion department, asserts that the rule as it currently exists works well for that department and that the proposed rule would place a burden on judicial officers who will have to print out copies of non-California authorities. In addition, that court notes that while the proposed rule would allow a judicial officer to request copies of documents, that request might be made too close to a hearing to be helpful in the law and motion department. Hence, that court asks that the rule either remain unchanged or include a provision to allow courts to opt out of the rule of court as a whole by local rule.

The committee concluded that the goal of modernization of the courts supports moving away from requiring paper copies and declined to change the default provided for in the current proposal. The committee concluded that a further distinction between types of non-California authorities was unnecessary because a judge could require the lodging of copies of any type of authorities the judge wants. The committee also concluded that permitting courts to opt out of the statewide rule via local rule was apt to provide exceptions that would swallow the whole, inviting a patchwork of rules that would be difficult for practitioners to deal with and contrary to the goal of uniformity provided via statewide rules of court.

² A copy of the comments chart is attached, with a summary of the comments received and the committee’s responses.

Specific comments on current proposal

The invitation to comment on the current proposal also invited specific comments on several individual points. The points and the committee's responses are as follows:

- *Whether the rule should include a provision that requires a party to provide paper copies to other parties on request, even if paper copies are not required by the court.*

The CAJ, Litigation Section Committee, and one individual attorney responded that the rule should provide that copies be given to parties on request. The Orange County Bar Association, on the other hand, disagreed and saw no need for copies to other parties. The committee concluded that the rule should include such a provision and hence has modified the proposal to do so. (Proposed rule 3.1113(i)(3).)

- *Whether the rule should, in addition to including the current Advisory Committee Comment referencing rule 1.200 regarding the required format of citations, expressly provide how a party should cite authorities of the type covered by the rule and, if so, what that provision should state.*

None of the commentators saw any need for further revising the rule or expanding the current advisory committee note to include or refer to further requirements as to how authorities should be cited. Each commentator that addressed this point (Orange County Bar Association, CAJ, and Litigation Section Committee) concluded that current rule 1.200, which requires that citations be in a style established by the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, and the reference to that rule in the existing advisory committee note, are sufficient on this point. The committee agreed.

- *Whether the rule should state specifically that a court may, by local rule, require paper copies to be lodged in all civil proceedings in a particular department.*

Three different opinions were provided on this point: the Orange County Bar Association and a legal service attorney agreed that the rule should not permit courts to make such exceptions by local rule. CAJ commented that such a provision is not necessary because courts are not precluded from making an exception by local rule under the current proposal. The State Bar Litigation Section Committee and Superior Court of San Mateo were of the opinion that the rule should expressly authorize courts to exempt courts or departments from the default — that is, to provide that paper copies are always required—, by local rule.

It should be noted that for such a local rule to be valid, an exception would need to be made to rule 3.20, which preempts all local rules regarding, among other things, motions. However, the committee disagreed that such an exception was appropriate, because, as noted above, it would lead to a patchwork of rules and defeat the goal of having a statewide rule.

Implementation Requirements, Costs, and Operational Impacts

The proposed rule amendment would decrease the amount of papers that have to be handled by the courts. There would be a minor additional burden on those judicial officers who want paper

copies, who would have to either inform the parties that such copies are required or print their own copies from electronic copies online.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because it would eliminate the across-the-board requirement for litigants to lodge with the court documents that can be retrieved electronically, the proposal furthers the goal of modernizing case management and administration through statewide rules that promote the efficient processing of civil cases. (Goal III, Objective 5 of the Operational Plan.)

Attachments

1. Proposed Amendment to Rule 3.1113(i)
2. Comment Chart

Rule 3.1113 of the California Rules of Court is amended effective July 1, 2011, to read:

1 **Rule 3.1113. Memorandum**

2
3 **(a) – (h) * * ***

4
5 **(i) Copies of ~~non-California~~ authorities**

6
7 (1) A judge may require that ~~If~~ any authority other than California cases, statutes,
8 constitutional provisions, or state or local rules is cited, a copy of the authority must
9 be lodged with the papers that cite the authority and tabbed as required by rule
10 3.1110(f).

11
12 (2) If a California case is cited before the time it is published in the advance sheets of
13 the Official Reports, the party must include the title, case number, date of decision,
14 and, if from the Court of Appeal, district of the Court of Appeal in which the case
15 was decided. A judge may require that a copy of that case must ~~also~~ be lodged and
16 tabbed as required by rule 3.1110(f).

17
18 (3) Upon the request of a party to the action, any party citing any authority other than
19 California cases, statutes, constitutional provisions, or state or local rules must
20 promptly provide a copy of such authority to the requesting party.

21
22 **(j) – (m) * * ***

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Mark D. Gershenson Attorney at Law Palm Springs	A	I agree with the proposed changes.	No response required
2.	Stephen Goldberg Staff Attorney Legal Services of Northern California Sacramento	A	Thank you for this proposal! Please adopt it as is and do not allow for local rules to require lodging copies of authorities in all cases.	The committee has decided not to recommend that courts be authorized to make exceptions to this statewide rule by local rule, because of concerns that such exceptions could result in a patchwork of rules across the state.
3.	Orange County Bar Association By John Hueston President	A	The OCBA agrees with this amended Rule which sets the default rule for no copies of authorities unless ordered by the Court. In addition, in response to the Council's general questions: we prefer this revised amendment as being more cost-effective and resourceful; we see no need for copies to other parties upon request; we see no need for further instructions on citation formats; and we see no need for local rules requiring paper copies to be lodged.	The committee notes the agreement with the proposed rule. The committee has concluded parties should be required to provide copies on request, but agrees there is no need for further rules regarding citations or local rules allowing court-wide exceptions to this rule.
4.	State Bar of California, Committee on Administration of Justice by Saul Bercovitch	A	The State Bar of California's Committee on Administration of Justice (CAJ) supports this proposal. When the previous proposal to amend rule 3.1113 was circulated in spring 2010, CAJ supported the goals of that proposal, but commented that those goals would be more effectively realized if the proposed amendment to the rule were reversed, so that copies of the	

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>cited authorities would <u>not</u> be required <u>unless</u> otherwise ordered by the court. CAJ appreciates that the current proposal does reverse the amendment, and supports the proposal as drafted.</p> <p>In response to the specific request to comment on the remaining bullet points on page two of the Invitation to Comment:</p> <ol style="list-style-type: none"> 1. CAJ believes the rule should include a provision that requires a party to provide paper or electronic copies to other parties, even if paper copies are not required by the court, but only upon request. 2. CAJ does not believe that the rule should expand the Advisory Committee Note and expressly provide how a party should cite authorities of the type covered by the rule. Rule 1.200 (cited in the existing Advisory Committee Note) covers that issue, and there does not appear to be a need for expanded explanation in this rule or any other stand-alone rule. <p>CAJ does not believe the rule should state specifically that a court may, by local rules, require paper copies to be lodged in all civil proceedings in a particular department. CAJ does not interpret the proposed rule as precluding a court from doing so by local rule,</p>	<ol style="list-style-type: none"> 1. The committee agrees and the proposed rule has been modified. 2. The committee agrees. <p>The committee notes that courts are preempted from making local rules regarding motions by California Rules of Court, rule 3.20. The committee has concluded that no exception to that rule should be made in this new rule.</p>

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			and therefore believes there is no need to say anything more. Moreover, providing specific authorization for local rules in this particular case may suggest that such authorization is absent in all other rules unless specifically provided.	
5.	State Bar of California Rules and Legislation Committee – Litigation Section, by Reuben A. Ginsburg	A	<p>The Rules and Legislation Committee agrees with the proposal. The committee offers the following comments in response to the specific requests for comment (p. 2 of the invitation to comment):</p> <ol style="list-style-type: none"> 1. The committee believes that the requirement of lodging a paper copy of the specified authorities in all cases is unnecessary and wasteful and that the current rule therefore should not be retained. 2. The committee believes that to require paper copies in all cases unless the court orders otherwise would not go far enough to eliminate the burden and waste of resources, and that the present proposal is preferable. 3. Because some parties may not have reasonable access to the Internet or a law library, the committee believes that the rule should include a provision requiring a party to provide paper copies to other parties upon request. 4. The committee believes that the proposed reference to rule 1.200 of the California Rules 	<ol style="list-style-type: none"> 1. The committee agrees. 2. The committee agrees. 3. The committee agrees and has modified the rule to so provide. 4. The committee agrees.

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>of Court regarding the format of citations is sufficient and that the rule should not expressly provide for the format of citations.</p> <p>5. The committee understands this question to refer to local rules requiring paper copies to be lodged in a particular department in a given case provided that the judge, pursuant to rule 3.113(i)(1) of the California Rules of Court, as revised, requires the lodging of a paper copy of authorities. The committee believes that rule 3.113(i) should specifically authorize such local rules.</p>	<p>5. The committee has decided not to recommend that courts be authorized to make exceptions to this statewide rule by local rule, because of concerns that such exceptions could result in a patchwork of rules across the state.</p>
6.	Superior Court of Los Angeles County	A	<p>1. The proposed rule should be modified to make the filing of the printed text of authorities optional only with respect to case authorities. Non-California statutes, regulations, local ordinances, etc., can be difficult to locate on computerized data bases.</p> <p>2. While many, and perhaps most, bench officers are comfortable working with case authorities on-line, some are not. Considerable time and expense may be involved for these bench officers or their staffs to print out-of-state case authorities. Unless those bench officers have access to some reliable method for posting their preferences, they may not be able to obtain the authorities they need from counsel under the proposed rule. Until there are more reliable, easily accessible modes for communicating</p>	<p>1. The committee has concluded that a distinction between types of non-California authorities is not necessary because a judge can require the lodging of copies of any type of authorities the judge wants</p> <p>2. The committee has concluded that a statewide rule with the default provision not requiring paper copies is appropriate.</p>

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			individual judges' preferences to counsel, the default option should favor judicial economy and reduction of court expense; that is, non-California case authorities should be made available unless the judge communicates otherwise to counsel.	
7.	Superior Court of Monterey County Diana Valenzuela Operations Manager	A		No response is required.
8.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A		No response is required.
9.	Superior Court of San Mateo County Hon. Beth Labson Freeman Presiding Judge	NI	In response to the Invitation to Comment about the proposed change in CRC 2.1113, I would like to state for the San Mateo County Superior Court that the Rule in its current form has served our court well. In our very busy law and motion department, precious time is saved by having non-California authorities provided in paper form to the judge. The task of reading online is very difficult for lengthy cases and the job of printing out the cases would fall on the judge because we do not have any support staff to perform that task. Our court is a master calendar court with a law and motion department. Due to normal rotation of assignments, litigants may appear before a particular judge for only some but not all of the pre-trial motions in their cases. Thus, a rule allowing the law and motion judge to	The committee has concluded that a statewide rule with the default provision not requiring paper copies is appropriate.

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>specifically require paper versions of out of state authorities would be cumbersome and likely to be made too late in the process of filing motions. A rule allowing a court to dispense with paper copies of cases, with the default provision in favor of paper copies would serve us best and I would urge the committee to either allow the rule to remain unchanged or allow an opt out of paper copies of cases for courts that deem that process most beneficial.</p> <p>Thank you for your work on this rule and for considering our comments.</p>	<p>The committee has decided not to recommend that courts be authorized to make exceptions to this statewide rule by local rule, because of concerns that such exceptions would result in a patchwork of rules across the state.</p>
10.	Michael Tenenbaum Attorney Thousand Oaks	AM	<p>This is a terrific proposal. (I had been secretly wishing for this change for years, so thank you for reading my mind. There are few more annoying things to deal with when preparing a motion than having to prepare a Notice of Lodging of Non-California Authorities and print and lodge copies of documents that are freely accessible online.)</p> <p>I noted that one of the potential modifications the Judicial Council is considering would address the situation where one lawyer cites non-California authority that is not readily available to another lawyer in the case (e.g., an uncommon or expensive treatise). I would expect that common courtesy among lawyers should suffice to ensure that a simple request from the one lawyer to another for a copy of</p>	<p>The committee concluded that it is appropriate to require that a party citing non-California authority to provide copies of such authorities if requested to do so by of another party. The committee determined that further provisions as to form of copies are not needed.</p>

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03

Civil Motions: Lodging of Copies of Authorities (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>such authority would solve the problem. But I am routinely surprised at how quick some lawyers are to withhold even the most basic of courtesies. Which is why we have rules, I suppose.</p> <p>For this reason, the Judicial Council should give careful consideration to adding some kind of provision that would require a lawyer who cites non-California authority to provide such authority to any other lawyer who requests it in the form of either a paper copy, fax copy, electronic copy, or Internet link. (If only an electronic copy, fax copy, or Internet link is requested, it should be provided by the end of the following day; if a paper copy is requested, it should be served by the end of the following day.)</p> <p>At the same time, I can foresee some complications arising from a requirement that one lawyer provide another with a copy of any non-California authority. The first is a practical one. What if a lawyer cited a sentence from a page of a treatise? Can he send a copy of only that page of a treatise? Or does he have to send the whole section/chapter/volume so that the other lawyer can determine that the proposition is not out of context? Also, I assume it doesn't raise any copyright concern for a lawyer to provide a brief excerpt from the treatise (or</p>	

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.

W11-03**Civil Motions: Lodging of Copies of Authorities** (amend Cal. Rules of Court, rule 3.1113)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>from another published authority), but this needs to be considered before requiring lawyers to provide some copies of published material to each other.</p> <p>With these suggestions, I am strongly in favor of the proposed rule. Thank you for addressing this issue.</p>	
11.	Hon. John P. Vander Feer Judge Superior Court of San Bernardino County	A	I agree with the proposed change.	No response is required.

Positions (as stated by commentator): A = Agree; AM = Agree if Modified; N = Do not agree; NI = Not indicated.