



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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Chair of the Judicial Council

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Director, Office of Governmental Affairs

May 15, 2009

Hon. Ellen Corbett, Chair
Senate Judiciary Committee
State Capitol, Room 5108
Sacramento, California 95814

Subject: AB 5 (Evans), as introduced December 1, 2008 – Support/Co-Sponsor

Hearing: Senate Judiciary Committee – June 9, 2009

Dear Senator Corbett:

The Judicial Council supports AB 5 (Evans), which will modernize the civil discovery law by improving the procedures for handling the discovery of electronically stored information. The council is pleased to be a co-sponsor of this important legislation with the Consumer Attorneys of California and the California Defense Counsel, whose members were actively involved in the development and drafting of the proposal. The Senate Judiciary Committee unanimously passed AB 926 (Evans) last year, which is virtually identical to this bill.

AB 5 essentially takes the provisions on electronic discovery from the recently enacted federal rules and the National Conference of Commissioners on Uniform State Laws rules, and integrates these into the California Civil Discovery Act. More specifically, AB 5 adds definitions of “electronic” and “electronically stored information” to the Civil Discovery Act; amends the act to expressly authorize the discovery of electronically stored information; and authorizes the “copying, testing or sampling” of such information. AB 5 allows a party to specify the form in which electronically stored information is to be produced, and if no form is specified, the responding party must produce the information in the form or forms in which it

is ordinarily maintained or in a form that is reasonably usable. Under the bill, a party will not need to produce the same electronically stored information in more than one form.

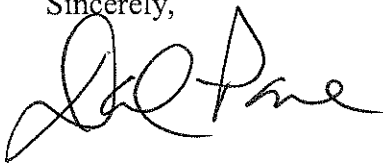
AB 5 also establishes procedures for motions to compel and motions for protective orders relating to the discovery of electronically stored information. The bill further establishes a procedure for handling disputes over the production of electronically stored information that is subject to claims of privilege or attorney work-product protection.

The Judicial Council supports AB 5 because it improves the practices and procedures for addressing the discovery of electronically stored information within the basic framework of California civil discovery law. Some commentators have suggested that existing California law is adequate to deal with electronic discovery. The Judicial Council and its co-sponsors disagree with this position. There are compelling reasons to modernize the Code of Civil Procedure at this time to address the discovery of electronically stored information. Most information today is created and maintained in electronic form. Discovery disputes increasingly involve such information.

The proposed legislative changes in AB 5 will provide direction and guidance for attorneys and judicial officers who are required to consider issues relating to the discovery of electronically stored information. Absent such direction, the practice in this area is likely to evolve in a piecemeal manner over a long period of time. As recent cases involving electronic discovery issues demonstrate, practitioners would benefit substantially from having more guidance and improved procedures in this important area of the law. AB 5 promotes the proper management of electronic discovery, which should significantly reduce the cost of discovery and minimize disputes in this area, thereby benefitting both litigants and the courts.

For these reasons, the Judicial Council supports AB 5.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pone", written over a horizontal line.

Daniel Pone
Senior Attorney

DP/ljb

cc: Members, Senate Judiciary Committee
Hon. Noreen Evans, Member of the Assembly
Ms. Kathy Banuelos, Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Michael Proso, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitke, Deputy Director of Legislation, Governor's Office of Planning and Research



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CURTIS L. CHILD
Director, Office of Governmental Affairs

June 16, 2009

Hon. Arnold Schwarzenegger
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 5 (Evans) – Request for Signature

Dear Governor Schwarzenegger:

The Judicial Council supports AB 5 (Evans), which will modernize the civil discovery law by improving the procedures for handling the discovery of electronically stored information. The council is pleased to be a co-sponsor of this important legislation with the Consumer Attorneys of California and the California Defense Counsel, whose members were actively involved in the development and drafting of the proposal.

AB 5 essentially takes the provisions on electronic discovery from the recently enacted federal rules and the National Conference of Commissioners on Uniform State Laws rules, and integrates these into the California Civil Discovery Act. More specifically, AB 5 adds definitions of "electronic" and "electronically stored information" to the Civil Discovery Act; amends the act to expressly authorize the discovery of electronically stored information; and authorizes the "copying, testing or sampling" of such information. AB 5 allows a party to specify the form in which electronically stored information is to be produced, and if no form is specified, the responding party must produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable. Under the bill, a party will not need to produce the same electronically stored information in more than one form.

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Hon. Arnold Schwarzenegger

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The proposed legislative changes in AB 5 will provide direction and guidance for attorneys and judicial officers who are required to consider issues relating to the discovery of electronically stored information. Absent such direction, the practice in this area is likely to evolve in a piecemeal manner over a long period of time. As recent cases involving electronic discovery issues demonstrate, practitioners would benefit substantially from having more guidance and improved procedures in this important area of the law. AB 5 promotes the proper management of electronic discovery, which should significantly reduce the cost of discovery and minimize disputes in this area, thereby benefitting both litigants and the courts.

AB 5 passed the Legislature without any "no" votes, and there is no known opposition to the measure.

For these reasons, the Judicial Council requests your signature on AB 5.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pone", written in a cursive style.

Daniel Pone
Senior Attorney

DP/ljb

cc: Hon. Noreen Evans, Member of the Assembly

Mr. Michael Prossio, Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitke, Deputy Director of Legislation, Governor's Office of Planning and Research