



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 1240 • Sacramento, California 95814-3358
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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

JODY PATEL
Interim Administrative Director of the Courts

CURT SODERLUND
Interim Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

April 24, 2012

Hon. Noreen Evans, Chair
Senate Judiciary Committee
State Capitol, Room 4032
Sacramento, California 95814

Subject: SB 1574 (Committee on Judiciary), as amended April 19, 2012 - Sponsor
Hearing: Senate Judiciary Committee – May 1, 2012

Dear Senator Evans:

The Judicial Council supports and is sponsoring SB 1574, which is a non-controversial, clean-up measure to the recently enacted Electronic Discovery Act [AB 5 (Evans), Stats. 2009, ch. 5].

SB 1574 continues the process of modernizing California's statutes on civil discovery to reflect the fact that most information today is created and stored in electronic form. The modernization of the discovery statutes was begun a little over two years ago with the passage of the Electronic Discovery Act, and SB 1574 will further this important effort. Although the amendments on civil discovery that were made through AB 5 were extensive, they were not completely comprehensive. Some sections of the Code of Civil Procedure still only refer to paper documents or records and fail to mention electronically stored information in appropriate places. To be consistent with the Electronic Discovery Act, these sections should be amended, which is the purpose of this clean-up legislation.

Like the initial e-discovery legislation, this bill seeks to integrate new provisions of the law relating to the discovery of electronically stored information into the existing framework of the Civil Discovery Act. SB 1574 generally retains the same procedural requirements and timelines as exist under current law. The main features of the bill are as follows:

- The civil subpoena statutes in the Code of Civil Procedure would be amended to consistently authorize the subpoenaing of “electronically stored information.” Although AB 5 added new section 1985.8 that provides for the subpoenaing of electronically stored information, some individual subpoena statutes continue to refer only to documents. To avoid any confusion or uncertainty, this legislation will ensure that all the subpoena statutes are consistent with the Electronic Discovery Act.
- A new section would be added to the Code of Civil Procedure on the methods and scope of discovery. This provision would provide that, when any method of discovery permits the production, inspection, copying, testing or sampling of documents or tangible things, those methods shall also permit the production, inspection, copying, testing or sampling of electronically stored information. (See proposed amendments to Code of Civil Procedure section 2019.040.)
- The statutes on the discovery of business records would be amended to include provisions similar to those in the recently enacted subpoena section, including provisions relating to the form of production, the discoverability of electronically stored information that is not reasonably accessible, proportionality principles, and a safe harbor provision. (See proposed amendments to Code Civil Procedure section 2020.220, subdivisions (d)–(m).) The statute on the production of business records only and the statute commanding the attendance of a deponent as well as the production of business records would be amended to add provisions on the form of production of any electronically stored information. (See proposed amendments to Code of Civil Procedure sections 2020.410(a) and 2020.510(a)(4).))
- The sections of the Civil Discovery Act on oral depositions inside California, oral depositions outside California, and discovery in out-of-state actions would be amended to be consistent with the Electronic Discovery Act.
- Several discovery sanctions statutes would be amended to include the same safe harbor provisions that were added to other sanctions statutes under the Electronic Discovery Act.
- The provisions of the Discovery Act enacted in 2004 providing for the use of technology in conducting discovery in complex cases (Code of Civil Procedure sections 2017.710–2017.740) would be repealed because these statutes on technology are unused, unnecessary, and inconsistent in some respects with more recently enacted legislation on e-discovery, e-service, and e-filing.

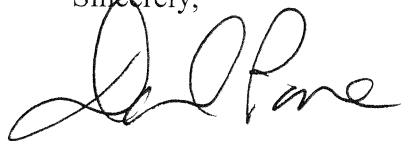
Hon. Noreen Evans

April 24, 2012

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These technical and conforming changes will assist in the implementation of the Electronic Discovery Act and should help avoid unnecessary confusion for both litigants and the courts. For these reasons, the Judicial Council supports SB 1574 and urges your Aye vote.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pone", with a stylized, cursive script.

Daniel Pone
Senior Attorney

DP/lp

cc: Members, Senate Judiciary Committee

Ms. Tara Welch, Counsel, Senate Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy



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June 13, 2012

Hon. Mike Feuer, Chair
Assembly Judiciary Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: SB 1574 (Feuer), as amended April 19, 2012 – Support
Hearing: Assembly Judiciary Committee – June 19, 2012

Dear Assembly Member Feuer:

The Judicial Council supports and is sponsoring SB 1574, which is a non-controversial, clean-up measure to the recently enacted Electronic Discovery Act [AB 5 (Evans), Stats. 2009, ch. 5].

SB 1574 continues the process of modernizing California's statutes on civil discovery to reflect the fact that most information today is created and stored in electronic form. The modernization of the discovery statutes was begun a little over two years ago with the passage of the Electronic Discovery Act, and SB 1574 will further this important effort. Although the amendments on civil discovery that were made through AB 5 were extensive, they were not completely comprehensive. Some sections of the Code of Civil Procedure still only refer to paper documents or records and fail to mention electronically stored information in appropriate places. To be consistent with the Electronic Discovery Act, these sections should be amended, which is the purpose of this clean-up legislation.

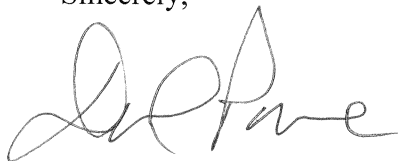
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Hon. Mike Feuer
June 13, 2012
Page 3

These technical and conforming changes will assist in the implementation of the Electronic Discovery Act and should help avoid unnecessary confusion for both litigants and the courts. For these reasons, the Judicial Council supports SB 1574 and urges your Aye vote.

Sincerely,

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Daniel Pone
Senior Attorney

DP/lp

cc: Members, Assembly Judiciary Committee

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy

Ms. Tara Welch, Counsel, Senate Judiciary Committee



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Director, Office of Governmental Affairs

June 26, 2012

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: SB 1574 (Committee on Judiciary) – Request for Signature

Dear Governor Brown:

The Judicial Council supports and is sponsoring SB 1574, which is a non-controversial, clean-up measure to the recently enacted Electronic Discovery Act [AB 5 (Evans), Stats. 2009, ch. 5].

SB 1574 continues the process of modernizing California's statutes on civil discovery to reflect the fact that most information today is created and stored in electronic form. The modernization of the discovery statutes was begun a little over two years ago with the passage of the Electronic Discovery Act, and SB 1574 will further this important effort. Although the amendments on civil discovery that were made through AB 5 were extensive, they were not completely comprehensive. Some sections of the Code of Civil Procedure still only refer to paper documents or records and fail to mention electronically stored information in appropriate places. To be consistent with the Electronic Discovery Act, these sections should be amended, which is the purpose of this clean-up legislation.

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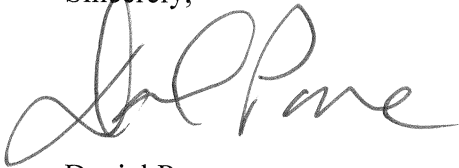
Hon. Edmund G. Brown, Jr.

June 26, 2012

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as exist under current law. These technical and conforming changes will assist in the implementation of the Electronic Discovery Act and should help avoid unnecessary confusion for both litigants and the courts. For these reasons, the Judicial Council requests your signature on SB 1574.

Sincerely,

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Daniel Pone
Senior Attorney

DP/lp

cc: Ms. Tara Welch, Counsel, Senate Judiciary Committee

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor