RESOLUTION 02-01-2018

DIGEST
Bond: Repeal Requirement for Out of State Plaintiffs
Deletes Code of Civil Procedure section 1030 to remove the requirement that an out-of-state plaintiff post a bond to maintain an action in California.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution deletes Code of Civil Procedure section 1030 to remove the requirement that an out-of-state plaintiff post a bond to maintain an action in California. This resolution should be disapproved because it eliminates an important protection for Californians sued by out-of-state plaintiffs.

Current law allows a California defendant sued by an out-of-state plaintiff to move the court to require the plaintiff post a bond to cover a potential defense costs award. "The purpose of the statute is to enable a California resident sued by an out-of-state resident 'to secure costs in light of the difficulty of enforcing a judgment for costs against a person who is not within the court's jurisdiction.'" (*Yao v. Superior Court* (2002) 104 Cal.App.4th 327, 331, quoting *Shannon v. Sims Service Center, Inc.* (1985) 164 Cal.App.3d 907, 913, quoting from Recommendation Relating to Security for Costs (Oct. 1978) 14 Cal. Law Revision Com. Rep. (1978) p. 323.) Or, as the 1980 Law Revision Commission stated, "Since the purpose of this section is to afford security for an award of costs which the defendant might otherwise have difficulty enforcing against a nonresident plaintiff, subdivision (b) permits an undertaking to be required whenever there is a 'reasonable possibility' that the defendant will prevail in the action."

Section 1030 is recognition that enforcement of a defense cost award against out-of-state plaintiffs is more costly and difficult, and may ultimately prove futile. Current law strikes an appropriate balance, following a due process hearing, of protecting California residents from meritless lawsuits brought by out-of-state residents versus the rights of out-of-state residents to pursue actions in California against California residents.

This protective measure is particularly important where the plaintiff resides in a foreign country. In some foreign countries, a California judgment for costs will not be recognized. The prevailing defendant must bring a separate action in the foreign country to prove the right to an award of costs.

The resolution would eliminate this valuable protection and, therefore, should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to delete Code of Civil Procedure section 1030 to read as follows:

~~§ 1030~~

~~(a) When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding. For the purposes of this section, "attorney's fees" means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract.~~

~~(b) The motion shall be made on the grounds that the plaintiff resides out of the state or is a foreign corporation and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding. The motion shall be accompanied by an affidavit in support of the grounds for the motion and by a memorandum of points and authorities. The affidavit shall set forth the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding.~~

~~(c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees.~~

~~(d) The plaintiff shall file the undertaking not later than 30 days after service of the court's order requiring it or within a greater time allowed by the court. If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made.~~

~~(e) If the defendant's motion for an order requiring an undertaking is filed not later than 30 days after service of summons on the defendant, further proceedings may be stayed in the discretion of the court upon application to the court by the defendant by noticed motion for the stay until 10 days after the motion for the undertaking is denied or, if granted, until 10 days after the required~~ undertaking ~~has been filed and the defendant has been served with a copy of the undertaking. The hearing on the application for the stay shall be held not later than 60 days after service of the summons. If the defendant files a motion for an order requiring an undertaking, which is granted but the defendant objects to the undertaking, the court may in its discretion stay the proceedings not longer than 10 days after a sufficient undertaking has been filed and the defendant has been served with a copy of the undertaking.~~

~~(f) The determinations of the court under this section have no effect on the determination of any issues on the merits of the action or special proceeding and may not be given in evidence nor referred to in the trial of the action or proceeding.~~

~~(g) An order granting or denying a motion for an undertaking under this section is not appealable.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 1030 provides a procedure under which a defendant can apply to have the court impose a requirement that a non-resident or foreign corporation post an undertaking to secure the award of costs and attorney fees that may be awarded in an action or proceeding. It provides for a hearing procedure where the burden on the moving defendant is nothing more than "that there is a reasonable possibility the moving defendant will obtain judgment . . ." This statute has already been held inapplicable to indigent plaintiffs in *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, in which the court articulated, at 428 it "acts to prevent out-of-state residents from filing frivolous lawsuits against California residents," noting that a previous version had been found unconstitutional for lack of a hearing requirement, citing *Gonzales v. Fox* (1977) 68 Cal.App.3d Supp. 16. In *Gonzales,* the Appellate Department did not reach on the plaintiffs' equal protection argument because it reversed based on the due process argument.

This bonding procedure, even with the hearing, is an undue burden on interstate commerce, as it clearly discriminates against out-of-state residents, both by requiring the effort and expense of a demonstration of indigence, and as requiring the posting of a bond by a non-indigent non-resident that a California resident would not have to post. In addition, because subdivision (g) provides the determination is not appealable, the only remedy would be through a writ petition at the Court of Appeal.

If an action is frivolous, such should be demonstrated through other pre-trial process directly related to the merits. The potential effect of this section is overuse akin to that which has occurred in the context of Code of Civil Procedure section 425.16 Special Motions to Strike, which are frequently used as a "war of attrition, scorched earth" tactic to dispose of litigation in lieu of resolution on the merits through demurrers and motions for summary judgment, given its low "probability" standard. This provision has an even lower standard, "reasonable possibility."

The Solution: Would eliminate this motion procedure with its attendant expense and consumption of court and litigant resources and the resulting discrimination against out-of-state litigants with meritorious cases. Cases should be resolved on their merits after full review, not based on a "reasonable possibility" that would only be required to be shown against a non-resident or foreign corporation, but would not be available against a resident or domestic corporation.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION
None known.

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RESOLUTION 02-02-2018

DIGEST
Anti-SLAPP Motion: Circumstances Allowing Evidentiary Affidavits and Discovery
Amends Code of Civil Procedure section 425.16 to allow consideration of evidentiary statements and to authorize discovery when motion is filed more than ninety days after service of process.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Code of Civil Procedure section 425.16 to allow consideration of evidentiary statements and to authorize discovery when motion is filed more than ninety days after service of process. This resolution should be disapproved because the current statute contains adequate provisions regarding the court's consideration of evidentiary statements and authorization for discovery upon a showing of good cause.

Under current law, the special motion to strike may be filed within 60 days of the service of the complaint, or within the discretion of the court at a later time upon terms it deems proper. (Code Civ. Proc., § 425.16, subd. (f).) While ordinarily all discovery proceedings are stayed upon the filing of the notice of a special motion to strike, the court, on a showing of good cause, may order that specified discovery be conducted. (*Id.*, subd. (g).) This ensures that plaintiffs who file cases that could chill speech, or the right of petition (i.e. a Strategic Lawsuit Against Public Participation), cannot further chill the defendant's rights by increasing the time and cost of that litigation through burdensome discovery. Regardless of whether the motion for relief from the discovery stay is brought early in the case, or whether the court allows it to be presented at a later time, the court already has the power to authorize discovery on a showing of good cause.

Further, in determining whether to grant a motion for relief from the discovery stay, the court considers the pleadings, as well as the supporting and opposing affidavits setting forth the facts upon which the liability or defense is based. (Code Civ. Proc., § 425.16, subd. (b)(2).) Thus, any evidentiary witness statements obtained, whether through discovery or otherwise, already may be offered and considered in deciding an anti-SLAPP motion to strike.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend the Code of Civil Procedure section 425.16 to read as follows:

§ 425.16

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in

the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through the abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. An affidavit or other statement under oath may be considered even if not made in connection with the cause of action to which the special motion is addressed.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to plaintiff prevailing on the motion, pursuant to Section 128.5

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259 or Section 11130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with the a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of

entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision. There shall be no discovery stay where a special motion is filed more than 90 days after service of the summons upon the moving defendant without an order by the court upon a showing of good cause.

(h) For purposes of this section "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j)(1) Any party who files a special motion to strike pursuant to this section, any party who files an opposition to a special motion to strike, shall promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a confirmed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(j)(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: This resolution addresses two problems. Existing law provides that when a defendant files a special motion all discovery is stayed. If a defendant files its special motion promptly after being served the defendant can prevent plaintiff from conducting any discovery. However, in order to prevail on the second prong a plaintiff/petitioner must present affidavits proving the existence of a *prima facie* case. Without the ability to conduct discovery a plaintiff/petitioner can only obtain evidence from "willing" witnesses. Defense counsel argue that affidavits and depositions taken in other cases are hearsay and should not be considered by the court. Without the means to conduct discovery the only method for a plaintiff/petitioner to present statements made by opposing parties and uncooperative witnesses is by using material prepared and/or obtained in other matters.

Existing law also allows a defendant to file a special motion to strike pursuant to Code of Civil Procedure 425.16 after the filing of an amended pleading even in situations where a special motion was denied and that ruling upheld on appeal. In such situations discovery is stayed for extended periods of time. During such times memories fade, people die, and documents are lost or destroyed.

The Solution: The proposed change would clarify that the court may consider statements under oath not prepared in connection with the case. The proposed change would cease the automatic stay of discovery for special motions not filed early in the litigation to avoid the loss of evidence.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly addressed.

CURRENT OR PRIOR RELATED LEGISTATION
None known.

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RESOLUTION 02-03-2018

DIGEST
Discovery: Responses Shall Be Provided Electronically Upon Request
Amends Code of Civil Procedure sections 2030.210, 2031.210, and 2033.210 to require an electronic copy of requests, if sought, and each request for discovery is included in the response.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
Similar to Resolution 10-04-2002, which was withdrawn, Resolutions 10-05-2002 and 01-08-2003, which were approved in principle as amended, and Resolution 08-11-2013, which was approved in principle.

Reasons:
This resolution amends Code of Civil Procedure sections 2030.210, 2031.210, and 2033.210 to require an electronic copy of requests, if sought, and each request for discovery is included in the response. This resolution should be approved in principle because it makes discovery less cumbersome to review for both the parties and the court.

When a party to litigation receives discovery responses, they must refer back to the requests to determine the meaning of the response. This is cumbersome, especially where the discovery is particularly voluminous. By requiring the responding party to include the request prior to the response, the parties and the court can look to only one document to see both the questions and the answer. By additionally requiring the propounding party to provide, when asked, an electronic version of the requests, there is no necessity for the responding party to recreate them; they simply merge the requests and answers into the responding document. This is not very different from the manner in which the separate statement in an opposition to summary judgment is prepared and serves a similar purpose.

This resolution is related to Resolution 02-08-2018.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 2030.210, 2031.210, and 2033.210 to read as follows:

§ 2030.210

(a) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following:

(1) An answer containing the information sought to be discovered.

(2) An exercise of the party's option to produce writings.

(3) An objection to the particular interrogatory.

(b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party.

(c) Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter, ~~and~~ be in the same sequence as the corresponding interrogatory, ~~but the text of that interrogatory need not be repeated~~ and shall include the text of the interrogatory immediately preceding the response.

(d) On request, the propounding party must within three days provide to the responding party an electronic version of the interrogatories. The electronic version may be provided in any form on which the parties agree. If the parties are unable to agree on the form, the propounding party must provide to the responding party the electronic version of the interrogatories that it used to prepare the document propounded. Under this subdivision, a party is not required to create an electronic version or any new version of any document for the purpose of transmission to the requesting party.

§ 2031.210

(a) The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection, copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A representation that the party lacks the ability to comply with the demand for inspection, copying, testing, or sampling of a particular item or category of item.

(3) An objection to the particular demand for inspection, copying, testing, or sampling.

(b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party.

(c) Each statement of compliance, each representation, and each objection in the response shall bear the same number, ~~and~~ be in the same sequence as the corresponding item or category in the demand, ~~but the text of that item or category need not be repeated~~ and shall include the text of the demand immediately preceding the response.

(d) On request, the propounding party must within three days provide to the responding party an electronic version of the demand. The electronic version may be provided in any form on which the parties agree. If the parties are unable to agree on the form, the propounding party must provide to the responding party the electronic version of the demand that it used to prepare the document propounded. Under this subdivision, a party is not required to create an electronic version or any new version of any document for the purpose of transmission to the requesting party.

~~(d)~~ (e) If a party objects to the discovery of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the responding party will not search the source in the absence of an agreement with the demanding party or court order, the responding party shall identify in its response the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that are not reasonably accessible, the responding party preserves any objections it may have relating to that electronically stored information.

§ 2033.210

(a) The party to whom requests for admission have been directed shall respond in writing under oath separately to each request.

(b) Each response shall answer the substance of the requested admission, or set forth an objection to the particular request.

(c) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the requesting party.

(d) Each answer or objection in the response shall bear the same identifying number or letter, ~~and~~ be in the same sequence as the corresponding request, ~~but the text of the particular request need not be repeated~~ and shall include the text of the demand immediately preceding the response.

(e) On request, the propounding party must within three days provide to the responding party an electronic version of the request. The electronic version may be provided in any form on which the parties agree. If the parties are unable to agree on the form, the propounding party must provide to the responding party the electronic version of the request that it used to prepare the document propounded. Under this subdivision, a party is not required to create an electronic version or any new version of any document for the purpose of transmission to the requesting party.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: By not requiring that the party responding to written discovery include the question in the responses, current law invites gamesmanship and inefficiency. The party signing the verification could attempt to disclaim a verified response on the grounds that he/she had not reviewed the actual interrogatories, requests, or demands. Additionally, review of the responses is cumbersome because two documents must be reviewed simultaneously. Moreover, in the event of a motion to compel, the moving party will be required to attach additional exhibits to the motion that in most circumstances could be avoided by inclusion of the interrogatory, request, or demand with the response.

The Solution: To avoid potential gamesmanship and inefficiencies, the party responding to written discovery should be required to include the interrogatory, request, or demand with the response. This eliminates the potential that the verifying party might try to avoid the response by claiming he/she did not review the propounded discovery. Additionally, review of the documents becomes more efficient and streamlined because the parties can generally work from the responses without having to simultaneously review the propounded discovery. This will also decrease the documents filed in a motion to compel. In most discovery disputes where the issues concern the nature of a response or objection, the document propounded is unnecessary to the ruling of the court or discovery referee. What is necessary is the interrogatory, request, or demand and the response thereto. By requiring the response contain the interrogatory, request, or

demand, one entire document is rendered unnecessary. This is particularly important in complex multiparty actions where a motion to compel might be filed against several parties.

Admittedly, if the resolution merely required that the response include the propounded discovery, an additional burden is placed on the responding party and the risk of the responding party incorrectly copying the propounded discovery would be created. This resolution avoids these risks, however, by requiring that the propounding party, upon request, provide an electronic copy of the request to the responding party within 3 days. This requirement is similar to the exchange of a separate statement to a motion for summary judgment. (See Cal. Rules of Court, Rule 3.1350(i).)

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Brian Freedman

RESOLUTION 02-04-2018

DIGEST
Statute of Limitations: Repeal Tolling For Persons Out of State
Deletes Code of Civil Procedure section 351 to remove tolling of the statute of limitations on causes of action against a person for the time when the person is absent from the state.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolutions 04-03-2005, 07-05-2011, 07-07-2011 and 03-06-2014, which were approved in principle, and Resolution 07-06-2011, which was disapproved.

Reasons:
This resolution deletes Code of Civil Procedure section 351 to remove tolling of the statute of limitations on causes of action against a person for the time when the person is absent from the state. This resolution should be disapproved because the provision is needed to protect creditors and plaintiffs whose cause of action may be lost where a debtor or wrongdoer willfully leaves the state to effectively secret his or her whereabouts and render service impracticable.

Some courts have determined that section 351 presents an unconstitutional burden on interstate commerce (U.S. Const., art. I, § 8, cl. 3). (See, e.g., *Dan Clark Family Ltd. Partnership v. Miramontes* (2011) 193 Cal.App.4th 219, 232-234.) Other courts have found that section 351 is not constitutionally infirm on its face. (See *Pratali v. Gates* (1992) 4 Cal.App.4th 632, 641, 643.)

California recognizes that an out-of-state defendant may be served personally by substituted service, mail or publication, but those provisions do not always conform to the service requirements for countries subscribing to the Hague Service Convention. (Convention on the Service Abroad Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, T.I.A.S. No. 6638.). In the United States, state law generally governs service of process in state court. However, under the Supremacy Clause (U.S. Const., Art. VI), the Convention preempts inconsistent methods of service prescribed by state law in all cases in which the Convention applies.

Where a defendant leaves the state or country, changes his or her name, and his or her whereabouts is unknown, another country's authorized modality of service may not comport with United States' constitutional precepts, frustrating the ability to serve even where the out-of-state defendant can be found. Service by publication is not always an effective fallback. It presupposes a judicial finding that any publication occurs "in a named newspaper outside this state that is most likely to give actual notice to that party." (Code Civ. Proc., § 415.50, subd. (b).) If the defendant's whereabouts is unknown, the plaintiff cannot secure such a judicial finding. Further, service by publication is not permitted by all signatories to the Hague Convention.

Therefore, additional time may be required to protect a California citizen from losing their cause of action against a party who leaves the state for purposes of escaping personal debt or liability.

Further, the logistical realties of this problematic situation are recognized on the criminal side, which extends the statute of limitations three years for an out-of-state defendant. (Pen. Code, § 803, subd. (d).)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to repeal Code of Civil Procedure section 351 to read as follows:

~~§ 351~~

~~If, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term herein limited, after his return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is not part of the time limited for the commencement of the action.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 350 provides that an action is commenced, for purposes of Title 2 of the Code or Civil Procedure related to time of commencement of civil actions, "when the complaint is filed." Code of Civil Procedure section 351, which has apparently been unchanged since enactment in 1872, provides an exception to this rule for any time during the time the defendant is out of state. This provision has been held to be unconstitutional in both federal and state courts, as it places an unreasonable burden on interstate commerce by compelling a nonresident to choose between remaining in state throughout the limitations period or forfeiting the limitations defense. (*Abramson v. Brownstein* (9th Cir., 1992) 897 F.2d 389; *Wilson v. Hays* (2017) 228 F.Supp.3d 1100; *Dan Clark Family Limited Partnership v. Miramontes* (2011) 193 Cal.App.4th 219; *Heritage Marketing and Insurance Services, Inc. V. Chrustawka* (2008) 160 Cal.App.3d 754.)

In 1872, it may have made sense to toll the statute of limitations, given the technologies of the time. In the modern world, any concern about the logistics about effectuating service of process is *de minimis* such that this tolling rule is entirely obsolete.

The Solution: Would eliminate absence from the state as a basis for tolling of the statute of limitations.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION
None known.

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RESOLUTION 02-05-2018

DIGEST
Usury: Maximum Rate of Interest
Amends Civil Code section 1916-1 to reduce the maximum rate of interest that may be charged on a judgment or by contract.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Civil Code section 1916-1 to reduce the maximum rate of interest that may be charged on a judgment or by contract. This resolution should be disapproved because Civil Code section 1916-1 was adopted by referendum, has never been codified, cannot be changed by the legislature and applies to both loans and judgments as expressly allowed by the California Constitution.

The California Constitution, Article II section 10 prohibits the legislature from amending or repealing as statute adopted through the referendum process unless the statute expressly permits amendment or repeal without the electors approval. The "usury law," Civil Code sections 1916-1 through 1916-5, was adopted by an initiative measure and contains no provision permitting its repeal by the legislature.

A California Constitutional provision regarding usury was added in 1937 and then repealed. The current Constitutional provision regarding usury is contained in Article XV, section 1 of the California Constitution, which was added in June 1976. While the current Constitutional provision generally establishes the maximum rate of interest on loans for personal, family, or household purposes, and on judgments, it expressly allows higher rates of interest in certain circumstances. For example, loans for purchase, construction, or improvement of real property, loans made by banks, credit unions, savings and loan associations, pawnbrokers, and others are not capped at ten percent. Instead, Article XV allows the Legislature to establish the maximum interest rate that may be charged on the specifically exempted loans. Interest rates on many of the specifically exempted loans are governed by other statutes, including Civil Code sections 1916.1 through 1916.12 and Financial Code section 21200.5. Given that section 1916-1 has been on the books, without change, through two Constitutional amendments, a change to it may be viewed as overriding the other statutes that specifically permit higher interest rates as expressly permitted under Article XV.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1916-1 to read as follows:

§ 1916-1

The rate of interest upon the loan or forbearance of any money, goods or things in action or on accounts after demand or judgments rendered in any court of this state, shall be seven dollars upon the one hundred dollars for one year and at that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding ~~twelve~~ ten dollars on the one hundred dollars for one year and not exceeding that rate for a greater or less sum or for a longer or shorter time, in which case such rate exceeding seven dollars on one hundred dollars shall be clearly expressed in writing.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: A constitutional amendment to the usury law was passed in 1934, which limits the maximum rate of interest to ten percent (unless an exception applies). The California Supreme Court, back in 1937, recognized that the Constitutional amendment, for practice purposes, changes the maximum permissible rate of interest from 12 percent to 10 percent and thus constitutes an amendment to this section of the usury law. (*Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 174.) However, this law remains on the books and causes great confusion when researching the issue.

The Solution: This harmonizes the statutory usury law with the terms of the constitutional amendment.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Melissa L. Bustarde

RESOLUTION 02-06-2018

DIGEST
Appeal: Satisfaction of the Uncontested Portion of a Severable Money Judgment
Amends Code of Civil Procedure section 695.220 to facilitate payment of the uncontested portion of a severable judgment pending a partial appeal.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Code of Civil Procedure section 695.220 to facilitate payment of the uncontested portion of a severable judgment pending a partial appeal. This resolution should be approved in principle because it is reasonable to allow the judgement debtor to pay the uncontested portion of a judgment, without waiving the right to appeal, to avoid paying accrued interest on the entire judgement.

Current law allows an appellant to take a partial appeal from a severable part of a judgment (see e.g., *Satchmed Plaza Owners' Association v. UWMC Hosp. Corp.* (2008) 167 Cal.App.4th 1034, 1044), and provides a process for satisfaction of an uncontested damage award (Code Civ. Proc., § 695.220.) However, under Code of Civil Procedure section 695.220, subdivision (c), an appellant who wants to pay the uncontested part of a severable money judgment is required to pay interest that has accrued on the entire judgment, instead of only on the uncontested portion. This makes it less likely that an appellant will be willing and/or able to pay the uncontested portion of a severable judgment pending appeal. Because the plaintiff is forced to wait until the appeal is resolved (which can take years) to receive payment on the uncontested sum and the defendant will continue to accrue interest on the uncontested sum, this harms both sides.

The resolution specifically allows a defendant/appellant to pay an uncontested, severable portion of a money judgment without paying accrued interest on the severable portion of the judgment that is being appealed. This is beneficial to plaintiffs and defendants because a plaintiff will be able to receive payment of an uncontested damage award without having to wait for the completion of an appeal (which could take years). The defendant will have the right to appeal the contested portion of the judgment after satisfying the uncontested severable damage award, without having to first pay accrued interest on the contested portion of the judgment. Under these circumstances, if the defendant's partial appeal is not successful, the defendant will then have to pay all of the accrued interest on the contested portion of the judgment.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 695.220 to read as follows:

§ 695.220

Money received in satisfaction of a money judgment, except a money judgment for support, is to be credited as follows:

(a) The money is first to be credited against the amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer.

(b) Any remaining money is next to be credited against any fee due the court pursuant to Section 6103.5 or 68511.3 of the Government Code, which are to be remitted to the court by the levying officer.

(c) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(d) Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money is to be credited against the matured installments in the order in which they matured.

(e) In the event a severable damage award in a money judgment is not contested on appeal, the judgment debtor may satisfy the unchallenged damage award, without waiving the right to appellate review of the challenged damage award, by paying, in this order: (1) any amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer with respect to the award(s) being satisfied; (2) any fee due the court pursuant to Section 6103.5 or 68511.3 of the Government Code with respect to the award being satisfied, which are to be remitted to the court by the levying officer; (3) the accrued interest that remains unsatisfied with respect to the award being satisfied; and (4) satisfaction of the principal amount of the uncontested damage award.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: An appellant may take a *partial* appeal from a severable part of a judgment. However, under CCP section 695.220(c), an appellant who wants to pay the uncontested part of a severable money judgment is required to pay interest that has accrued on the *entire* judgment, and not only on the uncontested portion. This makes it less likely that appellant will be willing or able to pay the uncontested portion of a severable judgment pending appeal and harms both sides: plaintiff is forced to wait until the appeal is resolved (which can take years) to receive payment on the uncontested sum, and the defendant will continue to pay interest on the uncontested sum during this time.

For example, assume that a severable judgment is entered awarding $1,000,000 in compensatory damages and $100,000,000 in punitive damages. Interest on the punitive damages portion of the judgment accrues at $833,000 per month at a yearly rate of 10%. A defendant wishing to pay the uncontested compensatory award and contest only the punitive damages award may be required to pay a substantial amount of accrued interest *on the entire judgment* before any payment is credited towards the uncontested compensatory damages under section 695.220(d).

The Solution: While parties usually attempt to reach an agreement on payment of uncontested sums pending appeal, this is not always possible and the appellant may need to rely on the process set forth in section 695.220 to satisfy an uncontested damage award. The proposed resolution amends this statute to explicitly allow a defendant/appellant to pay an uncontested, severable portion of a money judgment without paying accrued interest on the severable portion of the judgment that is being appealed. Payment for the uncontested portion of a severable judgment will be credited in the same order specified by the existing statute in subdivisions (a) to (d). This solution promotes efficient resolution of claims by allowing a plaintiff to quickly receive payment of an uncontested damage award without having to wait for the completion of an appeal, and also preserves a defendant's right to appeal the contested portion of the judgment after satisfying an uncontested severable damage award, without having to first pay accrued interest on the contested portion of the judgment.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Sarvenaz Bahar

RESOLUTION 02-07-2018

DIGEST
Civil Rights: Homelessness
Adds Civil Code sections 52.80, 52.81, 52.82, 52.83, 52.84, and 53.85 to give homeless people special rights in public spaces and a civil cause of action for infringement.

RESOLUTIONS COMMITTEE RECOMMENDATION
REFER TO CONFERENCE FOR DEBATE WITHOUT RECOMMENDATION

History:
Similar to Resolution 05-06-2016, which was disapproved, and identical to Resolution 09-01-2017, which was disapproved.

Reasons:
This resolution adds Civil Code sections 52.80, 52.81, 52.82, 52.83, 52.84, and 53.85 to give homeless people special rights in public spaces and a civil cause of action for infringement. This resolution is being referred to the conference for debate without recommendation due to the countervailing concerns to which it gives rise.

With poverty and homelessness reaching record numbers in California, there has been a documented increase in laws that directly affect the homeless population. The resolution would address these concerns by providing homeless people with rights and remedies to ensure their persons, privacy, and property are protected. It does so, however, by creating overly expansive rights for the homeless population, and imposing burdensome and costly requirements on municipalities seeking to balance the rights of homeless people against those of the rest of their citizens.

Under the resolution, homeless people would not be subject to criminal, civil, or administrative penalties for sleeping, eating, or resting on public property, which is defined as any government-owned property open to the public, including "plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks." Exempt from this definition are public spaces with a specific use that is substantially impeded by the "outdoor living," such as improved areas of municipal parks and public sidewalks in front of houses and dwelling units.

A municipality would be unable to remove homeless persons or their belongings unless it has provided "adequate" housing including room for every household member, handicap access, accommodation for physical and mental limitations, and no restrictions based on criminal history or substance abuse. The municipality would be required to provide outreach workers with extensive training to conduct an individual assessment of each person removed.

Prior to removal, municipalities would have to provide at least thirty days written notice. If a homeless person was not present at the time of removal, a municipality would have to document that person had received actual notice, and photograph and catalogue any property removed. Where the outdoor living space is in an unsafe or unsuitable location, the municipality would be

prohibited from undertaking a removal action without providing notice 48 hours in advance, identifying and making available nearby, alternative locations, and conducting individualized outreach. Where removal is based on a hazardous condition, the municipality would be required to provide cleaning supplies and give the homeless residents 72 hours to try and clean up the hazard, and then would be unable to move them without ensuring adequate alternative housing. The personal belongings of the homeless person being removed must be safeguarded and transported to the new housing.

The resolution further provides a civil cause of action for any violation of these rights, providing for restitution, actual, compensatory and exemplary damages, a statutory award of $1,000 per violation, and reasonable attorney fees and costs. Currently, the homeless can (and do) bring civil rights suits under 42 U.S.C. § 1983, and the Ninth Circuit has been receptive to those actions. (See, e.g., *Lavan v. City of Los Angeles* (9th Cir. 2012) 693 F.3d 1022, *cert. denied* June 24, 2013.)

There have been several legislative measures providing for a "right to rest" proposed in California, none of which were as broad as this resolution and all were unsuccessful. Assm. Bill No. 5 (Ammiano) (2013-2014 Reg. Sess.), Sen. Bill No. 608 (Liu) (2015-2016 Reg. Sess.), and Sen. Bill No. 876 (Liu) (2015-2016 Reg. Sess.), all died at the committee level.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code sections 52.80, 52.81, 52.82, 52.83, 52.84, and 52.85 to read as follows:

§ 52.80

There is created a Homeless Person's Bill of Rights to guarantee that the rights, privacy and property of homeless persons are adequately safeguarded and protected under the laws of this state. The rights afforded homeless persons to ensure that their person, privacy and property are safeguarded and protected, as set forth in subsection Sections 52.82 and 52.83 below, are available only insofar as they are implemented in accordance with other parts of the general statutes, state rules and regulations, federal law, the state Constitution and the United States Constitution.

§ 52. 81

For purposes of this part, the following definitions shall apply:

(a) “Adequate and accessible housing” means, at a minimum, living space:

(1) Where a person has both the right to reside and keep belongings on an ongoing, long-term basis at any time of day or night;

(2) That meets living standards commonly acceptable to society, and includes safety from other individuals, the elements, and exposure to disease or filth, room to move about, storage space for belongings, the ability to maintain current household composition, accommodation for physical or mental limitations, and access to hygiene facilities; and

(3) That is actually accessible to the individual who is or will be living in that space, including that the individual must not be barred as a result of criminal background, treatment

status, ability to show identification, household composition, physical or mental limitations, substance use disorder, or otherwise.

(b) "Hazardous condition" means a condition that creates an imminent public health or safety harm. The public health or safety harm must be created by the presence of a particular condition and not a generalized harm common to all who are unsheltered.

(c) "Homeless person(s)" and "person(s) experiencing homelessness" mean those individuals or members of families who lack a fixed, regular, and adequate nighttime residence, including people defined as homeless using the criteria established in the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.

(d) "Impoundment" means any action by the municipality to remove or tow a vehicle used as a residence without the express approval of the vehicle's owner.

(e) "Municipality" means any local jurisdiction and any of its contractors, agents, employees or partners.

(f) "Outdoor living space" means any outdoor public space that homeless individual(s) use to live or sleep in, as evidenced by the presence of a sleeping bag, shelter, tarp, tent, bed, cardboard, metal sheeting, furniture, or other objects demonstrating an intent to live in the location for one or more days, whether or not continuously.

(g) "Personal property" means any item which an individual owns and which might have value or use to that individual, regardless of whether the item is left unattended for temporary periods of time or whether it has monetary value. This does not include weapons other than knives, contraband, items which pose an obvious health or safety risk, or are clearly contaminated in a way which a reasonable person would conclude the items should not be stored with other property. Personal property includes non-rigid materials used for shelter, such as tents and tarps, but does not include building materials, such as wood products, metal, or rigid plastic.

(h) "Public space" means any property that is owned by a government entity or any property upon which there is an easement for public use and that is held open to the public, including, but not limited to, plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public buildings, shopping centers, and parks.

(i) "Qualified outreach program" means a social service program with adequate oversight, training, and clinical supervision to conduct sufficient individualized outreach, and that the municipality contracts with or provides. Such programs shall have an established record of providing sustained, equitable, person-centered care, and staff providing services shall have training in the following areas: working with people with behavioral health issues including substance use disorder, mental disorders, or both; trauma-informed care, including people who have experienced or are experiencing gender- and gender-identity-based violence and violence based on sexuality; outreach, assessment, and engagement; harm reduction practices (including but not limited to safe needle exchange, use, and disposal, carrying and dispensing Narcan, informing individuals of rights (Good Samaritan Law) and treatment options (Buprenorphine and Methadone); cultural competence; confidentiality and grievance procedures; and may include peer coaches that include adequate oversight and clinical supervision.

(j) "Removal" means action to remove people, camps, structures, or personal property located at outdoor living spaces.

(k) "Rest" means the state of not moving, holding certain postures that include, but are not limited to, sitting, standing, leaning, kneeling, squatting, sleeping, or lying.

(l) "Sufficient individualized outreach" means individualized, person-centered outreach that responds to the unique needs of each person. Sufficient outreach involves:

(m) Making an individual assessment of each affected individual, which includes, but is not limited to, considerations of household composition; disability; mental illness or other mental or emotional capacity limitations; substance use or treatment status; geographic needs, such as proximity to personal support, healthcare, employment and other geographic considerations; and ongoing support needs;

(1) Identifying and offering adequate and accessible housing, if available, based on this individual assessment; and

(2) If an offer is accepted, providing assistance with both the administrative and logistical aspects of moving into the identified adequate and accessible housing.

(n) "Unsafe location" means a public space that poses imminent danger of harm to individuals residing in that location or to the general public. The danger of harm must be created by the existence of the specific outdoor living space at that particular location and not generalized danger of harm common to all who are unsheltered. Unsafe locations include, but are not limited to, rights-of-way in industrial areas actively used for transporting people or goods and for providing ingress and egress to real property.

(o) "Unsuitable location" means a public space that has a specific public use that is substantially impeded as a result of an outdoor living space in that location. Improved areas of Municipality parks, including restored natural areas or natural areas actively undergoing restoration, and public sidewalks in front of houses and dwelling units are per se unsuitable.

§ 52.82

(a) Each homeless person in this state has the right to:

(1) Free movement without restraint;

(2) Have equal opportunities for employment;

(3) Receive emergency medical care;

(4) Register to vote and to vote;

(5) Have personal information protected;

(6) Have a reasonable expectation of privacy in his or her personal property; and

(7) Receive equal treatment by state and municipal agencies.

(b) Each municipality shall conspicuously post in the usual location for municipal notices a notice entitled "HOMELESS PERSON'S BILL OF RIGHTS" that contains the text set forth in subsection (a) of this section. Each municipality shall make copies of such notice available to members of the public upon request.

§ 52.83

(a) It is the intent of the Legislature that this section be interpreted broadly so as to prohibit policies or practices that are discriminatory in either their purpose or effect.

(b) Persons experiencing homelessness shall be permitted to use public space in the ways described in this section at any time that the public space is open to the public without discrimination based upon their housing status, and without being subject to criminal, civil, or administrative penalties. Permitted use of the public space include, but are not limited to, all of the following:

(1) Free movement without restraint.

(2) Sleeping or resting, and protecting oneself from the elements while sleeping or resting in a non-obstructive manner.

(3) Eating, sharing, accepting, or giving food in a space in which having food is not

otherwise generally prohibited.

(4) Praying, meditating, worshiping, or practicing religion.

(c) Nothing in this section shall prevent law enforcement from enforcing laws to protect the right of people to use the sidewalk pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(d) Nothing in this section shall prevent law enforcement from enforcing the Penal Code, except subdivision (e) of Section 647 of the Penal Code, so far as it prohibits rest.

§ 52.84

(a) A municipality may respond appropriately to emergency situations such as fires, crimes, or medical crises as it normally would outside outdoor living spaces. However, except as specified in (b) the municipality may undertake a removal or impoundment action only when the municipality has satisfied the following conditions:

(1) Adequate and accessible housing is available beginning at least 30 days before the time of removal or impoundment, to all individuals whose persons, personal possessions and/or vehicles are being removed or impounded.

(2) The affected individuals have been engaged with sufficient outreach over a period of not less than 30 days, to allow those interested to move voluntarily to adequate and accessible housing. Sufficient outreach involves, at a minimum: (1) making an individual assessment of each affected individual, which includes, but is not limited to, considerations of household composition; disability; mental illness or other mental or emotional capacity limitations; substance use or treatment status; geographic needs, such as proximately to personal support, healthcare, employment and other geographic considerations; and ongoing support needs; (2) identifying and offering adequate and accessible housing based on this individual assessment; and (3) if an offer is accepted, providing assistance with both the administrative and logistical aspects of moving into the identified adequate and accessible housing.

(3) The Municipality has provided written notice meeting the following requirements:

(A) The specific date and time the removal or impound will take place, which must not be fewer than thirty (30) days from notice date;

(B) Explanation of the actions that will be taken during the removal or impoundment and how loss of personal property can be avoided;

(C) Information about where personal property will be safeguarded if seized during the removal or impoundment and how it can be retrieved after removal or impoundment;

(D) Contact information for the outreach organizations that will work with that site as specified in subsection (2) above; and

(E) A statement that adequate and accessible housing is available for all affected individuals.

(F) Notice must be provided in languages likely to be spoken by impacted individuals, and through methods capable of being understood by persons with physical and mental disabilities.

(G) Notice must be posted in a conspicuous location at the relevant outdoor living space or on the relevant vehicle, as well as affixed to all tents and structures used for shelter at that location.

(b) If an outdoor living space or a vehicle used as a residence is in an unsafe or unsuitable location, or creates or contains a hazardous condition, the municipality may undertake a removal or impoundment action if conducted in accordance with the procedures set forth in this Section.

(1) Prior to conducting removal or impoundment actions based on unsafe or unsuitable locations, the municipality must do the following:

(A) The municipality must inform all individuals staying at such location the reasons that it is unsafe or unsuitable at least 48 hours prior to any removal or impoundment.

(B) The municipality must identify and make available a nearby, alternative location to camp or park that is not unsafe or unsuitable to all affected individuals.

(C) The municipality must conduct sufficient individualized outreach.

(2) Prior to conducting removal or impoundment actions based on hazardous conditions, the municipality must do the following:

(A) The Municipality must provide access to basic garbage, sanitation, and harm reduction services as dictated by the nature of the hazardous condition, for at least 72 hours.

(B) The municipality must make reasonable efforts to identify the likely source of the hazardous condition and take action against only those responsible for creating the hazardous condition.

(C) The municipality must provide a meaningful opportunity to cure the hazardous condition, including:

(i) An effective cure notice of the specific conditions that create the hazardous condition and information on how that condition can be remedied; and

(ii) Provision of necessary items, such as garbage bags and bins, rodent traps, intravenous needle receptacles, and/or portable toilets, among others, that would allow the individuals to cure the hazardous condition. The municipality must allow individuals at least 72 hours to cure the hazardous condition before posting notice of removal or impoundment, and shall not conduct removal or impoundment if the hazardous conditions have been cured.

(D) The municipality must conduct direct outreach through site visits to: (a) inform all affected individuals prior to or during the cure period that the location has a hazardous condition and the actions needed to cure that condition; and (b) inform all affected individuals whether the hazardous condition has been remedied after the cure period, and if not, why not.

(3) Prior to removal or impoundment, the municipality must provide written notice meeting the following requirements:

(A) The specific date and time the removal or impound will take place;

(i) The removal or impound may not take place fewer than 48 hours from the date of notice in the case of unsafe or unsuitable location;

(ii) The removal or impound may not take place fewer than five (5) days from the date of notice in the case of a hazardous condition

(B) Explanation of how the location of the outdoor living space or vehicle is unsafe and/or unsuitable, or the hazardous condition has not been remedied;

(C) Explanation of the actions that will be taken during the removal or impoundment and how loss of personal property can be avoided;

(D) Information about where personal property will be safeguarded if seized during the removal or impoundment and how it can be retrieved after removal or impoundment;

(E) Clear directions to the alternative location;

(F) Contact information for the outreach organizations that will work with that site as described in subsection (4) below; and

(G) If available, a statement that adequate and accessible housing is available for all affected individuals;

(H) Notice must be provided in languages likely to be spoken by impacted individuals,

and through methods capable of being understood by persons with physical and mental disabilities.

(I) Notice must be posted in a conspicuous location at the relevant outdoor living space or on the relevant vehicle, as well as affixed to all tents and structures used for shelter at that location.

(4) Sufficient individualized outreach must involve, at a minimum, the following actions:

(A) Informing all affected individuals of the availability of the alternative location for the outdoor living space or vehicle, or offering adequate and accessible housing; and

(B) Offering assistance with both the administrative and logistical aspects of moving into the identified alternative location or adequate and accessible housing.

(c) During a removal or impoundment, the Municipality will safeguard all personal property free of charge according to the following requirements:

(1) For individuals present at the time of the removal or impoundment who have accepted the offer of an adequate and accessible housing but do not have the ability to transport their personal property, the Municipality shall transport all personal property to the location of the accepted housing the day of the removal or impoundment.

(2) For individuals absent at the time of the removal or impoundment, the Municipality must document that those individuals had actual notice of the removal or impoundment.

(3) For individuals absent at the time of removal or impoundment, or present but who did not accept the offer of adequate and accessible housing and do not have the ability to transport their personal property, the Municipality will safeguard all personal property as follows:

(A) Personal property must be photographed and catalogued by location and with identifying details of the personal property prior to being put into storage. Such information must be searchable by computer and by calling a Municipality agent.

(B) The location of the storage facility must be accessible by public transportation and accessible to those with disabilities.

(C) Its operating hours must extend beyond normal business hours to accommodate those who work or have other obligations during midweek during normal business hours.

(D) Photo identification shall not be required as a condition of retrieval;

(E) The Municipality must post notice for 90 days at the location of the removal or impoundment with the location of the seized personal property and instructions for reclaiming such personal property.

(F) After 90 days, the Municipality may dispose of any unclaimed personal items provided all the above requirements have been met.

§ 53.85

(a) Any person whose rights have been violated pursuant to this part may enforce those rights in a civil action.

(b) The court may award appropriate injunctive and declaratory relief, restitution for loss of property or personal effects and belongings, actual damages, compensatory damages, exemplary damages, statutory damages of one thousand dollars ($1,000) per violation, and reasonable attorney's fees and costs to a prevailing party.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Existing law does not provide for the basic civil and human rights for homeless individuals to exist free of discrimination. Currently, several municipalities have enacted offensively anachronistic laws targeting the basic human and civil rights of homeless individuals. By the virtue of their existence, homeless individuals are subject to civil and criminal sanctions, and have restrictions on their right to use and to move freely in public spaces, to rest in public spaces, to protect themselves from the elements, to eat, or perform religious observances in public spaces.

The forced dispersal of people from encampment settings is not an appropriate solution or strategy, accomplishes nothing toward the goal of linking people to permanent housing opportunities, and can make it more difficult to provide such lasting solutions to people who have been sleeping and living in the encampment. Homeless encampments across the country, even those that have existed for years, are increasingly subject to sudden evictions or "sweeps". Often conducted with little or no notice, sweeps not only physically displace homeless people from public space, but they often result in the loss or destruction of people's few possessions.

The loss of warm clothing, protective tents, and medication can become a matter of life and death. Worse yet, sweeps are often conducted by governments with no plan to house or adequately shelter the displaced encampment residents. Instead, homeless persons are made to leave their encampment communities without being offered any alternative places to live. Because this will merely disperse, rather than reduce, homelessness, new encampments inevitably reappear. And, without sanitation services, so will the public health and safety concerns that led to the sweep in the first place. Indeed, California's state transportation agency eliminated 217 homeless encampments between July 2014 and February 2015, only to have some of them reopen the very same day. The cost to taxpayers for this ineffective exercise of governmental power is significant.

The Solution: Would afford persons experiencing homelessness the right to use public spaces without discrimination based on their housing status and describe basic human and civil rights that may be exercised without being subject to criminal or civil sanctions, including the right to use and to move freely in public spaces, the right to rest in public spaces and to protect themselves from the elements, the right to eat in any public space in which having food is not prohibited, and the right to perform religious observances in public spaces, as specified. It ensures homeless persons due process rights related to their personal property are upheld and requires municipalities to provide alternative space or adequate housing as well as appropriate tailored services to people experiencing homelessness. This resolution would authorize a person whose rights have been violated pursuant to these provisions to enforce those rights in a civil action in which the court may award the prevailing party injunctive and declaratory relief, restitution, damages, statutory damages of $1,000 per violation, and fees and costs.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
This resolution uses language from Connecticut Homeless Bill of Rights, California Senate Bill 876: Homelessness introduced by Liu in February 2016, and a proposed ordinance in Seattle, WA addressing assessment and access to housing, as well as due process rights of homeless persons.

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RESOLUTION 02-08-2018

DIGEST
Discovery: Electronic Exchange of Written Discovery
Adds California Rules of Court, rule 3.1005, to require a party to electronically exchange written discovery upon request.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
Similar to Resolution 01-08-2003, which was approved in principle as amended and Resolution 04-01-2007, which was approved in principle.

Reasons:
This resolution adds California Rules of Court, rule 3.1005, to require a party to electronically exchange written discovery upon request. This resolution should be approved in principle because it eases the technical burdens in responding to discovery and in preparing discovery related motions and is consistent with past resolutions approved by the Conference.

Current law only requires service of a paper version of written discovery and responses to discovery. This requires parties responding to discovery to re-type the written discovery if they want to have the question precede the responses given. Likewise, the propounding party must retype the responses as part of their separate statements in the event a motion to compel is brought. This often adds costs to the litigants. These costs can easily be avoided by electronic exchange of the discovery requests and responses upon request of the parties as proposed by this rule change.

The resolution also facilitates the preparation of the statutorily required separate statement in the event of any discovery motions. Discovery and discovery disputes are already costly. This is a simple solution towards reducing those costs.

This resolution is related to Resolution 02-03-2018.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Judicial Council add California Rules of Court, rule 3.1005, to read as follows:

Rule 3.1005: Request for Electronic Version of Written Discovery

A party represented by an attorney that has propounded or responded to written discovery on another party must, within five (5) court days of receiving a written request from the responding party, provide to the responding party an electronic version of that written discovery. The electronic version may be provided in any form on which the parties agree. If the parties are unable to agree on the form, the responding party must provide to the requesting party the electronic version of the discovery that it used to prepare the document. Under this rule, a party

is not required to create an electronic version or any new version of any document for the purpose of transmission to the requesting party.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Currently there is no requirement that the parties electronically exchange the discovery requests or responses. Thus, the attorney or his or her staff must retype all of the questions and answers, which is often very time consuming where there are voluminous discovery requests and responses, either when responding to discovery or in preparing a separate statement in anticipation of filing a motion to compel. Although when a party responds to written discovery it is not required to include the discovery requests (interrogatories, requests for production, requests for admissions) in the body of the responses, many practitioners do include the requests in the responses for ease of reading. Where the requests are included in the responses, it is also helpful to the courts in deciding discovery disputes, particularly during informal discovery responses where there is no separate statement filed.

The Solution: This resolution would add a new Rule of Court to address the issue and require that parties represented by an attorney exchange electronic versions of written discovery demands upon request of the responding party. This will save the parties time and money by not retyping the discovery requests and responses. In addition, if the discovery requests are included in the response, it will aid the reader and the courts if the questions and the answers are in one document. This resolution is modeled after California Rule of Court, rule 3.1350(i), which requires the electronic exchange of separate statements relating to motions for summary judgment on request of a party.

IMPACT STATEMENT
This resolution does not affect any other statute, law or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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