

2007 Year End Report

Committee on Administration of Justice Committee on Alternative Dispute Resolution Committee on Appellate Courts Committee on Federal Courts

Committee on Administration of Justice

The Committee on Administration of Justice (“CAJ”) is composed of up to thirty-six members appointed by the Board of Governors. It is a diverse group of attorneys concerned with aspects of civil procedure, court rules and administration, rules of evidence, and other matters having an impact on the administration of justice in the civil courts. The charge of the committee is as follows:

- a. Analyze, report to the Board of Governors and comment as authorized by the Board of Governors on proposed court rules, legislation and other proposals affecting the committee's subject area.
- b. Draft proposals relating to its area of concern for consideration by the Board of Governors.
- c. Perform such other functions relevant to the committee's subject area as the Board of Governors may from time to time assign.

The following is a summary of CAJ's activities in 2007 that furthered its charge:

A. Judicial Council Proposals

In 2007, CAJ reviewed and analyzed numerous Judicial Council proposals, and submitted comments on the following:

1. Collections Cases: Service and Case Management
2. Revised Format for Separate Statements in Support of and in Opposition to Motions for Summary Judgment
3. Electronic Filing and Service and Service by Fax
4. Construction of Rules When There Are Applicable Statutory Requirements and Format of Citations
5. Request and Order to File New Litigation by Vexatious Litigants
6. Small Claims Interpreter Instructions

7. Alteration of Judicial Council Forms
8. Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998
9. Protecting Private Information in Public Court Documents
10. Civil Discovery: Requests for Admissions
11. Civil Discovery: Commission to Take Deposition Outside California
12. Court Self-Help Center
13. Small Claims Post-Judgment Fees
14. Civil Pretrial Rules
15. Civil Jury Instructions

B. California Law Revision Commission Proposals

CAJ continues to monitor the work of the California Law Revision Commission ("CLRC"). In 2007, CAJ submitted written comments on the CLRC study concerning the statutes governing depositions taken in California in connection with litigation pending in another state.

C. CDCBA Resolutions

CAJ reviewed the resolutions of the Conference of Delegates of California Bar Associations relating to CAJ's charge, and ultimately submitted comments on one resolution.

D. Legislation and Other Rule Proposals

1. CAJ monitored legislation that was introduced but did not submit any comments on bills in 2007.
2. CAJ considered two potential CAJ affirmative proposals that would establish a) new rules governing preparation of the administrative record in CEQA cases; and b) new rules providing procedures to obtain court approval of a settlement of a shareholder derivative action.
3. CAJ considered member inquiries proposing a) potential amendment to the Code of Civil Procedure, to permit service by a party; and b) a proposed rule of court that would permit service of double-sided copies.

4. CAJ discussed the Trusts & Estates Section's affirmative legislative proposal dealing with court-ordered mediation of probates cases.
5. CAJ began a discussion of potential discovery reforms, and plans to continue that discussion in 2008.

E. State Bar Proposals

CAJ discussed the proposed *Attorney Standards of Civility and Professionalism*, but decided not to submit comments.

Committee on Alternative Dispute Resolution

The Committee on Alternative Dispute Resolution (“ADR Committee”) is composed of twenty-one persons appointed by the Board of Governors. Its membership consists of a diverse group of attorneys and public members with expertise or an interest in ADR, including ADR neutrals, consumers of ADR services and those who reflect the experience and expertise of State Bar sections. The charge of the committee is as follows:

- a. Analyze, report to the Board of Governors and comment as authorized by the Board of Governors on proposed court rules, legislation and other proposals affecting the committee's subject area.
- b. Draft proposals relating to alternative dispute resolution for consideration by the Board of Governors.
- c. Identify issues concerning the relationship of ADR to the practice of law, the administration of justice and improving access to justice.
- d. Plan and administer educational programs relating to alternative dispute resolution.
- e. Encourage attorneys involved in alternative dispute resolution to become active participants in the State Bar.
- f. Perform such other functions relevant to the committee’s subject area as the Board of Governors may from time to time assign.

The following is a summary of the ADR Committee’s activities in 2007 that furthered its charge:

A. Judicial Council Proposals

In 2007, the ADR Committee submitted comments on the following proposals:

1. Procedures for Addressing Complaints About Court-Program Mediators for Civil Cases
2. Mandatory Settlement Conferences
3. Access to Hearings and Records in Proceedings Before Temporary Judges and Referees
4. Procedures for Addressing Complaints About Court-Program Mediators for Civil Cases

The ADR Committee also discussed issues relating to the AOC working group on mediator qualifications in civil court-connected mediations.

B. California Law Revision Commission Proposals

The ADR Committee continues to monitor the work of the California Law Revision Commission (“CLRC”) as it relates to ADR.

C. CDCBA Resolutions

The ADR Committee discussed resolutions of the Conference of Delegates of California Bar Associations on the following topics:

1. Dispute Resolution: Dispute Resolution Program Act (DRPA)
2. Right to Conduct Discovery on Existence of Arbitration Agreement
3. Resolving Breakdowns in the Arbitrator Selection Process
4. Compelled Arbitration: Payment of Expenses

The Committee ultimately submitted comments on the resolution relating to DRPA.

D. Legislation and Regulatory Proposals

1. The Committee monitored ADR-related legislation, but did not submit any comments on bills in 2007.
2. The Committee provided comments on the Workers’ Compensation Section’s proposed ADR program for the Division of Workers’ Compensation, and worked closely with that Section on a series of changes to the original proposal that the Section had drafted.
3. The Committee provided input on the Trusts & Estates Section’s affirmative legislative proposal dealing with court-ordered mediation of probates cases.
4. The Committee provided comments on the California Dispute Resolution Council’s provisional Mediation Training Guidelines.

E. State Bar Proposals

The ADR Committee provided input on proposed new Rule of Professional Conduct 2.4, under consideration by the Commission for the Revision of the Rules of Professional Conduct.

F. MCLE Programs

The ADR Committee sponsored the following MCLE programs at the 2007 State Bar Annual Meeting:

1. Arbitrator Selection, Disclosure and Disqualification
2. Effective Mediation Advocacy, or How to Let the Other Side Have *Your Way*
3. Hurricane Katrina: Mediating in the Cultural Aftermath
4. On the Verge of a Mediation Boom with an Aging Population: Growth Areas, Special Concerns, and Best Practices
[Co-sponsored by Trusts & Estates Section]
5. The Ultimate ADR Update

Committee on Appellate Courts

The Committee on Appellate Courts is composed of sixteen attorneys appointed by the Board of Governors. Its members may be drawn from such diverse sources as law firms, solo practitioners, defense and prosecution offices handling criminal appeals, appellate court research staff, and law school faculty. The subject area of the committee concerns appellate court operation and appellate practice. In furtherance of the administration of justice, the charge of the committee is as follows:

- a. Analyze, report to the Board of Governors and comment as authorized by the Board of Governors on proposed court rules, legislation and other proposals affecting the committee's subject area.
- b. Draft proposals relating to its area of concern for consideration by the Board of Governors.
- c. Plan and administer educational programs designed to foster improvement in appellate practice and awareness of issues affecting the committee's subject area.
- d. Perform such other functions relevant to the committee's subject area as the Board of Governors may from time to time assign.

The following is a summary of the Committee's activities in 2007 that furthered its charge:

A. Judicial Council Proposals

In 2007, the Committee on Appellate Court submitted comments on the following proposals:

1. Remittitur, Costs and Sanctions in Appeals and Writ Proceedings
2. Records in Civil and Criminal Cases
3. Certificate of Interested Entities and Persons
4. Petitions for Writs of Supersedeas
5. Applications to File Amicus Briefs in the Court of Appeal and the Supreme Court
6. Notices of Appeal and Notices of Various Defaults
7. Construction of Rules When There Are Applicable Statutory Requirements and Format of Citations

8. Copies of Briefs in Civil Appeals

The Committee also decided to propose that all of the Courts of Appeal have a mechanism in place to provide notice of the identity of the justices on an oral argument panel in advance of the argument, a mechanism currently in place in some but not all of those courts.

B. CDCBA Resolutions

The Committee on Appellate Courts reviewed the resolutions of the Conference of Delegates of California Bar Associations that relate to appellate issues, but decided not to submit any comments.

C. Ninth Circuit Rules

The Committee on Appellate Courts submitted comments on a set of proposed amendments to the Ninth Circuit rules.

D. Federal Rules

The Committee on Appellate Courts began its review of proposed revisions to the Federal Rule of Appellate Procedure, with a comment deadline of February 2008.

F. California Law Revision Commission Proposals

The Committee on Appellate Courts continues to monitor the work of the California Law Revision Commission ("CLRC") as it relates to appellate issues. In 2007 The Committee considered a CLRC study dealing with an appeal from a judgment of the appellate division of the superior court, but decided not to submit any comments.

G. MCLE programs

The Committee on Appellate Courts sponsored the following MCLE programs at the 2007 State Bar Annual Meeting:

1. A "Top Ten" List of Suggestions for Handling Appeals and Writs
2. Recent U. S. Supreme Court Cases: Review of Actions and Most Effective Strategies for Achieving Successful Results
3. The Seven Deadly Sins in a Case Headed for Appeal

Committee on Federal Courts

The Committee on Federal Courts is composed of fifteen members appointed by the Board of Governors. A representative of the Circuit Executive of the United States Court of Appeals for the Ninth Circuit is eligible to participate ex officio. The charge of the committee is as follows:

- a. Generally enhance the lines of communication between the Federal Bench in California and the State Bar, including the attorney discipline system.
- b. Bring to the attention of the Federal Bench in California, State Bar issues that have an impact on Federal Court practice in California.
- c. Make the State Bar Board aware of Federal Court issues that may have an impact on the State Bar.
- d. Review and make recommendations on proposals that affect California Federal Court practice and the Federal Courts in California.
- e. Make recommendations to improve legal services in California's Federal Courts.
- f. Organize and sponsor educational programs on Federal Court practice.
- g. Perform such other functions relevant to the committee's subject area as the Board of Governors may from time to time assign.

The following is a summary of the Committee's activities in 2007 that furthered its charge:

A. Federal Rules

The Committee on Federal Courts considered a set of proposed amendments to the federal rules, and submitted comments on the following:

1. Five different Federal Rules of Bankruptcy Procedure
2. Federal Rules of Criminal Procedure dealing with a) the Crime Victims' Rights Act; b) a motion for a judgment of acquittal; and c) search and seizure.
3. The Federal Rules of Evidence

B. Federal Legislation

The Committee on Federal Courts continues to monitor developments concerning the Attorney-Client Privilege Protection Act of 2007 and related issues.

C. Ninth Circuit

The Committee on Federal Courts discussed proposed changes to the Ninth Circuit rules, but decided not to submit any comments.

D. MCLE Program

The Committee on Federal Courts sponsored an MCLE program at the 2007 State Bar Annual Meeting entitled “Is the War on Terror at War with the Constitution? Civil Liberties, Separation of Powers, and the Rule of Law.”

E. Communication with the Federal District Courts in California

The Committee on Federal Courts continues to enhance the lines of communication between the Federal Bench in California and the State Bar, primarily through annual in-person meetings with Judges in each of the four districts in California.