

2008 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 2008 that furthered its charge:

A. Judicial Council Proposals

In 2008, CAJ reviewed and analyzed numerous Judicial Council proposals, and submitted comments on the following:

1. Electronic Discovery: Legislation and Rules
2. Civil Form: General Denial
3. Proof of Service
4. Civil Form: Summons for Cross Complaint
5. Civil Form: Notice of Entry of Judgment
6. Civil Form: Request for Entry of Default and Request for Dismissal -
7. Civil Form: Case Management Conference Statement -
8. Alteration of Judicial Council Forms
9. Discovery: Geographic Limitations on Deposition Subpoenas
10. Civil Pretrial Rules

11. Small Claims: Proof of Service
12. Civil: Case Management
13. Civil: Motion to Be Relieved as Counsel
14. Trial Courts: Release of Court Records
15. Court-Appointed Temporary Judges: Application of Rules to Retired Judicial Officers and Evaluating the Performance of Temporary Judges
16. Court-Appointed Temporary Judges: Recruitment, Selection, and Appointment of Temporary Judges
17. Class Actions: Entry of Judgment Following Final Approval of Settlement
18. CEQA Actions: Form and Format of Administrative Record
19. New and Revised Civil Jury Instructions

B. California Law Revision Commission Proposals

CAJ continues to monitor the work of the California Law Revision Commission.

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 2008.
2. CAJ considered a proposed rule change to require notice of intent to file a discovery motion.
3. CAJ considered an issue brought to the Committee's attention concerning calendaring the last day to serve a motion by mail, and whether the existing statute is ambiguous.
4. CAJ considered potential revisions to the Judicial Council Request for Entry of Default Form.
5. CAJ considered potential amendments to Code of Civil Procedure § 1005 and issues relating to untimely service of a motion.

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 2008 that furthered its charge:

A. Judicial Council Proposals

In 2008, the ADR Committee submitted comments on the following proposals:

1. Procedures for Addressing Complaints About Court-Program Mediators for Civil Cases
2. A preliminary draft of a rule and standards for mediators serving in mediation programs for civil cases.

B. California Law Revision Commission Proposals

The ADR Committee continues to monitor the work of the California Law Revision Commission as it relates to ADR.

C. CDCBA Resolutions

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

1. Choice of Arbitration Forum in Interstate Franchise Agreement
2. Civil Action Mediation
3. Dispute Resolution Programs: Prohibition of Service Provider

4. Right to Appeal: Orders to Compel Arbitration
5. Deposition Subpoenas Issued in Arbitration: Enforcement
6. Subpoenas Issued in Arbitration: Enforcement
7. Certain Class Action Waivers Unenforceable

D. Legislation and Regulatory Proposals

The Committee monitored ADR-related legislation, but did not submit any comments on bills in 2008.

E. State Bar Proposals

The Committee considered the proposed new insurance disclosure rule. The Committee did not take a position on the overall proposal, but provided input on a potential ADR-related issue.

F. Other

The Committee considered the International Mediation Institute (IMI) draft standards.

G. MCLE Programs

The ADR Committee sponsored the following MCLE programs at the 2008 State Bar Annual Meeting:

1. Getting Best Results in Mediation: Competitive v. Cooperative Negotiation
2. What Trial Lawyers Know (and Don't) About Arbitrating
3. From Mediation to Jail: How Confidential is Confidential?
4. Negotiation Ethics for Attorneys: I Can Say That?
5. Bias, Diversity and Cultural Expectations in the Legal Profession

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 2008 that furthered its charge:

A. Judicial Council

In 2008, the Committee on Appellate Court submitted comments on the following proposals:

1. Petition for Review
2. Proceedings for Writ of Mandate, Certiorari, and Prohibition
3. Habeas Corpus Proceedings
4. Certificate of Interested Entities and Persons
5. Briefs
6. Record on Appeal
7. Miscellaneous Appellate Division Rules and Form
8. Judicial Notice
9. Service and Filing
10. The Committee worked with the Judicial Council's Appellate Advisory Committee to address a suggestion the Appellate Advisory Committee received concerning preparation of the record on appeal, and provided comments on that issue and a related issue.

11. The Committee joined in a request to make video and audio recordings of oral arguments available to the public.

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, and submitted a comment on one such resolution.

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 submitted comments on proposed amendments to the Federal Rules of Appellate Procedure

E. California Law Revision Commission Proposals

The Committee on Appellate Courts continues to monitor the work of the California Law Revision Commission as it relates to appellate issues.

F. MCLE programs

The Committee on Appellate Courts sponsored the following MCLE programs at the 2008 State Bar Annual Meeting:

1. Tales from the Appellate Bench
2. California Supreme Court Part I
3. California Supreme Court Part II
4. Trial Court Strategies for Successful Family Law Appeals

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 2008 that furthered its charge:

A. Federal Rules

The Committee on Federal Courts considered a set of proposed amendments to the federal rules, but ultimately determined not to submit any comments.

B. MCLE Program

The Committee on Federal Courts sponsored an MCLE program at the 2008 State Bar Annual Meeting entitled "A View From the Federal Bench: Effective Advocacy."

C. 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 the different district courts in California.