

2009 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 2009 that furthered its charge:

A. Judicial Council Proposals

In 2009, CAJ reviewed and analyzed numerous Judicial Council proposals, and submitted comments on the following:

1. Disability Access Litigation
2. Fee Waiver Rules and Forms
3. Civil Actions: Notice of Entry of Judgment or Order
4. Civil Discovery: Deposition Subpoenas in Actions Pending Outside California
5. Civil Forms: Attachment Forms, Financial Abuse of Elder or Dependent Adults
6. Civil Forms: Notice of Intent to Appear by Telephone

7. Administrative Record in CEQA Actions
8. Statement of Decision
9. Electronic Filing and Service: Changes to the Rules
10. Forms for Electronic Service: Consent to Electronic Service and Change of Electronic Notification Address
11. Proposed revisions to Civil Jury Instructions
12. Proposed legislation concerning electronic service of documents

CAJ also considered proposed legislation relating to protective orders in 2009, and submitted comments on that proposal in January 2010.

B. California Law Revision Commission Proposals

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

C. Federal Rule Proposals

In 2009, CAJ reviewed and analyzed proposed amendments to the Federal Rules of Civil Procedure, and submitted comments on the following:

1. Rule 26 (Duty to Disclose; General Provisions Governing Discovery)
2. Rule 56 (Summary Judgment)

D. Legislation and Other Miscellaneous Proposals

1. CAJ monitored legislation that was introduced in 2009. CAJ provided ongoing input on AB 578 (Huber), which relates to the production of privilege logs in civil litigation.
2. CAJ considered a proposal to deal with the remedies available to a responding party when the moving party gives inadequate notice of a motion, and related amendments to Code of Civil Procedure section 1005.
3. In response to a request for input, CAJ submitted comments to AOC staff concerning potential follow-up legislation to the Electronic Discovery Act.
4. CAJ approved pursuit of potential CAJ-sponsored legislation that would clarify the computation of the number of days before a hearing.

5. CAJ approved pursuit of potential CAJ-sponsored legislation that would clarify the time for a party to challenge a judge in certain fast track cases by filing a motion supported by an affidavit of prejudice under Code of Civil Procedure section 170.6.

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 2009 that furthered its charge:

A. Judicial Council Proposals

In 2009, the ADR Committee submitted comments on the following proposals:

1. Qualifications of Mediators in Court-Connected Mediation for General Civil Cases
2. Access to Hearings and Records in Proceedings Before Temporary Judges and Referees
3. Elkins Family Law Task Force Draft Recommendations, as those recommendations relate to ADR.

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 and submitted comments on the following:

1. Civil Trial Court Annexed Mediator Panels
2. Discovery Stay During Pendency Of Petition To Compel Arbitration
3. Consumer Protection: Class Action Waivers Unenforceable

D. Legislation and Regulatory Proposals

The ADR Committee monitored ADR-related legislation, but did not submit any comments on bills in 2009. The Committee discussed a potential foreclosure mediation program and pending legislation relating to that issue.

E. State Bar Proposals

1. The ADR Committee discussed legislative proposals from the State Bar's Committee on Mandatory Fee Arbitration, and suggested drafting revisions to those proposals.
2. The ADR Committee submitted comments to the Rules Revision Commission on proposed Rule of Professional Conduct 1.12 – Former Judge, Arbitrator, Mediator.

F. Other

The ADR Committee considered recent reports on inclusivity and diversity issues relating to the ADR field. Several different issues were discussed, including (1) increasing diversity among neutrals, (2) examining the conduct of neutrals as it relates to bias and prejudice, and (3) reviewing proposed legislation and rules, as they relate to and reflect various ADR processes.

E. MCLE Programs

The ADR Committee sponsored or co-sponsored the following MCLE programs at the 2009 State Bar Annual Meeting:

1. Appellate Mediation: It's Never Too Late for a Happy Ending

2. ADR Update: Arbitration and Mediation Legal Developments
3. Developmental Negotiation in the Law
4. Mediation Confidentiality and Creating Enforceable Mediation Settlement Agreements
5. Inclusiveness and Diversity: Eliminating Bias 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 2009 that furthered its charge:

A. Judicial Council

In 2009, the Committee on Appellate Court submitted comments on the following proposals:

1. The Committee on Appellate Courts worked with the Judicial Council's Appellate Advisory Committee to address the suggestion the Appellate Advisory Committee received concerning the California Rules of Court relating to preparation of the record on appeal where there is more than one appellant in a case and the appellants choose different record preparation options.
2. Time for Filing Notice of Appeal in a Civil Case
3. Civil Case Information Statement
4. Record on Appeal
5. Time for Filing Briefs

6. Petitions for Writs of Supersedeas
7. Time for Review of Decisions Regarding Request for Accommodations
8. Notice of Entry of Judgment or Order
9. Appeals and Writ Proceedings in Juvenile Dependency and Delinquency Cases
10. Videoconferencing Oral Argument in the Superior Court Appellate Division
11. Proposed legislation concerning electronic service of documents

B. Ninth Circuit Rules

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

G. 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.

H. MCLE programs

The Committee on Appellate Courts sponsored or co-sponsored the following MCLE programs at the 2009 State Bar Annual Meeting:

1. Preparing an Appellate Record: As Important as the Brief?
2. Standards of Review: Judicial Power and Decision-Making
3. Statements of Decision in Family Law and Other Civil Trials
4. Appellate Mediation: It's Never Too Late for a Happy Ending
5. The Perfect Love Song: Tips on Effective Appellate Arguments
6. Writ Practice in the Courts of 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 2009 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 2009 State Bar Annual Meeting entitled "The Federal Legal Landscape under the Obama Administration."

C. Various District Courts

The Committee on Federal Courts continued to monitor and report on changes to the local rules and other matters of interest from the four districts.

D. 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.