ASSOCIATION OF BUSINESS TRIAL LAWYERS SAN DIEGO

abtl REPORT

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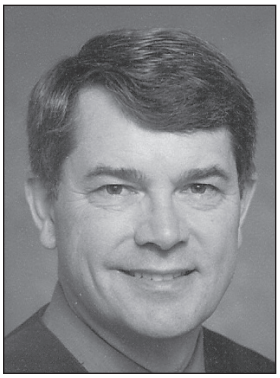
An Interview With the Hon. Steven Denton

by Kristin Strojan, Fish & Richardson LLC and Matthew Kleiner, Gordon & Rees LLP

On April 16, 2008, Judge Steven R. Denton opened Department 73 for a brown bag luncheon presented by the Association of Business Trial Lawyers ("ABTL"). At the luncheon, Judge Denton provided an overview of an independent calendar judge's duties, explained what he expects from the lawyers in his courtroom, and emphasized the importance of civility and professionalism in the legal profession. This article summarizes information he shared during this luncheon, as well as several additional insights from Judge Denton about the things he wished he knew while practicing as a trial attorney.



Hon. Steven Denton

Background

Judge Denton graduated from the University of San Diego Law School in 1975. After law school, he spent 26 years as a trial attorney, primarily focused on representing plaintiffs in construction accidents. Judge Denton was appointed to the bench in 2001. Following his appointment Judge Denton traveled through the local judicial circuit, working from Vista to Downtown handling criminal, civil and family law matters. Judge Denton said that his time as a family law judge was the most challenging, as it taught him

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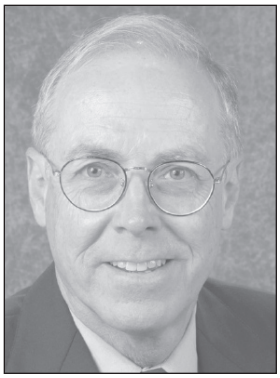
A Judge's Experience as a Trial Juror

by Hon. J. Richard Haden (Ret.), Judicial Abritration and Mediation Service

Like most San Diegans, I receive the occasional summons to participate in jury duty. This January was the second time I had received a summons since I retired from our Superior Court and joined JAMS. The first time was about three years ago. I was sent to a courtroom with a panel, only to find the case had been resolved and we were excused. Under our one day/one trial system, that completed my obligation. I frankly did not expect to fare any better this time, as I've presided over hundreds of jury trials, court trials, and arbitrations.



Hon. J. Richard Haden

Although a few judges and lawyers have actually served on juries, the odds are against us because trial lawyers are naturally reluctant

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Inside

President's Column: Staying Involved Does Make a Difference

by Robin A. Wofford, Esq., President ABTL

Do you realize what time of year it is? It's June 2008! It's graduation time, it's the NBA Playoffs, it's the time of year the Padres need to decide if they'll pull themselves out of the cellar or not, and of course, it's the time of year that Law Clerks eagerly show up in our offices looking for answers to success.

Robin A. Wofford

While I recognize there are many answers to success, one of the simplest, given to me, was "get involved in something you believe in." Don't just join an organization to say you are a member. Join that organization with a goal of making it stronger. There is no doubt ABTL has become so successful in San Diego and across the State because of the people that have become involved. This year, my job as President has actually been easier than the various offices I had before being nominated as President of this fine organization. I have come to the conclusion it is easier because of the fine judges and lawyers that have committed themselves to being an active part of this organization.

This year Programs, which are led by Tom Egler and Anna Roppo, promise to be rewarding and educational. Certainly, the presentation by the Magistrate Judges in June was a great way to remind all of us how to succeed in Federal Court and show the Law Clerks attending what a professional legal community can accomplish when it works together.

In September we have Judge Norbert Ehrenfreund, a former journalist who actually was a reporter at the Nuremberg Trials. He has written a book entitled "The Nuremberg Legacy" and will come and speak to us about his experiences and observations of the legal system and how those trials still stand as the foundation of international justice. Certainly I encourage everyone to attend and bring your college and high school children, because we can all learn from this historical event.

September 24-28th are the dates for the 35th Annual ABTL Seminar in Kauai, Hawaii. The title of the seminar is "Businesses in the Courtroom: Getting Your Message Across", and Justice Joyce L. Kennard is the keynote speaker. The seminar promises to be a very educational program. Some of San Diego's finest Jurists and attorneys have volunteered to participate in the program, including the Hon. Cynthia Aaron, Hon. Peter Bowie, Bob Brewer, Hon. Steve Denton, Harvey Levine, Margaret Mann, Pamela Parker, and Vickie Turner. Marisa Janine-Page has been an invaluable member of the San Diego contingent, leading the way for that seminar as well as volunteers such as Mark Zebrowski, Nancy Stagg, and Richard Gluck. Their commitment makes a great difference. I encourage those of you who have not signed up for the program to visit www.abtl.org because there is still limited space available for those who want to participate.

In October Judge Haden, with the help of Shannon Petersen from our Leadership Development Committee for young lawyers in our community, is leading the charge for our 2008 Mini Annual Seminar. This is a full-day seminar promising to provide an excellent opportunity for lawyers to watch San Diego's best and brightest present a complete trial in one day. This Mini Annual Seminar will be held on October 25th at the Westin Hotel. For further information please visit the ABTL website.

Our last program of the year will be Robert S. Bennett, a well-known Washington lawyer that has represented the likes of Bill Clinton, Caspar Weinberger, Margaret Schott, Judith Miller, and former World Bank President Paul Wolfowitz. He is currently representing John McCain over allegations by *The New York Times* of an improper

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The Revised Standards for Publication of Appellate Decisions

by Alan M. Mansfield, Editor, ABTL Report

In November 2006, a California Supreme Court Advisory Committee, chaired by Justice Kathryn Werdegar and including justices from each appellate district and several appellate attorneys, published a Report and Recommendation to revise California Rule of Court, Rule 8.1100 *et seq*. (subsequent "Rule" references are to the California Rules of Court). *Report and Recommendations of the California Supreme Court Advisory Committee of Rules for Publication of Court of Appeal Opinions* ("Report and Recommendation"). Based on the Report and Recommendation, Rule 8.1105 (which sets forth the standards for publication of Court of Appeal opinions) was amended effective April 1, 2007 to expand the criteria for publication and to change the presumption of publication status to one where certification should be granted so long as at least one of nine criteria is met. This article summarizes the revised rule and information from both the Report and Recommendation and the State's Office of the Reporter of Decisions, as well as discusses what relevant factors to consider in deciding whether to request publication or depublication.

A. What Does "Certified For Publication" Mean?

"Certified for Publication" is a shorthand term for citable as precedent in matters other than the particular case. Pursuant to Rule 8.1115(a), with only limited exceptions such as *res judicata* or collateral estoppel, only decisions certified for publication can be cited to or relied upon by other courts as precedent. It should be noted, however, that unpublished decisions are not without any value. The Report and Recommendation stated that over 58% of responding justices and over 90% of attorneys stated they have utilized unpublished opinions for certain background language, when drafting opinions or to ensure consistency of reasoning.

Although all California Supreme Court decisions are published, whether a Court of Appeal decision is certified for publication is within the initial discretion of the panel that issued the decision. If an opinion is not certified for publication when filed, any person can request the Court of Appeal or Supreme Court change the publication status under Rule 8.1120. Conversely, if an opinion is certified for publication when filed, any person can request the California Supreme Court "depublish" the opinion pursuant to Rule 8.1125.

Only a small percentage of Court of Appeal opinions are certified for publication. According to the Report and Recommendation, for the fiscal year 2004-2005, 1,047 of the 11,852 decisions issued by the Court of Appeal statewide were published. According to the Office of the Reporter of Decisions, the total numbers have not varied substantially year-to-year as a whole between April 2004 and March 2008, averaging approximately 11,500 opinions annually, 10,500 of which are not published. This means only between 9 and 10 percent of all opinions are published. While this percentage almost doubles in civil appeals (since 2005 approximately 75% of all published decisions have been in civil cases) over 80% of all opinions in civil appeals are unpublished.

B. How Does An Appellate Decision Get "Published"?

In the course of deciding an appeal, the panel that issues the opinion decides whether it meets any of the criteria for publication set forth in Rule 8.1105(c). As of April 1, 2007, a decision should be published if it: (1) establishes a new rule of law; (2) applies an existing rule of law to a set of facts significantly different from those stated in prior published opinions; (3) modifies, explains, or criticizes, with reasons given, an existing rule of law; (4) advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance or court rule; (5) addresses or creates an apparent conflict in the law; (6) involves a legal issue of continuing public interest; (7) makes a significant contribution to the legal literature by reviewing the development or legislative or judicial history of a statute, common law rule or other written law; (8) invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a re-

(see "Revised Standards" on page 12)

How Receivers Can Help Your Client In Business Litigation

by Shannon Z. Petersen, Ph.D., Esq., of Sheppard Mullin Richter & Hampton LLP and Robert D. Richley, Esq., President of Douglas Wilson Companies

What Is A Receiver?

A receiver is a person appointed by a court of law to act as an agent of the Court as a custodian of another person's property. While one typically thinks of a receiver in the context of bankruptcy, a receiver can be appointed by a Court in any litigation other than bankruptcy when a party can show there is a danger that property may be lost, removed, or damaged pending litigation. C.C.P. § 564(b). This power to appoint a receiver is unique to the courts. An arbitrator cannot appoint a receiver, even if the arbitration agreement says otherwise. *See Marsch v. Williams* (1994) 23 Cal. App.4th 238.

Shannon Z. Petersen

Receivers can be useful in many litigation contexts. A Court may appoint a receiver in a wide range of cases, including disputes between business partners, creditors and debtors, vendors and buyers, landlords and tenants, and spouses. For example, a partnership operates a business; the partners have a falling out and litigate the ownership and control of the business. Upon motion or stipulation, the Court may appoint a receiver to manage the day-to-day affairs of the business pending the resolution of the dispute. In some circumstances, a Court may even appoint a receiver on its own motion. *See generally* C.C.P. § 564-578; Civ. C. § 3439.10; Corp. C. § 1803; Cal.R.Ct. 3.1179.

Robert D. Richley

A receiver can also be appointed to enforce a judgment. C.C.P. § 564(b). In short, a Court may appoint

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The New Proposed California Digital Discovery Rules

The information age has radically changed how we create, share and store information. According to a University of California study, 93% of all information created in 1999 was generated in digital form while only 7% was generated in other media, such as paper. *In re Bristol-Myers Squibb Securities Litigation*, 205 F.R.D. 437, 440 n. 2 (D.N.J. 2002).

Monty A. McIntyre

Digital information is produced in ever growing volumes. In 2007 the e-mail volume per person was estimated to be four gigabytes. One gigabyte of information would equal approximately 26 Banker's boxes of paper, so four gigabytes would equal approximately 104 Banker's boxes of paper! Our ever increasing and already prodigious production of digital information means that digital discovery issues will play an increasingly important role in litigation.

The federal courts moved into the digital world on December 1, 2006, when the amendments to the Federal Rules of Civil Procedure became effective. California is now poised to follow. In a unanimous vote on April 28, 2008, the California Judicial Council approved proposed legislation amending the California civil discovery rules to address digital discovery and electronically stored information ("ESI") issues. The Judicial Council will co-sponsor the legislation with the Consumer Attorneys of California and California Defense Counsel. Assembly member Noreen Evans has agreed to sponsor the legislation, and Assembly Bill 926 will be used for this purpose. If adopted (it is presently in committee), those rules will likely go into effect January 1, 2009.

The proposed legislation would modernize the California Code of Civil Procedure ("C.C.P.") to reflect the growing importance of digital discovery and ESI discovery issues. The proposed legislation would amend the C.C.P. and add two new code sections relating to electronic discovery. These statutory changes are intended to incorporate many of the provisions in the Uniform Rules Relating to Discovery of Electronically Stored Information ("Uniform Rules") adopted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). The following is a summary of the proposed legislation.

Definitions (C.C.P. §2016.020)

The Civil Discovery Act ("Act") would be amended to include definitions of "electronic" and "electronically stored information." New subdivision (d) would define "electronic" as "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." New subdivision (e) would define "electronically stored information" as "information that is stored in an electronic medium."

Scope of Discovery (C.C.P. §2031.010)

Section 2031.010 on the scope of discovery would be amended to expressly state that a party may obtain discovery of "electronically stored information." This section and others in the Act also would be amended to say that parties may undertake discovery not only by "inspecting," but also by "copying, testing, or sampling." The addition of "copying, testing, and sampling" would make the new rules consistent with the Uniform Rules and the December 2006 amendments to the Federal Rules of Civil Procedure.

Timing of Discovery (C.C.P. §2031.020)

The current timeframes for civil discovery will apply to electronic discovery. The parties, however, can stipulate to different times.

Form of Discovery (C.C.P. §2031.030)

An important digital discovery issue is the form in which the information must be produced; the Act would be amended to address this issue. Section 2031.030 would be amended to include a provision that "a party demanding inspection, copying, testing, or sampling of electronically stored information may specify the form or forms in which each type of electronically stored information is to be produced."

Protective Orders (C.C.P. §2031.060)

The provisions of the Act relating to pro-

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Digital Discovery

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tective orders would be amended. Section 2031.060(a) authorizing protective orders would be amended to expressly refer to "electronically stored information."

A new subdivision (c) would be added, stating: "The party or affected person seeking a protective order regarding the production, inspection, copying, testing, or sampling of electronically stored information on the basis that such information is from a source that is not reasonably accessible because of undue burden or expense bears the burden of so demonstrating."

A new subdivision (d) would provide: "If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f)."

The California protective order statute would be further amended to provide that if the Court finds that there is good cause for the production of electronically stored information that is not reasonably accessible, it may set conditions for the discovery of the information, including allocation of the expense of discovery. (See C.C.P. §2031.060(e).)

The Court also would have the authority to limit the frequency or extent of discovery of electronically stored information, even from sources that are reasonably accessible. Subdivision (f) would provide that the Court shall limit the fre-

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President's Column

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relationship with a Washington lobbyist during the 2000 Presidential campaign. Mr. Bennett will speak about his experiences as one of America's best known attorneys, including discussing his recent book "In the Ring: The Trials of a Washington Lawyer." I personally want to thank Retired Judge Herbert Hoffman for being very instrumental in getting Mr. Bennett to attend this program.

Finally, we have an outstanding ABTL Report, which is circulated to over 1,500 people in both our local legal community and state-wide. Alan Mansfield and Rich Gluck spearhead that Report. We are always looking for interesting articles to include, so do not be afraid to share your ideas with them.

As you can see from our list of activities, there are many new projects and programs to become involved in through ABTL. I am hopeful that we will continue to offer programs that not only allow us to become better lawyers but also increases the professionalism within our community. Please make a difference and get involved! ▲

Judge Denton

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to be a decision maker very quickly.

Judge Denton handles 570-575 cases as an independent calendar ("IC") judge. Cases are assigned randomly within the IC Departments using a weighting system based on the perceived nature and complexity of the case. The IC judge handles the case from start to finish, unless the Court is engaged when the case comes up for trial. In that event the case can be assigned to the "wheel" and go out to any other available trial court.

This tremendous caseload leaves little free time. Judge Denton explained that his typical work week is often spent alternating between trials (and related motions) and *ex parte* hearings, as well as preparing for Friday's busy trial, trial readiness hearing and motion calendars. Case management conferences and Orders to Show Cause hearings are also set for Friday afternoons. Then, for Judge Denton's "dessert at the end of the week," he handles small claims appeals starting Friday afternoon at 3:30 p.m. Any free time is set aside for settlement conferences.

Suggested Practice Tips

With these responsibilities and caseload in mind, Judge Denton shared the following practice tips for lawyers appearing in his courtroom:

Make Sure You Have Conducted An Adequate Pre-Suit Investigation.

Judge Denton suggests conducting a thorough investigation of your case before filing a lawsuit, which includes interviewing not only the parties but also third party witnesses. Take time to consider all of the responsible parties and make sure the filing party has fulfilled all of its duties and obligations before filing suit. In addition, develop your theory of the case before filing a complaint. Failing to do so often leads to excessive motion practice. Finally, research and be prepared for a SLAPP motion where appropriate. Since a party has only 28 days to respond to such a motion, a proper analysis of the facts, as well as legal research performed well in advance of the motion, is necessary. Each of these actions helps reduce law and motion practice and alleviates some of the judicial stress.

Remember That *Ex Parte* = Urgent

Only use *ex parte* hearings for that which they were designed: the opportunity to present an issue to the Court that requires *immediate and urgent resolution*. IC judges do not appreciate being asked to referee disputes that could be resolved on a properly scheduled motion. In addition, really make a good faith effort to meet and confer with opposing counsel before scheduling an *ex parte* hearing. Some judges will not accept letters as an appropriate meet and confer attempt. At least offer to sit down with the other side face to face to work out the issues before filing a motion.

Judge Denton also advises lawyers to refrain from attaching voluminous records to an *ex parte* application unless absolutely necessary. Since the judge has very limited time to review the application, he or she will be less likely to focus on your issue if muddled with extraneous and unimportant evidence. Remember that IC judges only have a limited number of slots for *ex parte* hearings, and they are typically heard right before a trial that is in progress. When you reserve your hearing date and appear, you are preventing others who have an urgent need for the Court's attention from getting their relief.

Keep Your Briefing Concise

Each brief should be focused and to the point. Judge Denton recommends setting out an "executive summary" at the start of each brief outlining the relevant issues and the relief sought. As IC judges handle over 500 cases, they cannot reasonably be expected to remember all of the details of a particular case without having the appropriate context. Therefore, briefs should educate the judge on the relevant issues, and include only those facts needed to make the right decision. Be persuasive, succinct and support your statements with either case law or evidence at all times.

Know the Tentative Rulings Before Going To Court

If a judge has issued a tentative ruling in your case, take the time necessary to understand the ruling and know what areas you believe need to be addressed at the hearing. At the hearing, only argue the most important points and those you think the judge did not focus on when making the ruling. Try to avoid rearguing what was in your papers – they have already been read and considered. Since the point of oral argument

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is to have the judge reconsider his or her tentative ruling, be prepared to explain to the Court exactly what is wrong in the tentative ruling, using appropriate tact and respect.

Be Respectful of the Judge

The IC judges are well aware of the high stakes involved in litigation and the potential for appellate review of their decisions. It is usually advisable to refrain from starting your argument by stating the Court's ruling is "clearly reversible error." This shows a lack of respect for the judge, even if it is prefaced with the phrase "with all due respect" (another potentially disrespectful phrase that should probably be avoided). When you disagree strongly with the Court's intended ruling the best practice is to argue the point and urge the Court to take the matter under submission to further consider your strongest case or statutory authority. Spirited and enthusiastic argument is welcome. Sarcastic or disrespectful comments are almost always counter-productive.

Be Prepared For the Requirements of Electronic Discovery

Educate yourself on the new developments in e-discovery, which rules are in the process of being revised. Familiarize yourself with what needs to be done by both you and your client to comply with your discovery and preservation obligations. Think about and limit your requests to parameters relevant to the case.

Educate the Judge and Jury

In particularly technical or complex cases, be prepared to give a tutorial to the judge and/or the jury in a manner they can understand. Often these presentations help the trier of fact understand the complex issues in a case. Taking the time to explain the issues in simple terms at various points in the litigation may help the judge properly rule on your position, not only at trial but also in the law and motion stage. If you believe it will be helpful, consider using a PowerPoint presentation at a motion hearing. However, if you plan on doing so, practice in advance and do not forget to obtain pre-approval from the Court. The Court may not let counsel make such a presentation without notice.

Do Not Abuse Attorneys' Fees Provisions

The focus of a case should remain on the relevant issues. Do not shift the focus away from the relevant issues because you have an attorneys' fee provision. In addition, do not run up fees simply because you think they will be reimbursed. Judges need only grant "reasonable fees". While a certain amount of investigation on various issues is inevitable, if it becomes apparent to the Court counsel spent an excessive amount of time on an issue on which they did not prevail primarily because they were under the impression all fees would be reimbursed, the Court is less likely to grant them – at least for the amount requested.

Pay Attention to Deadlines

Litigation is a deadline-intensive area. Keep on top of the deadlines in your cases, and familiarize yourself with the lead time needed to file particular motions (for example, motions to compel and motions for summary judgment) and the court holidays that may throw off the calendaring of motions and responses. Judges do not like to vacate trial dates because the lawyers were not thinking ahead about the notice periods for filing each of these motions, and are not inclined to do so absent a very good reason.

Remember that Mediation Does Not Stop the Clock

The Court encourages parties participate in mediation at appropriate stages in the litigation, but counsel need to keep advancing the ball in terms of the progress of the litigation. If the case goes to mediation but is not resolved, judges do not appreciate having to re-set trial-related dates because no resolution was reached but counsel stopped working on the case in the interim and, therefore, needs more time to prepare. Counsel may want to consider advising the Court in advance of participating in such a process so that they can explain the situation and how it may affect the timing for pre-trial and trial.

Be Ready At Trial Readiness Conferences

Trial counsel should be ready at the trial readiness conference. This means counsel should be prepared to discuss jury instructions, the verdict forms, motions *in limine* and joint exhibit and witness lists if they have not already done

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so. Any important or "hot" documents should be placed into the first exhibit binder regardless of their logical or chronological sequence. This will save the court's and witness' time from constantly switching and moving through various exhibit binders.

Show Respect for Opposing Counsel

At all times, lawyers should show respect for their peers, both on paper and in the courtroom. Be mindful that any e-mail you send can be attached as evidence to a motion just as easily as a letter. Think long and hard before you hit the reply button and click send on an e-mail. There are ways to couch a smart legal argument without resorting to personal attacks or name-calling. It takes many years to develop a reputation but only a few moments to sully it. In addition, judges may be less likely to grant your motion for sanctions if they see that you have been disrespectful to the other side or did not provide a reasonable opportunity to resolve the issue.

Show Respect for Both the Court and Staff

Judges are very protective of their staff. The best practice is to go out of your way to be pleasant with the courtroom personnel. Never intentionally offend the court staff. Each judge has a courtroom clerk, a bailiff, a calendar clerk and a research attorney. They all work hard to keep the courtroom workflow as efficient as possible. Remember, the way you treat the court staff reflects directly on your professionalism. Abusive behavior towards these people will very likely be communicated to the judge and, as stated above, "judges are very protective of their staff." ▲

Judge Denton is on the ABTL Board of Governors. The ABTL thanks Judge Denton for the time he took out of his schedule to help prepare this article.

Judge as Juror

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to keep us on the jury. While I know a few colleagues who have been on juries, generally that is the exception, not the rule. Many lawyers have told me if they want a judge trial they can waive jury. In their view, leaving a judge on a jury is tantamount to a judge trial since the other jurors will likely defer to the judge/juror.

I did not find that to be the case. I arrived at the Hall of Justice prior to 7:45 a.m. as instructed, and found the same welcoming and efficient team I had known when I occasionally greeted the jurors on behalf of our Court. San Diego Superior Court and long-time jury commissioner Gerry Stevens pioneered "juror friendly jury service", and our program is a model in the State.

Once the jurors had checked in, we watched a brief video produced by the Judicial Council that explains the crucial role of the trial juror as well as the judge, counsel, and court staff. It is an excellent presentation. Next, Judge David Gill, our senior Superior Court Judge, greeted the assembled jurors as he has most days for many years. Our court has always believed it is necessary for a live judge to greet the jurors, explain how important they are, and personally thank them for their willingness to serve. No one has ever done this better than Judge Gill. If you are a trial lawyer, you should visit the jury lounge to see this video and hear Judge Gill, because this is exactly what your jury panel will have done just before you meet them. Your familiarity with this experience may help you better connect with them.

Within an hour I was assigned as part of a panel to Department 69 in the Hall of Justice, Judge Jeffry Barton Presiding. We were welcomed in the hall outside the courtroom by Bailiff Henry Whatley, who did a fine job explaining what would be expected of us, where we would sit, and what was about to happen. He was the first to set a tone of friendliness and efficiency that continued throughout our time in the Department. Given the jury sees and hears a lot from the Bailiff and probably comes to like him or her, trial lawyers would do well to maintain a good relationship with him or her.

After we were seated, Judge Barton briefly explained the facts of the case and asked if any of us knew the parties, lawyers, or anything about the facts. Thinking I was about to be excused, I raised my hand and explained I knew plaintiff's counsel and the judge, but acknowledged I could still be fair. No one seemed concerned.

As the jurors told about themselves I was impressed by their diversity, high education level, and types of employment. I was juror number eleven. Defense counsel, who was from out of town, asked if anyone was familiar with stock options, and once again I raised by hand. He asked, "Judge do you hear cases involving stocks and options." "I do." "And did you hear them when you were on this court?" "One floor up; one department down." Once again I thought I was a goner but nothing happened.

The selection process proceeded smoothly under the Judge's supervision. Both lawyers excused generally younger less well-educated jurors and left the rest of us. By the end of the day the lawyers had exercised all their preemptory challenges and we were sworn.

Our jury had three scientists, a USD professor with extensive jury experience, a nurse, some teachers, a jet mechanic studying aeronautical engineering, a security specialist who also taught martial arts, and me. Two jurors were reading Ayn Rand novels and others brought text books or mysteries as well as assorted I-pods and Blackberries. After we were admonished and excused I rushed back to my office to help re-schedule some cases. I was surprised but pleased I would have the opportunity to serve.

The next day we heard opening statements and four witnesses. The third day we heard three witnesses, closing arguments, and Judge Barton's instructions. In my view everyone worked hard to move the case efficiently. During deliberations, however, some of the jurors felt it could have moved even faster. When we took two long breaks (but less than one hour each) for the judge and counsel to deal with motions and instructions, the jurors were a bit impatient with the process.

Both counsel used an ELMO to display exhibits, which was very helpful to me. Plaintiff's counsel projected the verdict form during argument and explained why we should check particular boxes. Many jurors commented during deliberations that this was very helpful to them.

Defense counsel had objected frequently throughout the trial and his objections were usually sustained. I asked the jurors later about

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Judge as Juror

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their reaction to these objections, because I know many trial lawyers hesitate to object often, fearing the jury may suspect they have something to hide. Our jury felt the objections served to keep the case on track, and they didn't mind at all.

We commenced deliberations on the morning of our fourth day. I intentionally hung back and did not sit at either end of the table because I did not especially want to be presiding juror. As soon as we were alone one juror said, "I think its unanimous that Judge Haden will be our presiding juror." I said there were others well qualified, but they more or less insisted. I reminded them every juror's opinion was equally important and they agreed. I reluctantly became presiding juror.

We first read the verdict form to review what it was we were asked to decide. Then our professor suggested we create a time line using all the exhibits. Everyone agreed that was a good idea, and that process consumed some time. Had the lawyers prepared a time line the jurors would have used it.

Because jurors thoroughly consider the candor and appearance of witnesses, counsel should not underestimate the scrutiny to which each witness will be subjected.

As we returned to the first question on the verdict form I was asked to read the instructions that applied. After I did, we went around the table, giving every juror an opportunity to express his or her view on the question. Then we voted. We repeated this process for each question and all our votes were either unanimous or eleven to one. Our longest discussion was about damages. Some numbers had been suggested in argument for which there was simply no evidence. Those numbers were disregarded. The key point here is that it is probably a good idea to have some evidentiary basis for all your arguments.

Eleven of the jurors went to lunch together while one caught up on work through her Blackberry. As far as I could tell, all jurors were scrupulous in following our admonition. No one discussed the case except in the jury room with

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all twelve present. Our jurors did not indulge in superficial, even petty comments about lawyer's ties, shoes, jewelry, etc. They stayed focused on the work at hand. We returned our verdict by mid-afternoon and were thanked and excused. Only about half the jurors stayed to talk with the lawyers.

As we waited to deliver our verdict, I told my fellow jurors it had been an honor and a privilege to serve with them. If I ever needed a jury to decide a case of my own, I hoped I would find one as fair as this one. The jurors were confident about their own abilities to resolve the case. I did not discern that anybody especially relied on me to decide anything. Each juror decided the case for him or herself.

Based on this experience, here's my advice to trial lawyers:

1) Before your next trial, visit the jury lounge to see for yourself the video and the welcome your jurors will experience just before you meet them.

2) Given the juror's respect and like for the judge and staff, you had best appear courteous to the Court and staff.

3) Visual display of documents and demonstrative evidence go a long way to explain and even sell your case. Walking the jurors through filling out the verdict form can be very effective. Certainly if one side does it, the other should too.

4) Well-founded objections that are mostly sustained will not be resented and may even be appreciated by smart jurors.

5) Our jury created its own time line because neither lawyer provided one for us. In a case that needs a time line, help the jury with one of your own.

6) Witnesses who drastically alter their attitude and ability to recall events depending upon who questions them are probably unhelpful to the jury.

7) The clarity of the jury instructions is crucial. The jury may, as we did, rely on them and review them carefully in deciding each question in the case, just like they have been instructed.

8) The jurors I worked with were smart, hard working, and conscientious. Many took copious notes and most demonstrated an impressive command of the facts during deliberations. Accordingly, if you're going to make a particular argument, have some facts in evidence to back it up.

9) Be respectful of the juror's time because most have busy lives.

Every day hundreds of fine people report to jury service in San Diego. We can all be proud of them, our outstanding jury system, and the respectful way they are treated by our Superior Court. ▲

Revised Standards

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cently reported decision; or (9) is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the collective opinions would make a significant contribution to the development of the law. Standards 4, 8 and 9 are new, while standards 2, 3 and 5 expanded prior criteria (1, 6 and 7 largely remained the same). In addition, this rule was amended to add subsection (d), which provides that factors such as "the workload of the Court, or the potential embarrassment of a litigant, lawyer, judge or other persons should not affect the determination of whether to publish an opinion."

Rule 8.1105(c) was also revised to state that an opinion "should be certified for publication" if it meets at least one of the above criteria. This was a significant change from the previous rule, which stated no opinion was to be published "*unless*" the opinion met at least one of the criteria. The intent as stated in the Report and Recommendation was to both clarify the situations where publication was appropriate and shift the presumption against publication to one where an opinion "*should be*" published so long as it meets one of the expanded criteria.

If the panel believes at least one of the above criteria is satisfied, the panel votes to certify the opinion for publication. In most cases a tentative decision to publish is made before oral argument is held. As a general rule, this decision is based on the recommendation of the author of the opinion. 86% of appellate court justices surveyed in the Report and Recommendation said the author's

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Revised Standards

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recommendation whether to certify the opinion for publication was a major factor in voting to do so, as the author was most familiar with the development of the law in this particular area. Deference to other panel members, the quality of the decision and time spent preparing it and/or the presence of a particular recurring issue are also important factors considered by a panel in deciding publication status.

If a decision is not initially certified for publication, within 20 days after the decision is filed any person, whether or not a party to the action, may submit a letter to the Court that rendered the opinion "concisely stating" why the opinion should be certified for publication. Rule 8.1120(a). This request for publication is directed to the authoring judge for review, who presents the request to the panel. The Court has a short time to consider such a request, as the Court only has until the decision is final (typically 30 days after filing) to rule on the request. If a publication request is pending when the Court of Appeal loses jurisdiction, the Court of Appeal forwards the request, along with its recommendation and a brief statement of its reasons, to the California Supreme Court for a final determination. Rule 8.1120(b).

Since fiscal year 2007-08 is just ending, it is too early to tell if this change in the Rule has had a trending impact on the number of published decisions or requests for publication. However, initial data show there may be a positive trend towards more published decisions. According to the Office of the Reporter of Decisions, the percentage of published decisions increased from 9.0 to 9.9 percent ending in March 2008, from 999 to 1,151 published opinions -- the highest level in four years. In light of the relative consistency between the number of opinions that are issued and published in prior years, at least initially there seems to be a definite and significant increase in published opinions since the publications standards changed in April 2007.

C. Is It Worth The Time to Submit a Request for Publication or Depublication?

Publication rates between districts and divisions within districts significantly vary – sometimes by a factor of more than five according to the Office of the Reporter of Decisions. However, the initial decision not to certify an opinion for publication is far from the end of the issue.

A surprisingly large number of requests for publication are granted after an unpublished opinion has been filed. According to the Report and Recommendation, in fiscal year 2004, 126 post-filing publication orders where issued; in 2005, that number was 138. There are no readily available data as to what percentage this is of the total number of requests for publication submitted. However, considering that on average fewer than 1,100 published opinions are issued each year, the Courts of Appeal appear readily willing to reconsider their initial non-publication determination following a publication request.

Decisions to certify an opinion for publication are made almost exclusively at the Court of Appeal level. In fiscal 2004-2005, 350 publication requests were submitted to the Supreme Court's central staff pursuant to Rule 8.1120(b). According to the Office of the Reporter of Decisions, the Supreme Court issued only four publication orders. While the data do not directly correlate, they show that counsel should be prepared to act quickly to submit a publication request to the Court of Appeal, as the number of certification orders issued by the Supreme Court is very low.

In contrast, once a decision is published, it is very unlikely it will be depublished. Requests for depublication under Rule 8.1125 are directed to the Supreme Court. The Court can also order depublication on its own motion. However, according to the Report and Recommendation, of the 1,047 opinions published in the 2004-05 fiscal year, only 16 were ordered depublished by the Supreme Court. This is a material reduction from 20 years ago, when the Supreme Court ordered 141 opinions depublished in fiscal year 1988-89 alone – almost the same number of opinions ordered depublished in total between 1999 and 2005. Thus, while a person may want to state his or her interest in the matter and explain to the Supreme Court why an appellate opinion should not be published, the person must include a compelling reason why an order of depublication is proper.

D. What Factors Should Counsel Consider In Requesting Publication?

First, strictly follow the criteria in the Rule

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Revised Standards

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and tie any request to the relevant criteria. If you cannot explain how a decision fits (or does not fit) into any of nine listed criteria, it is probably not worth the effort.

Second, be succinct – or in the words of the Rule, "concise." If you cannot explain in a few pages how the opinion helps develop an area of the law, particularly if you just briefed that issue to the Court, a Court likely will not certify the decision for publication. Related to this point is the value of *amici* requests. Such letters may be relevant if they make a valuable point from a different perspective, but simple "me too" letters add little to the publication review process.

Third, be straightforward. According to the Report and Recommendation, the rationale underlying the limited publication rule (which has been in place since 1964) is that the number of Court of Appeal decisions being issued was overwhelming courts, counsel and the publication system. The Court wanted to limit the number of reported decisions from intermediate appellate courts only to those that help clarify or address ongoing legal issues. If there is another decision that is published and makes the same point, the Court likely already considered it in deciding not to certify the opinion for publication. Thus, where possible, identify any similar decisions and explain why the new decision adds a different perspective, interpretation, clarification, or criticism to the existing relevant body of law on the particular issue.

Finally, consider the whole picture. If you believe the decision is so important that it changes or adds to the legal landscape in a manner sufficient to warrant publication, doing so may increase the likelihood of California Supreme Court review of the decision – which results in the decision being unpublished again. Rule 8.1105(e)(1). While the Supreme Court grants review in very few civil matters, if the decision is unpublished it is almost certain the decision will not be reviewed. According to the Report and Recommendation, between 2001 and 2005 only 83 Supreme Court decisions involved cases where the decision was not certified for publication. Thus, of the approximately 90-plus percent of opinions overall that were not certified for publication, only one-tenth of one percent resulted in opinions issued by the Supreme Court. On the other hand, of the cases in which the opinion had been certified for publication, about seven percent resulted in a Supreme Court opinion. Even if a published decision does not ultimately result in a Supreme Court opinion, it may result in a "grant and hold" order that may also affect the case.

E. Conclusion

In light of the limited time frame the Court of Appeal has to consider such requests and the expanded criteria for publication in place since April 2007, the data show that a well-reasoned request for publication will be seriously considered, and may well result in certifying the decision for publication. However, requesting publication of a decision may take the opinion from the realm of an incredibly unlikely chance of reversal to being potentially the subject of Supreme Court review – which, even if it does not result in reversal, may delay resolution of the case for another year or more. The odds are still extremely low the Supreme Court will ultimately reverse that decision. Thus, requesting publication may well be worth the effort for the future development of the law in a manner both you and your client may believe is favorable. ▲

The author wishes to thank Edward Jessen and Pamela Hitchcock from the California Supreme Court for their assistance in providing much of the information referenced in this article.

Receiver

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a receiver whenever necessary to preserve the property rights of any party, such as real property, rental property, and personal property, including commercial goods. C.C.P. § 564(b)(9).

Duties And Powers Of A Receiver

A receiver is an officer of the Court and not an agent of the party. As such, a receiver must act for the benefit of all who may have an interest in the property. Cal.R.Ct. 3.1179(a). Though a receiver can employ a management company, a receiver must be an individual and not a corporate entity. C.C.P. §§ 566-567.

The powers of a receiver are limited to those set forth in the order appointing the receiver. C.C.P. § 568. The Judicial Council of California has prepared a form order (RC-310) appointing

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a receiver, which describes a receiver's typical powers. This form may either be used or relied upon to create an order tailored to the needs of the party or parties requesting the receivership. The form order provides that a receiver may take possession of and manage property, including a company, collect income from the property, care for the property, incur and pay expenses necessary for the care of the property, change any locks on the property, lease the property and collect rents, and establish bank accounts, all as is relevant to the particular situation.

With respect to management of a particular asset, the Judicial Council form order provides that a receiver may employ agents, clerks, accountants, and property managers to administer the receivership property. A receiver may also purchase materials, supplies, and services necessary to administer the property. In sum, a receiver may do all things ordinarily done by owners, managers, and operators of businesses or property, including incurring risks and obligations. *See* C.C.P. § 568. A receiver, however, cannot sell receivership assets without first obtaining court authorization. C.C.P. § 568.5.

Because a receiver's powers are limited to those set forth in the order, to avoid any misunderstanding, the order should include any specific limitations requested by the parties. For example, receivers are often prohibited from making capital improvements without prior court approval, though this is not mandated by the Code of Civil Procedure. If the receiver's powers are in doubt, either the receiver or one of the parties may move the Court for further instructions.

After being appointed, a receiver must regularly report to both the Court and the parties about the status of the receivership property and its management. Within 30 days of appointment, a receiver must file with the Court and serve on the parties a complete inventory of the receivership property. If the receivership subsequently obtains additional property, a receiver must supplement this inventory list. Cal.R.Ct. 3.1181. Thereafter, the receiver must provide monthly reports to the parties and, if requested, to lienholders regarding the financial status of the property and relevant management events. The monthly reports must also include a statement of all fees paid to the receiver and to employees and professionals retained by the receiver to manage or service the property. Unlike the inventory list, a receiver is not required to file the monthly reports with the Court. Cal.R.Ct. 3.1183.

A receivership terminates upon completion of the receiver's duties as set forth in the appointment order. The receiver must first prepare and file with the Court a final account and report, along with a motion request for discharge and for exoneration of the receiver's bond. No memorandum of points and authorities is necessary. The receiver must notice and serve the final account and report on the parties, as well as on any known creditors of the receivership.

The parties may also stipulate to the final account and report and to the requests for discharge and exoneration of the bond. Potential creditors, however, also have a right to object. Thus, a stipulation by the parties may not obviate the need for a hearing. The parties may also object to the accounting, including to the costs incurred by the receiver or the amount of the receiver's fees. Cal.R.Ct. 3.1184.

Upon approval of the final account and report, a Court usually discharges the receiver and exonerates the bond. An order approving the final account and report and discharging the receiver acts as *res judicata* as to all claims against the receiver. *Aviation Brake Systems, Ltd. v. Voorhis* (1982) 133 Cal.App.3d 230, 234. This rule provides substantial protection for receivers against subsequent litigation against the receiver by the parties, creditors, or other third parties.

How To Obtain A Receiver

If a party can convince the Court that appointment of a receiver will stave off further dissipation of the property in dispute pending a resolution of that dispute, the chances of obtaining a receiver are good, despite case law describing receiverships as drastic provisional remedies warranted only in "exceptional cases." *See City & County of San Francisco v. Daley* (1993) 16 Cal. App.4th 734, 745. As it turns out, "exceptional cases" can be somewhat common when there is a danger property may be lost or dissipated without a receiver. Indeed, parties often stipulate to the appointment of a receiver generally, even if they dispute the scope of the receiver's powers.

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Receiver

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Without a stipulation, a party—usually the plaintiff—may move for the appointment of a receiver. To succeed, the moving party must establish that the case involves a claim where the appointment of a receiver is statutorily authorized by one of the subdivisions of C.C.P. Section 564(b) or by the "catch-all" provision of Section 564(b)(9), which provides that a receiver may be appointed whenever necessary to preserve the property or the rights of any party. Further, because appointment of a receiver is considered an equitable remedy, the moving party must show irreparable injury and the inadequacy of other remedies. *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 Cal. App.2d 869, 872. A motion or *ex parte* application for appointment of a receiver must describe the property subject to the receivership and list the names and addresses of the individuals in possession of the property. If the proposed receivership property is a business, the motion or application must describe the impact a receiver would have on the business. A motion or application must also include a proposed order stating the powers of the receiver, the form of which is detailed above.

A receiver must also post a bond in an amount set by the Court. The Court also has the discretion to require that the moving party post a bond. C.C.P. § 567(b). The moving party often requests that the bond be set at the minimum standard amount of $10,000. An opposing party, however, can demand the bond be sufficient to cover the value of any cash and transferable personal property within the receivership. There is usually no need to bond any real property that is part of the receivership.

The rules also allow for the appointment of a receiver *ex parte*, but such appointments are extremely rare. Cal.R.Ct. 3.1175; *Turner v. Su-*

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perior Court (1977) 72 Cal.App.3d 804, 809. To obtain a receivership appointment *ex parte*, the moving party must establish the three elements required by a motion and must also explain the nature of the emergency and show why the moving party would suffer irreparable injury during the time necessary for a noticed motion. Unlike a noticed motion in which a plaintiff's bond is discretionary, to obtain an *ex parte* appointment both the receiver *and* the moving party must post a bond. C.C.P. § 566(b).

The Costs, Advantages, And Disadvantages of A Receivership

Receiverships can be expensive, but when operated correctly they add value that almost always outweighs the expense. The parties must weigh the costs of a receiver against the probability the property would be even more depleted if not under neutral management.

Receivers and their agents typically charge by the hour. A receiver often employs a management company, and fees can range anywhere from $50 per hour to $500 per hour. Depending on the nature of the receivership, a receiver's fees and costs can end up costing tens of thousands or more.

A receiver is paid out of the receivership estate—the property typically being disputed by the parties. The receiver must describe his costs and fees in the monthly reports. Subject to the Court's final approval, the receiver may pay the costs as well as interim fees out of the receivership estate. Unless good cause is shown, a party must object within 10 days of receipt of the monthly reports or waive objections to these costs. Cal.R.Ct. 3.1183.

Given the nature of their work and the litigation context that gives rise to their appointment, receivers often become a target in the litigation. Receivers may also indirectly and unintentionally influence the outcome of a case. For example, litigation over a business often involves an accounting that can determine misappropriation, breach of contract, or fraud, and which can also provide the measure of damages. A receiver's initial inventory, monthly financial reports, and final account and report may help determine whether there has been any wrongdoing and, if so, in what amount.

Receivers often become witnesses at trial, and are often allowed to give their neutral, expert opinion. Courts and juries usually give great deference to a receiver's testimony and to his or her reports. This necessarily requires that parties play close attention to the activities and reports of a receiver, to ensure their neutrality, and to object when warranted.

Since a receiver is an agent of the Court, a party must first obtain the permission of the Court prior to suing a receiver. *Vitug v. Griffin* (1989) 214 Cal.App.3d 488, 492-493. A party may also decide to move for further instructions, either to prevent the receiver from taking some action or to require that the receiver take some action the party believes may suit its interests in the litigation. To defend himself or herself against a party's objections or motions for further instruction, a receiver may seek to employ counsel. First, however, a receiver must obtain the consent of the Court. Cal.R.Ct. 3.1180. Counsel for a receiver are also paid out of the receivership estate.

Conclusion

Receivers can provide a powerful tool to business litigators who seek to preserve a business or property in dispute pending the outcome of litigation. Though receivers add value, they also create expense. When operated properly, the value added by a receiver usually outweighs the expense. Receivers can also indirectly influence the outcome of litigation. Business litigators should keep these facts in mind when advising their clients about whether a receiver should be sought in a particular case. ▲

Digital Discovery

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quency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the Court determines that: (1) it is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive; (2) the discovery sought is unreasonably cumulative or duplicative; (3) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (4) the likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the par-

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Digital Discovery

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ties, the importance of the issues, and the importance of the requested discovery in resolving the issues. (See C.C.P. §2031.060(f).)

The amended protective order statute also would include a new "safe harbor" provision relating to sanctions similar to those to be added elsewhere in the Act. (See C.C.P. §2031.060(i).)

Responses (C.C.P. §2031.280)

A new subdivision (c) would be added providing that, if a party responding to a demand for production of electronically stored information objects to the specific form of producing the information, or if no form or forms are specified for in the demand, the responding party shall state in its response the form or forms in which it intends to produce each type of the information.

Section 2031.280 also would be amended to include a new subdivision (d) providing that, unless the parties otherwise agree or the Court otherwise orders, if no form or forms for the production of electronically stored information are specified, the responding party shall produce the information in the form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable. A party need not produce the same electronically stored information in more than one form.

Current subdivision (c) (regarding the expense of translating data compilations into reasonably usable form) would be relocated to subdivision (e), but would otherwise be unchanged.

Claims of Privilege or Work Product Protection (C.C.P. §2031.285)

The sheer volume of digital information has created new issues regarding privileged information. This new legislative proposal would add a new C.C.P. §2031.285, which would provide that if electronically stored information produced in discovery is subject to a claim of privilege or protection as attorney work product, the party making the claim may notify the party that received the information of the claim and the basis for the claim. (See C.C.P. §2031.285(a).) After being notified, the party that received the information shall either immediately return the specified information and any copies it has or present the information to the Court conditionally under seal for a determination of the claim. A party that received information subject to a claim of privilege or protection may not disclose it until the claim is resolved. (See C.C.P. §2031.285(b)–(d).)

New section 2031.285 provides a procedure for handling privileged or protected materials contained in electronic form and produced in discovery. This procedure is not intended to modify substantive law. In discovery disputes, courts will continue to determine under applicable law whether any information produced in electronic form is privileged or protected, and whether a waiver of a privilege has occurred.

Motions to Compel (C.C.P. §2031.310)

California law allows a motion to compel further responses to discovery. A responding party also may seek a protective order under section 2031.060. New provisions would be added to the statute on motions to compel that are similar to the new provisions in the protective order statute regarding the discovery of electronically stored information. These provisions specifically will address matters such as the discovery of information from sources that are not reasonably accessible, the burden of proof, the grounds for the court to impose limitations on the frequency and extent of discovery of electronically stored information, and a safe harbor provision. (See C.C.P. §2031.310(d)–(g) and (j).)

"Safe Harbor" Provisions (C.C.P. §§2031.060, 2031.300, 2031.310, and 2031.320)

Another important digital discovery issue is whether sanctions should be imposed on a party that fails to produce electronically stored information that has been lost, damaged, altered, or overwritten because of the routine, good faith operation of an electronic information system. The proposed legislation would add new "safe harbor" provisions to several sanctions statutes, stating: "absent exceptional circumstances, the court shall not impose sanctions on a party or its attorneys for failure to provide electronically stored information lost, damaged, altered, or overwritten as a result of the routine, good-faith operation of an electronic information system." In addition, after each of the new "safe harbor" provisions described above, the following sentence would be added: "This subdivision shall not be construed to alter any obligation to pre-

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serve discoverable information."

Subpoena Requiring Production of Electronically Stored Information (C.C.P. §1985.8)

The proposal would add a new C.C.P. Section 1985.8 relating to the subpoena of electronically stored information, which provides that a party serving a subpoena requiring the production of electronically stored information may specify the form or forms in which each type of information is to be produced. (See C.C.P. §1985.8(b).) This section also addresses what happens if the subpoenaing party does not specify a form or forms for production. (See C.C.P. §1985.8(c).)

New Section 1985.8 contains provisions similar to those amending the statute on motions for a protective order and motions to compel relating to the discovery of electronically stored information. They address the subpoenaed party's burden of showing that electronically stored information is from a source that is not reasonably accessible, the Court's ability to permit discovery of such information on a showing of good cause, and the Court's ability to set conditions, allocate expenses, and impose limitations on this discovery. (See C.C.P. §1985.8(d)–(f) and (h).)

The new Section 1985.8(g) includes a provision stating that if "necessary, the person subpoenaed at the reasonable expense of the subpoenaing party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form." (See C.C.P. §1985.8(g).)

New Section 1985.8 includes provisions designed to protect persons who receive subpoenas requiring production of electronically stored information from undue burden or expense. (See C.C.P. §1985.8(f)–(h).) It also contains a "safe-harbor" provision for persons whose electronically stored information is subpoenaed. (See C.C.P. §1985.8(l).)

These new rules, if adopted by the Legislature, will create California rules that are similar to, but sometimes different, from the federal rules for electronically stored information. Digital discovery is here to stay, and if you have not familiarized yourself with the federal and proposed California procedures, it would be wise to start doing so now. ▲

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