

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR20-09**

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**Title**

Civil Practice and Procedure: Streamlined  
Discovery Pilot Project

**Action Requested**

Review and submit comments by June 9,  
2020

**Proposed Rules, Forms, Standards, or Statutes**

Adopt Cal. Rules of Court, rules 3.1030–  
3.1039; approve forms CIV-200 and  
CIV-200-INFO

**Proposed Effective Date**

January 1, 2021

**Contact**

Anne M. Ronan, 415-865-8933  
[anne.ronan@jud.ca.gov](mailto:anne.ronan@jud.ca.gov)

**Proposed by**

Civil and Small Claims Advisory Committee  
Hon. Ann I. Jones, Chair

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### Executive Summary and Origin

This proposal from the Civil and Small Claims Advisory Committee would provide for a pilot project to apply new discovery provisions for unlimited civil cases. The pilot project would be optional for courts and voluntary for parties appearing in participating courts. The proposal is based on the recommendations of the Commission on the Future of California’s Court System to streamline the discovery process in order to lessen the cost of litigation and therefore provide greater access to justice for civil litigants.

### Background

The *Commission on the Future of California’s Court System: Report to the Chief Justice* (Futures Commission report), issued in May 2017, included recommendations relating to civil cases. The Civil and Small Claims Advisory Committee has been directed to develop, with input from stakeholders, recommendations to the Judicial Council to implement the recommendations in the report that existing civil procedures be amended to reduce litigation costs by streamlining the discovery process and facilitating the early exchange of information.<sup>1</sup> The advisory committee previously circulated a more extensive legislative proposal that it believed would further the recommendations of the Futures Commission by changing the discovery process for most civil parties across the

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<sup>1</sup> Commission on the Future of California’s Court System, *Report to the Chief Justice* (Oct. 2017), pp. 19–22. The report may be viewed at [www.courts.ca.gov/documents/futures-commission-final-report.pdf](http://www.courts.ca.gov/documents/futures-commission-final-report.pdf).

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.  
It is circulated for comment purposes only.*

state but, in light of comments received, decided an optional pilot project is a better first step.

## **The Proposal**

The streamlined discovery pilot project would be available in any county in which the court agrees to take part. Currently, the leadership of the Superior Courts of Santa Clara and San Bernardino Counties have indicated their willingness to take part in the pilot project, and other courts are welcome to, also. The court would establish the pilot project by local rule or standing order, with approval of the council, subject to the statewide rules for the project.<sup>2</sup>

Under the proposed rules, a court in the pilot project would provide information about the project to plaintiffs in all unlimited general civil filings<sup>3</sup> by providing them with the proposed *Streamlined Discovery Pilot Project Information Sheet* (form CIV-200-INFO) and *[Proposed] Consent Order for Streamlined Discovery Pilot Project* (form CIV-200-INFO), and the plaintiffs would be required to serve copies of those forms on defendants.<sup>4</sup> If parties in a case agree to participate in the program, discovery in that case will be stayed until an initial round of disclosures is completed.<sup>5</sup> Unless the parties stipulate to a different schedule, plaintiffs are to make their initial disclosures (including production of documents) within 30 days after either the filing of the proposed consent order or the filing of a responsive pleading by the defendant, whichever is later. Defendants are to make their disclosures (also including production of documents) within 45 days after the plaintiff's disclosure.<sup>6</sup> Failure to provide information in the disclosures could serve as a basis for evidentiary or issue preclusion sanctions.

In addition, following the initial disclosures, participants in the pilot will be limited, to the 35 specially prepared interrogatories and requests for admission currently permitted by statute, with any further interrogatories or requests permitted only if agreed to or by court order on a showing of good cause.<sup>7</sup> In other words, a "good cause" declaration

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<sup>2</sup> See proposed rule 3.1030.

<sup>3</sup> "General civil case" means all civil cases *except* probate, guardianship, conservatorship, juvenile, and family law proceedings; small claims proceedings; unlawful detainer proceedings; petitions to prevent civil harassment, elder abuse, and workplace violence; petitions for name change; election contest petitions; and petitions for relief from late claims. (Cal. Rules of Court, rule 1.6.)

<sup>4</sup> See proposed rule. 3.1031. A court interested in the pilot project has suggested that all parties be required to meet and confer at the beginning of the litigation to consider whether to take part in the pilot project. Specific comments are being requested on this suggestion.

<sup>5</sup> See proposed rule 3.1034(a).

<sup>6</sup> See proposed rule 3.1033.

<sup>7</sup> See proposed rule 3.1034(b). A court interested in the pilot has suggested that the rules also limit the number of document requests. The statutes currently place no limit on this type of request, so a specific limit would need to be developed. Specific comments are requested on this proposal.

would be insufficient by itself to allow for additional discovery. Parties will also be able to request supplementation of the disclosures during the litigation.<sup>8</sup>

Because the program is voluntary, parties may ask that a case be removed from the pilot project at any time, either by stipulation of all the parties or by noticed motion to the court.<sup>9</sup>

Under this proposal, participating courts will provide incentives to parties to join the pilot project by providing the parties with informal discovery conferences when requested, giving them preference in hearing dates on noticed discovery motions if needed,<sup>10</sup> and setting earlier trial dates if requested by all parties.<sup>11</sup> Specific comments are being requested here as to other potential incentives that could be provided.

Courts will be responsible for keeping track of the cases in the pilot project, to ensure that the council can evaluate the effect of the project.<sup>12</sup>

### **Alternatives Considered**

As noted above, the advisory committee considered the alternative of proposing legislation that would have mandated changes to the civil discovery process similar to the ones proposed here in many general civil cases across the state. In light of concerns raised by commenters, the committee decided instead to recommend a voluntary pilot project so that the results could be evaluated before proposing statewide changes.

### **Fiscal and Operational Impacts**

Because the proposal focuses on discovery between the parties, the primary impact will be on litigants and their counsel. Participating courts will be holding more informal discovery conferences, which may be a change for the court, but the committee expects that, in the long run, the proposal will lessen the amount of court appearances required for discovery motions. Participating courts will also need to track information about cases involved in the pilot project and report it to the Judicial Council.

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<sup>8</sup> See proposed rule 3.1034(c).

<sup>9</sup> See proposed rule 3.1038.

<sup>10</sup> See proposed rule 3.1036.

<sup>11</sup> See proposed rule 3.1037.

<sup>12</sup> See proposed rule 3.1039.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should all parties in general civil matters in courts participating in the pilot project be required to meet and confer over whether to take part in the project? If so, when should the deadline for that meeting and conference be: within 30 days of service of the complaint, within 30 days of service of the first responsive pleading, or some other date?
- Should the pilot project include a limitation on the number of demands for inspection, copying, etc. under Code of Civil Procedure section 2031, et seq. that a party can make without showing good cause for more? If so, what should that number be?
- What incentives, in addition to those in the proposal, could be provided by courts to encourage participation in the pilot project?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rules 3.1030–3.1039, at pages 5–8
2. Forms CIV-200 and CIV-200-INFO, at pages 9–12
3. Link A: Futures Commission report (2017), [www.courts.ca.gov/documents/futures-commission-final-report.pdf](http://www.courts.ca.gov/documents/futures-commission-final-report.pdf)



1 signed by all parties to the action stating that all parties agree to serve on all other parties  
2 an initial disclosure, with information and documents as provided in this chapter, and  
3 agree to be subject to and comply with the rules in this chapter.  
4  
5

6 **Rule 3.1033. Initial Disclosures**  
7

8 **(a) Timing**  
9

10 (1) Timing. Except when otherwise agreed to in the proposed consent order or  
11 subject to (2), plaintiff must serve that party's initial disclosure within 30  
12 days after the filing of the stipulation or a responsive pleading by defendant,  
13 whichever is later. Defendant must serve that party's initial disclosure within  
14 45 days after plaintiff's disclosure was served on defendant.  
15

16 (2) Continuances. At any time before the service of the disclosures, parties may  
17 stipulate to continue the date for disclosures for up to 120 days for the  
18 purpose of conducting settlement discussions or mediation. Further  
19 continuance may be obtained by motion to the court with a showing of good  
20 cause or requested at an informal discovery conference, case management  
21 conference, or trial setting conference.  
22

23 **(b) Content**  
24

25 The initial disclosure must include the following information and attachments:  
26

27 (1) The name and, if known, address and telephone number of each individual  
28 likely to have discoverable information that the disclosing party may use to  
29 support its claims or defenses—along with the subjects of that information—  
30 unless the use would be solely for impeachment.  
31

32 (2) For inspection or copying, all documents, electronically stored information,  
33 and tangible things that the disclosing party has in its possession, custody, or  
34 control and may use to support its claims or defenses, unless the use would be  
35 solely for impeachment.  
36

37 (3) For inspection and copying, any insurance agreement under which an  
38 insurance business may be liable to satisfy all or part of a possible judgment  
39 in the action or to indemnify or reimburse for payments made to satisfy the  
40 judgment.  
41

1 (4) In a personal injury case, the name and address of each physician, dentist, or  
2 other health care provider who treated plaintiff, and the dates of treatment, as  
3 well as a copy of all medical records, bills, and evidence of payment.  
4

5 (5) A description of the types of damages claimed and, if known, a statement of  
6 economic damages incurred.  
7

8 **(c) Signatures**

9 Each initial disclosure must be signed by an attorney of record in the attorney's  
10 own name or by the party personally. By signing, an attorney or party certifies that  
11 to the best of the person's knowledge, information, and belief, formed after a  
12 reasonable inquiry, the disclosure is complete as to the information then known or,  
13 if it cannot by reasonable effort be complete, explaining why.  
14

15 **(d) Preservation of evidence**

16 Parties must not destroy and must preserve all items that are identified or that fall  
17 within the categories identified in the initial disclosure until the case has been  
18 completed.  
19  
20

21 **Rule 3.1034. Other Discovery**  
22

23 **(a) Initial stay of discovery**

24 Once the parties have agreed to take part in the streamlined discovery pilot project,  
25 all further discovery is stayed until the time for initial disclosures has passed and  
26 the party propounding discovery has completed and served the required disclosure.  
27

28 **(b) Limits on written discovery requests**

29 Any party seeking to propound more interrogatories or requests for admission than  
30 allowed as a matter of right under the Code of Civil Procedure may do so only by  
31 stipulation; agreement of the parties at an informal discovery conference, case  
32 management conference, or trial setting conference; or order of the court on a  
33 showing of good cause on a noticed motion.  
34

35 **(c) Supplemental disclosures**

36 Twice before the initial trial date and once after the initial trial date has been  
37 continued, a party may propound a request for a supplemental disclosure to elicit  
38 any later-acquired information bearing on a previously made disclosure, subject to  
39 the time limits on discovery.  
40  
41

1 **Rule 3.1035. Failure to Disclose**

2  
3 A party or attorney who willfully fails to comply with initial or supplemental disclosure  
4 requirements may be subject to the sanctions for misuse of the discovery process—  
5 including monetary, issue, and evidentiary sanctions—as provided in Code of Civil  
6 Procedure section 2023.030.

7  
8  
9 **Rule 3.1036. Discovery Disputes**

10  
11 **(a) Informal conference**

12  
13 On request of a party taking part in a streamlined discovery pilot project, the court  
14 will conduct an informal discovery conference to address any discovery matters in  
15 dispute between the parties.

16  
17 **(b) Noticed motion**

18  
19 If a discovery matter is not resolved at the informal conference and a party files a  
20 noticed motion to resolve the issue, the case will be given preference over other  
21 general civil cases for purposes of setting the hearing date.

22  
23  
24 **Rule 3.1037. Trial Setting**

25  
26 If requested by all parties, a case in the streamlined discovery pilot project will be given  
27 preference over other general civil cases for purpose of setting a trial date.

28  
29 **Rule 3.1038. Withdrawal From Pilot Project**

30  
31 Any party may request that a case be removed from the streamlined discovery pilot  
32 project, either by stipulation of all parties or by a showing of good cause on a noticed  
33 motion.

34  
35 **Rule 3.1039. Tracking Cases in Pilot Project**

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37 A court taking part in the streamlined discovery pilot project must track all cases in the  
38 pilot—by case number, party names, and length of time to disposition—to aid the  
39 Judicial Council in evaluating the effectiveness of the pilots.



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>03-27-2020</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>[PROPOSED] CONSENT ORDER FOR STREAMLINED DISCOVERY PILOT PROJECT</b>	CASE NUMBER:
<i>This form is to be signed by all parties consenting to litigate within the streamlined discovery pilot project under rules 3.1030–3.1039 of the California Rules of Court. Before completing this form, all parties should review Streamlined Discovery Pilot Project Information Sheet (form CIV-200-INFO).</i>	

**EACH PARTY AGREES AS FOLLOWS:**

1. The parties to the action are
  - a. plaintiff (name):
  - b. defendant (name):
  - c. Other party (name and party):
  
2. A party to this action  is  is not a minor, an incompetent person, or a person for whom a conservator has been appointed.
  
3. The parties agree that this action will be subject to and they will comply with the streamlined discovery pilot project procedures in California Rules of Court, rules 3.1030–3.1039, including the following:
  - a. Each party will make an initial disclosure with information and documents as provided in rule 3.1033.
  - b. Unless 3c is checked or the parties stipulate for a continuance under rule 3.1033(a)(2), the following timeline applies:
    - (1) Plaintiff will serve the initial disclosure on all other parties within 30 days after the filing of this form or the filing of a responsive pleading by defendant, whichever is later.
    - (2) Defendant will serve the initial disclosure on all other parties within 45 days after plaintiff's disclosure was served on defendant.
  - c.  The parties agree to the following timeline:
    - (1)  Plaintiff will serve the initial disclosure on all other parties by (describe date or deadline):
  
    - (2)  Defendant will serve the initial disclosure on all other parties by (describe date or deadline):
  
    - (3)  Other (describe timeline agreed to):

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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3. d. The parties must not destroy and must preserve throughout the case all items that are identified, or fall within a category identified, in the initial disclosure.
- e. All discovery is stayed until the time for initial disclosures has passed and the party propounding discovery has completed and served the required disclosure.
- f. No party may propound more interrogatories or requests for admission than allowed as a matter of right under the Code of Civil Procedure unless the additional items are allowed by written stipulation; by agreement of parties at a discovery conference, case management conference, or trial setting hearing; or by order of the court for good cause.
4. The parties understand and agree that failure to comply with the disclosure requirements may be subject to sanctions for misuse of discovery under Code of Civil Procedure section 2023.030.
5. The parties agree that the court will, at the request of any party, conduct informal discovery conferences to address any discovery matter between the parties. Any noticed motion following such a conference will be given preference in setting a hearing date.

**After reading the above, the parties hereby consent to proceed in this case under the streamlined discovery pilot project procedures stated in California Rules of Court, rules 3.1030–3.1039.**

Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR <i>(describe party)</i> ):
Date: _____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR <i>(describe party)</i> ):

- It is so **ORDERED**.
- The proposed consent order is **DENIED** for good cause.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

**STREAMLINED DISCOVERY PILOT PROJECT  
INFORMATION SHEET**

1. **Pilot Project.** The Judicial Council of California has authorized a streamlined discovery pilot project in certain courts throughout the state, including the one this case has been filed in. The goal of the pilot project is to decrease litigation costs in civil cases through streamlining civil discovery, leading to greater access to the courts. This streamlining is to be accomplished by bilateral early disclosures of factual information supporting claims or defenses, identity of known witnesses, and production of key documents; limiting written discovery unless good cause is shown for more; and having discovery disputes handled, at least initially, through informal discovery conferences. Participation in the program is voluntary.
2. **Deciding whether to take part.** When an unlimited civil case is filed in a court taking part in the streamlined discovery pilot project, the plaintiff is to serve this information sheet and *[Proposed] Consent Order for Streamlined Discovery Pilot Project* (form CIV-200) on all parties in the case with the complaint, or as soon as practicable. The parties should read through this sheet and the applicable rules (California Rules of Court, rules 3.1030–3.1039) and consider whether their case would benefit from being part of the pilot project and its more streamlined discovery procedures. The project is not intended to be used for cases with self-represented parties.

To encourage participation in the pilot project, participating courts agree to provide informal discovery conferences at the request of any participating party for any discovery disputes that should arise. If a formal noticed motion is required after such a conference, the court will give preference to the parties in setting a date for that hearing. (See rule 3.1036.) In addition, if the parties all agree, the case will be given preference over other general civil cases in trial setting. (See rule 3.1037.)

3. **Initial Disclosures and Discovery.** Agreeing to participate in the streamlined discovery pilot project means agreeing to comply with the rules relating to discovery set out in Cal. Rules of Court, rules 3.1033 through 3.1036. These include the following provisions:
  - a. The parties are to make initial disclosures of information at the beginning of the case, without any request from the other side. What is required is set out in rule 3.1033(b) and includes:
    - The identity of each individual likely to have discoverable information, along with the subject of that information;
    - All documents, electronically stored information, and tangible things that the disclosing party has and may use to support its claims or defenses;
    - Any insurance agreement that may be available to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment; and
    - In a personal injury case, the identity of all treating health care providers, dates of treatment, and copies of all medical records and bills.

The information provided is to be based on a reasonable inquiry and be complete as to the information then known to the disclosing party.
  - b. Under the timeline in the rules, plaintiff is to serve the initial disclosure first, within 30 days after the filing of either the proposed consent order or the defendant's responsive pleading, whichever is later; defendant is to serve that party's initial disclosure within 45 days thereafter. However, the parties can agree to their own timeline, as long as they include it in the proposed consent order. (Rule 3.1033(a))
  - c. Parties must preserve any items that are identified in, or are within categories that are identified in, the initial disclosures. (Rule 3.1033(d).)
  - d. Other discovery cannot begin until after the time for the initial disclosures is completed. The number of interrogatories or requests for admission that a party may put forward is limited to the number allowed as a matter of right within the Code of Civil Procedure, unless the party seeing to ask more either obtains the agreement of the other parties (either in a stipulation or at an informal discovery conference, case management conference, or trial setting conference) or obtains an order of the court on a showing of good cause. (Rule 3.1034(a)–(b).)
  - e. A party can ask another party to supplement the disclosure with any later acquired information twice before the initial trial date, and once more if the initial trial date is continued. (Rule 3.1034(c).)
  - f. A party or attorney who willfully fails to comply with the disclosure requirements may be subject to the sanctions for misuse of the discovery process set out in Code of Civil Procedure section 2020.030, including monetary, issue, and evidentiary sanctions. (Rule 3.1035.)

4. **How to sign up.** For a case to be in the pilot project, all parties must agree to take part. The parties must complete and sign the *[Proposed] Consent Order for Streamlined Discovery Pilot Project* (form CIV-200) and file it with the court. The court has the discretion to refuse to let a case into the project with good cause.
5. **How to withdraw.** Because the pilot project is voluntary, parties who decide to withdraw may do so either by a stipulation by all parties or by noticed motion to the court with a showing of good cause. (Rule 3.1038).