

J. MICHAEL SCHAEFER\*  
JOSEPH E. PAGE\*\*



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**SCHAEFER & ASSOCIATES**  
Law Offices

99-CV-11

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January 19, 2000

Secretary, Committee on Rules of Practice & Procedure  
Administrative Office of the U.S. Courts  
WASHINGTON, D.C. 20544

copy: Daniel F. Polsenberg, Esq. fax 385-9447  
State Bar of Nevada

At a seminar this date on changes in the federal rules, conducted by Judge Philip Pro and two Magistrate Judges, the audience was invited to send you comments for changes in the federal rules! Here is my input:

1. It pains me that California mandates that service of post-summons-service pleadings, like motions, notices, etc. must be done by a non-party; I applaud the federal and Nevada rules that permit anybody to make such service, and sign certificate of such service. I know this isn't the decision of your office, but if you ever have an opportunity to confer with the California Bar's liason on rules changes, please share with them the concern of many sole practitioners that the 'nonparty' requirement for California's CCP 1013a, is a royal pain in the rear, and many of applaud the federal Rule 5 as reflecting common sense. I do a lot of pro per for family interest

2. The new rules permitting fax tranmission of such post-summons-service pleadings are concerned that there be some limitation. I have had 50 pages faxes dumped into my machine, creating a burden to deal with unattached bulk paper and dissipating a tonor supply. The rule requires consent of adverse counsel, but consent for letter-exchanges and brief pleadings, is deemed unfettered wide-open consent. If I were writing the rules, I'd require that any pleading exceeding 10 pages requires the specific consent of the recipient.

3. Calif. CCP 1987(b), having written notice to a party to appear be the same as service of a subpoena, makes a lot of sense. In federal actions wherein I am a party, I am frankly irritated at being bothered by process servers hunting

\*ADMITTED NV. & CA.

\*\*ADMITTED AS PATENT AGENT ONLY, ALL JURISDICTIONS

3930 SWENSON ST, #105  
LAS VEGAS, NV. 89119

TEL. (702) 792-6710  
FAX (702) 792-6721

me down to serve a subpoena to appear, as if I would not appear as a plaintiff or a defendant???? Not only is this an imposition on parties to litigation, to be subpoenaed, when they all plan to appear anyway, it serves only to create "make work" services and costs for the other side. I must ask that the Committee give serious consideration to adopting a version of CCP 1987(b) into our federal rules.

4. I am not aware that we provide trial setting priority for Old Folks. California does, see attached CCP 36. Out of respect for our elders, we should speed up justice. And the legislative intent that produced CCP 36 in the California legislature, should be grounds for the Congress similarly evaluating our aging society and how well they are served by the judicial system.

Very truly,

  
J. MICHAEL SCHAEFER  
Public Interest Attorney

cc: Honorable Philip M. Pro  
US DISTRICT JUDGE

Enclosures: CCP 1987  
CCP 36

1929, c. 110, p. 19, § 1;  
§ 2, operative Jan. 1, 1958;  
2.)

References  
Government Code § 11510.  
Penal Code § 1326.  
Art. 1, § 15. Penal Code § 1326.  
Production, to witness subject to, see Code  
Judge or officer authorized to take  
Procedure § 1991 et seq.  
Elections, see Elections Code § 16502.  
Elections, see Penal Code § 1327.  
Elections, see Penal Code § 1326.  
Code §§ 1484, 1489, 1503.  
Commission, see Food and Agricultural  
Code § 454.  
Code §§ 12550, 12560.  
Harbors and Navigation Code  
Code §§ 13910, 13911.  
Revenue and Taxation Code  
1326.  
Code § 33034.  
Government Code § 11181.  
Labor Code § 1176.  
Code §§ 1042, 12924.  
Code, see Labor Code § 92.  
§ 9401 et seq.  
Code § 460 et seq.  
see Civil Code § 1201.  
Business and Professions Code  
Code § 6049,  
§ 14.  
Code § 2093; Government Code  
Code § 16.  
Government Code § 11528.  
Government Code § 12403.  
Civil Procedure § 259.  
§ 128.  
Labor Code § 74.  
Code § 177.  
§§ 45311, 88130.  
Government Code § 11181.

Subpoena  
duces tecum, but who is not required to personally  
attend a deposition away from his or her place of  
business, shall be those prescribed in Section 1563 of  
the Evidence Code. (Added by Stats.1961, c. 1386, p.  
3159, § 1. Amended by Stats.1986, c. 603, § 4.)

**§ 1987. Subpoena; notice to produce party or agent;  
method of service; production of books and docu-  
ments**

(a) Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled for travel to and from the place designated, and one day's attendance there. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. The service may be made by any person. When service is to be made on a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is 12 years of age or older.

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to

testify. The giving of the notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the court may make such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(c) If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within such shorter time as the court may order, it may include a request that the party or person bring with him or her books, documents or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control. Within five days thereafter, or such other period as the court may allow, the party or person of whom the request is made may serve \* \* \* written objections to the request or any part thereof, with a statement of grounds. Thereafter, upon noticed motion of the requesting party, accompanied by a showing of good cause and of materiality of the items to the issues, the court may order production of items to which objection was made, unless the objecting party or person establishes good cause for nonproduction or production under limitations or conditions. The procedure of this subdivision is alternative to the procedure provided by Sections 1985 and 1987.5 in the cases herein provided for, and no subpoena duces tecum shall be required.

Subject to this subdivision, the notice herein provided shall have the same effect as is provided in subdivision (b) as to a notice for attendance of that party or person. (Enacted 1872. Amended by Stats.1963, c. 1485, p. 3049, § 3; Stats.1968, c. 933, p. 1783, § 1; Stats.1969, c. 311, p. 678, § 1; Stats.1969, c. 1034, p. 2013, § 1.5; Stats. 1981, c. 184, p. 1105, § 2; Stats.1986, c. 605, § 2; Stats.1989, c. 1416, § 28.)

**Cross References**

- Administrative adjudication, service of subpoenas by agency, see Government Code § 11510.
- Concealment of witness, see Code of Civil Procedure § 1988.
- Copy of supporting affidavit required to be served with subpoena, see Code of Civil Procedure § 1987.5.
- Criminal proceedings, service in, see Penal Code § 1328.
- Legislator's privilege, see Const. Art. 4, § 14.
- Process servers, compensation, see Code of Civil Procedure § 1033.5.
- Processors of farm products, see Food and Agricultural Code § 55782.
- Produce dealers, see Food and Agricultural Code § 56472.
- Service of legislative subpoena, see Government Code § 9403.
- Sheriff, duty to serve process, see Government Code § 26608.
- Sheriff's fee for service, see Government Code § 26743.

opportunity to be heard; the subpoena entirely in accordance with it upon such shall declare, including the court may make appropriate to protect consumer from unreasonable consumer's right of require any witness or condition any records of any subdivision (b) of Section 1168, p. 5249, § 1.3102, § 2, operative (A.B.758), § 12.)

**§ 1987.2. Award of reasonable attorneys' fees on noticed motion**

In making an order under subdivision (c) of Section 1987, the court may in its award reasonable expenses on noticed motion, including reasonable attorneys' fees, if the court finds the motion warranted without substantial delay and the requirements of the statute. (Added by Stats.1976)

**§ 1987.3. Service of subpoena on custodian of records; Evidence Code**

When a subpoena is served on a custodian of records provided in Article 2 of Chapter 2 of Division 2, his personal attendance at the subpoena, Section 1970, c. 590, p.

**§ 1987.4. Repealed**

**§ 1987.5. Subpoena for production of records; original and copies**

The service of a subpoena for production of records shall be made unless at the time of service upon which the subpoena is served.

**Cross References**

New trials, restricted applicability of article governing, see Code of Civil Procedure § 655.

**§ 35. Election matters; precedence**

Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, and election contests shall be placed on the calendar in the order of their date of filing and shall be given precedence. *(Added by Stats.1971, c. 980, p. 1893, § 1.)*

**§ 36. Motion for preference; party of age 70; party under age 14; medical reasons; interest of justice; time of trial**

(a) A party to a civil \* \* \* action who \* \* \* is over the age of 70 years \* \* \* may petition the court \* \* \* for a preference, which the court shall grant if the court makes all of the following findings:

(1) The party \* \* \* has a substantial interest in the action as a whole.

(2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

(b) A civil action to recover damages for wrongful death or personal injury shall be entitled to preference upon the motion of any party to the action who is under the age of 14 years unless the court finds that the party does not have a substantial interest in the case as a whole. A civil action subject to subdivision (a) shall be given preference over a case subject to this subdivision.

(c) Unless the court otherwise orders, notice of a motion for preference shall be served with the memorandum to set or the at-issue memorandum by the party serving the memorandum, or 10 days after such service by any other party; or thereafter during the pendency of the action upon the application of a party who reaches the age of 70 years.

(d) In its discretion, the court may also grant a motion for preference served with the memorandum to set or the at-issue memorandum and accompanied by clear and convincing medical documentation which concludes that one of the parties suffers from an illness or condition raising substantial medical doubt of survival of that party beyond six months, and which satisfies the court that the interests of justice will be served by granting the preference.

party or a party's attorney, or upon cause stated in the record. \* \* \* shall be for no more than 15 days than one \* \* \* continuance for pl be granted to any party.

(g) Upon the granting of a motion pursuant to subdivision (b), a party upon a health provider's alleged negligence, as defined in Section 364, date not sooner than six months and months from the date that the *(Added by Stats.1979, c. 151, p. 348 Stats.1981, c. 215, § 1; Stats.1988, 1989, c. 913, § 1; Stats.1990, c. 42*

**§ 36.5. Motion for preference; affidavit**

An affidavit submitted in support of preference under subdivision (a) of § 36, signed by the attorney for the party based upon information and belief as to the diagnosis and prognosis of any party, shall not be admissible for any purpose other than preference under subdivision (a) of § 36. *Added by Stats.1990, c. 1232 (A.B.3820), § 1*

**§ 37. Preference; action for damages; felony; time**

(a) A civil action shall be entitled to preference if the action is one in which the party seeks damages \* \* \* which were alleged to have been caused by the defendant during the commission of an offense for which the defendant has been convicted.

(b) The court shall endeavor to grant preference within 120 days of the grant of preference. *Stats.1982, c. 514, p. 2297, § 1. Amended by Stats.1983, c. 938, § 1, eff. Sept. 20, 1983.)*

**CHAPTER 2. COURT OF IMPROVEMENTS AND GENERAL COUNCIL [REPEALED]**

**§ 38. Repealed by Code Am.1880, Stats.1933, c. 743, p. 1835, § 61**

**CHAPTER 2.5. THE JUDICIAL COUNCIL [REPEALED]**