

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012



04-CV-H

TELEPHONE
(213) 894-8551

CHAMBERS OF
CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

July 23, 2004

John Rabiej
Chief, Rules Committee Support Office
Thurgood Marshall Building
One Columbus Circle, Room 4-170d
Washington, D.C. 20544

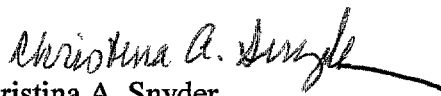
Re: Federal Rule of Civil Procedure 68

Dear Mr. Rabiej:

Enclosed is a copy of an April 21, 2004, letter and attachment from Ned Good, Esq. requesting that our Local Rules Committee consider changing our Local Rules to permit plaintiffs to make offers of compromise pursuant to Federal Rule of Civil Procedure 68.

Because it would be inappropriate for our committee to enact a local rule that is inconsistent with Rule 68, I am sending this proposal to you. We do think that the suggested amendment would serve to encourage settlement, and I hope that the National Rules Committee will give this proposal its favorable consideration.

Very truly yours,


Christina A. Snyder

ly/CAS
encl.

cc: Consuelo B. Marshall, Chief United States District Judge

GOOD, WEST & SCHUETZE

Office (626) 440-0000

Fax (626) 449-0214

E-mail nedgoodlaw@aol.com

TRIAL LAWYERS

Ned Good • Mark West • Steven Schuetze

Ivan Miller Law Clerk

Linda Thoemmes Calendar Manager

Rules

*Sherris
Rules Comm
Order
West
Ned
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April 21, 2004

To Each Judge of the U.S. District Court, Central District of California
Rules Committee of the Federal Bar Association
Rules Committee of the 9th Circuit

Dear Judge:

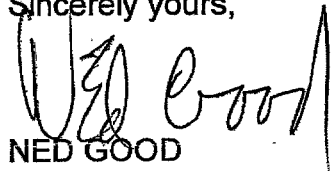
Federal Rules of Civil Procedure 68 dealing with offers to compromise only permits such an offer to be made by the defendant. Since 1971 California state court statute CCP §998 has permitted the offer to compromise to be made by plaintiff or defendant. This California rule has worked well. It encourages earlier disposition of cases thereby reducing the pressures of the trial calendars for all judges.

There is nothing unfair about permitting the plaintiff to have equal rights with defendants.

I have written to the Federal Courts on this subject before but my request unfortunately appears to have fallen on deaf ears. Hopefully someone will listen to this request and take action to update the Federal Rules.

Thank you for considering this request.

Sincerely yours,



NED GOOD
NGM

cc: LA Daily Journal
ATLA

Library References

6 Witkin, Procedure (4th ed) Prov Rem § 42.

CHAPTER 3. OFFERS BY A PARTY TO COMPROMISE

Section

998. Withholding or augmenting costs following rejection or acceptance of offer to allow judgment.

§ 998. Withholding or augmenting costs following rejection or acceptance of offer to allow judgment

(a) The costs allowed under Sections 1031 and 1032 shall be withheld or augmented as provided in this section.

(b) Not less than 10 days prior to commencement of trial or arbitration (as provided in Section 1281 or 1295) of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time.

(1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly. In the case of an arbitration, the offer with proof of acceptance shall be filed with the arbitrator or arbitrators who shall promptly render an award accordingly.

(2) If the offer is not accepted prior to trial or arbitration, within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial or arbitration.

(3) For purposes of this subdivision, a trial or arbitration shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, and if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(c)(1) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant.

(2)(A) In determining whether the plaintiff obtains a more favorable judgment, the court or arbitrator shall exclude the postoffer costs.

(B) It is the intent of the Legislature in enacting subparagraph (A) to supersede the holding in Encinitas Plaza Real v. Knight, 209 Cal.App.3d 996, that attorney's fees awarded to the prevailing party were not costs for purposes of this section but were part of the judgment.

(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the plaintiff, in addition to plaintiff's costs.

(e) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the

costs under this section, from the time of the offer, shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly.

(f) Police officers shall be deemed to be expert witnesses for the purposes of this section; plaintiff includes a cross-complainant and defendant includes a cross-defendant. Any judgment or award entered pursuant to this section shall be deemed to be a compromise settlement.

(g) This chapter does not apply to either of the following:

(1) An offer that is made by a plaintiff in an eminent domain action.

(2) Any enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, acting as a public prosecutor.

(h) The costs for services of expert witnesses for trial under subdivisions (c) and (d) shall not exceed those specified in Section 68092.5 of the Government Code.

(i) This section shall not apply to labor arbitrations filed pursuant to memoranda of understanding under the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code). (Added by Stats.1971, c. 1679, p. 3605, § 3. Amended by Stats.1977, c. 458, p. 1513, § 1; Stats.1986, c. 540, § 14; Stats.1987, c. 1080, § 8; Stats.1994, c. 332 (S.B.1324), § 1; Stats.1997, c. 892 (S.B.73), § 1; Stats.1999, c. 353 (S.B.1161), § 1; Stats.2001, c. 153 (A.B.732), § 1.)

Library References

10 Witkin, Summary (9th ed) P & C § 167.

1 Witkin, Summary (9th ed) Contracts § 751.

3 Witkin, Summary (9th ed) Sales § 308.

5 Witkin, Summary (9th ed) Torts § 57.

6 Witkin, Summary (9th ed) Torts §§ 1167, 1399, 1400, 1462, 1172B, 1400A.

8 Witkin, Summary (9th ed) Const Law §§ 1053, 1062.

6 Witkin, Procedure (4th ed) PWT §§ 25, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 476, 560, 564, 579, 580, 85A, 86A.

7 Witkin, Procedure (4th ed) Judgm §§ 111, 112, 113, 129, 158, 185, 201, 263, 315, 377.

8 Witkin, Procedure (4th ed) Attack Judgm Trial Court § 48.

9 Witkin, Procedure (4th ed) Appeal §§ 17, 57, 126, 142, 151, 238, 239, 245.

CHAPTER 4. MOTIONS AND ORDERS

Section

1003. Order and motion defined.

1004. Motions; court in which made.

1005. Written notice for motions; service and filing of moving and supporting papers.

1005.5. Making and pendency of motion.

1006. Transfer of motion or order to show cause.

1006.5. Appearance of counsel by telephone; standard of judicial administration; incorporation by superior courts in local rules.

1008. Application to reconsider and modify or revoke prior order; affidavit; noncompliance; revocation of order; contempt.

§ 1003. Order and motion defined

Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion. (Enacted 1872.