Litigating in California State Court, but Not a Local?

Plan for the Procedural Distinctions—Pleading and Motion Practice

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This is the third in Snell & Wilmer's series, "Welcome to California Business Litigation." California business litigation differs substantially from business litigation in most other parts of the United States, particularly for those used to dealing with Federal Rules-based civil procedures. California has various statutory regimes—among others, the Code of Civil Procedure, the Business & Professions Code, and the Evidence Code—of which businesses litigating in California must be aware in order to optimize their litigation outcomes.

In this series of articles, Snell & Wilmer lawyers familiar with both California and non-California business litigation practices will share a series of tips—both procedural and substantive—that in-house counsel may find useful in navigating the shoals of California business litigation.

Introduction

Due in large part to the California Code of Civil Procedure that *predates* the Federal Rules of Civil Procedure, a civil lawsuit may progress differently in California state courts, i.e., California superior courts, than in other jurisdictions that are based, procedurally, on the federal rules. The differences between California state court civil litigation and federal rules-based jurisdictions can even be seen in some instances in the federal courts in California, as some of the local rules of these federal courts are similar to procedures of the California Code of Civil Procedure.

Potential litigants with knowledge or experience founded upon federal rules, or federal rules-like procedures, should be aware of these differences to allow them to plan for the litigation and prevent surprise. This installment of the "Welcome to California Business Litigation" series provides a brief overview of some of the biggest differences in the handling of pleading and motion practice. The next installment will focus on important distinctions in discovery.

Background

More than 60 years before the adoption of the Federal Rules of Civil Procedure, California enacted the Code of Civil Procedure in 1872. The California Code of Civil Procedure is expansive and specifically addresses many more procedural events than the Federal Rules of Civil Procedure. Compared to the 82 Federal Rules of Civil Procedure, there are more than 2,000 sections—plus more subsections—of the California Code of Civil Procedure. There are also hundreds of additional provisions in the California Rules of Court, which augment some of the more general sections of the California Code of Civil Procedure.[1] In addition,

1 For example, California Code of Civil Procedure section 437c outlines summary judgment procedures, including

individual California Superior Courts of each California county have their own county or local rules, and judges may have their own "local local" rules and standing orders.[2]

Initial Case and Pleading Considerations

Civil procedural differences between California state court and federal rules-based courts manifest themselves from the beginning of the lawsuit: Any party to a lawsuit in state court may make a peremptory challenge of the assigned judge by making a declaration that the judge is prejudiced against the party or its attorney.[3]

A defendant's options for responding to the initial pleading also are different in California state court. In federal court, a defendant to a weak claim may stand a chance of disposing of the lawsuit with a motion to dismiss under the *Twombly/Iqbal* standard,[4] which requires the plaintiff to plead plausible facts to support a claim. Faced with the same circumstances in a California state court, however, a defendant would file a *demurrer* rather than a motion to dismiss, and would have to accept the complaint's allegations at face value without applying a plausibility standard.[5] Moreover, California state courts liberally allow amendment following a sustained demurrer, even if the plaintiff already had a prior opportunity to amend his complaint.[6] If the defendant declines to demur and wishes to answer the complaint, a general denial is permitted if the complaint is unverified. This means the defendant need not go through the complaint to admit or deny each paragraph, but rather may deny the material allegations of the complaint generally and assert affirmative defenses.

Additionally, the California Code of Civil Procedure liberally permits the naming of anonymous "Doe defendants," for whom real parties may be substituted later, allowing the complaint to relate back to the time of the original complaint, thereby evading—or implementing, depending on one's view—the statute of limitations.[7]

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the requirement that the moving party submit a separate statement of undisputed material facts, while California Rule of Court 3.1350(h) adds details to the format of that required separate statement.

2 It should be noted that the California procedural rules are not limited to the California Code of Civil Procedure or the California Rules of Court. For example, the Trial Court Delay Reduction Act (affecting the setting of trial dates) is found in sections 68600-68620 of the California Government Code, and the discoverability of a defendant's financial condition for punitive damages purposes is controlled by section 3295 of the California Civil Code. Evidentiary matters are governed by the separate California Evidence Code.

3 Cal. Code Civ. Proc. § 170.6.

4 *See* Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556-57 (2007) (holding that plaintiffs in antitrust actions must plead "plausible grounds" that defendants actually made an agreement to restrain trade rather than merely engaging in parallel conduct); Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (holding that the *Twombly* standard applies to all claims for relief, and that in determining the sufficiency of a complaint, district courts should disregard legal conclusions and instead determine whether the factual allegations "plausibly give rise to an entitlement for relief").

5 *See, e.g.*, Del E. Webb Corp. v. Structural Materials Co., 123 Cal. App. 3d 593, 604 (1981) ("As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be.").

6 *See, e.g.*, Angie M. v. Superior Court, 37 Cal. App. 4th 1217, 1227 (1995) ("Liberality in permitting amendment is the rule ….").

7 Cal. Code Civ. Proc. § 474; *see also* Bernson v. Browning-Ferris Indus., 7 Cal. 4th 926, 932 (1994) (noting that Doe pleading "effectively enlarg[es] the statute of limitations period").

Law and Motion Practice

A significant difference between civil motion practice in California and in many federal rules-based jurisdictions is the method by which opposition and reply deadlines are set. Rather than an opposition being due, for example, 14 days after a motion's filing, the California Code of Civil Procedure sets the deadline in relation to the hearing date chosen by the moving party—ordinarily, nine court days before the hearing.[8] The length of time between the filing of moving papers and the deadline for the opposition is controlled, in turn, by a minimum notice period. Most motion papers must be accompanied by a notice of motion identifying a hearing date at least 16 court days in the future.[9] In some cases, however, the notice period may be shorter or longer. For example, a summary judgment motion's hearing must be noticed for a date at least 75 days after the service of the motion papers.[10] This should be contrasted to jurisdictions that set deadlines based on the date a motion is filed and often do not set hearings (if at all) until the motion is fully briefed.

Parties may bring civil motions in California state court on an accelerated basis as "*ex parte* applications," such as when there are exceptional circumstances like the possibility of irreparable harm in the absence of immediate relief. On an *ex parte* application in California state court, the moving party must only provide notice to other parties no later than 10:00 a.m. on the day before the hearing and may provide the briefing on the application "at the first reasonable opportunity."[11]

California superior courts may have local rules that vary the motion procedures. For example, some California state courts issue a written tentative ruling a day or two before the hearing. Some of these courts have adopted a procedure so that the tentative ruling will become the order of the court without a hearing unless a party specifically gives notice of intent to appear at the hearing after the tentative ruling.[12]

Summary Judgment Practice

Summary judgment procedures can differ significantly between California state court and federal rules-based jurisdictions.[13]

The initial difference, as noted above, is that there is a long notice period for summary judgment motions—the motion papers must be served at least 75 days before the hearing.[14] Opposition papers, however, are due only

8 Cal. Code Civ. Proc. § 1005(b).

9 *Id.*

10 Cal. Code Civ. Proc. § 437c(a).

11 Cal. Rule of Court, 3.1203(a), 3.1206. A similar procedure is used in California federal court, in the Central District of California, as that court's local rule 7-19 borrows some of the California Rules of Court's "ex parte application" procedures (Cal. Rule of Court 3.1200 to 3.1207) for emergency motions. Another example of California state court rules influencing federal court local rules is in the procedure for noticing motions: three of the four federal district courts in California have enacted local rules calculating response deadlines backwards from hearing dates, instead of calculating response deadlines from the filing date of the motion. Central District of California Local Rule 7-4, -9, -10; Southern District of California Civil Rule 7.1(e); Eastern District of California Rule 230(c), (d). The Northern District of California sets deadlines for oppositions and replies based on the date the motion was filed. Northern District of California Civil Local Rule 7-3.

12 *E.g.*, Santa Barbara County Superior Court Local Rule 1301(b).

13 *See supra* n. 10.

14 Cal. Code Civ. Proc. § 437c(a).

14 days before the hearing.[15] This hearing (and corresponding opposition deadline) may be continued by the court to allow the party opposing the motion additional time to conduct discovery in an effort to uncover facts that could defeat the motion.[16]

A second significant difference is that the California Code of Civil Procedure leaves less room for partial resolution of a case on summary judgment than do the federal rules. In federal court, a judge faced with a motion for summary judgment may deny the motion, yet still enter an order declaring certain material facts as established.[17] In California state court, however, the judge may enter a *summary adjudication* on less than the entire pleading, but only on "one or more causes of action …, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty."[18] The California state courts may not otherwise resolve individual factual issues unless they completely dispose of an entire cause of action, affirmative defense, or issue of duty.[19]

Conclusion

This article only briefly touches on some of the unique pre-trial procedures of California's state courts, as contrasted with federal rules-based jurisdictions. Anyone litigating in California from a knowledge or experience base built upon application of the federal rules, or federal rules-like rules of the courts of other states, would be well advised to involve counsel with knowledge and experience in these, and other, procedural differences.

15 Cal. Code Civ. Proc. § 437c(b)(2).

16 *See, e.g.,* Cal. Code Civ. Proc. § 437c(h) ("If it appears … that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance …."); Bahl v. Bank of Am., 89 Cal. App. 4th 389, 395 (2001) (noting "little room for doubt that such continuances are to be liberally granted").

17 Fed. R. Civ. P. 56(g).

18 Cal. Code Civ. Proc. § 437c(f)(1).

19 *See* McCaskey v. Cal. Stat Auto Ass'n, 189 Cal. App. 4th 947, 975 (2010) ("If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered.").

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