Welcome to California Business Litigation #5

Litigating in the Central District of California, but Not a Local? Plan for the Procedural Distinctions

Marjorie A. Witter and Andrew F. Halaby | August 5, 2013

This is the fifth 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 exhaustive 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

The United States District Court for the Central District of California ("Central District") maintains one of the busiest civil dockets in the United States.[1] The judges and their staff expect lawyers appearing in their business cases to know their stuff. We address here several distinguishing features of local practice that may catch off guard business litigators used to practicing in other courts.

Briefing Schedule

As in California Superior Court, the briefing schedule on most pretrial motions—including motions to dismiss and motions for summary judgment—is set not by the filing date, but by the hearing date. The response and reply deadlines are calculated backward from that hearing date,[2] which typically is procured by consulting the particular district judge's web page (more on these below) shortly before filing. The hearing date is, technically, the date upon which the court will decide the motion.

One effect of this system is to slightly complicate extensions of response and reply time for professional courtesy. Absent a resetting of the hearing date, granting an extension of time to respond cuts into the time available to prepare the reply. Absent an order to the contrary, the

1 According to Federal Court Management Statistics, available at *uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-march-2013.aspx*, the Central District was, as of March 2013, the seventh-busiest federal district court as measured in civil filings per judgeship, and the third-ranked district court as measured in time from filing to disposition of civil cases.

2 *See* L.R. 7-9; L.R. 7-10.

deadline to reply cannot be extended to less than 14 days before the hearing. As a practical matter, therefore, counsel seeking an extension of time to respond or reply typically will require that the hearing date be reset. Stipulations to do so often are granted, particularly where the hearing is delayed only by a week or two. But not always—particularly where the putative later hearing date would fall past the deadline for such motions imposed by the scheduling order, or where the court's calendar that day is already full.

The Pervasive Meet and Confer Requirement

The Central District requires a meet and confer with opposing counsel before filing a motion. L.R. 7-3 requires the moving party to contact opposing counsel to discuss the substance of the contemplated motion and any potential resolution. The conference must take place at least seven days prior to filing the motion, and the motion must include a certification that the parties met and conferred.[3] Failure to strictly comply with L.R. 7-3 can prove fatal; several Central District judges have summarily denied motions on that basis.[4]

Length of Motions and Other Formatting Nuances

Memoranda of points and authorities are limited to 25 pages, excluding indices and exhibits.[5] This page limit applies not only to responses, but also to replies—absent a court order to the contrary. Filings must be in 14-point font or greater (if proportionally spaced) or, if in monospaced face, contain no more than 10½ characters per inch.[6] Block quotations must be indented no less than five and no more than 20 spaces.[7]

Individual Judge Procedures

Each district judge and each magistrate judge has a page on the Central District's website (*court.cacd.uscourts.gov/CACD/JudgeReq.nsf/*) that presents that judge's specific procedural and scheduling requirements. These pages can contain critical information on, among other things, open hearing dates, whether and when the judge issues tentative rulings, and whether the judge's law clerks or secretaries may be contacted. Additional procedures may also be found in the standing order and other orders available for download on some judges' pages.

3 L.R. 7-3

4 *See Singer v. Live Nation Worldwide*, No. SACV 11-0427 DOC (MLGx), 2012 WL 123146, *2 (C.D. Cal. Jan. 13, 2012) (Carter, D.J.) (denying motion for summary judgment for failure to comply with L.R. 7-3); *Alcatel-Lucent USA v. Dugdale Communications*, No. CV 09-2140 PSG (JCx), 2009 WL 3346784, *1-*2 (C.D. Cal. Oct. 13, 2009) (Gutierrez, D.J.) (denying motion to dismiss for lack of service of process for failure to comply with L.R. 7-3); *Valdovinos v. County of Los Angeles*, No. CV 06-7580 JVS (SHx), 2008 WL 2872648, *2 (C.D. Cal. Jul. 23, 2008) (Selna, D.J.) (denying motions in limine for "gross failure to comply" with L.R. 7-3); *Gonzales v. Valenzuela*, CV No. 00-9892 ABC (MANx), 2002 WL 34700599, *1 (C.D. Cal. Oct. 7, 2002) (Collins, D.J.) (striking plaintiff's motions in limine for failure to comply with L.R. 7-3); *Deutsche Int'l 1 v. E1 Trade Int'l*, No. CV 03-1663 GPS (SSx), 2006 WL 6106246, *1 (C.D. Cal. Jan. 4, 2006) (Schiavelli, D.J.) (denying motion for summary judgment without prejudice due to failure to comply with L.R. 7-3).

5 L.R. 11-6.

6 L.R. 11-3.1.1.

7 L.R. 11-3.7.

Discovery Motions: The Joint Stipulation

The Central District requires litigants to complete an unusual and elaborate procedure before it will hear a discovery motion. This procedure, set forth in L.R. 37-1 through 37-4, requires the parties to file a "joint stipulation" in place of a motion, as well as to fulfill a number of corresponding pre-filing requirements.

Specifically, a moving party must first send a letter to the opposing party that identifies each issue and discovery request in dispute and states the moving party's position, supported by any legal authority which the moving party believes is dispositive of the dispute. The letter must also include the terms of the discovery order sought.[8]

Within 10 days of service of the letter, counsel for the parties must meet and confer. If both counsel are located in the same county of the Central District, the Central District requires that the conference take place in person. At the meet and confer, counsel must make a good faith effort to eliminate entirely the necessity for hearing the motion, and if not that, as many disputes as possible.[9]

Following the meet and confer, the parties must prepare a joint stipulation in place of a motion.[10] The joint stipulation is a single document, signed by both parties, that contains the entirety of the discovery request in dispute and insufficient response thereto, and each party's introductory statement, contentions, evidence, and points and authorities.[11] The parties must also state how each proposed to resolve the dispute over each issue at the conference of counsel.[12] The joint stipulation must be prepared and served as required by L.R. 37-2.2.[13]

The hearing will take place no less than 21 days following the filing of the joint stipulation.[14] Each party may submit a supplemental memorandum, not to exceed five pages, 14 days prior to the hearing.[15] No other supplemental memorandum of points and authorities may be filed by either party.[16]

Penalties for failing to comply with the procedures and timelines set forth in the Local Rules are severe. Central District judges often have refused to consider discovery motions where the moving party failed to certify that the parties had met and conferred prior to filing the joint stipulation, and where the moving party filed a motion that was not in the form of a joint stipulation.[17] Litigants who wish

8 L.R. 37-1.

9 *Id.*

10 L.R. 37-2, 37-2.1.

11 L.R. 37-2.1.

12 *Id.*

13 Under L.R. 37-2.2, the moving party prepares and serves its portions of the joint stipulation, together with all declarations and exhibits to be offered in support. Once served, the opposing party has seven days to prepare its portions. The moving party then adds the opposing party's portions to the stipulation and provides the final draft for opposing counsel's signature. The opposing party must sign and return the final stipulation to the moving party no later than the end of the next business day.

14 L.R. 37-3.

15 L.R. 37-2.3.

16 *Id.*

17 *See, e.g., Cavanaugh v. Southern California Permanente Medical Group, Inc.*, 583 F. Supp. 2d 1109, 1139-40 (C.D. Cal. 2008) (Wu, D.J.) (denying motion in part based on

to bring a discovery motion should carefully follow L.R. 37-1 to 37-4 and plan ahead for the lengthy pre-filing requirements to optimize their chances for success.

Summary Judgment Requirements

The Central District requires, among other things, that any party filing a motion for summary judgment (or motion for partial summary judgment) lodge a proposed "Statement of Uncontroverted Facts and Conclusions of Law."[18] These statements conventionally take the form of a two-column table, with the movant's facts presented, one in each row, on the left. The respondent then, typically, satisfies its requirement to file a "Statement of Genuine Disputes"[19] by replicating the movant's table, and adding controverting factual information in the right-hand cell of each row containing the disputed factual matter.

Taxable Costs

In the Central District, applications to tax costs are governed not only by the general federal statute, 28 U.S.C. § 1920, its more specific counterparts,[20] and Fed. R. Civ. P. 54(d)(1), but also by L.R. 54-3. The rule provides more granular detail than the statutes, particularly as to recovery of costs for "Certification, Exemplification and Reproduction of Documents,"[21] a rule which, with its statutory counterpart,[22] has been held to include electronic discovery costs.[23]

Cost taxation proceedings can be speedy. Objections to the bill of costs are due no later than seven days before the cost application hearing date, and a reply may be filed no later than three days before the hearing date.[24]

Frequent Local Rule Revisions

To a practitioner new to the Central District, or even to those familiar, it is important to note the frequency with which the Central District revises its Local Rules. Although these amendments may be minor, the Local Rules generally are revised twice a year, on June 1 and December 1. The most recent set of revisions renumbered certain rules and addressed the circumstances under which *pro se* litigants may be served via the CM-ECF system, among other changes. Public notice of upcoming rules changes is posted to the Central District's website approximately 30 days in advance of the June and December dates. See *cacd.uscourts.gov/court-procedures/local-rules* for more information.

moving party's failure to file joint stipulation and meet and confer); *So v. Land Base, LLC*, No. CV 08-03336 DDP (AGRx), 2009 WL 2407954, *4 (C.D. Cal. Aug. 4, 2009) (Pregerson, D.J.) (denying motion where there was no evidence that moving party attempted to meet and confer prior to filing).

18 L.R. 56-1.

19 L.R. 56-2.

20 *See, e.g.*, 28 U.S.C. §§ 1921-1923.

21 L.R. 54-3.10.

22 28 U.S.C. § 1920(4).

23 *See, e.g.*, *Tibble v. Edison Int'l*, No. CV 07-5359 SVW (AGRx), 2001 WL 3759927, at *7 (C.D. Cal. Aug. 22, 2011); *In re Katz Interactive Call Processing Patent Litig.*, 07-ML-01816-B-RGK, 2009 WL 8635997, at *1 (C.D. Cal. Sept. 8, 2009).

24 L.R. 54-6.

Conclusion

As should be readily apparent, practicing business litigation in the Central District is in many ways different than practicing elsewhere. Hiring the right local counsel can, of course, help avoid pitfalls. But since the degree of dependence upon local counsel varies from lead counsel to lead counsel, and matter to matter, we believe both lead counsel and in-house counsel will benefit from understanding that the Central District's local rules can make a material difference in how to litigate the case. The foregoing features of Central District practice help explain why.

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Marjorie A. Witter

Marjorie, an associate in Snell & Wilmer's Los Angeles office, focuses her practice on intellectual property litigation. She has represented companies before several federal district courts, the Trademark Trial and Appeal Board, and the Federal Circuit Court of Appeals.

213.929.2639 | mwitter@swlaw.com

Andrew F. Halaby

Andy, a partner in Snell & Wilmer's Phoenix office, focuses his practice on intellectual property litigation and professional responsibility matters. He is admitted to practice in California as well as the United States Patent & Trademark Office.

602.382.6277 | ahalaby@swlaw.com