



## Revised California Rules Intended to Streamline Demurrer Process With New Meet-And-Confer Requirements

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California courts are tired of hearing your demurrers, and now the state has done something about it. Code of Civil Procedure Section 430.41, which went into effect on January 1, 2016, now requires a meet-and-confer process before a demurrer is filed.

The purpose of these requirements is to encourage parties to cooperate with each other to resolve their demurrer objections out of court. As the author of the bill enacting the changes stated, "some attorneys fail to make common sense, good-faith efforts to resolve conflicts and work out pre-litigation issues, instead choosing to take most or all of the 30 days of time allowed for filing an amended complaint immediately prior to the demurrer hearing, thus wasting court resources." (California Committee Report, 2015 CA S.B. 383 (Sept. 4, 2015).)

The changes are also intended to reduce the cycle where the plaintiff files a complaint, the defendant demurs, the court sustains with leave to amend, the plaintiff files an amended complaint, the defendant demurs again, the court sustains with leave to amend again, which may continue until the party bringing successive demurrers relents or the court denies a demurrer.

Under the new rule, "the demurring party must meet and confer in person or by telephone with the party who filed the pleading" and identify with legal support the basis of the perceived deficiencies. (Civ. Proc. Section 430.41(a), (a)(1).) The non-demurring party then must respond with legal support of why its pleading is legally sufficient. (Id. at (a)(1).)

The meet-and-confer must take place at least five days before the responsive pleading is due. (Section 430.41(a)(2).) If a live-time conference does not take place in time, the demurring party can file a declaration saying it made a good faith effort to meet and confer and why it did not happen, and it will receive an automatic 30-day extension to respond. (Id.)

Regardless of its meet-and-confer efforts, the demurring party must file a declaration with its demurrer saying that it met and conferred and was unable to resolve all of its objections or that the non-demurring party failed to meet and confer with it. (Section 430.41(a)(3).)

The Code of Civil Procedure specifically states, however, that any finding that the meet-and-confer process was insufficient "shall not be grounds to overrule or sustain a demurrer." (Section 430.41(a)(4).) But any party dissatisfied with the meet-and-confer process might still want to bring its deficiencies to the court's attention.

### **A few other notes on this new rule:**

- If you can demur to a portion of the complaint now, do it or accept that you will not be able to do so if it continues to appear in amended complaint. (Section 430.41(b).)
- If the court sustains a demurrer with leave to amend, it can now order a conference of the parties before an amended complaint is filed. In addition, the court can order a conference *sua sponte*, and a party may also request such a conference. (Id. At (c).)

- Generally, a complaint or cross-complaint shall not be amended more than three times in response to a demurrer, unless the pleading party can argue that additional facts can be pleaded such that there is a reasonable possibility the defect can be cured to state a cause of action. The limit also does not include an amendment made without leave of court pursuant to Civ. Proc. Code Section 472. (*Id.* At (e).)
- Are you a prisoner representing yourself or litigating an unlawful detainer? Then these rules don't apply to you. (*Id.* At (d).)

The state legislature also amended Civ. Proc. Code Section 472, which previously only allowed an amendment of a pleading once as of course before an answer or demurrer is filed, or after the demurrer and before the trial. Now, a party can amend its pleading as of course after a demurrer is filed but before it is heard if the amended pleading is filed and served by the date for filing an opposition to the demurrer. A party may only amend its pleading after that date upon stipulation by the parties under the current rule.

The amendments to both Sections 430.41 and 472 are currently scheduled to sunset on January 1, 2021 in order to allow legislative evaluation of the changes.



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