

Note on the Legal Status and Effect of Rules

California Constitution, article VI, section 6(d), gives the Judicial Council the power to make rules governing the judiciary, provided they are consistent with statute and the Constitution:

To improve the administration of justice the council shall . . . adopt rules for court administration, practice and procedure The rules adopted shall not be inconsistent with statute.

Valid rules bind the courts with the force of statute. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 125; *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1011 [distinguishing between the Judicial Council's *law-making powers* (e.g., adoption of rules), which are binding on courts, versus its *interpretive functions* (e.g., its constructions of statute), which are not]; *In re Richard S.* (1991) 54 Cal.3d 857, 863; cf. *People v. Hall* (1994) 8 Cal.4th 950 [rule on sentencing contrary to statute and so void]; *In re Kler* (2010) 188 Cal.App.4th 1399, 1403-1404 [rule contrary to Constitution and thus invalid].)

The courts (especially the Supreme Court in its supervisory role over the judicial system) can exercise some vestigial rule-making function by filling in the interstices when the rules are silent. (E.g., *Silverbrand v. County of Los Angeles*, *supra*, 46 Cal.4th 106, 125 [applying prison delivery rule to civil notice of appeal when rules silent on that point]; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1023-1025 [setting case for oral argument is equivalent of issuing order to show cause under former rule 24(a), now 8.490(b)].) But the Judicial Council's law-making authority is primary in this area, and when validly enacted rules have spoken, the courts are bound.

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