

## Reducing the Costs of Civil Litigation

### Local Rules: Should California Standardize Local Rules?

by Debra A. Geiler



#### Introduction

This morning as I entered the library at Hastings, a frenzied local attorney stormed passed me to the reference desk. She shouted in fury, "Do you have the Alameda Court Rules, I need them badly as they are missing from the San Francisco Law Library." The reference librarian directed this young attorney to the reserve stacks. However, before she could get too far, I informed her that I had been looking for them for weeks and that they had been missing from our shelves. She left in a huff.

Well, the fact that the rules are missing from our library is a whole other story. The point here, is that an attorney practicing in an area like San Francisco, or many areas in California, is very likely to find herself confronted by an appearance in another county courtroom and in dire need of accessing the local rules of that courtroom in order to proceed with her case.

An attorney might locate the local rules of a particular court in his county law library or maybe even a local law school library. One could purchase a set from the "Daily Journal Company" for \$74.00 annually for a set, for a smaller court like Alameda, up to \$254 annually for an entire set of Northern California or Southern California local rules. [\[1\]](#) Altogether there are fifteen volumes of these local rules in California covering the fifty-eight county courts.

So what's the problem? If you are confronted with appearing in a court away from home, just get the rules from the library or buy yourself a set. Well, the problem really does not end there. Once one has her hands on one of these local rules sets, how does she find out what it is that she needs to do to properly appear and present a case in a particular court? The answer is really not as easy as one would like to think.

Sometimes there are hundreds of local rules to sift through in a particular court. Sometimes there are fewer than twenty. What accounts for this difference? Is it really necessary to have this many local rules, thousands of pages in fifteen volumes? How much variation is there really among these rules in various jurisdictions? Does California really need local rules anyway?

These issues are addressed by this paper in an effort to look for a practical solution to the ongoing and overwhelming local rules problem in California.

#### The Purpose of Local Rules and How They are Promulgated

## in California.

"Every court in California may make rules for its own government not inconsistent with the law or with the rules adopted and prescribed by the Judicial Council." Witkin Cal. Proc. Courts 142 (1994).

The purpose for adopting local rules is provided by California Code of Civil Procedure 575.1. Sub-part (a) provides: "that the presiding judge of each superior, municipal, and justice court may prepare. . .proposed local rules *designed to expedite and facilitate* the business of the court." Deering's Cal Code Civ. Proc. 571.1(a) (1995) (emphasis added.)

After local rules are proposed, public comment and an official adoption by a majority of judges of a court, copies of the rules and amendments to the rules are filed with the California Judicial Council. [2] The rules are then made available at the office of the county clerk of each county or at the county law library and through publication by the Daily Journal Company. [3]

All the local rules designed to *expedite and facilitate* the business of a particular court are published and available as mandated by statute. So what's the problem?

## Is There a Problem with Local Rules in California?

Many lawyers and judges in California believe that a proliferation of local rules is contributing to the rising costs of civil litigation. This view is shared by many scholars, practitioners and judges, including William Erickson, Deputy Chief Justice of the Colorado Supreme Court.

Justice Erickson, in his article, Reducing Court Costs and Delay: Colorado's Answer to the Local Rules Problem, maintains that most "states and federal courts have adopted systems of procedural rules designed to promote justice through the 'speedy, and inexpensive determination of every action.'" [4] The author contends that this goal has been undercut by individual courts insistence on promulgating an abundance of local court rules. [5] Mr. Justice Erickson asserts that:

"[i]nstead of using their authority to meet truly local needs and fill the interstices within the Federal Rules of Civil Procedure or the state rules of procedure, the courts have insisted on developing detailed codes of local practice that undermine the flexibility needed for individual cases and burden the practicing bar with unnecessary standards." Id. at 493.

This view is widespread. Generally, numerous local rules lead to problems. In California there are thousands of local rules. In Alameda County there are seventeen local rules. In Los Angeles and San Francisco County there are hundreds of local rules. Variations in rules from one court to another present particular problems to attorneys whose practice takes them to court in more than one jurisdiction. The attorney and his client face an increased potential for mistakes, the waste of time and money or even more dire consequences. [6] Each encounter with a local rule is an occasion for a case lost or a malpractice suit.

The obvious answer to this problem is to implement uniform rules. However, in determining whether this is an appropriate process for California, a couple of concerns must be addressed. First, the standardization of court rules necessarily limits the ability of

a locality to respond to a unique local condition. Secondly, uniform court rules infringe upon the inherent power of the courts to provide an efficient processing system under their individual circumstances. Is there a way to accommodate both the need for autonomy and unique local condition and create a system rules which is accessible by practitioners? A possible answer to this question may become apparent in examining the existing local rules system.

## What are the Problems with Local Rules in California?

California makes its local rules available to the public through the county clerk or law library and they are available for purchase from the Daily Journal Company. However, being available does not necessarily mean these rules are functional and useful.

The first problem with the California system of local rules, is that there are thousands of local rules, among the various courts in California. Furthermore, these rules, in printed format, do not include a court's individual rules or policies which relate to the internal management of the court. [7]

In addition to the overwhelming number of local rules, there is no consistent numbering system or common index in the fifteen volumes to facilitate in their use. Needless to say this makes cross-referencing from local court to local court nearly impossible. For example, telephone appearances are governed by California Rules of Court, Rule 298, San Mateo Court Rule 5.2(e)(3), Santa Cruz Court Rule 2.6 and San Francisco Court Rule ?. In the state court rules volume this item is indexed under Appearances, telephone appearances. In San Mateo, this item is indexed under Appearances, telephone appearances. In Santa Cruz, the same thing is true. However, this item is curiously missing from the San Francisco index. Does this mean there is no local rule governing appearances by telephone in San Francisco? Can one simply refer to the state court rule or the California Code of Civil Procedure? No. After a phone call to the filing clerk supervisor, of the Superior Court of San Francisco, I found there was in fact a local rule governing telephone appearances. The rule, in the law and motion court is that a "pink form" must be filed to make this request. What number local rule is this, I curiously asked the clerk? After twenty minutes on hold, he told me he could not find one, nevertheless the "pink form" is required.

The foregoing example is an excellent illustration of the inconsistent numbering and indexing system among the local rules. The index does not always provide the guidance one needs to sift their way through the myriad of local rules. A common sensical search may prove futile, but that does not necessarily mean there is no local rule on a particular matter. However one might be used to accessing a particular rule in their home court, by use of index and particular key words or terms, will not necessarily lead to the variation, if one exists, in another court.

So how does one find the item that is needed? Good question. You might spend hours and hours, as many attorneys do, attempting to make heads or tails of the local rules. Or you might call the clerk at the particular court. But sometimes this effort is ineffective too.

Mary Grace, Reference Librarian in the Maricopa County Court in Arizona, [8] says she has the need to refer to various local rules in California about ten to twelve times a month. Ms. Grace often takes on the task of helping attorneys in her court figure out what they need to properly file and proceed in court in many of southern California's

courtrooms. Ms. Grace has been dealing with this problem for well over thirteen years and while she states that she has become more facile with using the numerous volumes, she regularly has the need to contact a local court for deciphering information.

Ms. Grace has experienced many responses in her contacts with these courts. Some have told her to get the rules herself. This is met with the response "I have the rules in front of me and I still cannot figure it out, can you tell me?" Sometimes the clerk will provide the information, but more often Ms. Grace must speak to a supervisor, who in turn will usually give her the information that she needs, but not necessarily with a citation to a rule number to refer to.

What good is it to have published rules available if they are next to impossible to use? Maybe large law firms with large resources can spend the time and money to figure out what is required by particular local rules. Maybe an attorney who has been practicing for a number of years can figure out the maze. But where does that leave a new practitioner? Usually, the choice is to find out by default. Too much time and effort is required to attempt to figure these rules out.

Notwithstanding, 572, California Code of Civil Procedure mandates compliance with local rules and provides for sanctions in the event of non-compliance. Deering's Cal Code Civ. Proc. 572 (1995). The sanctions could result in a dismissal or judgment by default. *Id.* These are rather significant consequences to be subjected to when it is so difficult to figure out what a court might require in its local rules.

## **What Creates the Need for Thousands of Local Rules?**

California's complex and confusing system of local rules might be a necessary evil if there were strong justifications for it. A local rule is supposed to "promote justice through the speedy and inexpensive determination of every action." [9] Local Rules in California are designed to expedite and facilitate the business of the court. [10]

The purpose of a local rule is to expedite the business of a court by specifically addressing a unique local condition that would otherwise interfere with the efficient management and operation of that court. Such as, the need in a very rural area, to define the hours and days in which certain matters will be heard. [11] Presently, in California the individual court determines what constitutes a condition for which a local rule is needed. [12] And all rules promulgated in compliance with California Rules of Court, Rule 981, which are not in conflict with state law or the rules of the California Judicial Council are authorized.

Are there actually thousands of truly local conditions, that require individual local rules to expedite and facilitate court business? After countless hours of research, I have determined that the answer to this question is probably, no! This conclusion comes through looking at one major issue. That issue is how much variation actually exists in local rules?

There is no question that local rules must in some way allow individual courts to accommodate local conditions which will in turn provide for streamlining the judicial process. But as they exist in California, the excessive number and published format cripples this goal. In addition to the excessive number, inability to cross reference through a consistent numbering system and effective indexing system as discussed

above, it appears that many local rules are not really local rules at all. They are in effect the California rule disguised by a new rule number and maybe some slightly different wording. So while substantial variation exists in the numbering and indexing systems, it is not apparent that there is a substantial variance in the rules themselves.

A brilliant example of this is illustrated in the chart below where California Rule of Court Rule 201, "Form of Papers Presented for Filing" is compared with Mendocino County Rule 7.7, "Form of Documents Presented for Filing" and San Francisco County Rule 6.1.7, "Format of Documents to be Filed."

### **"Forms of Papers Presented for Filing"**

California Rule 201 provides, in part, that "All papers shall be typewritten or printed. . .standard quality not less than 20-pound weight, 8 by 11 inches in size. One side of the paper shall be used. . .and [e]ach paper presented for filing shall contain two pre-punched normal size holes, centered 2-1/2 inches apart, and 5/8 inches from the top of the paper." [13]

Mendocino County, Rule 7.7 provides all documents "shall be clear and legible. . . ." [14]

San Francisco County, Rule 6.1.7 states that "[e]very document presented for filing shall contain (2) pre-punched normal size holes, centered 2 inches apart, and 5/8 inches from the top side of the required 8 " x 11" paper." [15]

Where is the difference? Is it necessary to have a local rule that provides nothing more than the state rule? This illustration may seem insignificant as it pertains only to papers, but many hours curled up with your volumes of rules prove the point that numerous local rules are redundant, restated and renumbered state court rules. If there truly is a difference in a particular rule it is often not apparent. [16]

Many jurisdictions require colored papers for filing of various forms. These requirements may not be found in the local rules, as a court might consider that this is an "internal management" policy exempted by Rule 981. As indicated earlier, San Francisco requires a "pink form" for request for a telephone appearance and this specific is not indicated in the printed rules. Nevertheless, the pink form is a requirement which prevents appearance by telephone unless complied with. (Contra Costa County requires several different colors of forms for various things and they are or are not spelled out in the local rules. See CC rules.)

The local rules system in California is an unnecessarily costly one, resulting in hours and hours of research, sifting through pages and pages of rules, only to produce minor differences in rules among the courts, if any.

### **What are other States doing about this problem?**

The local rules issue has been the hot topic of discussion for a number of years in states all across the nation. The concern that a glut of local rules undermines the efficiency that is intended by having local rules in the first place has been addressed

by two states in particular with very favorable results.

Both Arizona and Colorado [17] have uniform rules systems. A look at the experience in these states can provide a practical solution to the California dilemma.

## Arizona

Arizona has a uniform local rules system. [18] However, Arizona allows for local rules in jurisdictions where a truly local condition creates the need to have a modification in a state rule to allow for efficiency within a local court. This process sounds similar to the California plan, but with very significant differences.

First, Arizona's rules including the state rules and all of the local court rules combined, are contained in ONE volume. This ONE volume also contains an annotated section of the rules.

The process for implementing a local rule is also very similar to California in that under Uniform Rules of Practice of the Superior Court of Arizona, Rule 1(a)(5), the presiding judge "promulgate[s] such local rules as a majority of the judges of the county may approve. . . ." Additionally, in contrast to California, Rule XIV maintains that upon approval of a majority of judges in the county, the local rules "shall be promulgated and published *upon approval of the Chief Justice of the Supreme Court.*" [19]

Does this seem sufficient to account for a fourteen volume difference? Practically speaking, Arizona has devised a method of allowing for local rules, but only to the extent that they are needed for truly local conditions. For example, Navajo County which is 99% reservation land, has eleven local rules. These rules regulate the hours and administrative matters of the court and they are all contained on one page. There is no overlap with the state rules and it is readily apparent to anyone who reviews these rules what is required to appear in this court. [20] Tehema County, one of the largest counties in Arizona, has two local rules. (What these rules cover)

What does this example tell us in California? Arizona's uniform rules system is a uniform rules system. The only local rules which can be approved provide for truly local conditions. There are massive benefits from a system such as this. Indeed, with no overlap in state rule and local rule, one can cut to the chase and see specifically what is required in a particular court, which adds to the uniform state rule.

Access is streamlined by the fact that these succinct rules are available on Lexis. A quick search on Lexis brings up the particular page of rules for a court. This Lexis access is probably not feasible in California unless and until the rules as they exist are overhauled. [21]

Lastly, Arizona does not have a uniform numbering system for its rules. This is not such a problem when rules are streamlined such that each court has succinct rules, usually, all of which are contained on one reference page. However, uniform numbering systems can be very helpful for cross referencing with the state rules or as between various local courts. Colorado has implemented such a system within its

uniform rules plan.

## Colorado

In the early 1980's Colorado overhauled its system of local rules. [22] In a situation similar to that in most states, Colorado was confronted by the problem that each court in every district in the state had their own set of local rules. Also, as exists in California [23], some judges within courts had their own set of local rules. What did Colorado do about this?

Colorado's legislature grants power to the Supreme Court to govern rules of the various courts in the state. As of 1988, the Supreme Court mandated that all preceding local rules be repealed. [24] This repeal was met by a considerable amount of grumbling by many judges in the state who felt that their power to govern their own courts was being stripped. To a certain extent this was probably true, however most judges in the state now acknowledge that the uniform system is more efficient both for practicing attorneys and the judiciary. [25]

Colorado had also considered two other methods for local rules reform. First, it was suggested that the Colorado Rules of Civil Procedure be individually modified to incorporate details found in the local rules throughout the state. [26] This suggestion was unacceptable because it would clearly add unmanageable detail to the existing rules of procedure. [27] The second approach considered was to mandate uniform rules for the lower state trial courts. [28] This approach was not seriously considered because it had been unsuccessfully attempted in the past. [29] The result of these previous attempts did nothing to prevent the courts from amending the suggested uniform local rules as they desired. [30]

Colorado has created a uniform system by reconciling all rules with the state civil procedure rules. [31] The outcome of this is statewide "practice standards" for all courts. [32] Several steps were taken to streamline the judicial process.

First, a uniform numbering system was implemented which followed the state code of civil procedure. Second, to deal with a local condition, a jurisdiction that wants a particular local rule, which is not in conflict with the state rules of civil procedure, must submit the rule to the Supreme Court Rules Committee. If the rule even roughly parallels a state rule it is not allowed as a local rule. Recall, in California that a local rule often is a reworded state rule disguised by a new number and a different wording.

Colorado's system allows for local rules but they must be uniform in number, truly local in meaning, and non-substantive in that they cannot effect the outcome of a case. The system allows for an individual court to determine what hours it will make available for cases to be set by telephone. Likewise, other administrative matters of a court which are allowed only upon approval and promulgation by the Supreme Court.

In both the Arizona and Colorado models a system of statewide rules has been implemented without destroying the ability of an individual court to provide for a truly local condition. What these examples illustrate is that there is no rational explanation for why California should not have a uniform system of local rules.

## Conclusion. What Should California do about Local Rules?

If California is indeed concerned about the high and ever rising costs of civil litigation then a uniform system of local rules must be established.

As discussed the costs are apparent and unjustified. Attorneys spend countless hours attempting to make heads or tails of the existing local rules often to no avail. An attorney will often forego the hours of research required and appear in a court only to find himself unable to file a particular document because it is not the right form or color. Often times this can result in a serious consequence if a statute of limitations is tolled. At the minimum these rules result in a delay or a waste of time, necessary to correct the particular defect. This could be avoided altogether if the rules were clear and concise with no restatement of the state rule. As expressed it is often very difficult to find out how a rule differs from the state rule or a rule you may be used to in your home court.

While it is necessary to provide for local rules for truly local conditions, it is not necessary to have fifteen volumes of rules which are for the most part, redundant restatements of the state rules.

California can take many approaches to this problem. First, the state can continue allowing these redundant rules by rationalizing that there is no apparent harm because a restatement does not conflict with the state rule. However, as illustrated there is tremendous harm to attorneys and clients in fruitlessly attempting to figure them out.

Second, a systematic approach can be taken to implement uniform state rules. The Arizona and Colorado examples provide guidance. A repeal of all local rules can be mandated. A thorough survey of rules can create a uniform system which will eliminate the redundancy in the current system and provide for a comprehensive system of rules that are workable throughout the state.

The individual jurisdictions should be allowed to provide input regarding a particular rule or rules from their jurisdictions that they feel will benefit the statewide system. Quite possibly the use of color coded or blue backed documents, used on a statewide basis, could facilitate a court's ability to access documents.

The structure of the uniform local rules ought to follow a uniform numbering system, maybe that of the CCCP or the current state rules numbering format, so long as there is consistency within the state.

Finally, local rules should be allowed only to accommodate truly local conditions. Where these local rules do exist it must be apparent how it is that they differ from or add to the state rule. In other words, a restatement of the state rule will not be allowed in a local rule. A local rule regarding a particular issue will follow the state numbering format and indicate precisely how it differs or adds. For example, "blue backed documents" [33] will exist under Los Angeles Superior Court *Rule 201, "Forms of Documents for Filing"* as simply "all attorney generated documents shall be blue backed." There could also be a brief explanation of this process, simply stated and without an unnecessary reference or recitation to the state rule.

This process will dramatically streamline the existing system of local rules and get the state back on track to expediting and facilitating the business of the courts, quite possibly eliminating twelve or thirteen of the current volumes of rules. The additional possibilities for access would then be endless, such as, a web site or online availability through Westlaw or Lexis.

It is time to take action. Colorado and Arizona provide practical solutions to this overwhelming problem.

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### Local Rules: Should California Standardize Local Rules?

#### Bibliography

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  2. Deering, California Code of Civil Procedure, 571.1(a) (1995).
  3. Witkin, California Procedure Courts, 142 (1994).
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  5. Neubauer, "Local Rule Mania," California Litigation, volume 3 number 3, Spring 1990.
  6. Day and Tschetter, "The Local Rule Revision Project: The South Dakota Experience," 38 S.D. L. Rev. 500, (1993).
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  8. Lascher, "Uniform Rules are Needed (state court rules vs. local) (California), The Los Angeles Daily Journal, Volume 103, Page 7 (July 11, 1990).
  9. Klein, Chapman and Westby, "The Uniform Rules: What the Bar Thinks (Uniform Rules Survey, Georgia State Bar), Georgia State Bar Journal, Volume 25 (February 1989).
  10. Arizona Rules of Court, Uniform Rules of Practice of the Superior Court of Arizona, Rule I, XIV, (Lexis, 1994).
  11. Colorado Court Rules, Rules of Civil Procedure for Courts of Record in Colorado, Chapter 17A, Practice Standards and Local Court Rules, CRCP 121 (Lexis, 1995).
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## Notes

- [1] Daily Journal Publication Department, Los Angeles, California. ([return to text](#))
- [2] At present, there is no provision for review of proposed local rules by the California Judicial Council or any other entity. As long as local rules do not conflict with the law or rules of the California Judicial Council they are permitted. Thus, as illustrated below, these rules are often redundant restatements of the state rules of court. ([return to text](#))
- [3] California General Rules, Rule 981(d) applies to "every rule, regulation, order, policy, form, or standard of general application adopted by a superior court or municipal court to govern practice and procedure, except on which relates *only* to the *internal management* of the court." California Rules of Court, Rule 981 (1995). (emphasis added.) ([return to text](#))
- [4] 16 U. Mich. J.L. Ref. 493 (1983). ([return to text](#))
- [5] Id. ([return to text](#))
- [6] See Mark A. Neubauer, "Local Rule Mania," California Litigation, vol. 3, no. 3, Spring 1990. See also, Alex Tiffany v. State Farm Mutual Automobile Insurance Company, where the appellate court found that a monetary sanction of \$2,500 was an improper sanction by the trial court. In May of 1990, the trial court imposed the harsh sanction because the defendants failed to comply with a local rule preference involving double spacing versus one and one-half spacing in typewritten memoranda of points and authorities. 14 Cal. App. 4th 1763 (1993). It should be additionally noted that the state rule on this matter allows for one and one-half spaced or double spaced. California Rules of Court, Rule 201(b), Court Rules - Northern California, Volume VI, Daily Journal Company (1995). ([return to text](#))
- [7] See infra. n.2. ([return to text](#))
- [8] Interview, Mary Grace, Reference Librarian, Maricopa County Court, Arizona, November 13, 1995. ([return to text](#))
- [9] Erickson, Reducing Court Costs and Delay: Colorado's Answer to the Local Rules Problem, 16 U. Mich. J.L. Ref. 493 (1983). ([return to text](#))
- [10] At present, there is no provision for review of proposed local rules by the California Judicial Council or any other entity. As long as local rules do not conflict with the law or rules of the California Judicial Council they are permitted. Thus, as illustrated below, these rules are often redundant restatements of the state rules of court. ([return to text](#))
- [11] See Modoc County Superior Court Rules Chapter II, Court Rules - Northern California, Volume III, Daily Journal Company (1995). ([return to text](#))
- [12] Deering's Cal. Code Civ. Proc. 571 (1995). ([return to text](#))
- [13] California Rules of Court, Court Rules - Northern California, Volume VI, Daily Journal Company (1995). ([return to text](#))

[14] Mendocino County Superior Court Rules, Court Rules - Northern California, Volume II, Daily Journal Company (1995). ([return to text](#))

[15] San Francisco County Superior Court Rules, Court Rules - Northern California, Volume IV, Daily Journal Company (1995). ([return to text](#))

[16] Example. The information will be supplemented. ([return to text](#))

[17] Georgia, Maryland, Louisiana and New Jersey also have uniform local rules. ([return to text](#))

[18] Interview, Mary Grace, Reference Librarian, Maricopa County Court, Arizona, November 13, 1995. See also appendix A for comparison of state rule, annotated rule and local court rule. ([return to text](#))

[19] Arizona Rules of Court, Uniform Rules of Practice of the Superior Court, Rule XIV, (Lexis 1994) (emphasis added.) ([return to text](#))

[20] See appendix A. ([return to text](#))

[21] See examples above pertaining to the inability to cross-reference by key word, index or number. ([return to text](#))

[22] Interview, Richard Laugesen, Chairman of Colorado Supreme Court Civil Rules Committee, November 15, 1995. ([return to text](#))

[23] Under Rule 981, courts are not required to publish rules related to administrative matters. ([return to text](#))

[24] Colorado Court Rules, Rules of Civil Procedure for Courts of Record in Colorado, Chapter 17A, Practice Standards and Local Court Rules, Rule 121(a) (Lexis 1995). ([return to text](#))

[25] Supra, n. 22. ([return to text](#))

[26] Erickson, Reducing Court Costs and Delay: Colorado's Answer to the Local Rules Problem, 16 U. Mich. J.L. Ref. 493, 511. ([return to text](#))

[27] Id. ([return to text](#))

[28] Id. ([return to text](#))

[29] Id. ([return to text](#))

[30] Id. ([return to text](#))

[31] Colorado's rules of civil procedure system roughly parallels the Federal Rules of Civil Procedure. ([return to text](#))

[32] Colo. R. Civ. P. 121 (Lexis 1995). ([return to text](#))

[33] Los Angeles requires blue backing. Los Angeles Superior Court Rule 9.2(f) requires that every "Attorney Generated Document" shall be attached to a "blue back" which serves as a document tab. This seems to be a good rule. It makes

identification of documents very easy and in a court as large as Los Angeles maybe  
this rule does indeed serve a truly local condition. ([return to text](#))