

LITIGATION BY THE NUMBERS

January 2021 Update

Enclosed is the 21 two-sided page January 2021 Update to ***Litigation By The Numbers***® (“LBTN”). Key changes included in the Update are highlighted below.

Chapter 1

- **eFiling Process:** C.C.P. § 1010.6 has been revised to: clarify that “electronic filing” is the act of transmission to the court as opposed to including the approval process; change procedure regarding notification of rejection of documents; and extend the statute of limitations for filing complaints and cross-complaints where the eFiling was rejected for failure to comply with rules or pay fees. (Pages 1-25.1 to 1-25.2)
- **Formatting the PDF:** Added: L.A.S.C. will reject eFilings that are not text searchable. (Page 1-25.5)

Chapter 2

- **Electronic Service:** C.R.C., Emergency Rule 12, which required represented parties to accept eService and to eServe upon request, is repealed, and is incorporated in C.C.P. §1010.6. The rule has been deleted from Appendix H, and the C.C.P. change included in the main text, which has been substantially revised. (Pages 2-8 to 2-9)

Chapter 5

- **Cut-Off Dates:** New C.C.P. § 599 automatically extends certain cut-off dates when trials are continued. Added note to see Appendix H for more detail (Page 5-5.1)
- **Remote Depositions:** C.R.C., Emergency Rule 11, which allowed deponents to appear outside the presence of the deposition officer, is repealed, and is incorporated in C.C.P. § 2025.310. It has been deleted from Appendix H and included in the main text. (See Note re Remote Depositions, page 5-7)
- Added more detail, suggestions, and resources re remote depositions (Pages 5-7 through 5-14)

Chapter 6

- Corrected procedure re tentative rulings and added link to L.A.S.C. postings (Page 6-24)
- Updated section re CourtCall/LACourtConnect (Page 6-25.2)

Appendix B

- Updated list of eFiling courts

Appendix E

- Added year 2022

Appendix H

- Added full text of C.C.P. § 599 and repeal date
- Deleted emergency rules incorporated into the text, e.g., Rules 11 and 12, and other information no longer relevant
- Added state and L.A.S.C. resources re COVID-19 changes

* * *

After printing the pages 2-sided, here's how to insert them. (For all insertions, the identical pages are discarded except for Appendix H (discard 5 pages and insert 3 pages).)

TO INSERT	# of sheets	TO INSERT	# of sheets
Title page	1	5-5.1 to 5-5.2	1
v-vi	1	5-7 to 5-14	3
1-11 to 1-12	1	6-23 to 6-24	1
1-17 to 1-18	1	6-25.1 to 6-25.2	1
1-25.1 to 1-25.2	1	8-15 to 8-16	1
1-25.5 to 1-26	1	Appendix B	1
1-49 to 1-50	1	Appendix E	1
2-7 to 2-10	2	Appendix H	3

Thank you for subscribing to the LBTN Update Service. I appreciate your business, and look forward to keeping your copy current.

In the meantime, I sincerely wish you and yours a happy, healthy, and abundant 2021!

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LITIGATION BY THE NUMBERS®

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READ THIS!!!

DISCLAIMERS, IMPORTANT INFORMATION, AND REFERENCES

****PRACTICE DURING THE COVID-19 PANDEMIC****

The COVID-19 pandemic has led to the issuance of numerous emergency orders and rules from the Chief Justice and local courts. Because they are temporary orders, we address them in Appendix “H.” Where emergency orders have been subsumed in the C.C.P., they are incorporated in the text.

CHECK APPENDIX “H” FOR WARNINGS REGARDING CALENDARING, DISCOVERY, AND MOTIONS. BE SURE TO KEEP UP ON THE COVID-19 INFORMATION ON YOUR COURT’S WEBSITE.

The forms and documents used in this book are examples only. You must conform substantive information to your case. **THERE IS NO INTENT TO PROVIDE LEGAL ADVICE IN THIS BOOK. TREATING THE INFORMATION AS LEGAL ADVICE COULD HAVE NEGATIVE CONSEQUENCES.**

Coverage

Litigation By The Numbers® is geared for use in civil lawsuits filed in any California Superior Court (not Federal). **MANY TYPES OF LEGAL ACTIONS HAVE THEIR OWN RULES AND FORMS, e.g., FAMILY LAW, UNLAWFUL DETAINER, WORKPLACE VIOLENCE, DOMESTIC VIOLENCE, etc., WHICH ARE NOT INCLUDED IN THIS BOOK.**

Statewide Codes, Rules, Forms, and Fees

All lawsuits in California are governed by the Code of Civil Procedure (“C.C.P.”) and the California Rules of Court (“C.R.C.”). **WHILE WE REFER TO SEVERAL CODES AND RULES, YOU MUST DETERMINE WHAT IS APPLICABLE TO YOUR CASE.** You can find all of the state codes here: <http://leginfo.legislature.ca.gov/faces/codes.xhtml> and all of the state court rules here: www.courts.ca.gov/rules.

The Judicial Council has developed forms (many mandatory) to use in various circumstances. **WE DO NOT PROVIDE EVERY FORM WHICH MAY BE APPLICABLE TO YOUR CASE. IT IS UP TO YOU TO IDENTIFY THE CURRENT FORMS APPLICABLE TO YOUR CASE.** Judicial Council forms are available for free here: www.courts.ca.gov/forms.

There are many fees which must be paid to the court during the course of a lawsuit. Appendix “F” is an abbreviated list of those fees. The fees are subject to change. The current fee schedule may be found here: <http://www.courts.ca.gov/7646.htm>.

eFiling/eService Codes and Rules

Statewide codes and rules authorize individual courts to adopt local rules allowing or requiring eFiling. You will need to ascertain whether eFiling is allowed or required in your case, and, if you are eFiling, you must follow the applicable rules relating to format of your papers. (See Appendix “B” - “Status of eFiling” chart and “eFiling Checklist.”) Although there

are exemptions, a statewide rule provides that where eFiling is required in an action, eService is also required. *The breadth of this rule is discussed in § 2.3.4.*

Rules relating to signatures on eFiled documents are in flux. While there are circumstances where no signature, or an electronic signature, or a digital signature may be used, because the rules are logistically difficult to implement, we instruct the reader to always sign and retain hard copies of eFiled documents. See “Electronic Signatures” on page 1-25.5.

Local Court Rules, Forms, and Hours

In addition to the statewide rules and forms, individual courts have their own. **CHECK YOUR COURT’S WEBSITE FOR APPLICABLE LOCAL RULES AND FORMS, PARTICULARLY COVID-19 RELATED RULES.** (*Court websites may be accessed here: <https://www.courts.ca.gov/find-my-court.htm?query=browse+courts>.*) We mention several L.A. County (“L.A.S.C.”) rules and forms. L.A.S.C. civil rules may be found here: <http://www.lacourt.org/courtrules/ui/index.aspx?ch=Chap3&ct=TR&tab=2> and forms here: <http://www.lacourt.org/forms/civil>. (Scroll down to “Locally Approved Forms.”) L.A.S.C. has several pages dedicated to COVID-19 emergency measures. The main page may be found here: <http://www.lacourt.org/newsmedia/ui/covid19NewsCenter.aspx>.

FOR HARD COPY FILING: COURTS HAVE THEIR OWN FILING WINDOW AND/OR DROPBOX CUT-OFF TIMES WHICH MAY DEPEND ON THE DAY OF THE WEEK. CHECK YOUR COURT’S WEBSITE FOR CUT-OFF TIMES SO YOU DO NOT MISS A DEADLINE.

Calendaring Deadlines

Deadlines within which to perform various acts are governed by the C.C.P., C.R.C., and local rules. **WE DO NOT PROVIDE EVERY DEADLINE TRIGGERED BY A GIVEN EVENT OR EVERY DEADLINE THAT MAY BE APPLICABLE TO YOUR CASE. ALWAYS CHECK THE CURRENT CODES AND RULES TO DETERMINE WHAT IS APPLICABLE TO YOUR CASE.** We highly recommend using a reliable automated rules-based calendaring program for calendaring the deadlines in your case. ***COVID-19 related orders may affect certain deadlines in your case. See § 2.10 in Appendix “H.”***

Our Update Service

Changes to the C.C.P., the C.R.C., and Judicial Council forms are made every January and July. We keep track of these changes and incorporate them in the book twice a year, sending them to our Update Service subscribers so that their copies remain current. <http://www.litigationbythenumbers.com/update-service>. **EVEN IF YOU SUBSCRIBE TO THE UPDATE SERVICE, ALWAYS CHECK THE APPLICABLE CODES, RULES, AND FORMS TO MAKE SURE YOU ARE RELYING ON THE MOST CURRENT INFORMATION.**

Visit Our Website

Visit www.litigationbythenumbers.com to learn about our “Substantive Companion,” ***California Civil Litigation and Discovery***, which contains more in-depth information about California civil litigation, and about our video, “*Calendaring in State Court: Steps and Traps for the Unwary*.” You’ll also find several articles written by Julie A. Goren on our website.

Feel free to contact us at: 818.787.9799 or info@litigationbythenumbers.com.

The Body

1
2 Defendants. }

1► 3 PLAINTIFF, FRED A. WRONGED, ALLEGES:
4 2► GENERAL ALLEGATIONS APPLICABLE TO
5 ALL CAUSES OF ACTION

3► 6 1. Plaintiff, Fred A. Wronged, is, and at all times material hereto was, a natural person
7 residing in Los Angeles County, California.
8 2. Defendant, James A. Wrongdoer, is, and at all times material hereto was, a natural
9 person residing in Los Angeles County, California.
10 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
11 DOES 1-10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will
12 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
13 informed and believes and thereon alleges that each of the fictitiously named defendants is
14 responsible in some manner for the occurrences herein alleged, and that the Plaintiff's damages as
15 herein alleged were proximately caused by their conduct.

16
17 4► FIRST CAUSE OF ACTION
18 NEGLIGENCE
19 BY PLAINTIFF FRED A. WRONGED AGAINST DEFENDANTS
20 JAMES A. WRONGDOER AND DOES 1-5, INCLUSIVE
21 4. *[The paragraphs of the First Cause of Action would start here, e.g., paragraphs 4-7.]*

22 SECOND CAUSE OF ACTION
23 NEGLIGENCE PER SE
24 BY PLAINTIFF FRED A. WRONGED AGAINST DEFENDANTS
25 JAMES A. WRONGDOER AND DOES 6-10, INCLUSIVE

5► 25 8. Plaintiff incorporates by reference Paragraphs 1 through 3 of the General Allegations
26 and paragraphs 5 through 8 of the First Cause of Action as though fully set forth.
27 ///
28 ///

-2-

COMPLAINT FOR PERSONAL INJURY

§ 1.2.3 The Prayer

The prayer is where the plaintiff states what it is asking the court to do, e.g., grant judgment for plaintiff and order defendant to pay a sum of money.

NOTE: IN ACTIONS TO RECOVER ACTUAL OR PUNITIVE DAMAGES FOR PERSONAL INJURY OR WRONGFUL DEATH, THE AMOUNT DEMANDED IS NOT ALLOWED TO BE STATED IN THE COMPLAINT. (C.C.P. § 425.10) NOTICE OF THE SPECIFIC AMOUNTS CLAIMED IS SET FORTH IN A “STATEMENT OF DAMAGES” (see § 1.5A)

- 1► The word, “WHEREFORE” always begins the prayer and is typed in all caps. The prayer is not a numbered paragraph, instead, each part of the prayer is numbered.
- 2► The prayer for each cause of action is separately stated.
- 3► Each prayer is listed and numbered as shown.

§ 1.2.4 The Date and Signature Lines

Under the prayer are the date line (date the Complaint is signed) and the signature line (signature of attorney). The date line is at the left margin, and the signature line at the right margin. **The next two steps describe the “standard date and signature lines” referred to throughout this book.**

- 4► The month and year are typed. Usually the day is left blank unless you know it will be signed that day.
- 5► For sole practitioners, the signature line is typed as in the example. When an attorney is in a law firm, the signature line is typed in “by-line” form. For example, if Mr. Lawyer were an associate with the firm of “Smith, Jones & Kramer,” his signature line would look like this:

SMITH, JONES & KRAMER

By: _____
JOE LAWYER
Attorney for Plaintiff
FRED A. WRONGED

- The attorney should review the Complaint. If it is going to be eFiled, see “Electronic Signatures” on page 1-25.5. If it is not going to be eFiled, a hard copy must be signed.

The Verification

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES 1➤

I have read the foregoing COMPLAINT FOR PERSONAL INJURY 2➤

_____ and know its
contents.

☐ CHECK APPLICABLE PARAGRAPHS

3➤ ☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

3➤ ☐ I am ☐ an officer ☐ a partner _____ ☐ a _____ of 3➤
3➤ _____

_____ ,
a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

3➤ ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

☐ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

3➤ ☐ I am one of the attorneys for 3➤ _____ , a
party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

4➤ Executed on (date) August 2, 2019 , at Los Angeles , California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5➤ FRED A. WRONGED

Type or Print Name

Signature

§ 1.2.8 “Civil Case Cover Sheet” (Mandatory Judicial Council Form No. CM-010)

This form must be filed with the Complaint in all cases except those filed under the Probate, Family, or Welfare & Institutions Codes. It is only required to be served if the plaintiff indicates on the form that the case is “complex” or that it is a “Rule 3.740 Collections Case.” (C.R.C., Rule 3.220)

- 1➤ In the top box, enter the name of the attorney in all caps, with state bar number, telephone number, address, and, if available, the fax number. After “Attorney For (Name):,” enter the name of the client in all caps.
- 2➤ In the next box, enter the name and address of the court in which the action is being filed.
- 3➤ In the next box, enter in all caps the name of the plaintiff followed by “vs.” and the name of the defendant.
- 4➤ In the title of the form, check the “Unlimited” box or the “Limited” box depending upon whether the amount in controversy exceeds or is less than \$25,000.
 - Do not do anything in the box for “Complex Case Designation.” This box is for other parties who may respond to the filing of your form when they appear. (See Chapter 3, Appearance By Defendant.)
 - Leave the Case Number, Judge, and Department blank.
- 5➤ Item #1 contains a list of types of cases with numerical designations. Check the box for the type of case which best describes your case -- in our case it is “Auto (22).” (Note the new designation for “Rule 3.740 collections” cases.)
- 6➤ At #2, check the first or second box depending on whether the case is or is not a complex case as defined in C.R.C., Rule 3.400. (The characteristics of a complex case are listed in 2a-f of the form.)
- 7➤ At #3, check all of the types of remedies being sought -- in our case, the Complaint seeks only monetary remedies, so only that box is checked.
- 8➤ At #4, insert the number of causes of action contained in the Complaint.
- 9➤ At #5, check the first or second box depending on whether the case is or is not a class action suit.
- 10➤ Enter the date the attorney will sign and the attorney’s name in all caps.
 - The attorney should review the form. If it is going to be eFiled, see “Electronic Signatures” on page 1-25.5. If it is not going to be eFiled, a hard copy must be signed.

[The reverse side of the form, not shown, contains instructions on how to complete the form.]

- 6➤ Check the box which corresponds to the number you circled in Column C, and enter the address/location of the event which is the subject of the action.
- 7➤ Enter the name of the district in which the matter is being filed.
- 8➤ Enter the date you prepare the form. If the Complaint is going to be filed in hard copy, then the Civil Case Cover Sheet Addendum should be printed and signed. If it is going to be eFiled, the date should be entered; it will be “deemed signed” upon eFiling. (C.R.C., Rule 2.257(b)) Although it may be left blank, good practice is to type “/s/” followed by the signer’s name.

§ 1.3 Delivering the Complaint and Accompanying Forms to the Court Clerk

Now that you have prepared the Complaint and accompanying forms, the next step is to get them to the court clerk. The procedure will depend upon whether you are eFiling or you are printing hard copies to deliver to the court in some manner.

EFILING IS MANDATORY IN MANY COURTS, INCLUDING L.A.S.C.

(See Appendix B-1 - “Status of eFiling” chart.)

- If you know or are unsure whether you are eFiling, continue immediately below to § 1.3A. If you know you are not eFiling, skip to § 1.3B.

§ 1.3A eFiling

eFiling in your case could be mandatory, allowed, or unavailable. (See Appendix B-1 - “Status of eFiling” chart.) Although they are encouraged to participate voluntarily, self-represented parties^{2/} are not required to eFile. (C.R.C., Rule 2.253(b)(2)) If you are eFiling, you need to learn the eFiling basics before you begin.

§ 1.3A(1) The Process

eFiling is “the electronic transmission to a court of a document in electronic form.” (C.R.C., Rule 2.250(b)(7)) Usually this is done through an “electronic filing service provider” (“EFSP”), which does the eFiling on the party’s behalf. In some courts, documents are transmitted directly to the court.

Here is what occurs during the eFiling process:

1. The eFiler prepares the document for eFiling (*more detail on this below*) and transmits it to the EFSP or directly to the court in accordance with the applicable

^{2/} C.R.C., Rule 2.250(b)(10) defines a self-represented as a party or other person who is unrepresented in an action by an attorney and does not include an attorney appearing in an action who represents himself or herself.

requirements. If submitted to an EFSP, the EFSP instantly sends the document into the court's case management system. ***A document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day is deemed filed on that court day. Any document that is received electronically on a noncourt day is deemed filed on the next court day.*** (C.C.P. § 1010.6(b)(3)) As noted in C.C.P. § 1010.6(a)(1)(D), “electronic filing” here means the transmission to the court, not the processing and review necessary for the document to be officially filed.

2. Whichever of the EFSP or the court first receives the submission sends the eFiler a confirmation with the date and time of receipt. (C.C.P. § 1010.6(b)(4)(A)) This constitutes “proof of electronic submission.”
3. The clerk reviews the document to determine whether to accept or reject it. (*In L.A.S.C., this could take 24-48 court hours, i.e., it can take several days.*)
4. If the document complies with the filing requirements and required filing fees have been paid, the clerk accepts it for filing, applying a digital stamp to the document indicating the time and date of filing (the time and date the court received it). (*In L.A.S.C. this information will be included in a “filed ribbon” placed at the top of the document.*) The court sends confirmation to the eFiler that it has been filed. (C.C.P. § 1010.6(b)(4)(B)) The notice typically directs the eFiler to a link through which a conformed copy may be downloaded.
5. If the clerk rejects the filing because it does not comply with filing requirements or required filing fees have not been paid, the court sends the eFiler a notice of rejection of electronic filing, indicating the reasons for rejection and indicating the date the court sent the notice. If the EFSP receives this notice, the EFSP sends notice of rejection to the eFiler, indicating the date the EFSP sent the notice. ***(If a complaint or cross-complaint is rejected, the statute of limitations is tolled from the date the court received the document through the later of the date of notice of rejection by the clerk or the EFSP plus one additional day if the errors are corrected. (See C.C.P. § 1010.6(b)(4)(E) for more detail.)***

§ 1.3A(2) Before You Begin

Although there are statewide eFiling statutes and rules (C.C.P. § 1010.6 and C.R.C., Rules 2.250, *et seq.*), local courts decide what *must* and what *may* be eFiled, acceptable format, size of documents, selection of EFSPs, etc. (*See Appendix B-1 - “Status of eFiling” chart listing the eFiling courts, types of actions in which eFiling is allowed or mandated, and authorized EFSP’s.*) To avoid rejection, do the following:

(1) Where you have an option, carefully select your EFSP.

They are not the same. Each has its own website, registration requirements, upload requirements, restrictions, deadlines, and fees. Some offer services that others do not, such as concierge services and free training courses. Choose an EFSP that will guide you through your eFilings until it becomes second nature to you.

document's image," i.e., by using "standard, commercially available optical character recognition ("OCR") software" like Adobe Acrobat. (C.R.C., Rule 2.256(b)(3)) One Legal's Court-Friendly Article can be helpful here.

- ☐ L.A.S.C. requires declarations, proofs of service, and exhibits to be text searchable. (See "L.A.S.C. General Order.") ***The court will reject documents not meeting this requirement.***
- **Redaction of Personal Identifiers and Removal of Metadata:** To protect personal privacy, C.R.C., Rule 1.201 requires parties to exclude or redact from court filings anything but the last four digits of social security and financial account numbers. One Legal's Court-Friendly Article discusses using Adobe Acrobat to redact information and remove it from the document's metadata.
- **Reducing PDF File Size/Optimization:** Each court has its own file size limitations. One Legal's Court-Friendly Article includes a chart with the file size limits in various courts and explains how to reduce file size.
- **Document Security:** PDF security settings can prevent the clerk from opening the document or affixing the filed-endorsed stamp. In either case, your eFiling will be rejected. Avoid this in Adobe Acrobat by clicking "File," "Properties," and "Security." On the Security Method drop down check "No Security."
- **Electronic Signatures:** A document only needs to be signed in some manner if it is signed: (1) under penalty of perjury or (2) by someone not the eFiler. While this sounds simple, it is not. The document itself might not be signed under penalty of perjury, but any attached proof of service must be. A document could have more than one signature, e.g., a motion may include the client's declaration. The eFiler may or might not be a signatory at all. ***For this reason, it is always safest to sign and retain a hard copy of your eFiled documents.*** Here are the rules:
 - ☐ **Signed by the eFiler Not Under Penalty of Perjury:** It is deemed signed by the person who eFiles it; nothing needs to be actually signed. (C.R.C., Rule 2.257(c)(1)) However, it is good practice to enter the date and "/s/" followed by the signer's name.
 - ☐ **Signed Under Penalty of Perjury by the eFiler:** It is deemed signed if the declarant uses an ***electronic signature***. (C.R.C., Rule 2.257(b)(1)) Defined in Rule 2.257(a), this may be a scan/photo of an actual signature. The document is also deemed signed if a hard copy is signed prior to eFiling; by eFiling, the eFiler certifies that it has the original signed document which must be made available for inspection under Rule 2.257(b)(2).
 - ☐ **Signed By Someone Other than the eFiler** - If the signer is not the eFiler or the document includes other signatures, e.g., a stipulation, the document is deemed signed if the signer uses what is essentially a ***digital signature***, verifying the declarant's signature and ensuring that, if the document changes, the electronic signature is invalidated. (Rule 2.257(c)(2)(B)) Digital signatures show the signer's name, email address, and time/date stamp. Alternatively, a hard copy may be signed and retained as described above.

§ 1.3A(4) Creating Your New Case, Uploading Documents, and Authorizing Fees

Once the documents are in the proper format, you need to submit them to your EFSP for eFiling. The exact manner in which you will do so depends on your EFSP and the court you are in, but you will take the following basic steps:

- Choose and create an account with an authorized EFSP or log in to a previously created account.
- Initiate a new case by selecting the court, entering case information such as case type, attorney information, and names of all parties. *Be sure to spell the parties names exactly as they appear in the Complaint and to enter them in the same order that they appear.*
- Select and upload each of the documents to be eFiled. *In L.A.S.C. you need to combine the Civil Case Cover Sheet and the Civil Case Cover Sheet Addendum in one PDF. You would upload the Complaint as the “Lead Document” and the accompanying documents as “Supporting Documents.”*
- Authorize applicable fees, including the filing fee for the Complaint as well as eFiling-related fees charged by the court and by the EFSP.
- Submit the eFiling order.

Assuming you have successfully uploaded the Complaint and accompanying documents, skip to § 1.4 “Filing Complaint/Issuing Summons.” If your eFiling is rejected, you will have to go back to correct the errors and resubmit it.

§ 1.3B Hard Copy Filing

If you are not eFiling the Complaint and accompanying documents, you’ll need to deliver them to the court clerk in another manner. The first step is to prepare the package.

§ 1.3B(1) Preparing the Package

- Make two copies of the Complaint and accompanying forms. If the Complaint is lengthy, you might want to simply make a copy of the face page of the Complaint instead of the entire document.
- Put one complete copy in the file.
- 2-hole punch the Complaint and all original forms, centered at the top, 2½” apart, 5/8” from the top. (C.R.C., Rule 2.115).
- Clip together the original and one copy of the Complaint and accompanying forms.

- 1➤ Enter the short title of the action, i.e., the last name of the plaintiff vs. the last name of the defendant, and the case number.
- 2➤ State the facts showing that service cannot be effected by any means other than publication. If service cannot be made by a means other than publication because the defendant's address is unknown to the plaintiff, you must detail the efforts made to locate an address for the defendant. If service cannot be made for other reasons, e.g., the defendant is evading service, then detail the efforts made to serve the defendant.
- 3➤ Enter the date and city where the form will be signed by the attorney.
- 4➤ Enter the attorney's name in all caps.
- The declaration on the bottom need be completed only if the Complaint was not verified. If necessary, fill in the blanks as follows:
 - 5➤ Plaintiff's name in all caps
 - 6➤ Preparing attorney's name in all caps
 - 7➤ Defendant's name in all caps
 - 8➤ Date the declaration will be signed and city where the declaration will be signed
 - 9➤ Plaintiff's name in all caps above "Print Name of Declarant"
- The attorney and the plaintiff, if applicable, should review the form. If it is going to be eFiled, see "Electronic Signatures - Signed Under Penalty of Perjury" on page 1-25.5. Note that because the plaintiff is not the eFiler, the plaintiff's electronic signature must satisfy the specific requirements of the rule. If it is not going to be eFiled, the hard copy must be signed.

“Order for Publication” (L.A. County Superior Court Form No. LACIV 145)

- 1➤ Complete the top portion of the form exactly as you completed the Application.
- 2➤ Enter the defendant’s name in all caps.
- 3➤ Enter the name of the newspaper in which the Summons will be published. See Step 7 of the Application for Publication for this information.
- 4➤ Enter the city where the newspaper will be published.
- Leave the rest of the form blank.

Once the Application is completed and signed and the Order is completed, both forms must be filed with the court with the applicable fee, and the Order must be signed by the judge.

§2.3.3 Service by Fax

If there is insufficient time to serve by mail, then service by fax might be an option, but *only if the recipient has agreed to accept service by fax*. (C.R.C., Rule 2.306(a)(1)) The extensions of time for service by fax are the same as those for overnight delivery or express mail.

Extensions for Service by Fax

Code Section	Extension
C.C.P. §1013 ^{8/} & § 437c	two <i>court</i> days
C.C.P. § 1005(b) - Regular motions only	two <i>calendar</i> days

C.R.C., Rule 2.306 contains several provisions relating to fax service. For example:

- Fax service is only permitted if the parties agree, and a written confirmation of that agreement is made. (C.R.C., Rule 2.306(a)(1))
- The fax is to be sent to the fax number indicated in the last document filed and served by the recipient. (C.R.C., Rule 2.306(a)(2))
- Service by fax is deemed complete upon receipt of the entire document by the receiving fax machine. Service after 5:00 p.m. is deemed to occur on the next *court* day. (C.R.C., Rule 2.306(g))
- A copy of the successful transmission report must be attached to the proof of service.

Before serving by fax, know whether to add *court* days or *calendar* days, and make sure you have enough time as well as an agreement to do so!

§2.3.4 Electronic service

Electronic service or eService may be done by: (1) attaching the document to an email (“electronic transmission”), or (2) emailing a hyperlink at which the document may be viewed and downloaded (“electronic notification”). In either case, the email is sent to the electronic service address at which the recipient has authorized eService.^{9/} Unlike other service methods, eService may be performed directly by a party (C.C.P. § 1010.6(a)(1)(A)).

^{8/} Remember that the C.C.P. § 1013 extensions do not apply to all deadlines. See footnote 3.

^{9/} A party whose electronic service address changes must promptly eFile and eServe a notice of change of address; until then, the prior address is presumed valid. (C.R.C., Rule 2.251(g)) [Judicial Council Form No. EFS-010 (not shown) may be used for this purpose.] Parties must also notify their EFSP of their electronic service address and any changes to it. (C.R.C., Rule 2.256(a)(6))

eService is deemed complete when the electronic transmission or electronic notification is sent. (C.R.C., Rule 2.251(i)) ***eService that occurs between 12:00 a.m. and 11:59:59 p.m. on a court day is deemed served on that court day. Documents eServed on a non-court day are deemed served on the next court day.*** (C.C.P. §1010.6(a)(5))

Unlike fax and overnight delivery, the extension for eService is a uniform two *court* days. This uniformity is one of the ways eService simplifies calendaring. See ***“eService Simplifies Calendaring in California State Court,”*** which may be accessed here: <https://www.litigationbythenumbers.com/eservice.html>.

Extensions for Electronic Service

What is extended	Extension
time for notice (non-motion) or to act or respond ^{10/}	two <i>court</i> days
notice of motion for all types of motions	two <i>court</i> days

Thus, notice of motion must be eServed at least 18 court days before the hearing (16 court days + 2 court days); responses to eServed interrogatories must be served within 30 calendar days + two court days after the interrogatories were eServed.

C.C.P. § 1010.6 and C.R.C., Rule 2.251, *et seq.* must be read together to determine whether eService is mandatory or allowed in your case, whether any formal consent is required, and whether any party may be exempt where it is otherwise required.

For Represented Parties: Mandatory eService under the C.C.P. - C.C.P. § 1010.6(e)(1) requires parties represented by counsel to accept eService of any document that may be served by mail, express mail, overnight delivery, or fax. Before serving electronically, the serving party must confirm by telephone or email the appropriate electronic service address for counsel being served. C.C.P. § 1010.6(e)(2) requires any party represented by counsel to eServe such documents upon request of a party who has appeared in the action and provided an electronic service address. ***There is no requirement for express consent under this provision.***

For Represented Parties: Mandatory eService under the C.R.C. - C.R.C., Rule 2.251(c)(3) provides: *“Except when personal service is otherwise required by statute or rule, a party or other person that is **required to file documents electronically in an action must also serve documents and accept service of documents electronically** from all other parties or persons . . .”* [See Appendix B-1 - “Status of eFiling Chart” to see whether eFiling is mandatory in your action.]

NOTE RE EXTENT OF RULE 2.251(c)(3): Many practitioners interpret this rule to apply only to eFiled documents, *i.e.*, not to discovery demands and responses. This is incorrect. In January 2019, to clear up any uncertainty, the Judicial Council

^{10/} The extensions do not apply to all deadlines. C.C.P. § 1010.6(a)(4) contains the same exceptions as C.C.P. § 1013. See footnote 3.

amended the definition of “document” in C.R.C., Rule 2.250, replacing “or another filing” with “or another writing.” See <https://tinyurl.com/documentdefined> for relevant excerpts from the Report to the Judicial Council.

Exemptions from Mandatory eService - Self-represented parties are exempt from mandatory eFiling and eService requirements in the C.C.P. and the C.R.C. (C.R.C., Rule 2.253(b)(2)) Any party may request an exemption from mandatory eService based upon undue hardship or significant prejudice. (C.R.C., Rule 2.253(b)(4)) Judicial Council Form No. EFS-007 - “Request for Exemption from Mandatory Electronic Filing and Service” (not shown) may be used for this purpose.

Parties May Affirmatively Consent to eService - *[Given the applicability of C.C.P. §1010.6(e)(1) and C.R.C., Rule 2.251(c)(3) to represented parties, this provision would likely be used only by self-represented parties.]* C.R.C., Rule 2.251(b)(1) allows a party to expressly consent to be eServed. The easiest way to do so is to file and serve Form No. EFS-005-CV “Consent to Electronic Service and Notice of Electronic Service Address” (not shown).

A party may eServe directly, by an agent, or through an EFSP. (C.R.C., Rule 2.251(b)(1)) Parties eServe via electronic transmission (attaching the document to an email); EFSP’s eServe via electronic notification (including a hyperlink to the document in an email). Because the latter reveals whether and when the recipient opens the email, clicks the hyperlink, and opens the document, we recommended that you serve via your EFSP. The EFSP may eServe whether or not the document is eFiled, e.g., discovery documents. *[Check with your EFSP for specific instructions and charges for eServing with or without eFiling.]*

When service is by electronic notification, C.R.C., Rule 2.251(h) requires the party to make sure the document can be viewed and downloaded from the hyperlink. The document must be preserved, without any change, alteration, or modification, until the hyperlink is terminated. It cannot be terminated until either: (A) all parties have settled, or the case has ended and the time for appeal has expired; or (B) 60 days have elapsed since the serving party served notice that they are no longer in the case, and the parties have 60 days to download any documents.

<p>Before eServing, make sure you are authorized to do so, and do not forget the two court day extension!</p>

§2.3.5 Personal Service

Personal service (C.C.P. §1011) is the only method that does not add an extension of time, so would be necessary if no other service method would be timely. Typically, service is made at the attorney’s office. The documents are placed in an envelope or package clearly labeled to identify the attorney being served, and left with a receptionist or individual in charge of the office between 9:00 a.m. and 5:00 p.m. Where the party is not represented by an attorney, service may be made at their residence between 8:00 a.m. and 8:00 p.m. by leaving the envelope with someone not younger than 18 years old. When service is made by an attorney service, they normally prepare the proof of service. When service is made by a messenger, you may need to prepare a proof of service for their signature.

§ 2.4 Proof of Service

Regardless of the service method, In order to prove that a document was properly served on a particular date, a “proof of service” must be completed.^{11/} Basically, the person signing the proof of service, who must be over the age of 18 and, for all methods of service other than eService, not a party to the action, declares under penalty of perjury that he or she sent a particular document by a particular means on a particular date, to particular person(s) at particular address(es), fax numbers, or electronic service addresses.

As noted earlier, documents generally must be served on all parties in the case. ***There are special rules regarding multi-party cases:***

- C.R.C., Rule 1.21(c) requires the proof of service to state which party(ies) is/are represented by the attorneys being served.
- Except as regards eService, C.R.C., Rule 3.254 requires: the first-named plaintiff to maintain a current list of the parties and their service addresses and to furnish a copy of the list on request to any party or the court, and all other parties to keep the first-named plaintiff apprised of their current address. If any party serves an order, notice or pleading on a party who has not appeared in the action, a copy of the current service list must be served at the same time. (C.R.C., Rule 2.251(e) requires *the court* to maintain a list of the parties’ electronic service addresses.)
- When the parties have agreed to accept service by fax, C.R.C., Rule 2.306 requires the first-named plaintiff to maintain a current list of the parties and their fax numbers, and all other parties to keep the first-named plaintiff apprised of their current fax number. If any party serves an order, notice or pleading on a party who has not appeared in the action, a copy of the current service list must be served along with it.

There are many different formats used for proof of service. Law firms often create their own form, where they list and describe all methods of service, and the applicable service method is selected via a check box. There are also four Judicial Council Proof of Service forms available for optional use: (1) for eService only, (2) for service by mail only, (3) for personal service only, and (4) for every method except eService.^{12/} If the firm does not have its own multi-purpose form, and you are eServing, we recommend and show an example of the eService-specific form in § 2.5.2, page 2-12; and if you are serving by any method other than eService, we recommend and show an example of the Judicial Council multi-purpose form in § 2.6.1, page 2-16.

^{11/} Usually, the proof of service becomes the last page of the document being served, but it may also stand alone.

^{12/} Because these forms have full captions, they are designed to be separately filed after the document is served, but they can be attached as the last page of a document being filed and/or served.

§ 5.2 Introduction and Discovery Deadlines Chart

Discovery is the process by which the parties gather evidence to support their case, disprove the opposing party's case, and tie down the opposing party's story. Although the parties may engage in informal discovery,^{1/} our focus is on formal discovery, governed by C.C.P. § 2016.010, *et seq.*, the "Civil Discovery Act."

Scope of Discovery: Generally, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the case or any motion made in the case, as long as the matter either is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be used to obtain evidence to support a claim or to defend against a claim. Through various discovery methods, a party may ask for information about the identity and location of people with knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property relevant to the case. (C.C.P. § 2017.010)

Discovery and Discovery Motion Cut-Off Dates: There are deadlines by which discovery must be completed, and deadlines by which motions concerning discovery must be heard ("cut-off" dates). For purposes of calculating these deadlines, a deposition is "completed" on the day it begins, and written discovery is "completed" on the day the responses are due. (C.C.P. § 2024.010) The "discovery cut-off date" is 30 days prior to the **initial** trial date for non-experts, and 15 days prior to the **initial** trial date for experts. The "motion cut-off date" is 15 days prior to the **initial** trial date for non-experts, and 10 days prior to the **initial** trial date for experts. (See C.C.P. § 2024.020 for non-expert discovery, and C.C.P. § 2024.030 for expert discovery.) Generally, continuing the trial date does not extend the discovery cut-off date. (C.C.P. § 2024.020(b)) **[BUT NEW C.C.P. § 599 EXTENDS CERTAIN DATES DURING THE COVID-19 PANDEMIC - SEE APPENDIX "H".]** The parties may agree in writing (C.C.P. § 2024.060) or a party may move for a court order (C.C.P. § 2024.050) to extend the cut-off dates.

WHEN THE TRIAL DATE IS SET, CALENDAR THE LAST DAY TO SERVE DISCOVERY IN COMPLIANCE WITH THE DISCOVERY CUT-OFF AND MOTION CUT-OFF DATES (i.e., for written discovery, at least 65 days before the discovery cut-off date.) **IF THE CUT-OFF DATE FALLS ON A NON-COURT DAY, MOVE IT TO THE FIRST COURT DAY CLOSER TO THE TRIAL DATE.** (See C.C.P. § 2016.060, which provides: "*When the last day to perform or complete any act provided for in the discovery act falls on a non-court day, the time limit is extended until the next court day closer to the trial date.*" (See also, *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1572. fn. 5. "*The 30th day before trial was actually October 15, but since that was a Saturday, the discovery cutoff date rolled forward to Monday, October 17.*" (See § 2016.060.)")

The five common formal discovery devices discussed in this chapter are: depositions, interrogatories, requests for admission, inspection demands, and demands for exchange of expert witness information. Other formal discovery methods exist, but are not discussed here. For example, where relevant (typically personal injury cases), parties are allowed to demand that another party undergo a physical and/or mental examination (see C.C.P. § 2032.010, *et seq.*, or, in Limited Civil Cases, C.C.P. § 94(d)). In addition, newly added C.C.P. § 2016.090 provides for mandatory disclosures of specified information upon stipulation and court order.

^{1/} In Los Angeles County, if the parties enter into the "Stipulation-Early Organizational Meeting," they may have agreed to mutual exchanges of documents and witness information. See Appendix "G" for more information on the Voluntary Efficient Litigation program and this particular stipulation.

DISCOVERY DEADLINES

These are just a few of the discovery deadlines; the list is by no means exhaustive. Notice periods are the minimum required; try to give more where possible. Serve requests for documents (and set production dates) well in advance of the date you need the documents. Always keep in mind the extensions required where any method other than personal service is used. (C.C.P. §§1005(b), 1010.6, and 1013) When deadlines are counted backward from the trial date, and the last day lands on a non-court day, reverse direction and choose the first court day closer to the trial date. (§2016.060) (See “*Calendaring Notes*” next page.)

<u>Commencing Discovery</u>	<i>Discovery is commenced when the discovery request is served.</i>
Deposition (“depo”)	<ul style="list-style-type: none"> Plaintiff may not serve notice of depo earlier than 20 days after defendant is served or appears in the action. No time restriction on defendant.
Interrogatories (“Rogs”); Requests for Admission (“RFA’s”); Inspection Demands (“I/D’s”)	<ul style="list-style-type: none"> Plaintiff may not serve Rogs, RFA’s, or I/D’s earlier than 10 days after defendant is served or appears in the action, whichever is first. No time restriction on defendant.
Demand to exchange list of experts	<ul style="list-style-type: none"> Must be served no later than 10 days after setting of initial trial date, or 70 days before that trial date, whichever is closer to trial date. Exchange date must be 50 days before initial trial date or 20 days after service of demand, whichever is closer to trial date. Supplemental list of expert witnesses may be served within 20 days after the initial exchange.
<u>Completing Discovery (“Discovery Cut-off”):</u>	<i>A depo is “completed” on the day it begins. Written discovery is “completed” on the day the responses are due.</i>
Non-expert discovery	<ul style="list-style-type: none"> Must be completed at least 30 days prior to initial trial date.
Expert discovery	<ul style="list-style-type: none"> Must be completed at least 15 days prior to initial trial date.
<u>Noticing Depo:</u>	
Depo of party (appearance only)	<ul style="list-style-type: none"> Notice of depo must be served at least 10 days prior to depo.
Depo of party where documents are sought	<ul style="list-style-type: none"> Notice of depo must be served at least 10 days prior to depo (and consider need to add reasonable time for deponent to locate, produce documents, and travel to depo).
Depo of non-party (appearance only)	<ul style="list-style-type: none"> Serve notice of depo at least 10 days prior to depo. Serve depo subpoena on witness a sufficient time in advance of depo to provide deponent a reasonable time to travel to place of depo.
Depo of non-party where non-consumer/non-employee documents are sought	<ul style="list-style-type: none"> Serve notice of depo at least 10 days prior to depo. Serve depo subpoena on witness a sufficient time in advance of depo to allow deponent a reasonable opportunity to locate and produce requested documents and travel to place of depo.

The initial procedures for setting up a deposition depend upon whether the deponent is a party or non-party, and whether the deponent is only required to appear at the deposition, appear and produce documents or other things at the deposition, or simply to produce business records without appearing. We discuss the five possibilities in the following order:

- (1) Deposition of a Party - Appearance Only
- (2) Deposition of a Party Where Production of Documents is Demanded
- (3) Deposition of a Non-Party - Appearance Only
- (4) Deposition of a Non-Party for Appearance and Production of Documents, etc.
- (5) Deposition of a Non-Party for Production of Business Records - No Appearance

NOTE RE REMOTE DEPOSITIONS: C.C.P. § 2025.310 has long allowed depositions to be conducted remotely, but the deponent and the deposition officer had to be physically together. COVID-19 related amendments dispense with this requirement, allowing either the deponent or the deposing party to elect that the deponent and deposition officer attend at different locations via remote means. (*C.R.C., Rule 3.1010 does not yet reflect this change; the statute controls.*) Remote depositions present technological challenges best handled by having a court reporting service host the deposition using a video teleconference service (like Zoom or WebEx) or their own remote deposition platform. (This video <https://www.veritext.com/remote/> provides a great example as to how remote depositions may be set up and conducted.)

§ 5.3.1 Deposition of a Party - Appearance Only

Assume that Ms. Smith, the defendant's attorney, wants to depose the plaintiff to find out his story about the facts of the accident and to determine whether or not he will make a good witness at trial. C.C.P. § 2025.270 allows a party to take the deposition of another party on 10 days' notice. There are various procedural steps Ms. Smith must take in order to depose the plaintiff, Mr. Wronged.

Set a Date, Time, and Place for the Deposition

The first step is to set a date, time, and place (which may be virtual/remote) for the deposition. There are two approaches to take: (1) be nice and courteous and consult opposing counsel to set it up, or (2) be discourteous and set it according to your calendar. The first way is preferable, and should be attempted. Either way, the deposition notice must satisfy the following distance and notice requirements:

Distance: It must be taken either: (1) within 75 miles of the deponent's residence, or (2) in the county where the action is pending and within 150 miles of the deponent's residence. (C.C.P. § 2025.250(a)) If the party is an organization, mileage is measured from the organization's principal executive or business office. (C.C.P. § 2025.250(b))

Advance Notice: C.C.P. § 2025.270(a) requires at least 10 days' notice of a deposition of a party. Extra time must be added if it is not personally served. (See § 2.3.)

[The next page is 5-10.]

Contact the Court Reporter

You must have a certified shorthand reporter/notary public (“deposition officer” or “court reporter”) at the deposition. For remote depositions, it is best to choose a court reporting service that can host it. Find out if they suggest language to include in your Notice of Taking Deposition, e.g., how to attend, technical requirements, etc. Determine what information they need from you to move forward. Typically, they will need the information in your Notice of Taking Deposition and, if it is remote, the email addresses and phone numbers of the deponent and attendees.

“Notice of Taking Deposition”

C.C.P. § 2025.220(a) specifies the information to include in the deposition notice, e.g., the date, time and place of the deposition (which could be virtual/remote), the names of the deponent and the deposing party, etc. (The list includes specification of documents and things to be produced, but we address that in § 5.3.2.) ***Be sure to include all applicable requirements in your notice and to prepare the notice in at least 12-point type.***

- 1➤ Type the caption as on previous pleadings. Note that because this document is not filed with the court, there is no requirement that a footer be placed on the bottom of the document per C.R.C., Rule 2.110. However, you may place a footer on the page if you wish.
- 2➤ The title is “NOTICE OF TAKING DEPOSITION OF (DEPONENT’S NAME).”
- 3➤ Type the introductory clause in all caps, indented 10 spaces on the first available numbered line below the bracketed caption. The introductory clause is usually “TO,” followed by the party designations, names of the party or parties, and the attorneys of record in all caps. When multiple parties are involved in the case, type “TO: THE PARTIES HERETO AND TO THEIR ATTORNEYS OF RECORD:”. ***(We refer to this as “the standard introductory clause” throughout this book.)***
- 4➤ Type “PLEASE TAKE NOTICE” in all caps, indented 10 spaces on the next numbered line to begin the first paragraph.
- 5➤ The body, typed in unnumbered standard paragraph form (see § 1.2.2), must include the information required by C.C.P. § 2025.220(a). If applicable, consider including any stipulations or orders allowing the deposition to exceed the length in C.C.P. § 2025.290. If the deposition will be conducted remotely, the notice needs to say so and provide relevant information. ***(See Suggested Additions for Remote Depositions, below.)***
- 6➤ Type the standard date and signature lines, as described in § 1.2.4, and have the attorney read and sign the Notice.

Suggested Additions for Remote Depositions: If the deposition will be conducted remotely, include the following, as applicable:

- ✓ Instead of a physical place, the notice would state that it will be taken remotely, e.g., by way of “remote video conferencing,” “audio-visual conference technology,” or language suggested by your court reporter/host.

Notice of Taking Deposition

1► 1 DEBORAH SMITH, ESQ. (State Bar #1134685)
2 2222 West Flower Street
3 Suite 101
4 Los Angeles, California 90234-5130
5 Telephone: (213) 205-1234
6 Facsimile: (213) 205-1235
7 Email: D.Smith@smithlawyerslaw.com

8 Attorney for Defendant
9 JAMES A. WRONGDOER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13

14 FRED A. WRONGED,

15 Plaintiff,

16 vs.

17 JAMES A. WRONGDOER, and DOES 1
18 through 10, inclusive,

19 Defendants.

Case No. C 126447

2► NOTICE OF TAKING DEPOSITION
OF FRED A. WRONGED

3► 17 TO: PLAINTIFF, FRED A. WRONGED, AND HIS ATTORNEY OF RECORD:

4► 18 PLEASE TAKE NOTICE that Defendant, JAMES A. WRONGDOER, will take the
19 deposition of Plaintiff, FRED A. WRONGED, on January 18, 2021 at 9:00 a.m., at the office of
20 Deborah Smith, located at 222 West Flower Street, Suite 101, Los Angeles, California 90234,
21 before a notary public and certified shorthand reporter, continuing day to day until completed.

5► 22 PLEASE TAKE FURTHER NOTICE that the deposition proceedings will be recorded
23 both stenographically and by audio and video technology.

24 *[The notice would continue to include all applicable requirements of C.C.P. §2025.220.]*

6► 25 DATED: December 21, 2020.

26
27 6► DEBORAH SMITH
28 Attorney for Defendant
JAMES A. WRONGDOER

NOTICE OF TAKING DEPOSITION OF FRED A. WRONGED

- ✓ Instructions for joining the deposition, and any technical requirements, e.g., you might include a link and password or advise that instructions will be made available upon request, etc. The court reporter/host will provide appropriate language.
- ✓ How exhibits will be handled, e.g., “provided and displayed digitally to the deponent, deposition officers, parties, and attorneys” or language suggested by your court reporter/host.
- ✓ A statement that the deposing party elects, pursuant to C.C.P. § 2025.310, that the deponent not be present with the deposition officer at the time of the deposition.

Service of Notice of Taking Deposition

Discovery documents are not filed with the court, but are served on all parties.

- Ignoring references to eFiling and filing, see § 2.5 for eService on your own or via an EFSP, and § 2.6 if you are serving by any other method. *(To expedite the scheduling of your deposition, send a copy to your court reporter as well.)*
- Be sure to enter the deposition details in the office calendar.

IF YOU ARE SERVED WITH A NOTICE OF TAKING DEPOSITION, BE SURE TO CALENDAR:

- ☐ The date, time, and place of the deposition
- ☐ Three days prior to the deposition as the last day to serve an objection to the notice of deposition (see note below)

Objections to the Notice (not shown)

Any objection to the notice of taking deposition (e.g., on the ground that it is set in a place outside § 2025.250’s geographical limits; it is served on less than 10 days’ notice, etc.) is waived if not **served** (but see Note below) on the deposing party and all other interested parties at least **three days** prior to the date set for the deposition. (C.C.P. § 2025.410(a))

Service of the Objection

The objection must be served, but not filed, by the deadline.

NOTE: C.C.P. § 2025.410(b) provides that if the objection is made three calendar days before the deposition date, **personal service** is required. While the code is silent as to allowable methods of service when service is earlier than three days prior to the deposition date (e.g., would service by mail suffice four days prior to the deposition?), **best practice would be to serve in a manner so that the objection is received at least three days prior to the deposition.**

§ 5.3.2 Deposition of a Party Where Production of Documents Is Demanded

Sometimes at the deposition the attorney will want to examine certain materials or documents in the possession or control of a party deponent. The attorney may require the party deponent to bring those items to the deposition by including a demand in the deposition notice. (C.C.P. § 2025.280) Where the deposition is conducted remotely, the documents are usually emailed to the deposing attorney prior to or at the start of the deposition. The parties may agree on how and when they are to be produced, and include the date and method of transmittal in the notice.

In our case, the defendant's attorney wants to take the plaintiff's deposition and examine documents in the plaintiff's possession related to insurance, employment history, medical treatment, automobile maintenance and repair, etc. The only difference between this procedure and that previously discussed for deposing a party is that the Notice of Taking Deposition includes the document demand.

Set a Date, Time and Place for the Deposition

- See this section on page 5-7, however, bear in mind that you might want to give more than 10 days' notice depending upon the volume of documents expected to be produced.

Contact the Court Reporter

- See this section on page 5-10.

“Notice of Taking Deposition and Demand for Production of Documents for Inspection and/or Copying”

This document serves the same purpose as the Notice of Taking Deposition and describes the documents to be produced at the deposition.

- 1► Follow the instructions for preparing the Notice of Taking Deposition, page 5-10, but add “and Demand for Production for Inspection and/or Copying” to the title. Stop when you get to the date and signature lines.
- 2► Start a new paragraph, type in all caps “PLEASE TAKE FURTHER NOTICE,” and add appropriate language containing the document demand and, if applicable, any instructions for producing them prior to the deposition , e.g., by email or otherwise. C.C.P. § 2025.220(a)(4) requires the *“specification with reasonable particularity of any materials or category of materials, including any electronically stored information, to be produced by the deponent.”*

Points and Authorities in Opposition to Motion

1► 1 DEBORAH SMITH, ESQ. (SBN #1134685)
2 1000 Colorado Boulevard
3 Suite 555
4 Los Angeles, California 90001-1234
5 Telephone: 213.205.1234
6 Facsimile: 213.205.1235
7 Email: D.Smith@smithlawyerslaw.com

8 Attorney for Defendant
9 JAMES A. WRONGDOER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 FRED A. WRONGED,
14 Plaintiff,

15 vs.

16 JAMES A. WRONGDOER, and DOES 1
17 through 10, inclusive,
18 Defendants.

Case No. C 126447

2► POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR ORDER
COMPELLING ANSWERS TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT;
DECLARATION OF DEBORAH SMITH
IN SUPPORT THEREOF

3► Date: January 5, 2017
Time: 9:00 A.M.
Dept: 83
Judge: Honorable June Justice
Action Filed: August 3, 1998
Trial Date: Not set

4► 20 Defendant, JAMES A. WRONGDOER, hereby submits the following points and authorities
21 in opposition to Plaintiff's Motion for orders compelling answers to interrogatories and for sanctions.

22 I.

23 **IMPOSITION OF SANCTIONS WOULD BE UNJUST**

24 C.C.P. § 2030.290 provides that sanctions should not be imposed where "circumstances exist
25 to make the imposition of sanctions unjust." As appears more fully in the Smith Declaration attached
26 hereto, Defendant's counsel, a sole practitioner, suffered a coma in an auto accident on November 6,
27 1998, the day after she fired her secretary, and approximately three days before the subject
28 interrogatory responses were due. As a result, . . . [the P's & A's would continue.]

2►

POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO COMPEL ANSWERS

§ 6.3.8 Filing and Service of P's & A's in Opposition to Motion/in Reply to Opposition

The opposition papers must be filed and served at least **9 court days** prior to the hearing, and the reply to the opposition must be filed and served at least **5 court days** prior to the hearing.

A NOTE ABOUT SERVICE METHOD: The opposition and the reply must be served by *“personal delivery, facsimile transmission, express mail, or other means consistent with C.C.P. §§ 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day”* after they are filed. (C.C.P. § 1005(c)) ***Of course the documents will have to be eServed where mandatory, and may also be eServed where the parties have agreed.***

- Follow the procedures in Chapter 2 for filing and service. See § 2.5 if you are eFiling, and § 2.6 if you are filing by any other method, being sure to choose a method that will comply with the above requirements.
- Be sure to comply with any requirements for delivery of courtesy copies to the courtroom.

§ 6.3.9 Tentative Ruling on the Motion

Before the hearing on the motion, some judges make a "tentative ruling" based solely on the moving, opposing, and reply papers. Depending upon the tentative ruling, the hearing might not go forward. C.R.C., Rule 3.1308 allows the court to follow one of two procedures:

C.R.C., Rule 3.1308(a)(1) requires the court to make the tentative ruling available by telephone and, at the court's option, any other method designated by the court, by 3:00 p.m. the day before the hearing. *(Many courts publish their tentative rulings on their website. L.A.S.C. posts several here: <http://www.lacourt.org/tentativeRulingNet/ui/main.aspx>.)* If the court wants oral argument, the tentative ruling says so. If not, oral argument is permitted if, by 4:00 p.m. the day before the hearing, a party notifies the court and other parties of their intent to appear. Notice to parties is to be made by telephone or in person; notice to the court is to be made by telephone or other method designated by the court. If the court does not direct oral argument, and no one gives notice of intent to appear, the parties "submit to the tentative," and the ruling becomes final.

C.R.C., Rule 3.1308(a)(2) requires the court to make the tentative ruling available by telephone and, at the court's option, any other method designated by the court, by a specified time before the hearing. It allows the court to specify any issues on which it wants oral argument. The hearing will be held as scheduled; no notice of intent to appear is required. The tentative ruling does not become the actual ruling (if at all) until the hearing.

If the parties submit to the tentative ruling, the next step is to prepare the "Notice of Ruling," § 6.3.12. If they do not submit to the tentative ruling, the hearing goes on as scheduled.

§ 6.3.10 Pre-Hearing Arrangements and Hearing

Prior to the hearing it may be necessary to arrange a remote appearance, either by telephone or video, and/or for the services of a court reporter. *[The C.R.C. refer to these as “telephone appearances,” whether the appearance is over the telephone or video conference. We use the term “telephone appearances” accordingly to mean both.]* See § 6.3.10.1 for telephone appearances, and § 6.3.10.2 for arranging for a court reporter.

§ 6.3.10.1 Telephone Appearances in Regular Motions

While parties may be able to appear in person, there is a policy in favor of telephone/remote appearances wherever possible in order to improve access to the courts and reduce litigation costs. Telephone appearances require: (a) authority, (b) proper and timely notice, and (c) logistical arrangements with the provider, including payment of applicable fees.

(a) Authority. C.R.C., Rule 3.670(c) constitutes general authority to appear by telephone at conferences, hearings, and proceedings. C.R.C., Rule 3.670(e) lists several exceptions to that general authority, e.g., where witnesses are expected to testify, settlement conferences, hearings on motions *in limine*, etc. C.R.C., Rule 3.670(d) generally allows parties to appear telephonically at hearings on ex parte applications as well.

Be sure to check the rules to determine whether a telephone appearance is authorized for the particular matter. Note, however, that under C.R.C., Rule 3.670(f)(2), the court may require personal appearances where telephone appearances are generally allowed, and under C.R.C., Rule 3.670(f)(3), the court may allow telephone appearances where personal appearances are generally required. If the court denies a request to appear by telephone, the court must give reasonable notice to all parties before the hearing and may continue the hearing to accommodate the personal appearance. (C.R.C., Rule 3.670(i))

(b) Notice. A party choosing to appear by telephone at a *non-ex parte matter* must do one of the following:

- Type “*Telephone Appearance*” below the title of their moving, opposing, or reply papers. (C.R.C., Rule 3.670(h)(1)(A))
- At least **two court days** before the hearing, notify the court and all other parties of their intent to appear by telephone. Notice may be oral or written. If the notice is in writing, a “Notice of Intent to Appear by Telephone” must be filed with the court and served on all other parties by a means reasonably calculated to ensure delivery to the parties at least **two court days** before the hearing. (C.R.C., Rule 3.670(h)(1)(B)) (See “Notice of Intent to Appear By Telephone” next page.)
- A party that receives notice of another party’s intent to appear by telephone may give their own notice of intent to appear by telephone **by noon** on the court day before the hearing. (C.R.C., Rule 3.670(h)(2))

If a party that has given notice of its intention to appear by telephone subsequently chooses to appear in person, they may do so without giving notice. (C.R.C., Rule 3.670(h)(5)) Upon a showing of good cause or unforeseen circumstances, the court should permit a telephone appearance even if notice has not been given. (C.R.C., Rule 3.670(h)(6))

(c) Logistics. Some courts use CourtCall, LLC, and others have their own systems. Check your court's website to determine the proper platform. If the court has its own system, instructions for use will be posted. For CourtCall, go to <http://www.courtcall.com>. See C.R.C., Rule 3.670(k) for information on CourtCall appearance fees, late fees, and cancellation fees.

L.A.S.C. Remote Platform - LACourtConnect

L.A.S.C. utilizes its own remote system, LACourtConnect ("LACC"), in civil and several other case types. Audio appearances are \$15; video appearances are \$23. LACC may be accessed here: <https://my.lacourt.org/laccwelcome> ("LACC Welcome Page"). Anyone with an active role in a hearing (parties, attorneys, witnesses) may use it by creating an account. Attorneys are encouraged to access LACC through the court's Attorney Portal page: <https://my.lacourt.org/attorney/#/>. *(The Attorney Portal is free; an Advanced Attorney Portal is available for a \$100/annual subscription. The advanced service offers the attorney the ability to view cases and documents, track hearings, view hearing reservations, and authorize others to access case records.)* The LACC Welcome Page and the Attorney Portal offer videos, quick reference guides, complete user guides, FAQs, and more on how to schedule, prepare for, and participate in remote appearances. Be sure to check out those resources, and, in addition, scroll down the LACC Welcome page to "Tips for a Successful Remote Appearance." Because the system is evolving, it is a good idea to check for new features prior to your appearance by clicking "LACourtConnect Enhancement Updates" under "LACourtConnect News" on the LACC Welcome Page.

§ 6.3.10.1.1 "Notice of Intent to Appear By Telephone" (Judicial Council Form No. CIV-020)

Where notice is in writing, C.R.C., Rule 3.670(h)(1)(B) requires a "Notice of Intent to Appear By Telephone." Judicial Council form CIV-020 may be used for this purpose or the notice may be drafted from scratch using the operative language in the form. If using the Judicial Council form:

- 1► Complete the top portion as on previous court forms.
- 2► Check the box which identifies the party you represent, and enter their name in all caps.
- 3► Enter the title of the motion.
- 4► Enter the date and time of the hearing, and the department in which it will be held. If you know the name of the judicial officer who will be conducting the hearing, enter their name as well.
- 5► Enter the date the attorney will sign the Notice.
- 6► Enter in all caps the name of the attorney who will sign the Notice.

Notice of Entry of Dismissal

CIV-120	
<p>1 ➤ ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JOE LAWYER, ESQ. (State Bar No. 7756234) 1000 Colorado Boulevard, Suite 555 Los Angeles, California 90001-1234 TELEPHONE NO.: 213.462.0000 FAX NO.: 213.462.0001 E-MAIL ADDRESS: joe@joelawyerlaw.com ATTORNEY FOR (Name): FRED A. WRONGED</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME:</p>	
<p>PLAINTIFF/PETITIONER: FRED A. WRONGED DEFENDANT/RESPONDENT: JAMES A. WRONGDOER</p>	
<p>NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input checked="" type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):</p>	<p>CASE NUMBER: C 126447</p>

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. (Attach a copy completed by the clerk.)

2 ➤ Date: **May 23, 1999**

3 ➤ **JOE LAWYER**

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) _____ (SIGNATURE) _____

PROOF OF SERVICE 4 ➤

1. I am over the age of 18 and not a party to this cause. My residence or business address is: **1000 Colorado Boulevard, Suite 555
Los Angeles, California 90001-1234**

5 ➤ 2. ☒ I am a resident of or employed in the county where the mailing occurred. I served a copy of the *Notice of Entry of Dismissal and Request for Dismissal* by mailing them, in a sealed envelope with postage fully prepaid, as follows:

6 ➤ a. ☐ I deposited the envelope with the United States Postal Service.

6 ➤ b. ☒ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

6 ➤ c. Date of deposit: **June 2, 1999** d. Place of deposit (city and state): **Los Angeles, California**

6 ➤ e. Addressed as follows (name and address): **DEBORAH SMITH, ESQ.
2222 West Flower Street, Suite 101**

5 ➤ 3. ☐ I served a copy of the *Notice of Entry of Dismissal and Request for Dismissal* by personally delivering copies as shown below:

6 ➤ a. Name of person served:

6 ➤ b. Address at which person served:

6 ➤ c. On (date): d. At (time):

5 ➤ 4. ☐ I served a copy of the *Notice of Entry of Dismissal and Request for Dismissal* by electronically serving copies as shown below (complete if electronic service is used based on a court order or agreement of the parties):

6 ➤ a. Name of person served:

6 ➤ b. Electronic service address of person served:

6 ➤ c. On (date): d. At (time):

6 ➤ e. Electronic service address from which I served the documents:

☐ Proof of electronic service is attached.

7 ➤ 5. ☐ Proof of service on additional parties is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8 ➤ Date: **June 2, 1999**

9 ➤ **JOAN JEFFRIES** 9 ➤

(TYPE OR PRINT NAME) _____ (SIGNATURE OF DECLARANT) _____

§ 8.2.7 Filing and Service

- Be sure to attach a copy of the Request for Dismissal behind the Notice as well as any attachments referenced in the Notice.
- Ignoring reference to proof of service (it is included in the form), follow the procedures in Chapter 2 for filing and service. See § 2.5 if you are eFiling, and § 2.6 if you are filing by any other method.

STATUS OF eFILING

(references Civil ("CIV") and Family Law ("FL") cases only)

COURT	Method or EFSP	WHAT MAY/MUST BE eFILED
Butte	eFileCA*	Mandatory: CIV & FL
Calaveras	eFileCA*	Allowed: CIV & FL
Contra Costa	File & ServeXpress	Mandatory: Complex
Fresno	eFileCA*	Mandatory: CIV & FL
Imperial	Direct - eDelivery	Mandatory: CIV & FL
Kern	eFileCA*	Mandatory: CIV & FL
Kings	eFileCA*	Allowed: CIV & FL
Los Angeles	One Legal & others	Mandatory: CIV; Complex expected in 2021
Los Angeles	eFileCA*	Allowed: FL expected in 2021 Mandatory: FL expected 30 days later
Merced	eFileCA*	Mandatory: CIV & FL
Monterey	eFileCA*	Mandatory: CIV & FL
Napa	eFileCA*	Allowed: CIV & FL
Orange	One Legal & others	Mandatory: CIV
Orange	eFileCA*	Mandatory: FL
Placer	eDelivery	Mandatory: CIV & FL
Riverside	Direct - eDelivery	Allowed: CIV & FL
San Bernardino	TurboCourt	Online form preparation and eFiling allowed in several areas including CIV
San Diego Central & No. County Civil	One Legal & others	Mandatory: Civil Class Actions, Consolidated, Construction Defect, Coordinated, Complex Allowed: CIV & FL
San Francisco	One Legal & Others	Mandatory after physical filing of Complaint: CIV
San Francisco	File & ServeXpress	Mandatory: Asbestos, complex
San Luis Obispo	eFileCA*	Mandatory: CIV & FL
San Mateo	eFileCA*	Mandatory: CIV & FL
Santa Barbara	eFileCA*	Mandatory: CIV & FL
Santa Clara	eFileCA*	Mandatory: CIV & FL
Santa Cruz	eFileCA*	Mandatory: CIV & FL
Sonoma	eFileCA*	Mandatory: CIV & FL
Stanislaus	eFileCA*	Mandatory: CIV & FL
Sutter	eFileCA*	Mandatory: CIV & FL
Tulare	Direct - eDelivery	Allowed: CIV & FL case initiations only
Ventura	Direct - eDelivery	Allowed: CIV & FL
Yolo	eFileCA*	Mandatory: CIV & FL
Yuba	eFileCA*	Mandatory: CIV & FL

*Includes One Legal and any other EFSP certified by efileCA. Courts are often added to eFileCA's list; be sure to check local court rules and eFileCA if your court is not listed here.

eFILING CHECKLIST

1. Is eFiling/eService mandatory in my case? (§ 2.3.4 and “Status of eFiling Chart”)
2. Is eFiling/eService optional in my case? If so, has a represented party requested eService or a non-represented party expressly consented? (§ 2.3.4)
3. Are any parties exempt from eService? (§ 2.3.4)
 - a. Self-represented parties are exempt unless they expressly consent.
 - b. Parties may request an exemption based on undue hardship.
4. May this particular document be eFiled? Each court has its own exceptions. (§ 2.5)
5. Is my document properly formatted? (§ 1.3A(3))
 - a. Suggested fonts Cambria, Georgia, Helvetica.
 - b. Suggested 1.5 line spacing and 1.5" for all four margins.
 - c. Consecutive page numbering of entire document using Arabic numbers.
 - d. All eFiled documents, including exhibits and court forms must be text searchable.
 - e. Confidential information appropriately redacted and metadata removed.
 - f. Bookmark exhibits to motions. (L.A.S.C. requires bookmarking of all attachments to all documents).
 - g. File size limits.
 - h. L.A.S.C. suggests hyperlinks.
6. Is it signed? We recommend always signing and retaining a hard copy. (§ 1.3A(3))
 - a. If not signed under penalty of perjury, it will be deemed signed by the person who eFiles it, but note that the accompanying proof of service is signed under penalty.
 - b. If signed under penalty of perjury by the eFiler, a hard copy must be signed and retained or the eFiled document must be “electronically signed.”
 - c. If signed by someone other than the eFiler, a hard copy must be signed and retained or the electronic signature on the eFiled document must be verified and become invalidated if the document changes, *i.e.*, essentially a digital signature.
7. Are courtesy copies required? (§ 2.5.3)
 - a. L.A.S.C. requires courtesy copies of specified documents.
 - b. L.A.S.C. requires courtesy copies of all documents eFiled within two days of a hearing. Delivery required by 4:30 p.m. the day of the eFiling if the eFiling was submitted before then, and if eFiled after 4:30 p.m., delivery required by 10:00 a.m. the next business day.
8. Are there any deadlines unique to eFiling/eService?
 - a. L.A.S.C. - *ex parte* applications must be eFiled and eServed by 10 a.m. the day before the hearing. (§ 6.4.8)
 - b. L.A.S.C. - oppositions to *ex parte* applications must be eFiled and eServed by 8:30 a.m. the day of the hearing. (§ 6.4.9)

CALENDAR OF CALIFORNIA COURT HOLIDAYS (2021)

January Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	March Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
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January 1	New Year's Day
January 18	Martin Luther King's BD
February 12	Lincoln's Birthday
February 15	Presidents' Day
March 31	Cesar Chavez Day
May 31	Memorial Day
July 5	Independence Day

September 6	Labor Day
October 11	Columbus Day
November 11	Veteran's Day
November 25	Thanksgiving Day
November 26	Day after Thanksgiving
December 24	Christmas Day
December 31	New Year's Day

CALENDAR OF CALIFORNIA COURT HOLIDAYS (2022)

For later years, see [<http://www.lacourt.org/holiday/ui/index.aspx>]

January Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	March Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
April Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	May Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	June Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
July Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	August Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	September Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
October Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	November Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	December Mo Tu We Th Fr Sa Su 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

January 17 Martin Luther King's BD
February 11 Lincoln's Birthday
February 21 Presidents' Day
March 31 Cesar Chavez Day
May 30 Memorial Day
July 4 Independence Day

September 5 Labor Day
October 10 Columbus Day
November 11 Veteran's Day
November 24 Thanksgiving Day
November 25 Day after Thanksgiving
December 26 Christmas Day

COVID-19 EMERGENCY ORDERS AND RULES

The COVID-19 pandemic has necessitated emergency orders and rules from the Chief Justice and local courts. The Chief Justice has (so far) added 13 Emergency Rules to the C.R.C., several of which apply to civil cases. Two of those (Rules 11 and 12) have been repealed and incorporated into the C.C.P.^{1/} The remaining emergency rules may be found here: <https://www.courts.ca.gov/documents/appendix-i.pdf>. Each contains a sunset provision: *“The rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.”*

Another COVID-19 related change adds a section to the C.C.P. on a temporary basis. New C.C.P. § 599 extends unexpired trial-related deadlines when a trial is continued. It is repealed 180 days after the end of the state of emergency. (See § 5.2 below for more information.)

In addition to the statewide code and rule changes, the vast majority of courts have requested, and the Chief Justice has issued, one or more orders authorizing them to implement their own emergency rules.^{2/} Among other things, the orders and rules deem certain time periods as holidays for purposes of calculating deadlines, and provide for extensions of time, continuances, court closures, etc. Because the health crisis manifests itself differently throughout the state, and courts have different capacities and resources, each local court’s orders and rules are unique.

This Appendix is intended to help you navigate the “new normal” in this unprecedented time.^{3/} We begin with *“WHAT TO WATCH OUT FOR,”* alerting you to procedural questions and, where possible, providing answers with references to authority. The resources mentioned here and others, which may not have been mentioned, are included in the next two sections: *“COVID-19 RESOURCES - CALIFORNIA”* (page 5) and *“COVID-19 RESOURCES - L.A.S.C.”* (page 6).

^{1/} Rule 11, which allowed deponents to appear outside the presence of the deposition officer, has been incorporated into C.C.P. § 2025.310. Rule 12, which required parties represented by counsel to eServe upon request and to accept eService, has been incorporated into C.C.P. § 1010.6.

^{2/} As of December 7, 2020, the Chief Justice had signed 353 emergency orders to help trial courts manage their caseloads in the face of the pandemic; 55 trial courts needed emergency orders, and 33 were still using them. They continue to be requested as needed.

^{3/} Where changes have been made to the C.C.P. on a permanent basis, i.e., those relating to eService and remote depositions, revisions have been made to the main text.

WHAT TO WATCH OUT FOR

The procedures discussed below are unquestionably affected by the COVID-19 pandemic in some or all courts. Your court may be affected in ways not mentioned here.

**BE SURE TO CHECK YOUR COURT'S COVID-19 INFORMATION PAGE
AND/OR ORDERS FOR THE CURRENT PROCEDURE.**

Find your court here:

<https://newsroom.courts.ca.gov/covid-19-news-center/court-services-and-operations>

Chapter 2 - FILING, SERVICE, AND CALENDARING

§ 2.10 Essential Calendaring Notes (page 2-28)

Government Code § 68115 authorizes the presiding judge of a court to request authority from the Chief Justice to make various enumerated orders. One of those is to declare that a date or dates in which an emergency condition substantially interfered with the public's ability to file papers in a court facility be deemed a holiday for purposes of computing the time for *filing* papers with the court under C.C.P. §§ 12 and 12a.

Each court submits its own request for this authority. Some courts have sought blanket extensions for all filing deadlines, renewing/extending them via subsequent orders for consecutive periods. Some courts extended only specified filing deadlines. For example, L.A.S.C. deemed only March 17-19, 2020, holidays for all filing deadlines, and then, beginning April 17, 2020, declared holidays only for specified deadlines. For civil cases, that included a single small claims statute.

Courts continue to seek authority to declare holidays as necessary. For example, on December 17, 2020, the Ventura County Superior Court declared December 21, 2020 - December 31, 2020, holidays for computing time for filing papers except for certain matters. OneLegal.com provides information as to holidays declared in each court, along with a link to the most recent order: <https://support.onelegal.com/california-court-updates-covid-19>.

**BE SURE TO CHECK YOUR COURT'S ORDERS TO PROPERLY CALENDAR
YOUR DEADLINES. STIPULATE WITH OPPOSING COUNSEL WHERE
POSSIBLE, AND ERR ON THE SIDE OF CAUTION.**

Chapter 5 - DISCOVERY

§ 5.2 Discovery and Motion Cut-Off Dates (page 5-5.1)

It is the general rule that continuing the trial date does not extend the discovery cut-off date. (C.C.P. § 2024.020(b)) However, ***newly enacted C.C.P. § 599 provides that the continuance or postponement of a trial date extends “any deadlines that have not already passed as of March 19, 2020, applicable to discovery, including exchange of expert witness information, mandatory settlement conferences, and summary judgment motions in the same matter” for the same length of time as the trial date was continued or postponed.*** The section is to remain in effect until 180 days after the end of the state of emergency, at which time it is repealed.

CHAPTER 6 - MOTIONS

§ 6.2 Introduction (page 6-6)

Many courts are only accepting and hearing “essential matters,” e.g., emergency *ex parte* applications. Backlogs in criminal matters are expected to delay non-emergency civil hearings for months in some courts. Before you begin drafting your motion, make sure that your court is accepting them for filing and that, by the time it can be heard, it will still make a meaningful difference in the case.

§ 6.3 Regular Motions (page 6-7)

Many courts during their respective emergency periods continued trial and hearing dates and/or took them off calendar, and certain courts allowed the filing of motions without hearing dates. At least two calendar-related questions have arisen.

1. First, for continued trials, whether the discovery and motion cut-off dates are also continued. This is now answered; see § 5.2 above.
2. Second, for continued hearings or hearings on motions initially filed without a hearing date, when notice of motion, oppositions and replies are due. In L.A.S.C. the deadlines are governed by C.C.P. § 1005. (See L.A.S.C. FAQs, FAQ #12; <http://www.lacourt.org/pdf/COVID-19FAQsCivilLitigation-04222020.pdf>.)

§ 6.3.1.1 Setting the Hearing (page 6-8)

Hearing dates have been hard to come by in many courts for years due to budget cuts. Now, with court closures, reduced staff, and monumental backlogs, it is far worse in many courts. It may be that the only way to set a hearing in a given court is by scheduling a remote appearance.

§ 6.3.10 Pre-Hearing Arrangements and Hearing (page 6-25.1)

Emergency Rule 3 - <https://www.courts.ca.gov/documents/appendix-i.pdf>

Telephonic appearances, authorized by C.R.C., Rule 3.670, have been encouraged for many years. With the pandemic, **Emergency Rule 3 - “Use of Technology for remote appearances,”** which applies statewide, allows courts to **require** that proceedings be conducted remotely, including use of video, audio, and telephonic means.

The procedures set forth in C.R.C., Rule 3.670(h) for giving notice of intent to appear by telephone would appear to be obsolete where remote appearances are required, and, instead, the remote appearance would be subject to the local court’s requirements. You will need to check your court’s website for remote appearance options and requirements.

§ 6.3.10.3 Hearing on the Motion (page 6-26)

Before attending a hearing in-person, review your court’s entrance health screening requirements and be sure to arrive early enough to comply. Some courts require a temperature screening, some require a “pre-screening survey, some have no requirements. Also be sure to know the rules re social distancing within the courthouse. For example, L.A.S.C. does not allow people to gather or speak to anyone outside their household unless they can do so at least six feet apart while wearing a mask, and prohibits eating in hallways and courtrooms. In L.A.S.C., see the “Notice to Attorneys” page of the court website: <http://www.lacourt.org/newsmedia/notices/attorneynotice> for the latest order.

CALENDAR OF CALIFORNIA COURT HOLIDAYS (Appendix E)

See the discussion above for § 2.10 “Essential Calendaring Notes.”

**BE SURE TO CHECK YOUR OWN COURT’S ORDERS
TO IDENTIFY HOLIDAY PERIODS AND DETERMINE
WHETHER THEY AFFECT YOUR DEADLINES.**

COVID-19 RESOURCES - CALIFORNIA

Judicial Branch Emergency Actions

<https://newsroom.courts.ca.gov/covid-19-news-center/judicial-branch-emergency-actions>

Summarizes each of the emergency rules.

C.R.C. Emergency Rules Related to COVID-19:

<https://www.courts.ca.gov/documents/appendix-i.pdf>

The current text of the emergency rules.

Statewide Court Services and Operations:

<https://newsroom.courts.ca.gov/covid-19-news-center/court-services-and-operations>

Using data provided by the courts, the Judicial Council has published a summary of statewide emergency actions and updates on county court services and operations. It includes: entrance health screening requirements; clerk hours; self-help centers availability; e-filing status; whether jury trials are being conducted; whether remote proceedings are available; and a link to each court's COVID-19 website information.

Law.com - How COVID-19 Is Impacting California Courts: Roundup of Services:

<https://www.law.com/therecorder/2020/07/13/how-covid-19-is-impacting-california-courts-roundup-of-services/>

Often updated information re emergency orders, notices, closures, extensions, etc. throughout California.

OneLegal.com - California court updates:

<https://support.onelegal.com/california-court-updates-covid-19>

For each court, whether there is physical and/or remote access, the status of filing documents (eFiling, dropbox, etc.), and the end dates (if applicable) of any holiday period.

COVID-19 RESOURCES - L.A.S.C.

“HERE FOR YOU - SAFE FOR YOU”

<http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>

The best starting point, includes links to Judicial Orders, News Releases, Notices to Attorneys, Call Center Phone Numbers, the new Attorney Portal, and more. Expect constant additions and revisions.

NEWS RELEASES and NOTICES TO ATTORNEYS (Sign up for these!)

<http://www.lacourt.org/newsmedia/notices/newsrelease>

<http://www.lacourt.org/newsmedia/notices/attorneynotice>

Whenever the court issues a new order, it is added to the Judicial Orders page. To be notified by email of these orders, sign up for **both** News Releases and Notices to Attorneys. While they are often duplicative, there are instances where an order will be announced as a News Release, but not as a Notice to Attorney, and vice versa. **Sign up either on the website (each has a link to click to receive notices) or just email directly: publicinfo@lacourt.org and request to be added to both lists.**

FAQs - Civil Litigation 4-22-2020:

<http://www.lacourt.org/pdf/COVID-19FAQsCivilLitigation-04222020.pdf>

Very comprehensive and detailed set of FAQs, but it has not been updated since April 2020.

COVID-19 Timeline of Events:

[http://www.lacourt.org/newsmedia/uploads/142020618145650COVID19TimelineofEvents6.17.2020\(Final\).pdf](http://www.lacourt.org/newsmedia/uploads/142020618145650COVID19TimelineofEvents6.17.2020(Final).pdf)

Summarizes actions taken and orders issued by the Governor, the Chief Justice and Presiding Judge Brazile, with links to the applicable News Release or order. It provides a quick way to see if any orders have been issued since you last checked and whether they are relevant to your matter.