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by Julie A. Goren, Esq.

(Revised Effective **July 2019**)

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LITIGATION BY THE NUMBERS®

REVISED EFFECTIVE: July 1, 2019

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LAWDABLE PRESS
LOS ANGELES, CALIFORNIA

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by Julie A. Goren

Publishing History:

Lawdable Press - 1982-1992
(Title: *Litigation By The Numbers*)

West Publishing Company - 1992-1999
(Title: *California Litigation By The Numbers*)

Matthew Bender & Company, Inc. - 2000-2002
(Title: *California Litigation By The Numbers*)

Lawdable Press - 2003 - present
(Title: *Litigation By The Numbers®*)

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READ THIS!!!

DISCLAIMERS, IMPORTANT INFORMATION, AND REFERENCES

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The forms and documents used in this book are examples only. Substantive information must be conformed to your particular 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, WORKPLACE VIOLENCE, DOMESTIC VIOLENCE, etc., WHICH ARE NOT INCLUDED IN THIS BOOK.**

Statewide Codes, Rules and Forms

All lawsuits in California are governed by the Code of Civil Procedure (“C.C.P.”) and the California Rules of Court (“C.R.C.”). **WE DO NOT PROVIDE EVERY RULE OR CODE OR THE FULL TEXT OF ANY RULE OR CODE. ALWAYS CHECK THE CURRENT RULES AND CODES TO 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.** Access, complete, and print Judicial Council forms for free here: **www.courts.ca.gov/forms**. **CHECK THAT PAGE TO IDENTIFY THE CURRENT FORMS APPLICABLE TO YOUR CASE.**

Statewide Fees

There are many fees which must be paid to the court during the course of a lawsuit. The amount of most of those fees is uniform throughout California. Appendix “F” is an abbreviated list of those fees. **NOTE: THE FEES ARE SUBJECT TO CHANGE.** The current fee schedule may be found here: **<http://www.courts.ca.gov/7646.htm>**.

eFiling/eService

Statewide codes and rules authorize individual courts to allow or to require eFiling. Although there are rules for exemptions, where eFiling is required, eService is also required. You will need to ascertain whether eFiling is allowed or required in your case, and, if you are eFiling, you must follow the applicable state and local rules relating to format of your papers. (See Appendix “B” - “Status of eFiling” chart listing the eFiling courts, authorized EFSP’s, and the types of civil actions in which eFiling is allowed or mandated, and “eFiling Checklist” with several requirements unique to eFiling.)

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.** (*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, but they may change at any time. (Note that L.A.S.C. does not follow a January/July revision cycle.) 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> by scrolling down to "Locally Approved Forms."

If you are not eFiling, you need to know filing cut-off times in your court. **EACH COURT MAINTAINS ITS OWN FILING WINDOW CUT-OFF TIMES WHICH MAY VARY BY DAY OF THE WEEK. CHECK YOUR COURT'S WEBSITE FOR DAILY FILING WINDOW CLOSING TIMES SO YOU DO NOT MISS A FILING DEADLINE.** Watch for notices relating to "limited service days" -- a day on which a court might close one or more courtrooms or reduce the hours of one or more clerk's offices, or both. The notices are published here: www.courts.ca.gov/12973.htm.

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.

Our Update Service

CHANGES TO THE C.C.P., THE C.R.C., AND JUDICIAL COUNCIL FORMS ARE MADE EVERY JANUARY 1 AND JULY 1. We keep track of these changes and incorporate them into the book twice a year. The revision date of this copy (located on the title page) will be either January or July of a given year. Every December and June, we send our Update Service Subscribers replacement pages with a memo highlighting the changes. **WHETHER OR NOT 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.** For more information about our Update Service, go to: <http://www.litigationbythenumbers.com/update-service>.

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:

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INTRODUCTION

On May 3, 1998,^{1/} in Los Angeles, California, FRED A. WRONGED was in the process of pulling out from the curb at the intersection of Vermont Avenue and Sunset Boulevard when his vehicle was struck by JAMES A. WRONGDOER's vehicle. The posted speed limit was 35 mph. WRONGED contends that WRONGDOER was traveling at 45 mph, and that his speeding caused the accident. As a result of the accident, WRONGED suffered a mild concussion, a broken leg, two broken fingers, lacerations and scrapes to his head, and lower lumbar strain and sprain. His hospital and physical therapy bills totaled \$50,000. He missed work for five weeks, losing \$25,000 in wages. Further surgery may be required. His car, worth about \$30,000, was totaled in the accident.

WRONGDOER contends that he was not speeding, that Wronged was entering traffic from a no-parking zone, he failed to signal, and he cut off WRONGDOER. WRONGDOER adds that, although he tried to stop to avoid the accident, his brakes failed. Coincidentally, WRONGDOER had picked his car up that morning from Jim's Auto Repair Shop, which had installed a new set of brakes.

Using this hypothetical, ***Litigation By The Numbers®*** takes you step-by-step through the life of a typical California Superior Court lawsuit.

Chapter 1 - "Appearance By Plaintiff"

Chapter 1 details how the Complaint is prepared, filed, and served. It introduces eFiling, EFSP's, formatting and converting documents, and more. It identifies the forms which must accompany the Complaint, provides the deadline for serving the defendant, describes each method of service (e.g., personal, by mail with notice and acknowledgment of receipt, etc.) and the effective date of service for each method. It includes information on calendaring several key dates triggered by the filing or service of the Complaint.

Chapter 2 - "Filing, Service, and Calendaring"

Chapter 2 discusses court filing (eFiling and hard copy filing) as well as service of documents by eService, mail, overnight or express delivery, personal delivery, and fax. It explains the extensions of time associated with each service method and their effect on deadlines. It explains the purpose of Proofs of Service and provides step-by-step instructions for preparing them. It includes a 10-page section providing step-by-step instructions on how to calendar deadlines.

Chapter 3 - "Default By Defendant"

Chapter 3 describes what happens when the defendant fails to timely respond to the Complaint. It discusses entry of default and how to obtain a default judgment either from the clerk or from the court within the applicable deadlines. It includes a checklist to enable the reader to avoid rejection of default papers.

^{1/} Although the accident in our hypothetical scenario occurred quite some time ago, it has no bearing on the rules, forms, and codes referenced in this book. For example, the Civil Case Cover Sheet submitted with the 1998 Complaint was revised effective July 2007 or later.

Chapter 4 - “Appearance By Defendant”

Chapter 4 discusses the various ways the defendant may respond to the Complaint, with greatest focus on the Answer. (Demurrers and Motions to Strike are discussed in Chapter 6.) Also included are Cross-Complaints and the very different procedures required to file and serve a Cross-Complaint against an existing party as opposed to a new party.

Chapter 5 - “Discovery”

Chapter 5 discusses the various ways the parties obtain information to prove their own case and disprove the opposing party's case, including depositions, interrogatories, requests for admission, inspection demands, and exchange of expert witness information. The Discovery Deadlines Chart includes information on when discovery can commence, when it must be concluded, deadlines for notices, response times, motions to compel further responses, and more. There is tremendous focus on calendaring deadlines in this chapter.

Chapter 6 - “Motions”

Chapter 6 discusses motions, *ex parte* applications, demurrers, motions to strike, motions for summary judgment, and motions for summary adjudication. Among the topics discussed are: preconditions to bringing certain motions; setting hearings; preparing notices, points and authorities, declarations, and exhibits, including formatting, page limitations, and special requirements for eFiled documents; tentative rulings, and proposed orders. Filing and service deadlines for each type of motion, as well as for opposing the motion and replying to the opposition are highlighted. The scheduling and timing of telephonic appearances is also included.

Chapter 7 - “Pre-Trial”

Chapter 7 discusses case management issues, compelling the appearance of witnesses at trial, preparing jury instructions, and complying with the many deadlines shown on the “Trial-Related Calendaring” chart. It also includes information about the Mandatory Expedited Jury Trials Act and the Voluntary Expedited Jury Trials Act.

Chapter 8 - “Settlement and Dismissal”

Chapter 8 discusses offers to compromise, reaching settlement, notifying the court of settlement, dismissing the case, and the several deadlines which must be calendared in the process. Also included is the procedure for requesting additional time to complete settlements so that the case is not dismissed prematurely.

Chapter 9 - “Judgment and Enforcement”

Chapter 9 deals with preparing the notice of entry of judgment, seeking costs of suit, and enforcing the Judgment. It includes sections on creating liens on real estate, seizing known assets, identifying assets, recouping post-judgment costs, and satisfaction of judgment.

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§ 1.1 Vocabulary

Action	lawsuit, court case
Allegation	statement asserted to be true
Alternative Dispute Resolution (“ADR”)	dispute resolution process intended to expedite resolution and reduce costs, e.g., arbitration or mediation
Appear	to enter a lawsuit
Appearance fee	sum paid to the court by all parties (except public entities and parties obtaining a waiver)
Arbitration	alternative dispute resolution process in which each party presents its case to a neutral third party called an "arbitrator," who issues an award as would a judge; may be binding or non-binding.
Attorney service	service which, among other things, files court documents, serves process and searches records
Body	that part of a pleading that contains “the meat”
By-line	type of signature line used when person signing is a member of a law firm or other entity
Caption	consists of the name, address, phone number, fax number and email address (if available), and state bar number of the attorney who prepares the document; designation and name of the party on whose behalf the document is prepared; name of the court and county where the action is pending; title of the action, case number, and title of the document
Case number	the number assigned to a case by the court clerk, used on all subsequent documents filed in that case, sometimes referred to as “docket number”
Cause of action	legal theory on which an action is brought
Collections Case	an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorneys’ fees, arising from a transaction in which property, services, or money was acquired on credit, and does not seek tort or punitive damages, recovery of real or personal property or a prejudgment writ of attachment
Complaint	pleading filed by complaining party, stating allegations against another, and asking court for relief

Complex case	an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel (C.R.C., Rule 3.400)
Conform	(1) to stamp with court clerk's filing stamp, evidencing date of filing; (2) to fill in filing data on file copies
Damage	injury to a person or entity
Damages	monetary compensation awarded to a person or entity for suffering damage
Declare	to make a statement setting forth facts under penalty of perjury
Defendant	party designation of person or entity being sued
DOE(S)	fictionally named defendant(s) whose name(s) plaintiff does not know when preparing the complaint
Face page	first page of a document; contains the caption
File	(1) to enter documents on court records; (2) to place in an office file
Issue	approval by the court clerk of the use and service of a court form; here for a "summons"
Judgment	decision of the trial court concerning the rights and claims of the parties
Jurisdiction	the power and authority of the court to render a legally binding decision in a lawsuit; requires subject matter jurisdiction (court's power to rule on the particular type of case and amount in controversy), and either personal jurisdiction (control over the defendant in the case) or <i>in rem</i> jurisdiction (control over the property at issue in the case)
Limited civil case	general civil case seeking monetary damages up to \$25,000; governed by C.C.P. §§ 90-100
Mediation	Alternative dispute resolution process in which a neutral person facilitates communication between the parties to assist them in reaching a mutually acceptable settlement
Perjury	to testify falsely and deliberately under oath
Plaintiff	party designation of person or entity commencing the legal action

Pleading	a document typed on pleading paper, alleging matters of fact and/or law, and requesting the court to grant relief
Pleading paper	paper used for most court documents; numbered 1 through 28 on the left hand margin; sometimes referred to as “ruled and numbered paper”
Prayer	the last part of a pleading, begins with the word “WHEREFORE,” and in it, a party asks that the court grant relief in its favor
Process server	a person who serves court summonses, subpoenas and writs
Service	the delivery, by mail, personally, or otherwise, of a document to an individual or entity
State bar number	the number assigned to each attorney upon admission to the state bar association
Title	the name of a pleading or other court document
Title of the action	part of a pleading or other court document naming the parties to the action and their party designations, (names of parties are always typed in all caps); that portion of a pleading surrounded by brackets
Unlimited civil case	tort cases with potential damages in excess of \$25,000; non-tort cases with claims in excess of \$25,000; cases requesting equitable relief
Venue	the proper location for a case to be heard, e.g., a personal injury case may be heard where the accident occurred or where the defendant resides

§ 1.2 Preparing the Complaint and Accompanying Forms

The plaintiff begins the lawsuit by filing a Complaint against the defendant, setting forth the allegations upon which the lawsuit is based. While there are Judicial Council form Complaints (see the end of this Chapter), we explain how to draft them because understanding the parts of a Complaint is essential for preparing other court documents.

Although we jump right into drafting the Complaint, much needs to be done beforehand. The plaintiff must decide whom to sue, what to allege, and must select the court with the power and authority to render a legally binding decision in the lawsuit (the court with “jurisdiction”). This requires both subject matter jurisdiction (power to rule on the particular type of case and amount in controversy), and either personal jurisdiction (control over the defendant in the case) or *in rem* jurisdiction (control over the property at issue in the case). The plaintiff also needs to identify the proper county (“venue”) in which to file the case. Venue is usually proper in the county in which one or more of the defendants resides when the Complaint is filed. Venue might be proper in more than one county. For example, a personal injury case may be filed in the county in which the accident occurred or where one or more of the defendants reside. In large counties, like Los Angeles and Orange, local rules determine the particular courthouse in which to file. *[Determinations such as whom to name, what to allege, how to allege it, and where to file are beyond the scope of this book. Our focus is on format and procedure.]*

Several rules govern the format of papers to be filed with the court. Except where otherwise indicated, the rules apply to all documents, whether submitted in hard copy or eFiled. eFiled documents have additional requirements.

BEFORE YOU BEGIN, DETERMINE WHETHER YOU ARE eFILING.

**eFILING IS MANDATORY IN MANY COURTS, INCLUDING L.A.S.C.
IT MAY ALSO BE OPTIONAL IN YOUR CASE. (See Appendix “B.”)**

Here are just a few of the rules relating to format of all documents filed with the court, with emphasis on the differences for eFiled documents:

- C.R.C., Rule 1.201 requires parties to exclude or redact anything but the last four digits of social security numbers and financial account numbers.
- The font must be “essentially equivalent” to Courier, Times New Roman or Arial in black or blue-black, no smaller than 12 point font. (C.R.C., Rules 2.104-2.106) Cambria, Georgia, and Helvetica qualify and are very readable on paper and screen. ***If you are eFiling, use 13-14 point font because the font size will likely shrink when the document is converted to PDF.***
- C.R.C., Rules 2.107-2.108 detail margins, spacing, and line numbering. The left margin must be at least one inch and the right at least 1/2 inch. Lines must be 1.5 or double-spaced and numbered consecutively, but footnotes, quotations, and

real property descriptions may be single-spaced and unnumbered. ***If you are eFiling, 1.5 line spacing, left-hand justification, and 1.5" margins all around is recommended for on-screen readability.*** There must be a vertical line at the left margin separating the numbers and the text. This is commonly referred to as “pleading paper” (see p. 1-9). (This pleading paper template lines up pretty well: <https://www.litigationbythenumbers.com/pleadingpaper.>)

- Unless otherwise provided, pages must be consecutively numbered at the bottom using Arabic numerals (1, 2, 3). The first page is page one, but that page number may be suppressed (i.e., not show). (C.R.C., Rule 2.109) ***If you are eFiling, it might be easier to omit page numbering at this stage, and to do it after conversion to PDF.***
- Except for exhibits, each page must have a footer below the page number and divided from the rest of the page by a line, with the title of the document or a clear and concise abbreviation in at least 10 point font. (C.R.C., Rule 2.110) ***If you are eFiling, the footer should be 11-12 point font because the font size will likely shrink in the conversion process.***

For simplicity, we break down the complaint into four main parts: the caption, the body, the prayer, and the date and signature lines.

§ 1.2.1 The Caption

The caption of the complaint includes:

- The name and specified information identifying the attorney or the self-represented party who prepares the document
- Party designation and name of the party on whose behalf the document is prepared
- Name and place of the court where the action is filed
- Title of the case or action
- Space for case number
- Title of the document

C.R.C., Rule 2.111 requires the above information to appear in specific places. C.R.C., Rule 2.111(1) also requires everything from line 1 through line 7 to be entirely to the left of the center of the page, leaving the area to the right blank for court use. Although we do not recommend it, this rule is commonly ignored, because: (1) there is often not enough room on the left-hand side of the page for all of the required information, and (2) the clerk does not need the entire right side of the page to affix a filing stamp.

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FILING, SERVICE, AND CALENDARING

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§ 2.1 Vocabulary

Attorney of record	an attorney currently representing a party who has appeared in the action
to calendar	to calculate a deadline or other date by applying a number of different rules; may be done by hand or by using rules-based computerized calendaring
Calendar day	every day of the week, including weekends and holidays
Court day	generally, days that the court is open for business, e.g., not weekends or holidays, but including “limited service days,” on which the court can be closed
Electronic filer	a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider
Electronic filing service provider	person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties
Electronic notification	notification that a document is served by sending an electronic message specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded
Electronic service	service of a document by electronic transmission or electronic notification to an electronic service address
Electronic service address	electronic address at or through which a party has authorized electronic service
Electronic transmission	transmission of a document by electronic means to an authorized electronic service address
Esq.	abbreviation for “Esquire,” a title of courtesy following the name of an attorney
Fax filing agency	entity that receives documents by fax for processing and filing with the court
Holiday	a day designated as a judicial holiday in C.C.P. § 135 (as shown on Appendix “E” - Calendar of California Court Holidays)
Interested party	a party who has appeared in the action
Limited service day	one on which a court might close one or more courtrooms or reduce the hours of one or more of its clerks' offices, or both
Transmission record	document printed by transmitting fax machine stating telephone number of receiving machine, number of pages sent, transmission time and date, and indication of any errors in transmission

§ 2.2 Introduction

There are usually many documents and forms prepared and filed during the course of a lawsuit, e.g., pleadings, motions, stipulations, etc. With few exceptions, all parties who have appeared in a lawsuit (“interested parties”) must be served with a copy of each document filed with the court.^{1/} There are also many documents which are *served* on the parties, but are not *filed* with the court, e.g., discovery demands and responses.

Quite often, these documents trigger one or more deadlines or give notice of one or more deadlines or events. If a deadline is missed, or if insufficient notice is given, serious problems may result. For example, if responses to interrogatories are served late, the responding party waives its right to object to the interrogatories. If a party gives insufficient notice of a hearing on a motion, the motion may be taken off calendar or denied.

In this chapter we explain the various types of service, the extensions of time associated with each service method, and their effect on deadlines. We discuss methods of filing documents with the court, including eFiling and hard copy filing. The last part of the chapter is a 10-page section with step-by-step instructions on calendaring deadlines.

§ 2.3 Authorized Methods of Service and Related Extensions of Time

There are various methods by which documents may be served, including: personal service (“by hand” or “hand delivery”), mail, express mail or overnight delivery, fax, and electronic service (“eService”). These methods may or may not be available to you in the case or at a given time. While more detail on these topics may be found later in this chapter, make note of the following now:

- **eService may be mandatory in your case.** It is mandatory if eFiling is mandatory, although an exemption may be automatic or may be requested.
- Where there are multiple parties, and one or more is exempt from eService, certain parties must be eServed and others will have to be served by another authorized method.
- Fax and voluntary eService require prior agreement.

Every method other than hand delivery requires extensions of time. These extensions are mandated because, for the most part, deadlines and notice periods start running from the date documents are *served*, not the date they are *received*. For example, responses to interrogatories are due 30 days after the interrogatories are *served*; a motion to compel further responses must be filed within 45 days after the responses to interrogatories are *served*; a deposition may be taken ten days after the notice of taking deposition is *served*; notice of a motion must be *served* 16 court days prior to the hearing.

^{1/} Whenever a party is represented by an attorney (“attorney of record”), documents are served on the attorney of record. If the party is *in pro per* or self-represented, documents are served directly on the party.

Any method other than personal service will result in a delay between the act of service and the receipt of the document. In that regard, *service by mail* is deemed complete upon deposit in a USPS mail box (C.C.P. § 1013(a)), but the envelope might not be delivered for days. *Service by fax* is deemed complete upon transmission of the entire document to the receiving party's fax machine (C.C.P. § 1013(e) and C.R.C., Rule 2.306(g)), but that does not mean that the document will be in the hands of the intended recipient that day. A document *served electronically* is deemed complete when it is sent (C.C.P. § 1010.6(a)(4)), but it may sit unopened for hours, if not days.

To obviate any inherent prejudice in this delay in receipt of a document, various extensions of time are added depending upon the type of document served and the method by which it is served. These extensions are found in C.C.P. §§1013, 1005, 1010.6, and 437c, as follows:

C.C.P. § 1013	Extends certain deadlines to act or respond, as well as non-motion notice periods (e.g., notice of deposition) for service methods <i>other than electronic service</i> .
C.C.P. § 1005	Extends notice of motion period for regular motions (but not motions for summary judgment ("MSJ") or summary adjudication ("MSA")) for service methods <i>other than electronic service</i> .
C.C.P. § 437c	Extends notice of motion period for MSJ's and MSA's for service methods <i>other than electronic service</i> .
C.C.P. § 1010.6	Extends all of the above for electronic service.

In this section we describe each method of service, the governing rules, and the extensions of time, if any, associated with each type.

§2.3.1 Service by Mail

C.C.P. § 1013(a) requires service by mail to be made by depositing the document in a USPS post office or mail box in a sealed envelope, with postage paid, addressed to the person on whom it is served. The person signing the proof of service either may have personally dropped the envelope into the mailbox or placed it where it would be picked up and mailed that same day in the ordinary course of business.

Service is deemed complete upon deposit in a USPS mail box, but various extensions take into account the delay in delivery time. C.C.P. § 1005 increases the notice period for regular motions, and C.C.P. § 437c extends the notice period for MSJ's and MSA's, by at least five days when service is by mail.^{2/} Similarly, with limited exceptions,

^{2/} C.C.P. § 1005(b) (regular motions) states that "*all moving and supporting papers shall be served and filed at least 16 court days before the hearing,*" followed by the various extensions of time. C.C.P. § 437c has similar language increasing the 75-day notice period for MSJ's and MSA's.

§ 2.10 Calendaring in California State Court

Calendaring in the litigation context involves entering appearances and deadlines into a calendar so that someone is reminded to make the appearance or comply with the deadline. A typical lawsuit requires calendaring appearances such as depositions, hearings, mediations, and settlement conferences, and calendaring deadlines such as last day to serve or respond to pleadings, first or last day to serve discovery, last day to respond to discovery, last day to serve notice of, or opposition to, motions, etc.

An appearance may be simple to calendar, requiring no more than the entry of a date, time, and place, e.g., “Wronged deposition, May 12, 2011, 10:00 a.m., Joe Lawyer’s office.” On the other hand, an appearance may trigger several deadlines, e.g., a hearing on a motion triggers the deadlines for serving the notice, opposition, and reply, giving notice of intent to appear by telephone, checking the tentative ruling, etc. The trial date triggers a significant number of deadlines, e.g., discovery cut-off dates, certain motion deadlines, deadlines for requesting jury trial and depositing jury fees, etc. (See § 7.5 for “Trial-Related Calendaring.”)

Although the court may set deadlines in a particular case, the deadlines generally applicable to California state court cases come from several sources, including the Code of Civil Procedure, the California Rules of Court, and local rules. Calculating a single deadline requires the application of many different codes and rules. Any error, e.g., using an old rule, forgetting to add extra time based on the service method, counting calendar days instead of court days, or simply miscounting, can result in calculating the wrong deadline.^{17/}

We cannot stress enough the importance of using a computerized calendaring program to calculate your deadlines. By computerized calendaring, we do not mean that you manually calculate the deadline and enter it on a calendar on your computer, or that you use an electronic calendar to help you calculate the date that is five days before or after a given date. We mean *rules-based computerized calendaring*, such as Deadlines.com (www.Deadlines.com). With these programs, you simply enter an “event,” and they automatically calculate the deadlines for you in accordance with the applicable codes and rules. As we describe the several calendaring steps, you should see the benefit of rules-based computerized calendaring programs.

Even with rules-based computerized calendaring, however, you need to know how to calendar manually. What if you need to calendar something when your computer is down or inaccessible? What if your computer is fully operational, but you do not know enough to tell it that something needs calendaring?^{18/}

^{17/} Calendar-related deadlines are the leading cause of malpractice claims in California.

^{18/} A discussion of the calendaring steps follow. More detailed explanations of the steps and traps, along with examples, calendaring exercises, and more may be found on the Calendaring Video on our website.

To calendar dates and deadlines in California state court, one must do all of the following:

Calendaring Steps

1. Identify the triggering event.
2. Identify what deadlines are triggered.
3. Identify the *current* codes and rules which apply to those triggered deadlines.
4. Correctly apply those codes and rules.
 - A. Identify the events which define the time period in question.
 - B. Identify what date to start counting and what date to stop counting.
 - (1) Count or skip weekends and California holidays as appropriate during the relevant time period.
 - (2) Determine the last day - deal with weekends, holidays, and extra time.
 - (a) *For personal service only*, adjust when the last day falls on a weekend or California holiday.
 - (b) *For a triggering document not personally served*, first add the applicable extension of time to determine the last day, *then* adjust when the last day falls on a weekend or California holiday.
 - (c) *For hearing-related dates*, count backward from the hearing date.

Except for step 1, identifying the triggering event, rules-based computerized calendaring programs do every one of these steps automatically.

Step 1: Identify the triggering event.

A “triggering event” is anything which triggers one or more deadlines. A triggering event might be the filing of a document, the service of a document, or an appearance. Although not referred to as “triggering events,” triggering events are noted throughout this book. Every time we include a warning such as “be sure to calendar the following,” a triggering event has just been discussed. A few of the triggering events we address are:

- Filing of complaint
- Service of complaint
- Entry of default
- Answering complaint
- Service of interrogatories
- Service of responses to interrogatories
- Hearing on regular motion
- Hearing on summary judgment motion
- Settlement

Chapter 3

DEFAULT BY DEFENDANT

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§ 3.1 Vocabulary

Default	failure to respond to a complaint or appear at trial or other hearing
Default judgment	decision as to the rights of the parties to a lawsuit after defendant fails to respond to a complaint
Due date	date by which a pleading or document must be filed and served
Entry of default	notation by the clerk of the court regarding defendant's failure to appear

§ 3.2 Introduction

The course of a lawsuit can vary greatly. The quickest end to a lawsuit can be when the defendant fails to respond to the Complaint by the due date (i.e., 30 days from service of the Summons and Complaint unless an extension of time is obtained from opposing counsel or granted by court order).^{1/} The plaintiff can then embark upon a two-step process to obtain a default judgment in the plaintiff's favor.^{2/}

The first step is to ask the court clerk to enter the defendant's default in the court file. Entry of default prevents the defendant from filing a late response unless the defendant successfully moves to set aside the default. (See C.C.P. §§ 473 and 473.5 for grounds and time limitations.) The second step, which may be put in motion simultaneously with the first, is to obtain a default judgment. Default judgment may be entered by the clerk in certain cases or by the court.

- Default judgment may be entered by the clerk so long as: (1) the case is one arising from a contract or judgment and seeks recovery of money or damages only in a fixed or determinable amount, and (2) the summons was not served by publication. (C.C.P. § 585(a)) For example, if the complaint in a breach of contract alleges that defendant was required to pay \$50,000, but only paid \$10,000, the defendant would owe a fixed or determinable amount: \$40,000.
- Default judgment must be sought from the court where service was made by publication or where the sum to be awarded must be proved, such as personal injury cases. (C.C.P. § 585(b))

^{1/} In Los Angeles County, if the parties enter into the "Stipulation-Early Organizational Meeting," the defendant has an automatic 30-day extension. See Appendix "G" for more information on the Voluntary Efficient Litigation program and this stipulation.

^{2/} The default procedures against a defendant apply equally to a cross-defendant.

In no case can the amount of the judgment exceed that prayed for in the Complaint or set forth in the Statement of Damages, as applicable.

Many courts have guidelines and/or checklists on their websites outlining their specific (and sometimes unique) requirements for defaults. For example, San Diego County requires the submission of its “Judgment Checklist-Default By Clerk (Civil)” form, and Sacramento County requires that proof of service of the “Request for Entry of Default” form (discussed below) be done via Proof of Service by Mail (Judicial Council form POS-030). Courts also have “reject sheets” which list all of the reasons they might reject default papers.

HINT: Before attempting to enter default or obtain default judgment, try to obtain a copy of your court’s default checklists and reject sheets. (See L.A. County’s reject form “Notice of Rejection Default / Clerk’s Judgment” (LACIV098) at the end of this chapter. Listing 37 specific reasons for rejection, it’s an excellent resource to be used in any court.)

§ 3.3 Entering the Defendant’s Default

The first step is to request that the court clerk enter the default on the court record, cutting off the defendant’s right to file a response to the Complaint. This is done with a mandatory Judicial Council form entitled “Request for Entry of Default.”^{3/} Form CIV-100 is a multi-purpose form which allows the plaintiff to take the second step as well, i.e., request entry of default judgment. This second step may or may not be made simultaneously.^{4/}

NOTES RE FILING REQUEST FOR ENTRY OF DEFAULT:

- Until the Request for Entry of Default form is filed, a responsive pleading may be filed even though the due date has passed.
- If the plaintiff does not file the Request for Entry of Default within ten days after the defendant’s response to the Complaint was due, the court may file an order to show cause why sanctions should not be imposed against the plaintiff. (C.R.C., Rule 3.110(g))
- Default will not be entered unless: (1) an accurate Proof of Service of Summons has been filed, (2) defendant’s response deadline has passed, and (3) in personal injury and wrongful death cases, proper proof of service of a Statement of Damages has been filed.

^{3/} As of January 1, 2018, there are two forms entitled “Request for Entry of Default.” Our focus is on Form No. CIV-100, used in all cases except those brought under the “Fair Debt Buying Practices Act.” The second form, CIV-105 (not shown), must be used in cases brought under that Act.

^{4/} Sometimes a party might not be able to meet the requirements for a default judgment at the time they request entry of default. For example, where the case involves multiple defendants or DOES, the court will not enter default judgment against any defendants until all other defendants, including DOES, have been dismissed.

Chapter 4

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§ 4.1 Vocabulary

Affirmative defense	fact pled by an answering defendant or cross-defendant in defense of a cause of action
Answer	a responsive pleading containing admissions and/or denials of the allegations set forth in a complaint or cross-complaint
Counter Civil Case Cover Sheet	Civil Case Cover Sheet filed by a defendant to indicate disagreement with the plaintiff's description of the case as complex or not complex, or to join in the plaintiff's description of the case as complex
Cross-complaint	a responsive pleading alleging a cause or causes of action against a cross-defendant
Demurrer	a responsive pleading in which a defendant or cross-defendant objects to a complaint or cross-complaint on various grounds, including that it fails to allege facts sufficient to state a cause of action; follows format of a motion
General Denial	a response whereby the defendant or cross-defendant denies all of the allegations in a complaint or cross-complaint
Motion to Dismiss	a motion requesting that an entire action be dismissed because it was filed in an inconvenient location
Motion to Quash Service	a motion requesting that the court void service of the summons and complaint based on the fact that the Court has no jurisdiction over the defendant
Motion to Strike	a motion requesting that all or part of a pleading be deleted
Responsive pleading	an answer, demurrer or cross-complaint filed in response to allegations of a complaint or other pleading
ROE(S)	fictitiously named cross-defendant(s) whose name(s) the cross-complainant does not know when preparing the cross-complaint

§ 4.2 Introduction

The defendant has 30 days from service of the Summons and Complaint to file and serve a response. That period may be extended by stipulation or order of the court.^{1/} The response due date may also be extended automatically under certain circumstances.^{2/}

IF YOU ARE SERVED WITH A COMPLAINT, BE SURE TO CALENDAR:

- ☐ The date the Complaint was filed
- ☐ All appearance dates and deadlines in, or triggered by, the Clerk's Notices, e.g., CMC, final status conference, trial date, and associated dates (see §§ 7.2.2, 7.5) **NOTE: If any of these dates falls on a holiday or weekend continue counting backward to the next court day.**
- ☐ 30 days after service of the Summons and Complaint (the effective date depends on the method of service - see §1.5) as the date the defendant's response (C.C.P. § 412.20) or a declaration of inability to meet and confer re demurrer (C.C.P. § 430.41(a)(2)) or motion to strike (C.C.P. § 435.5(a)(2)) is due

NOTE: When calendaring the above deadlines, if the last day is a holiday or weekend, extend the deadline to the next court day. (C.C.P. § 12a(a))

- ☐ 5 days prior to the date the defendant's response is due as the last day to meet and confer re demurrer (C.C.P. § 430.41(a)(2)) or motion to strike (C.C.P. § 435.5(a)(2)) **NOTE: If this date falls on a holiday or weekend continue counting backward to the next court day.**

The defendant may respond to the Complaint in various ways, as follows:

- **Answer:** Defendant admits or denies the allegations of the Complaint and states allegations in his/her defense ("affirmative defenses"). Sometimes this may be done by "General Denial," i.e., denying all allegations without specifically responding to any one. (See the General Denial form at the end of this Chapter.)
- **Demurrer:** Defendant alleges that the Complaint is defective; even if plaintiff proves every fact alleged, plaintiff would not be entitled to relief. Defendant requests that plaintiff be ordered to amend the Complaint to cure the defects (if curable) or that the Complaint be dismissed (if defects are not curable).
- **Motion to Dismiss:** Defendant requests that the entire action be dismissed because it was filed in an inconvenient location.
- **Motion to Quash:** Defendant claims that service of the Summons and Complaint should be voided because the court has no jurisdiction over the defendant.
- **Motion to Strike:** Defendant requests that a portion, portions, or the entire Complaint be stricken because they are irrelevant, false or improper.

^{1/} The parties may stipulate once to a 15-day extension without leave of court. (C.R.C., Rule 3.110(d)) After that, extensions must be granted by the Court.

^{2/} C.C.P. § 430.41(a)(2) provides a mechanism for automatic extension relating to demurrers. (See § 6.5A for details.) In L.A., if the parties enter into the "Stipulation-Early Organizational Meeting," the defendant automatically has a 30-day extension pursuant to a General Order. (See Appendix "G.")

Chapter 5 DISCOVERY

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§ 5.1 Vocabulary

Consumer	individual, partnership of five or fewer persons, trust or association whose personal records are being sought from a “witness”
Court reporter	certified shorthand reporter who prepares transcripts of depositions, hearings and trials
Custodian of Records	person who has custody and control of records
Cut-off dates	dates by which discovery must be completed and motions concerning discovery heard
Demand for exchange of expert witness information	written demand from one party to another to participate in a mutual exchange of information regarding their expert witnesses
Deponent	witness testifying at a deposition
To depose	to question a deponent
Deposing attorney	attorney who takes a deposition
Deposition	oral question and answer session attended by attorneys, witnesses and a court reporter
Electronic	relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities
Electronically stored information	information that is stored in an electronic medium (“ESI”)
Inspection demand	written demand to a party to inspect, copy, test, or sample specified documents, tangible things, land or other property, and electronically stored information
Interrogatories	written questions directed by one party to another
Personal records	documents pertaining to a “consumer” maintained by a “witness”
Requests for admission	written request to a party to admit or deny the truth of facts, opinion or application of law relating to fact, and genuineness of documents
Subpoena	court form ordering a person to appear at a certain place and time, e.g., a deposition or trial
Subpoena duces tecum	a court form ordering a person to appear at a certain place and time, and to bring with him/her specified material
Witness	deponent who testifies at a deposition; under C.C.P. § 1985.3(1) one who would have personal records of a consumer (e.g., doctor, attorney, bank)

§ 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: Generally, discovery must be *completed* by the applicable "discovery cut-off date" (30th day prior to the **initial** trial date for non-experts; 15th day prior to the **initial** trial date for experts), and motions concerning discovery must be heard on or before the applicable "motion cut-off date" (15th day prior to the **initial** trial date for non-experts; 10th day 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.) Continuing the trial date does not extend the discovery cut-off date (C.C.P. § 2024.020(b)). 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. The Discovery Deadlines chart on the next page shows when written discovery and depositions are deemed "completed."

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, *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.)*") C.C.P. § 2016.060 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."

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 do exist. 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)).

^{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

NOTES: These are just a few of the discovery deadlines; the list is by no means exhaustive. All of the notice dates are the minimum required. Try to give more notice where possible. Plan ahead to serve requests for documents (and set production dates) well in advance of the date you need the documents. Be sure to calendar the last dates to serve discovery (by hand, mail, etc.) in compliance with the discovery cut-off and motion cut-off dates. Always keep in mind the effect of C.C.P. § 1013 (and § 1010.6 for electronic service) when you serve and respond to discovery by any method other than personal service.

<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”)	<ul style="list-style-type: none"> Plaintiff may not serve Rogs, RFA’s, or I/D 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 within 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 within 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. See note re effect of C.C.P. §§ 1013 and 1010.6 below.</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>	<i>See note re effect of C.C.P. §§ 1013 and 1010.6 below.</i>
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.

§ 5.3.4.2 Further Procedures for Personal Records of Consumer

If you are subpoenaing personal records of a Consumer, there are many more procedures to follow.

“Notice to Consumer or Employee and Objection” (Mandatory Judicial Council Form No. SUBP-025)

This document warns the person whose records are being sought to take action if he/she objects to the production of the documents. C.C.P. § 1985.3(b) requires the notice to be served on the Consumer not less than 10 days prior to the production date specified in the Subpoena and at least 5 days prior to service on the witness, plus the additional time allowed by C.C.P. §§ 1013 or 1010.6 if the notice is not personally served. (See § 2.3.)

- 1➤ Complete the top portion as on previous court forms.
 - 2➤ After “TO (name):” enter in all caps the name of the consumer, in our case the plaintiff.
 - 3➤ At #1, enter in all caps the name of the party your office represents.
 - 4➤ Enter the date selected for the deposition, as shown on the deposition Subpoena.
 - 5➤ Enter the name and address of the witness you designated on the Deposition Subpoena.
 - 6➤ Enter the date the form will be signed.
 - 7➤ Enter the attorney’s name, in all caps, on the line below the date.
 - 8➤ Check the box below the signature line for “Attorney.”
- Have the attorney sign the front of the form.
 - Ignore the rest of the front of the form, because it is prepared by the consumer if he/she objects to the production of any part of the documents.

Notice to Consumer or Employee and Objection (page one)

SUBP-025	
<p>1 ➤ ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DEBORAH SMITH, ESQ. (State Bar No. 1134685) 2222 West Flower Street Suite 101 Los Angeles, California 90234-5130 TELEPHONE NO.: 213.205.1234 FAX NO. (Optional): 213.205.1235 E-MAIL ADDRESS (Optional): D.Smith@smithlawyerslaw.com ATTORNEY FOR (Name): JAMES A. WRONGDOER</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 style="text-align: center;">NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1985.3, 1985.6)</p>	<p style="text-align: center; font-size: small;">FOR COURT USE ONLY</p> <p style="text-align: center;">CASE NUMBER: C 126447</p>
<p>2 ➤ TO (name): FRED A. WRONGED</p> <p>1. PLEASE TAKE NOTICE THAT REQUESTING PARTY (name): 3 ➤ JAMES A. WRONGDOER SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on (specify date): 4 ➤ November 18, 1998 The records are described in the subpoena directed to witness (specify name and address of person or entity from whom records are sought): 5 ➤ Custodian of Records of General Hospital, 3006 Sunset Boulevard, Los Angeles, CA 90025 A copy of the subpoena is attached.</p> <p>2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED. IN ITEM a. OR b. BELOW:</p> <p style="margin-left: 20px;">a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the witness and the deposition officer named in the subpoena at least five days before the date set for production of the records.</p> <p style="margin-left: 20px;">b. If you are not a party to this action, you must serve on the requesting party and on the witness, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should not be filed with the court. WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.</p> <p>3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.</p> <p>6 ➤ Date: October 21, 1998</p> <p style="margin-left: 100px;">7 ➤ <u>DEBORAH SMITH</u> <small>(TYPE OR PRINT NAME)</small></p> <p style="margin-left: 400px;">8 ➤ _____ <small>(SIGNATURE OF <input type="checkbox"/> REQUESTING PARTY <input checked="" type="checkbox"/> ATTORNEY)</small></p> <p style="text-align: center;">OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS</p> <p>1. <input type="checkbox"/> I object to the production of all of my records specified in the subpoena.</p> <p>2. <input type="checkbox"/> I object only to the production of the following specified records:</p> <p>3. The specific grounds for my objection are as follows:</p> <p>Date: _____ <small>(TYPE OR PRINT NAME)</small> _____ <small>(SIGNATURE)</small></p> <p style="text-align: center; font-size: x-small;">(Proof of service on reverse)</p>	

Form Adopted for Mandatory Use
 Judicial Council of California
 SUBP-025 (Rev. January 1, 2008)

NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION

Page 1 of 2
 Code of Civil Procedure,
 §§ 1985.3, 1985.6,
 2020.010-2020.510
www.accesslaw.com

§ 5.3.5 Deposition of a Non-Party - Production of Business Records

Suppose the defendant's attorney, Ms. Smith, wants to obtain a copy of the plaintiff's medical records from the hospital which treated him for injuries he suffered in the accident. She does not want to depose anyone about the medical records -- she just wants to either: (1) inspect originals and make copies of them, or (2) have copies delivered to her.

The procedure is different from that where an appearance is required. In this situation, there really is no deposition to speak of. You don't call a court reporter; you don't reserve a conference room; there is no Notice of Taking Deposition. Instead, you prepare a "Deposition Subpoena for Production of Business Records" (Mandatory Judicial Council Form No. SUBP-010), specifying the documents to be produced, the date, time, and place they are to be produced, and the method to be used to produce them, and you have it personally served, with a witness fee, on the witness.

Since all parties are entitled to see exactly what is produced for any other party, a copy of the Deposition Subpoena must be served on all attorneys of record, and they must be given an opportunity to purchase a copy of the documents produced.

If the records are personal records of a Consumer (or Employee), then (1) the Consumer has to be served with a "Notice to Consumer" (Mandatory Judicial Council Form No. 982(a)(15.5)) advising that the records are being sought and that the Consumer has the right to object to their production, and (2) the witness has to be served with proof that the Consumer was served with the Notice to Consumer. In addition, in order to make sure that the witness does not produce the documents before the Consumer has an opportunity to object to the production, strict time requirements must be met.

HINT: This very complicated procedure can most likely be accomplished by the photocopy department of your attorney service for a very reasonable fee!

Set a Date, Time and Place for the Deposition

- As noted above, you're not actually setting a deposition -- you're demanding production of documents in a particular manner at a specific date, time, and place. You should try to give a minimum of 30 days notice because several deadlines and time requirements come into play, among them:
 - ✓ If the documents demanded are consumer records, C.C.P. § 1985.3(b) requires Notice to Consumer that the records are being sought and that the Consumer has a right to object to their production to be served on the Consumer (or his/her attorney of record) at least 5 days before the witness is served with the Deposition Subpoena, plus an additional 5 days if served by regular mail (see § 2.3).

- ✓ C.C.P. § 2020.220(a) requires the Deposition Subpoena to be served a sufficient time in advance of the deposition to allow the deponent a reasonable opportunity to locate and produce the documents.
- ✓ C.C.P. § 2020.410(c) does not allow the witness to comply with the demand earlier than 20 days after the issuance of the Deposition Subpoena or earlier than 15 days after service of the Deposition Subpoena, whichever date is later.

WARNING: To comply with all of these dates, you should start the process 30 days before the deposition date. If you were to issue the Deposition Subpoena and mail the Notice to Consumer just 26 days prior to the deposition, there would be only one day upon which the witness may be served with the Deposition Subpoena -- one day earlier would be less than 5 days after the Notice to Consumer was served; one day later would put the deposition less than 15 days after service on the witness. When an attorney service has a single day upon which to accomplish service, it's a "rush serve," which costs extra. If you need to shorten the process, you can save 5 days by personally serving the Notice to Consumer.

§ 5.4 Interrogatories

Interrogatories (sometimes called “interrogs” or “rogs”) are written questions directed by one party to another party. C.C.P. § 2030.010, *et seq.*, set forth the procedures for propounding (asking) and responding to interrogatories.

The plaintiff must wait until 10 days after the defendant is served with the Complaint or 10 days after the defendant appears in the action (whichever occurs first) before serving a set of interrogatories (C.C.P. § 2030.020(b)), but there are no such restrictions on the defendant, who can serve them at any time (C.C.P. § 2030.020(a)). The party to whom interrogatories are propounded must respond within 30 days from the date they were served. (C.C.P. § 2030.260(a))

Interrogatories may be prepared in two different ways: (1) by drafting them from scratch on pleading paper, referred to as “special interrogatories” (see § 5.4.1), and (2) by using the applicable Judicial Council check box form(s) (see § 5.4.3), referred to as “form interrogatories.”

UNLIMITED CIVIL CASES:

IN AN UNLIMITED CIVIL CASE, NO PARTY CAN PROPOUND MORE THAN 35 SPECIAL INTERROGATORIES TO ANY OTHER PARTY (see C.C.P. § 2030.030) UNLESS:

- (1) Pursuant to C.C.P. § 2030.050, a “Declaration for Additional Discovery” is attached to the set of interrogatories which causes the limit of 35 to be exceeded and to each subsequent set (see § 5.4.2), or
- (2) The rog is a “supplementary interrogatory” (C.C.P. § 2030.070(a)) – a rog requesting information acquired by a responding party after they responded to previous rogs; in essence, a request to update previous responses on the basis of later-acquired information. A party has a right to serve a supplemental rog twice before a trial date is initially set, and once afterwards. (C.C.P. § 2030.070(b))

LIMITED CIVIL CASES:

IN A LIMITED CIVIL CASE, NO PARTY CAN PROPOUND MORE THAN A TOTAL OF 35 OF ANY COMBINATION OF INTERROGATORIES (SPECIAL OR FORM), REQUESTS FOR ADMISSION, AND REQUESTS TO PRODUCE TO ANY OTHER PARTY (see C.C.P. § 94) UNLESS:

- (1) The court grants a motion authorizing additional discovery (see C.C.P. § 95 for grounds)
- or -
- (2) The parties stipulate to additional discovery (see C.C.P. § 95)

§ 5.4.1 “Special Interrogatories”

- 1➤ Type the caption as on previous pleadings.
- 2➤ The title is, “SPECIAL INTERROGATORIES PROPOUNDED BY (PLAINTIFF/ DEFENDANT) TO (PLAINTIFF/ DEFENDANT).” The footer is optional.
- 3➤ The first paragraph must identify the propounding party, the set number, and the responding party. (C.C.P. § 2030.060(b)) Although the code refers to this requirement as a “paragraph,” it is usually set out as shown.
- 4➤ Typically there is a clause requesting or demanding that the interrogatories be answered under oath within thirty days.

A Note About “Prefaces” and “Instructions.” They are only allowed if they are identical to those contained in the Form Interrogatories. Otherwise, no “preface” or “instruction” is allowed. (C.C.P. § 2030.060(b))

A Note About “Definitions.” In practice, attorneys define terms in special rogs by: (1) inserting a definitions section before the interrogatories, or (2) defining the term in the rog in which it is first used. Either way, when the definition is subsequently used, it appears in all caps as required by C.C.P. § 2030.060(e).

Based on a theory that a “definitions section” is a “preface” or an “instruction,” there is a growing trend toward the latter method. This author disagrees with that theory, and also believes that it is easier for the responding party to locate a definition when it is placed in a separate definitions section (especially when they are in alphabetical order). The choice is yours (or your employer’s). To avoid an objection on the placement of the definitions, you may embed them in a rog, as shown in the example on page 5-42. If you prefer to do it the old-fashioned way, probably making it easier for the responding party, but risking an objection, do it as follows (but double-spaced):

DEFINITIONS

Words typed in capital letters in these Interrogatories are defined as follows:

ACCIDENT *is the collision that occurred on or about May 3, 1998, between Plaintiff and Defendant which is the subject of this action.*

IDENTIFY *means to describe with sufficient particularity to satisfy a demand for production of documents, and, when referring to a person, means to provide that person’s name, address, and telephone number.*

SPECIAL INTERROGATORIES

1. *IDENTIFY all percipient witnesses to the ACCIDENT.*

Service

Interrogatory responses are not filed with the court. (C.C.P. § 2030.280(a)) The original response, not a copy, is sent to the propounding party (C.C.P. § 2030.260(a)), and copies are sent to all interested parties unless the responding party successfully moves for relief from this requirement on the ground that it would be unduly expensive or burdensome to serve all interested parties. (C.C.P. § 2030.260(b))

- Prepare a proof of service as in Chapter 2.
- Mail the original response attached to the original verification and proof of service to the propounding party.
- Mail a copy of the response attached to a copy of the verification and proof of service to all other parties on the proof of service.
- Keep a complete copy for your file.

WHEN YOU RECEIVE VERIFIED RESPONSES TO ROGS WHICH YOU PROPOUNDED:

- ☐ Calendar the last day to serve notice of motion to compel further responses (45 days after the verified responses were served)^{3/} (C.C.P. § 2030.300(c)), plus the extra time allowed by C.C.P. §§ 1013 or 1010.6 if the responses were not personally served. (See § 2.3.) If the last day falls on a Saturday, Sunday or holiday, the time limit is extended to the next day that is not a Saturday, Sunday or holiday. (C.C.P. § 2016.060) (See Appendix “E” for Calendar of California Court Holidays.)
- ☐ If you believe the responses are insufficient, or for more information on motions to compel further answers, please refer to § 5.7.

C.C.P. § 2030.280(b) requires that the propounding party retain the original interrogatories and original response until 6 months after final disposition of the action.

^{3/} As of January 1, 2014, C.C.P. § 2030.300(c) makes clear that the time in which to move to compel further responses does not begin to run until the verification is served.

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§ 6.1 Vocabulary

Authorities	sources supporting points
Declarant	one who makes and signs a declaration
Declaration	a statement setting forth facts and signed under penalty of perjury
Demurrer	a responsive pleading in which a defendant or cross-defendant objects to a complaint or cross-complaint on various grounds, including that it fails to allege facts sufficient to state a cause of action; follows format of a motion
Exhibit	supporting documentation or material usually designated by capital letters or numbers (Exhibit "A", Exhibit "1", etc.)
<i>Ex parte</i> application	(Latin "for one side only"); an application for a court order made on short or no notice
Material fact	with respect to an MSJ or MSA, a fact that relates to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion
Motion	an application by a party for a court order
Motion for summary adjudication ("MSA")	motion intended to determine fewer than all ultimate issues or causes of action without trial where there is no triable issue of material fact as to those issues
Motion for summary judgment ("MSJ")	motion intended to dispose of an entire action on the ground that the action has no merit or there is no defense thereto where there is no triable issue of material fact
Motion to strike	a motion requesting that all or part of a pleading be deleted
Moving party	party who makes a motion, also called "movant"
Order	directive of the court
Point	legal theory upon which a motion is based
Responsive pleading	an answer, demurrer or cross-complaint filed in response to allegations of a complaint or other pleading
Sanctions	penalty assessed against a party or a party's attorney; can be a monetary, evidence, issue or terminating sanction
Stipulate	to agree

[NEXT PAGE IS PAGE 6-6]

§ 6.2 Introduction

Motions are probably the most complicated and most frequently used documents in the course of a lawsuit. They are governed by the Code of Civil Procedure ("C.C.P."), the California Rules of Court ("C.R.C."), and local rules. There are different types of Motions. This chapter deals with:

Regular Motions

Ex parte Applications

Motions to Strike

Demurrers

Motions for Summary Judgment ("MSJ") and Summary Adjudication ("MSA")

WARNING!!

THERE MAY BE SEVERAL DEADLINES AFFECTING YOUR RIGHT TO MAKE A MOTION.

For example, a motion to compel further answers to discovery must be brought within 45 days of the service of the verified response (C.C.P. §§ 2030.300(c), 2031.310(c), 2033.290(c)) and must be heard at least 15 days before the *initial* trial date (C.C.P. § 2024.020(a)). An MSJ or MSA must be served at least 75 days in advance of the hearing, and must be heard at least 30 days prior to trial (C.C.P. §437c(a)).

THERE MAY BE PREREQUISITES FOR BRINGING A MOTION.

For example, a motion to compel further answers to discovery in any court must be preceded by a "reasonable and good faith attempt at an informal resolution." (See § 6.3.3) ***A motion to compel further answers to discovery in L.A. County Central District Personal Injury Actions will not be heard unless the parties participate in an Informal Discovery Conference ("IDC") or the moving party submits a declaration that the opposing party failed or refused to participate in an IDC.*** (For the current requirements for scheduling IDC's and hearings, see the most recently amended "Standing Order Re: Personal Injury Procedures, Central District" on this page: <http://www.lacourt.org/division/civil/CI0030.aspx>).

MSJ'S, MSA'S, AND POST-TRIAL MOTIONS HAVE DIFFERENT DEADLINES THAN REGULAR MOTIONS.

See page 6-52 for deadlines for MSJ'S and MSA'S. C.C.P. § 629(b) (motion for judgment notwithstanding the verdict); C.C.P. § 659a (motion for new trial); and C.C.P. § 663a(d) (motion to set aside and vacate judgment) all have the same deadlines: moving papers due 10 days after filing notice of motion; opposition due 10 days after service of moving papers; reply due five days after service of opposition.

BE SURE TO CHECK THE APPLICABLE STATE CODES AND RULES AFFECTING THE PARTICULAR MOTION AS WELL AS LOCAL RULES.

§ 6.3 Regular Motions

From time to time during the course of a lawsuit, a party might need court intervention to allow them to do something or not do something, or to force the opposing party or a third party to do or not do something. The attorney applies to the court for such relief by filing a motion for an order. For example, a party might file a motion for an order allowing them to amend a complaint, or granting an extension of time to respond to something, or for relief from default; a party might seek an order compelling an opposing party to provide further answers to interrogatories or other discovery.

Various rules govern regular motions, including rules regarding contents, number of pages allowed, and deadlines for filing and serving notice of motions, opposition to motions, and replies to oppositions. Below is a table showing some of the basic rules.

General Rules for Regular Motions

Last day to hear non-expert discovery motions C.C.P. § 2024.020	15 days before the initial trial date
Last day to hear expert discovery motions C.C.P. § 2024.030	10 days before the initial trial date
Notice and motion must be filed and served C.C.P. §§ 1005(b) and 12c	at least 16 court days before the hearing ^{1/} (counting backward from the hearing date)
Opposition must be filed and served C.C.P. §§ 1005(b) and 12c	at least 9 court days before the hearing (counting backward from the hearing date)
Reply must be filed and served C.C.P. §§ 1005(b) and 12c	at least 5 court days before the hearing (counting backward from the hearing date)
Limit on length of opening/opposing P's & A's C.R.C., Rule 3.1113(d)	15 pages
Limit on length of reply P's & A's C.R.C., Rule 3.1113(d)	10 pages
Separate statement required C.R.C., Rule 3.1345	motion to compel <i>further</i> answers

A regular motion always contains a notice of hearing (also referred to as “notice of motion”) and the motion itself, and, unless excepted under C.R.C., Rule 3.1114, a memorandum of points and authorities. It often contains one or more declarations and exhibits. Sometimes a separate statement is required; sometimes a proposed order is submitted. C.R.C., Rule 3.1112(c) allows these various parts to be prepared and filed either as separate documents or combined in one or more documents. If combined, the caption must list all of the attached documents (see following example). If filed separately, it should say so below the title of the notice of motion, e.g., “[Declaration of Joe Lawyer filed concurrently.]”

^{1/} Service must be made earlier if the papers are not personally served. (See § 2.3)

§ 6.3.5 Exhibits

- C.R.C., Rule 3.1110(f) specifies the form of exhibits. Below are some of the rules:
 - ✓ An index of exhibits must be provided. It must briefly describe the exhibit and identify the exhibit designation and page number, e.g., “Exhibit B - 11/28/18 letter from Joe Lawyer to Deborah Smith, page 1.” (C.R.C., Rule 3.1110(f)(1))
 - ✓ Pages from a single deposition must be designated as a single exhibit. (C.R.C., Rule 3.1110(f)(2))
 - ✓ Each paper exhibit must be separated by a hard 8-½” x 11” sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. (C.R.C., Rule 3.1110(f)(3)) **Note that eFiled exhibits must be bookmarked.** (C.R.C., Rule 3.1110(f)(4))

§ 6.3.6 Filing and Service of Motion

- 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.
- A hearing fee will be required. (See Appendix “F” under “Civil Motion and Other Filing Fees” for the current fee.) If you are not eFiling, prepare a check for the fee. Check the court’s website to determine to whom to make the check payable. Add the check to the package.
- Be sure to check for and comply with any additional requirements in your court, e.g., in L.A.S.C., the Court Reservation System receipt for payment of the hearing fee must be attached as the last page of the motion. In addition, if you are eFiling in L.A.S.C., you are required to deliver courtesy copies to the courtroom.

A NOTE ABOUT MULTIPLE MOTIONS: The filing fee applies to each motion, whether heard at a single hearing or separate hearings. (Gov. Code §70617(f))

A NOTE ABOUT PROOF OF SERVICE: Although you will likely file your motion along with the proof of service, C.R.C., Rule 3.1300(c) requires the proof of service of the moving papers to be filed with the court at least 5 court days prior to the hearing.

§ 6.3.7 **Opposing the Motion/Replying to the Opposition**

The opposing attorney may file and serve P's & A's in opposition to the motion at least **9 court days** prior to the date of hearing on the motion. The moving party may then file and serve P's & A's in reply to the opposition at least **5 court days** prior to the date of hearing on the motion. (C.C.P. § 1005(b)) **These deadlines should be counted backward from the hearing date as provided by C.C.P. § 12c.**

IF YOU ARE SERVED WITH A MOTION, BE SURE TO CALENDAR:

- ☐ The date, time, and place of the hearing
- ☐ The deadlines for filing and serving the opposition and reply (see p. 6-7)
- ☐ Any deadlines pursuant to local rule, e.g., for submitting courtesy copies directly to the courtroom
- ☐ A reminder to check the tentative ruling (see § 6.3.9)
- ☐ A reminder to give notice of intent to appear by telephone, if any (see § 6.3.10.1)
- ☐ A reminder to arrange for a court reporter, if necessary (see § 6.3.10.2)

Oppositions and replies follow the same format, except oppositions are limited to 15 pages, and replies are limited to 10 pages. (C.R.C., Rule 3.1113)

- 1▶ Type the caption as on previous pleadings.
 - 2▶ The title is "POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR . . ." or "POINTS AND AUTHORITIES IN REPLY TO OPPOSITION TO MOTION FOR . . ." and reference to declarations, if any. The footer is an abbreviation of the title. (C.R.C., Rule 2.110) If the attorney plans to appear telephonically (see § 6.3.10), type "Telephone Appearance" immediately below the title of the document.
 - 3▶ Type below the title the same information contained below the title of the motion (date, time, place, etc.).
 - 4▶ Type the body of the P's & A's, beginning just below the bracketed caption, in the same format described in "Memorandum of Points and Authorities," above. Type the date and signature line (with "Respectfully submitted") as described for the P's & A's in support of the motion (§ 6.3.2)
- Prepare any declarations, separate statements, or exhibits as discussed in §§ 6.3.3 - 6.3.5.

§ 6.3.10 Pre-Hearing Arrangements and Hearing

Prior to the hearing it may be necessary to arrange either for a telephone appearance (and perhaps videoconferencing, where available) and/or for the services of a court reporter. 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

Parties may always appear at the hearing in person. However, there is a policy in favor of telephone 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))

§ 6.4 *Ex parte* Applications

An "*ex parte*" (Latin "for one side only") application is basically a motion made on little or no notice. It is used where the matter either does not require a hearing (e.g., applications requesting orders extending time to serve a pleading or granting leave to file P's and A's exceeding the page limit) or where the moving party is unable to or does not want to give the other party the 16 court days' notice required in regular motions.

Circumstances may prevent the applicant from giving regular notice. For example, suppose Mr. Lawyer discovers that in less than 10 days a key witness he needs to depose will leave the country and be unreachable for an extended period. Obviously, it's impossible for Mr. Lawyer to give the witness and other parties 10 days' notice of the deposition. Instead, he can seek an "order shortening time" allowing him to give less than 10 days' notice. He has no time to notice a regular motion requesting that order; the witness would be long gone before the 16-court day notice period ended. So, he seeks the order shortening time on an *ex parte* basis.

In some circumstances, advance notice could defeat the purpose of the relief requested. For example, if the plaintiff seeks an order freezing a bank account or seizing an asset of the defendant, advance notice could enable the defendant to withdraw the money or move the asset. In that situation, the plaintiff would seek *ex parte* relief without notice.

When it is required, notice (typically by telephone) must be given by 10:00 a.m. **one court day** before the hearing. (C.R.C., Rule 3.1203) However, if the applicant intends to appear at the hearing telephonically, notice must be given and papers have to be filed and served by 10:00 a.m. **two court days** before the hearing. (C.R.C., Rule 3.670(h)(3)(B)) As is explained below, the notice needs to be given earlier than these stated deadlines.

The parts of an *ex parte* application are similar to those of a regular motion. The main difference is that the *ex parte* application does not include a notice of motion. The *ex parte* application is comprised of:

- An application containing the case caption and stating the relief requested
- A declaration in support of the application making the necessary factual showing
- A declaration based on personal knowledge of notice given
- A memorandum of points and authorities
- A proposed order

§ 6.5 Demurrers

A demurrer, a responsive pleading treated as a motion, challenges certain defects in pleadings. (C.C.P. § 430.10, *et seq.*) With exceptions noted below, if in response to a complaint or cross-complaint, it must be filed and served within **30 days** after service of the complaint or cross-complaint. (C.C.P. § 430.40(a)) If in response to an answer, it must be filed and served within **10 days** after service of the answer. (C.C.P. § 430.40(b)) The party on whose behalf the demurrer is prepared is the "demurring party." The pleading being objected to is "demurred to." Demurrers are "sustained" or "overruled," not granted or denied.

In the demurrer, a party attacks a pleading or parts thereof on various grounds, among them:

- (1) The pleading fails to state a cause of action or defense or the court lacks subject matter jurisdiction ("general demurrer")
- (2) The pleading is uncertain ("special demurrer")
- (3) Another action is pending between the parties for the same cause of action ("special demurrer")
- (4) The plaintiff does not have the legal capacity to sue ("special demurrer")

NOTE: Special demurrers are not allowed in Limited Civil Cases. (C.C.P. § 92(c))

§ 6.5A Meet and Confer Requirement

C.C.P. § 430.41 requires the demurring party, prior to filing a demurrer, to attempt to meet and confer over the phone or in person with the party who filed the pleading to determine whether they can resolve the issues raised in the demurrer. C.C.P. § 430.41(a)(1) specifies what is required of the parties during the meet and confer process.^{4/}

- **Deadline to Meet and Confer:** The meet and confer must take place **at least five days** prior to the date the demurrer would have to be filed and served ("response due date"). (C.C.P. § 430.41(a)(2))

BE SURE TO CALENDAR FIVE DAYS PRIOR TO THE RESPONSE DUE DATE AS THE LAST DAY TO MEET AND CONFER.

NOTE: *If the last day falls on a holiday or weekend continue counting backward to the next court day.*

^{4/} The demurring party identifies the specific causes of action and legal support for the basis of the deficiencies; the party who filed the pleading provides legal support that the pleading is legally sufficient or how the pleading can be amended to cure any legal insufficiency.

§ 6.5B “Declaration of Demurring or Moving Party In Support of Automatic Extension” (Judicial Council Form No. CIV-141)

If, despite a good faith attempt to meet and confer by the response due date, the parties are unable to do so, the demurring party may, ***on or before the response due date***, file and serve a declaration stating that a good faith effort was made and explaining why they could not meet and confer by the deadline. ***The filing and service of this declaration automatically extends the response due date by 30 days.*** (C.C.P. § 430.41(a)(2)) This Judicial Council form may be used to satisfy the declaration requirement. *[It may also be used to satisfy the same requirement in connection with motions to strike and motions for judgment on the pleadings.]* Alternatively, a declaration may be drafted from scratch.

- 1► Complete the top portion as on previous court forms.
- 2► Enter in all caps the name of the party you represent.
- 3► Check the box that best describes the pleading that will be the subject of the demurrer, or use the “other” box and add a description.
- 4► Enter the due date for the response to the pleading which will be the subject of the demurrer.
- 5► If the explanation will fit, check the box before “below” and enter the reason why the parties were unable to meet and confer. Otherwise, check the box indicating that you are attaching a declaration explaining the inability, and then do so.
- 6► Enter the date the attorney will sign the form.
- 7► Enter the attorney’s name in all caps.

Filing and Service

Follow the procedures outlined in Chapter 2, but be sure to do so ***on or before the response due date***.

**BE SURE TO CALENDAR THE EXTENDED RESPONSE DUE DATE
(30 DAYS AFTER THE ORIGINAL RESPONSE DUE DATE).**

NOTE: If the last day falls on a holiday or weekend, extend the deadline to the next court day.

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§ 7.1 Vocabulary

Alternative Dispute Resolution (“ADR”)	dispute resolution process intended to expedite resolution and reduce costs, e.g., arbitration or mediation
Arbitration	alternative dispute resolution process in which each party presents its case to a neutral third party called an "arbitrator," who issues an award as would a judge; may be binding or non-binding
Case Management Conference (“CMC”)	conference where attorneys and parties set various dates including discovery deadlines, mandatory settlement conference, final status conference and trial; not held in all cases
Expedited jury trial	a short jury trial before a reduced jury panel, which may be either a voluntary expedited jury trial or, as of July 1, 2016, a mandatory expedited jury trial
High/low agreement	an agreement which specifies the minimum amount the plaintiff is guaranteed to receive, and the maximum amount the defendant will be liable for, regardless of the verdict in an expedited jury trial
Initial trial date	the date first set for trial to begin; triggers important deadlines (see § 7.5)
Jury instructions	statements of the legal principles and rules applicable to the disputed claims and defenses
Mandatory Settlement Conference (“MSC”)	conference where judge, attorneys and parties discuss the possibility of settling the case without going to trial
Mediation	alternative dispute resolution process in which a neutral person facilitates communication between the parties to assist them in reaching a mutually acceptable settlement
Trial <i>de novo</i>	Latin for trial from the beginning
Trial setting date	date on which the initial trial date is selected or announced; triggers important deadlines (see § 7.5)

§ 7.2 Case Management

The case management process is intended to move cases towards final resolution expeditiously. Among other things, the process involves considering ADR options, limits and deadlines pertaining to discovery, and exploring settlement possibilities. The Expedited Jury Trial Act offers another mechanism for resolving disputes. (See § 7.6 - "Expedited Jury Trials".)

The statewide case management rules for general civil cases are set forth in C.R.C., Rule 3.700, *et seq.*

EXEMPTION FROM STATEWIDE CASE MANAGEMENT RULES

Any court by local rule may exempt specified types or categories of general civil cases filed before January 1, 2020 from the case management rules, but there must be an alternate procedure in place, posted on the court's website. (See, C.R.C., Rule 3.720(b))

In L.A., L.A.S.C.R., Rule 3.24(b) exempts several types of cases, including "Personal Injury Actions" (defined in L.A.S.C.R., Rule 2.3(a)(1)(A)). (For alternate procedures, see the most recently amended "Standing Order Re: Final Status Conference Personal Injury ("PI") Courts" posted on this page: <http://www.lacourt.org/division/civil/CI0030.aspx>.)

Check your court website to determine whether your case is exempt, and if so, what alternate procedures apply.

If not exempt, the process begins with the issuance of a Notice of Case Management Conference (below), which the clerk may generate as soon as the Complaint is filed, and ends when the case is dismissed or judgment is entered. During the process, the parties meet and confer, prepare statements, appear at hearings, and abide by court orders. Sometimes parties will voluntarily participate in ADR; sometimes they are ordered to do so. If the case is not resolved via ADR or settlement, it proceeds towards trial, with the court issuing various orders relating to the exchange of information, trial preparation, and conduct of trial.

§ 7.2.1 Alternative Dispute Resolution

The significant number of civil case filings in California has resulted in an attempt to resolve cases by ADR instead of trial, typically, arbitration (C.R.C., Rules 3.810, *et seq.*) and mediation (C.R.C., Rules 3.870, *et seq.*). Both arbitration and mediation can be voluntary (the parties stipulate to the process) or involuntary (the court orders the parties to do so).

In arbitration, the case is heard by an arbitrator who renders an "award" in favor of the prevailing party. The procedures for arbitration are much simpler and less formal than those for trial, and an arbitration hearing is usually conducted before a trial date would be available. If the arbitration is non-binding, any party may request a "trial *de novo*" and proceed to trial as if the arbitration had not occurred. In mediation, the parties and their counsel meet with a mediator trained to help them settle the case. If they succeed, the case settles in accordance with their agreement; if they do not settle, they continue to prosecute the case towards trial.

NOTE: ADR RULES AND FORMS ARE NOT ADDRESSED IN THIS BOOK. IF YOUR CASE IS REFERRED TO ADR, BE SURE TO CHECK ALL APPLICABLE STATE AND LOCAL RULES.

§ 7.5 Trial-Related Calendaring

Several deadlines relate to the trial date. They may be triggered by the trial setting date (the date on which the trial date is selected or announced), the initial trial date (the first assigned trial date), and/or the actual trial date. Deadlines are dictated by the C.C.P., the C.R.C., and local rules. The following table lists some of the statewide deadlines.^{3/}

Sample Statewide Deadlines Triggered by Trial Setting and/or Trial Date

Request jury trial	Announce at time of trial setting if set upon notice or stipulation; or within 5 days of notice of setting if trial date set without notice or stipulation	C.C.P. § 631(f)(4)
Exchange of expert witness information	Serve demand to exchange within 10 days after setting initial trial date, or at least 70 days before initial trial date, whichever is closer to trial date; exchange 20 days after service of demand or 50 days before initial trial date, whichever is closer to trial date	C.C.P. § 2034.220; C.C.P. § 2034.230 (See § 5.8)
Request to opt out of Mandatory EJT	File and serve at least 45 days before the date first set for trial or the first trial date after July 1, 2016	C.R.C., Rule 3.1546(c)(2)
Motion for judgment on the pleadings	If no pretrial conference order, last day to bring is 31 days prior to initial trial date	C.C.P. § 438(e)
MSJ/MSA; motion to bifurcate	Last day to hear is 30 days before trial date	C.C.P. § 437c(a); C.C.P. § 598 (See § 6.7)
Discovery cut-off: non-experts	Must be completed 30 days before, and discovery motions must be heard 15 days before, initial trial date	C.C.P. § 2024.020 (See § 5.2)
Proposed consent order for Voluntary EJT	Must be submitted no later than 30 days before any assigned trial date	C.R.C., Rule 3.1547(a)(1)
Deposit advance jury fees	If case filed before 7/1/11 and CMC held prior to 6/28/12, or party requesting jury has not appeared before initial CMC or first appeared more than 365 calendar days after filing of initial complaint, 25 days before initial trial date; otherwise see C.C.P. §631(c) in its entirety	C.C.P. § 631(c)(3) and (4)
Discovery cut-off: experts	Must be completed 15 days before, and expert discovery motions must be heard 10 days before, initial trial date	C.C.P. § 2024.030 (See § 5.2)
Statutory offer to compromise	Last day to serve is 10 days before trial	C.C.P. § 998 (See § 8.2)
Notice to appear at trial	If documents demanded, last day to serve is 20 days before trial; otherwise 10 days	C.C.P. § 1987(b) and (c)

^{3/} This list is by no means exhaustive. Rules-based computerized calendaring software is invaluable at this juncture.

The chart below shows these similarities and slight variations, with the shaded rows highlighting the variations.

Procedure	Mandatory EJT	Voluntary EJT
Time for <i>Voir Dire</i> and Presentation of Case	5 Hours C.R.C., Rule 3.1550	5 Hours C.R.C., Rule 3.1550
Number of Jurors	8 + 1 alternate C.C.P. § 630.23(b)	8 + 0 alternates C.C.P. § 630.04(a)
Number of Peremptory Challenges	4 C.C.P. § 630.23(c)	3 C.C.P. § 630.04(b)
Numbers of Jurors for Verdict	6 C.C.P. § 630.26(a)	6 C.C.P. § 630.07(b)
Parties May Modify Procedures (including above)	Yes C.R.C., Rule 3.1546(d)	Yes C.R.C., Rule 3.1547(b)
High/Low Agreements Allowed	Yes C.C.P. § 630.21(b)	Yes C.C.P. § 630.01(b)

§ 7.6.1.3 Governing Rules for Both Types of EJT's

The procedures for the two types of EJT's are found in C.C.P. §§ 630.20-630.30 (Mandatory EJT's), C.C.P. §§ 630.01-630.11 (Voluntary EJT's), and the C.R.C. The C.R.C. contains four articles on EJT's, each applicable to one or both types of EJT's:

Article	C.R.C., Rules	Applicability
1	3.1545	Mandatory and Voluntary
2	3.1546	Mandatory only
3	3.1547-3.1548	Voluntary only (but Mandatory refers to 3.1547(b))
4	3.1549-3.1553	Mandatory and Voluntary

§ 7.6.1.4 Applicable Judicial Council Forms for Both Types of EJT's

There are seven Judicial Council forms for EJT's. Some are mandatory; some are optional. One is used only in Voluntary EJT's; two are used in both types of EJT's; and four are used only in Mandatory EJT's. The chart below lists the current forms.

Form #	Mandatory/ Optional	Form Title	Mandatory EJT	Voluntary EJT
EJT-001- INFO	M	Expedited Jury Trial Information Sheet (p. 7-46)	✓	✓
EJT-003	M	Request to Opt Out of Mandatory Expedited Jury Trial Procedures (p. 7-33)	✓	
EJT-004	M	Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures (p. 7-35)	✓	
EJT-005	O	Order on Request to Opt Out of Mandatory Expedited Jury Trial Procedures (p. 7-48)	✓	
EJT-018	O	Agreement of Parties (Mandatory Expedited Jury Trial Procedures) (p. 7-37)	✓	
EJT-020	O	[Proposed] Consent Order for Voluntary Expedited Jury Trial (p. 7-43)		✓
EJT-022A	O	Attachment to [Proposed] Consent Order or Agreement of Parties (p. 7-39)	✓	✓

§ 7.6.2 Procedures Specific to Mandatory EJT's

C.R.C., Rule 3.1546 relates only to Mandatory EJT's. As noted above, Mandatory EJT's follow the pretrial and case management procedures of regular limited civil cases. (C.R.C., Rule 3.1546(a) and (b)) Unique to Mandatory EJT's is the opt out procedure set forth in C.R.C., Rule 3.1546(c). (see § 7.6.2.1) The parties to a Mandatory EJT may modify pretrial and trial procedures. (C.R.C., Rule 3.1546(d)) (see § 7.6.2.2)

§ 7.6.2.1 The Mandatory EJT Opt Out Process

The grounds for opting out of a Mandatory EJT are in C.C.P. § 630.20(b) and listed on the "Request to Opt Out of Mandatory Expedited Jury Trial Procedures" form. There are nine grounds: eight statutory and one catch-all for good cause, including needing more than five hours to present or defend the case and the inability to stipulate to additional time. Either party may make the request; the opposing party may object, contending that grounds to opt out do not exist. The court issues an order either granting the request, denying the request, or setting a hearing on the request.

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§ 8.1 Vocabulary

Dismissal

to dismiss a party from a lawsuit; plaintiffs can dismiss defendants and cross-complainants can dismiss cross-defendants

Release

a document whereby the plaintiff or cross-complainant agrees to dismiss a defendant or cross-defendant from a lawsuit and not bring suit against that party for the same cause of action in the future

Settlement

agreement reached by parties to terminate a lawsuit; plaintiff usually agrees to dismiss in return for defendant paying a specified sum of money to plaintiff

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§ 9.1 Vocabulary

Abstract of Judgment	record of judgment prepared by the court clerk; when filed with the county recorder, becomes a lien on real estate owned by the judgment debtor
Acknowledgment of Satisfaction of Judgment	notice prepared by judgment creditor stating that the judgment has been paid by the judgment debtor
Entry	annotation by the court clerk in court records; e.g., entry of default, entry of judgment, entry of order
Execution	enforcement of a judgment
Judgment	decision of the trial court concerning the rights and claims of the parties
Judgment creditor	the party in whose favor a money judgment is awarded
Judgment debtor	the party against whom a money judgment is awarded
Statement of Decision	factual and legal reasons given by the trial court for making its judgment
Writ of Execution	document issued by the court clerk authorizing an officer or registered process server to take and sell property of a judgment debtor to satisfy a judgment

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