

## Chapter 5 DISCOVERY

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## § 5.1 Vocabulary

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

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## § 5.2 Introduction

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, 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:** Absent agreement of the parties or court order, and except as provided in C.C.P. § 2024.040, discovery not related to expert witnesses must be *completed* by the "discovery cut-off date" (on or before the 30<sup>th</sup> day prior to the *initial* trial date), and all motions concerning discovery must be heard on or before the 15<sup>th</sup> day prior to the *initial* trial date. (C.C.P. § 2024.020(a)) Written discovery is "completed" on the day the response is due; depositions are "completed" on the day they begin. (C.C.P. § 2024.010) Depositions of expert witnesses must be taken on or before the 15<sup>th</sup> day prior to the *initial* trial date, and motions concerning discovery relating to expert witnesses must be heard on or before the 10<sup>th</sup> day prior to the *initial* trial date. (C.C.P. § 2024.030) Continuing the trial date does not extend the discovery cut-off date (C.C.P. § 2024.020(b)). The parties may either agree in writing to extend the discovery or discovery motion cut-off dates (C.C.P. § 2024.060), or any party may move the court for an order extending them (C.C.P. § 2024.050).

**WHEN THE TRIAL DATE IS SET, CALENDAR THE LAST DAY TO SERVE DISCOVERY IN COMPLIANCE WITH THE DISCOVERY CUT-OFF AND DISCOVERY MOTION CUT-OFF DATES** (i.e., for written discovery, at least 65 days before the discovery cut-off date.)

The five most common formal discovery devices are discussed in greater detail later in this chapter. They are:

- depositions
- interrogatories
- requests for admission
- inspection demands
- 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)).

**SEE NEXT TWO PAGES FOR TABLES SHOWING KEY DISCOVERY DEADLINES.**

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### 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 when you serve and respond to discovery.

<b><u>Commencing Discovery</u></b>	<i>Discovery is commenced when the discovery request is served.</i>
Deposition (“depo”)	<ul style="list-style-type: none"> <li>Plaintiff may not serve notice of depo earlier than <b>20</b> days after defendant is served or appears in the action. No time restriction on defendant.</li> </ul>
Interrogatories (“Rogs”); Requests for Admission (“RFA’s”); Inspection Demands (“I/D”)	<ul style="list-style-type: none"> <li>Plaintiff may not serve Rogs, RFA’s, or I/D earlier than <b>10</b> days after defendant is served or appears in the action, whichever is first. No time restriction on defendant.</li> </ul>
Demand to exchange list of experts	<ul style="list-style-type: none"> <li>Must be served within <b>10</b> days after setting of initial trial date, or <b>70</b> days before that trial date, whichever is closer to trial date.</li> <li>Exchange date must be within <b>50</b> days before initial trial date, or <b>20</b> days after service of demand, whichever is closer to trial date.</li> <li>Supplemental list of expert witnesses may be served within <b>20</b> days after the initial exchange.</li> </ul>
<b><u>Completing Discovery (“Discovery Cut-off”):</u></b>	<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 below.</i>
Non-expert discovery	<ul style="list-style-type: none"> <li>Must be completed at least <b>30</b> days prior to initial trial date.</li> </ul>
Expert discovery	<ul style="list-style-type: none"> <li>Must be completed at least <b>15</b> days prior to initial trial date.</li> </ul>
<b><u>Noticing Depo:</u></b>	<i>See note re effect of C.C.P. § 1013 below.</i>
Depo of party (appearance only)	<ul style="list-style-type: none"> <li>Notice of depo must be served at least <b>10</b> days prior to depo.</li> </ul>
Depo of party where documents are sought	<ul style="list-style-type: none"> <li>Notice of depo must be served at least <b>10</b> days prior to depo (and consider need to add reasonable time for deponent to locate, produce documents, and travel to depo).</li> </ul>
Depo of non-party (appearance only)	<ul style="list-style-type: none"> <li>Serve notice of depo at least <b>10</b> days prior to depo.</li> <li>Serve depo subpoena on witness a sufficient time in advance of depo to provide deponent a reasonable time to travel to place of depo.</li> </ul>
Depo of non-party where non-consumer/non-employee documents are sought	<ul style="list-style-type: none"> <li>Serve notice of depo at least <b>10</b> days prior to depo.</li> <li>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.</li> </ul>

Form  
revised  
1/1/09

**“Deposition Subpoena For Personal Appearance” (Mandatory Judicial Council Form No. SUBP-015)**

- 1' Complete the top portion as on previous court forms.
- 2' Enter in all caps the name of the deponent and his/her address and phone number, if known.
- 3' Enter the date, time, and place of the deposition.
- 4'
  - 1a: If you are subpoenaing an entity, as opposed to a natural person, check box #1a, ordering the entity to designate to testify on its behalf the person most knowledgeable (“PMK”) about the matters you will describe in #2.
  - 1b: Always check the first box in #1b, stating that the depo will be recorded stenographically. If the depo will be recorded by additional means, check the applicable boxes.
  - 1c: If a videotape of the deposition is intended for use at trial, check #1c.
- 5' Enter the date the attorney will sign (issue) the Deposition Subpoena.
- 6' Enter the attorney’s name, in all caps.
- 7' Enter “Attorney” on the right side of the form.

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Deposition Subpoena for Personal Appearance (page one)

Form revised 1/1/09

<b>SUBP-015</b>	
<p>1 ▶ ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>DEBORAH SMITH, ESQ.</b> (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): FRED A. WRONGED</p>	<i>FOR COURT USE ONLY</i>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>          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><b>DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE</b></p>	
<p>CASE NUMBER C 126447</p>	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

2 ▶ MICHELLE H. BROWNING, 123 First Street, Los Angeles, California 90012; 213.562.0012

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

3 ▶ Date: November 15, 1998 Time: 10:00 a.m. Address: 2222 West Flower Street, Suite 101  
Los Angeles, California 90234-5130

a.  As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.230.)

4 ▶ b.  This deposition will be recorded stenographically  through the instant visual display of testimony and by  audiotape  videotape.

c.  This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2.  If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

3. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

5 ▶ Date issued: October 18, 1998

6 ▶ \_\_\_\_\_  
DEBORAH SMITH  
(TYPE OR PRINT NAME)

7 ▶ \_\_\_\_\_  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

\_\_\_\_\_  
Attorney  
(TITLE)

(Proof of service on reverse)

Form Adopted for Mandatory Use  
Judicial Council of California  
SUBP-015 (Rev. January 1, 2009)

**DEPOSITION SUBPOENA  
FOR PERSONAL APPEARANCE**

Page 1 of 2  
Code of Civil Procedure §§ 2020.310,  
2025.220, 2025.230, 2025.250, 2025.620  
Government Code, § 68097.1  
www.courtinfo.ca.gov



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#### § 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 can be prepared in 2 ways: (1) the conventional pleading format, referred to as “special interrogatories,” and (2) the Judicial Council forms (DISC-001 for Unlimited Civil Cases or DISC-004 for Limited Civil Cases), 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)

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**§ 5.4.5 “Response to Interrogatories”**

Unless the propounding and responding parties agree in writing to extend the time for service of a response (C.C.P. § 2030.270), the responding party must serve a response to the Interrogatories within 30 days after service (C.C.P. § 2030.260), plus the additional time allowed by C.C.P. § 1013 if the Interrogatories were served by regular mail, fax, express mail, or overnight delivery. (See § 2.3)

**WHEN YOU RECEIVE A SET OF INTERROGATORIES PROPOUNDED TO YOUR CLIENT, BE SURE TO CALENDAR THE DATE THE RESPONSE IS DUE AS NOTED IN THE BOX ON PAGE 5-48.**

**WARNING!!**

**IF YOU DO NOT RESPOND WITHIN THE TIME ALLOTTED, YOU HAVE WAIVED YOUR CLIENT’S RIGHT TO OBJECT TO THE INTERROGATORIES. [SEE C.C.P. § 2030.290 FOR MORE DETAILS AND EXCEPTIONS.]**

Upon receipt of a set of interrogatories, an attorney usually sends a copy to the client, requesting that he/she answer as many as possible and return them to the attorney. When the attorney receives the answers, he/she prepares the responses, making objections where appropriate.

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**CALENDARING NOTES FOR REQUESTS FOR ADMISSION:**

**Calendar** the date the Response is due (30 days after service) (C.C.P. § 2033.250), plus the extra time allowed by C.C.P. § 1013 if the Requests were not personally served (see § 2.3) Also, if the last day to respond 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 Court Holidays) .

**IF RESPONSES ARE NOT SERVED TIMELY, THE PROPOUNDING PARTY CAN MOVE TO HAVE THE MATTERS DEEMED ADMITTED AND FOR SANCTIONS. (C.C.P. § 2033.280)**

**§ 5.5.3 “Response to Requests for Admission”**

Unless the propounding and responding parties agree in writing to extend the time for service of a response (C.C.P. § 2033.260), the responding party must serve a Response to the Requests for Admission within 30 days after service (C.C.P. § 2033.250), plus the additional time allowed by C.C.P. § 1013 if they were served by regular mail, fax, express mail, or overnight delivery. (See § 2.3)

**WHEN YOU RECEIVE A SET OF REQUESTS PROPOUNDED TO YOUR CLIENT, BE SURE TO CALENDAR THE DATE THE RESPONSE IS DUE AS NOTED IN THE BOX ABOVE.**

**WARNING!!**

**IF YOU DO NOT RESPOND WITHIN THE TIME ALLOTTED, YOU HAVE WAIVED YOUR CLIENT’S RIGHT TO OBJECT TO THE REQUESTS AND THE PROPOUNDING PARTY CAN MOVE TO HAVE THE MATTERS DEEMED ADMITTED. [SEE C.C.P. § 2033.280 FOR MORE DETAILS]**

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### § 5.8.3 Exchanging Expert Witness Information

All parties must comply timely with the demand.<sup>3/</sup> Even when a specific date and time is set for the exchange, parties typically comply by mailing their expert information to the parties who have appeared in the action on or before the date set for the exchange. Mailing on that date is expressly authorized by the code. (C.C.P. § 2034.260(a))

To comply, the parties must either: (1) provide a statement that the party does not presently intend to offer the testimony of any expert witness, or (2) provide a list setting forth the name and address of any person whose expert opinion that party expects to offer in evidence at the trial (see “Designation of Expert Witnesses” § 5.8.3.1). In addition, for every expert who “is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action,” a “Declaration in Support of Designation of Expert Witnesses” must be prepared and served (see § 5.8.3.2).

**THIS IS A VERY COMPLEX AREA OF THE LAW. FAILURE TO FOLLOW ALL RULES REGARDING EXPERT WITNESSES, INCLUDING DESIGNATING EXPERTS, EXCHANGING DECLARATIONS AND REPORTS, MAKING THE EXPERT AVAILABLE FOR DEPOSITION, ETC., MAY RESULT IN ALL OR PART OF THE EXPERT'S TESTIMONY BEING EXCLUDED AT TRIAL. (See C.C.P. § 2034.300)**

#### § 5.8.3.1 “Designation of Expert Witnesses”

- 1▶ Type the caption as on previous pleadings.
- 2▶ The title is “DESIGNATION OF [PLAINTIFF'S/DEFENDANT'S] EXPERT WITNESSES.”
- 3▶ Insert the standard introductory clause.
- 4▶ State that the designation is being made pursuant to C.C.P. § 2034.260.
- 5▶ List the name and address of each expert. (Our sample also includes the telephone number, which is not required under the code.)
- 6▶ If a declaration under C.C.P. § 2034.260 will be concurrently served, indicate that on the designation.
- 7▶ Although C.C.P. § 2034.310 allows a party to call at trial an expert designated by an opposing party under certain circumstances, an express reservation of the right to do so is often included in a party's designation.

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<sup>3/</sup> Also, a party may move for a protective order on several different grounds. See C.C.P. § 2034.250.

