For example, if a party is requesting an evidentiary sanction, they would find cases where evidentiary sanctions were imposed, and they would argue that the cases are so similar that the court should rule as did the other court.

Example:

"In Smith v. Jones, 123 Cal.App.3d 444 (1999), the court issued an order barring the defendant from so much as mentioning at trial the possibility that a third party not a party to the lawsuit caused the accident. The facts in Smith are virtually indistinguishable from those in the instant case. There, the plaintiff had served the defendant with interrogatories on the issue of causation. The defendant failed to respond to the interrogatories. After numerous attempts to contact the defendant's attorney, the plaintiff brought a motion to compel. The defendant in Smith did not oppose the motion or appear at the hearing. The court issued a monetary sanction and ordered the defendant to respond to the interrogatories within a specified time period. The defendant failed to do so. The plaintiff brought a subsequent motion requesting an issue sanction, which the court granted.

As appears more fully in the Declaration of Joe Lawyer, the only difference between the facts in Smith and the facts in the instant case is that the instant motion is the third motion to compel relating to the interrogatories in question. Thus, there is even more reason to impose the requested issue sanction."

- The P's & A's contain statements of law followed by citations to appropriate legal authorities. Citations must be either as defined in the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, at the option of the party filing the document, but use of one or the other must be consistent throughout.[1/]

- Where possible, citations should be to primary authorities as opposed to secondary authorities.[2/]

- Statements of fact in the P's & A's must be supported by references to the evidence supporting the facts. The evidence may be the testimony (embodied in a written declaration) of someone competent to testify about the facts (see "Declarations" below) or it may be documentary evidence (exhibits) such as a copy of a contract, a copy of a letter, etc. The evidence is cited in the P's & A's, e.g., *"On October 13, 2007, Plaintiff served its 'First Set of*

[1/] One of the paralegal's duties with respect to drafting motions is to cite check the P's & A's, which involves making sure that the citations are to the correct page and in the proper format, and that the case names are correctly spelled. The more experienced paralegal may also be responsible for reading the cited cases to ensure that they are accurately quoted or described.

[2/] Remember that primary sources of law are statements *of* the law, and consist of constitutions, statutes, and cases, while secondary sources are statements *about* the law, and consist of legal encyclopedias, dictionaries, treatises, law review articles, and legal journals.

Interrogatories Propounded By Plaintiff To Defendant' on Defendant. Despite two telephone calls and three letters from Plaintiff's counsel to Defendant's counsel, Defendant has failed to respond to the interrogatories." (Declaration of Joe Lawyer, page 3, lines 6-15)"[3/]

- There are strict rules regard the number of pages in the P's & A's: they may not exceed 15 pages without leave of court; if they exceed 10 pages, they must include a table of authorities and a table of contents, and if they exceed 15 pages (pursuant to a court order[4/]), they must contain a summary of argument.

- The signature line is different from other court filings as the words "Respectfully submitted" precede the signature.

Declaration

A **declaration** is a written statement of facts signed under penalty of perjury. It may be made by anyone **competent** to testify who has personal knowledge of the facts stated in the declaration (the "**declarant**").

- The declaration states in detail the facts upon which the motion is based (i.e., the facts referred to in the P's & A's). For example, the declaration of an attorney moving for an order shortening the time within which to notice a deposition would describe the subject matter of the witness' testimony, how it is relevant to the case, and why it is imperative to take the deposition on less than 10 days notice (e.g., the deponent is leaving the country, about to have major surgery, their identity was recently discovered, and the discovery cut-off date is less than 10 days away).

- The declaration also authenticates exhibits referred to in the P's & A's, e.g., *"Attached as Exhibit 'A' is a true and correct copy of my August 31, 2007, letter to Defendant's attorney demanding responses to the interrogatories." "Attached as Exhibit 'B' is a true and correct copy of the Lease Agreement dated October 5, 2006, entered into by Plaintiff and Defendant for the premises which are the subject of this action.* "

- Where monetary sanctions are sought, the declaration must detail how the requested sum was calculated.

[3/] The declaration would describe, in detail, each of the attempts, and would attach copies of the letters as exhibits.

[4/] Leave of court to file P's & A's in excess of 15 pages may be requested by filing an *ex parte* application at least 24 hours before the P's & A's are due.

* * *

Dispositive Motions

A *dispositive motion* is a motion asking the court to dispose of one or more causes of action, or even the entire action, in favor of the moving party, without the need for a trial. In that regard, trials are required only where there are **material facts** (e.g., those which support elements of a cause of action) in dispute. The purpose of the trial is to allow the judge or the jury (trier of fact) to hear evidence from both sides, and make findings as to those disputed facts and determine what actually happened.

For example, in the case of *Wronged v. Wrongdoer* in the Procedural Guide, there are numerous material facts in dispute related to the *cause* of the accident, and who is therefore liable:

- Whether Wronged illegally pulled away from the curb.
- Whether Wrongdoer was speeding.
- Whether Wrongdoer's brakes failed.
- Whether Wrongdoer's brakes failed because of some act or omission on the part of Jim's Auto Shop.

If these material facts are still disputed at the time of trial, evidence will be presented, and the trier of fact will make the necessary determinations. However, when the facts are not disputed, there is no reason to have a trial (at least as to those undisputed facts).

There are many ways in which a material fact can be conclusively established prior to trial. For example, a material fact alleged in the complaint is conclusively established if:

- It is not denied in the answer.
- It is admitted or deemed admitted in discovery.
- The plaintiff introduces evidence establishing the fact, and the defendant has no evidence to refute it.

When a fact is conclusively established, for whatever reason, it may be possible to have the court rule as a matter of law as to some or all of the parties' rights in the case. For example, if the plaintiff is able to show that the essential elements of its cause of action have been conclusively established, the plaintiff should win the case without going to trial. Similarly, if the defendant is able to show that the plaintiff is unable to establish the elements of its cause of action, the defendant should win the case without going to trial.

A party requests that the court rule as a matter of law as to the parties' rights by filing one of various dispositive motions with the court. They include: a motion for judgment on the pleadings, a motion for summary judgment, and a motion for summary adjudication, each of which has a specific purpose.

Motion for Judgment on the Pleadings

The **motion for judgment on the pleadings** has the same function as a *general demurrer,* but it is made after the time to file a demurrer has expired, and at least 30 days prior to the initial trial date (unless leave of court is obtained to file it later). Any party may move for judgment on the pleadings, but because leave to amend is freely given by the court, a motion for judgment on the pleadings should not be made unless it is clear from the facts in the pleadings, in light of applicable substantive law, that the moving party will prevail.