**LITIGATION CHECKLIST 2014**

# FEDERAL – USDC CENTRAL CALIFORNIA

**Computing Time:** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

**Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer:

[ ]  Exclude the day of the event that triggers the period

[ ]  Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

[ ]  Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**Period Stated in Hours.** When the period is stated in hours:

[ ]  Begin counting immediately on the occurrence of the event that triggers the period;

[ ]  Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

[ ]  If the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

**Inaccessibility Clerk's Office.** Unless the court orders otherwise, if the it is inaccessible:

[ ]  On the last day for filing under [Rule 6(a)(1)](http://www.law.cornell.edu/rules/frcp/rule_6#rule_6_a_1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

[ ]  During the last hour for filing under [Rule 6(a)(2)](http://www.law.cornell.edu/rules/frcp/rule_6#rule_6_a_2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

**“Last Day” Defined.** Unless a different time is set by a statute, LR, or CO, the last day ends:

[ ]  For electronic filing, at midnight in the court's time zone; and

[ ]  For filing by other means, when the clerk's office is scheduled to close

**“Next Day” Defined.**The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

# Motion Papers:

**\*\*ALWAYS LOOK AT THE JUDGES LOCAL RULES AND PROCEDURES\*\***

[http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/FAQs+about+Judges%27+Procedures+and+Schedules?OpenView](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/FAQs%2Babout%2BJudges%27%2BProcedures%2Band%2BSchedules?OpenView)

[ ]  Set a motion date by selecting an open date from one of the Judges dates under the “Motion Calendar” link.

## Timing:

1. **Moving Papers:**
	1. Mailed - the notice of motion must be served not later than 31 days before the Motion Day designated in the notice.
	2. Served personally, or electronically, the notice of motion **must be served not later than 28 days before the Motion Day designated in the notice.** The court may order a shorter time. *Central Dist. LR 6-1 (amended 12/1/13).*
2. **Opposition Papers** must be served and filed at least 21 days before the hearing date. *Central Dist. LR 7-9 (amended eff 1/1/10).*
3. **Notice of Withdrawal or Non-Opposition**
	1. Any moving party who intends to withdraw the motion before the hearing date must file and serve a withdrawal of the motion, not later than 7 days preceding the hearing.
	2. Any opposing party who no longer intends to oppose the motion, must file and serve a withdrawal of the opposition, not later than 7 days preceding the hearing. *Central Dist. LR 7-16 (amended eff 12/1/10).*
4. **Reply Papers** must be served at least 14 days before the hearing date, not excluding Saturdays, Sundays and holidays. *Central Dist. LR 7-10 (amended 1/1/10).*
5. **If Hearing Date Continued,** unless otherwise specified by the court, the entry of an order continuing a hearing on a motion automatically **extends the time for filing and serving opposition and reply papers to 21 days and 14 days, respectively, before the hearing date.** *Central Dist. LR 7-11 (amended 1/1/10).*
6. **Lodge Deposition Transcripts 10 Days Before Hearing** to be used at trial or an evidentiary hearing shall be marked as provided in *Central Dist. LR 16-2.7*. **The original deposition shall be lodged with the Clerk on or before the first day of a trial or at least ten (10) days before an evidentiary hearing unless required to be filed earlier under Central Dist. LR 16-11.2.** *Central Dist. LR 32-1 (amended eff 12/1/13).*

## Service of Notice, Motion and Affidavits Under the FRCP:

In Case of Conflict Follow Local Rules, it is recommended practice to follow local rule requirements.

1. **Notice, Motion and Affidavits--14 Days Before Hearing:**
2. A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, except, when the motion may be heard ex parte, when these rules set a different time; or when a court order which a party may, for good cause, apply for ex parte sets a different time. *FRCP 6*. Any affidavit supporting a motion must be served with the motion. *FRCP 6*.
3. **Opposing Affidavits--7 Days Before Hearing:**
4. Except as Rule 59 provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time. *FRCP 6*.
5. **Service by Mail, Delivery to Clerk, Electronic or Other Means--3 Additional Days:**
6. When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C)(mail), (D)(delivery to court clerk), (E)(electronic means), or (F)(other means consented to), 3 days are added after the period would otherwise expire under Rule 6. *FRCP 6.*

## Calculating the Due Date or Deadline Pursuant to the FRCP

1. All deadlines stated in days, no matter the length of the period, are computed in the same way.
	1. The day of the event that triggers the deadline is not counted.
	2. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, **with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday.** *FRCP 6(a)(1).*
2. **When determining the last day of a filing period stated in days**, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. *FRCP 6(a)(3).*
3. The end of the last day of a period is defined as midnight in the court's time zone for electronic filing, and closure of the clerk's office for filing by any other means. *FRCP 6(a)(4).*
4. In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. *FRCP 6(a)(5).*
5. Legal holidays are set forth and defined at Rule 6(a)(6). *FRCP 6(a)(6).*
6. Cut-off or Deadline: The court must set a motion cut-off date or deadline. *FRCP 16.*

## Filing Requirements of the Motion Papers:

* 1. **First page must include of each document and the Notice of Motion:**

[ ]  Hearing date and time

[ ]  The name of the judicial officer before whom the motion has been noticed.

[ ]  The notice of motion shall contain a concise statement of the relief or Court action the movant seeks.

* 1. **Certification of Conference of Counsel**

Except in exempt cases, or for discovery motions or applications for TROs or preliminary injunctions, all motions must be discussed with the opposing party, preferably in person, in an attempt to informally resolve the issues raised by the motion. **The conference shall take place at least 7 days prior to the last day for filing the motion.**

[ ]  Counsel for the moving party must include in the notice of motion the following statement: "This motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place on [date]."

* 1. **Memorandum of Points and Authorities**
1. A memorandum of points and authorities must set forth the legal points and authorities and evidence on which the moving party relies. *LR 7-5.*
2. The Court may decline to consider any memorandum or other document not filed within the deadline set by order or local rule. The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion. *LR 7-12.*
	1. **There is a *25 Page* Limit on Briefs**
3. Memoranda of points and authorities, pre-trial, trial, and post-trial briefs shall not exceed 25 pages in length, excluding indices and exhibits, unless permitted by order of the judge. *LR 11-6.*
	1. **Table of Contents and Authorities**
4. **Any memorandum of points and authorities or any brief exceeding 10 pages in length**, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof, and by an indexed table of the cases, statutes, rules and other authorities cited. *LR 11-8.*
	1. **Entire Document Sequentially Numbered**
5. Documents filed in the Central District must be numbered consecutively at the bottom of each page. *LR 11-3.3*.
6. Exhibits must be numbered consecutively with the principal document. *LR 11-5.2.*
	1. **Signature Required**
7. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorneys name or by a party personally if the party is unrepresented.
8. The paper must state the signers address, e-mail address, and telephone number. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorneys or party’s attention. *FRCP 11(a)*.
	1. **Local Rule Re Signature**
9. All documents, except declarations, shall be signed by the attorney for the party or the party appearing pro se. The name of the person signing the document shall be clearly typed below the signature line. *LR 11-1.*
	1. **Proposed Orders:**

[ ]  Must conform to the first page of the other motion papers, however omitting the firm caption

[ ]  File and then the stamped copy and word version lodged with the judge using ECF’s proposed orders portal

[ ]  Make sure to receive the confirmation of the lodged proposed order

***Example Language:***

After the caption, the proposed order might read as follows:

Upon the [plaintiff's/defendant's] Motion dated \_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and [plaintiff/defendant having opposed the motion][or][there being no opposition to the motion], the Court, having considered the papers submitted and the oral argument presented by counsel,

HEREBY ORDERS THAT:

1. (LIST SPECIFIC ITEMS OF RELIEF IN SEPARATE NUMBERED PARAGRAPHS)

Dated: [Month] [Year]

IT IS SO ORDERED: [Signature block for Judge, etc.]

## Electronic Filing Required in Most Cases

Except as provided in *L.R. 5-4.2*, all documents filed in civil cases must be filed electronically using the Court's CM/ECF System. Sending a document by e-mail does not constitute an electronic filing. *LR 5-4.1.*

## Hearing and Disposition

1. **Advance Notice of Withdrawal or Non-Opposition**

Any moving party who intends to withdraw the motion before the hearing date must file and serve a withdrawal of the motion, not later than 7 days preceding the hearing. Any opposing party who no longer intends to oppose the motion, must file and serve a withdrawal of the opposition, not later than 7 days preceding the hearing. LR 7-16

1. **Appearance**

Counsel for parties must be present and know the case. Failure to appear may result in an adverse ruling. *LR 7-14.*

1. **Preparation of Order**

When the Court orders a party to prepare an order, it must be served and lodged with the Clerk within 5 days. *LR 52-4*.

# DISCOVERY

# Request for Admissions

## Timing

1. After Rule 26 Meeting:

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. *FRCP 26(d)(1).*

1. Sequence:

Unless, on motion, the court orders otherwise for the parties and witnesses convenience and in the interests of justice, methods of discovery may be used in any sequence; and discovery by one party does not require any other party to delay its discovery. *FRCP 26(d)(2).*

## Discovery Cut-Off: The court must set a discovery cut-off date. *FRCP 16(b)(3)(A).*

## Method of Service and Due Date of Responses

1. Personally served, responses to RFA’s due within **30 days of service**.
2. Mail served, or if served by any other means to which the parties have agreed in writing, responses are due within **33 days of service**. *FRCP 36(a)(3); FRCP 6(d).*

## Calculating the Due Date or Deadline

1. All deadlines stated in days, no matter the length of the period, are computed in the same way.
2. The day of the event that triggers the deadline is not counted.
3. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. *FRCP 6(a)(1).*
4. In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. *FRCP 6(a)(5).*

## Rules and Requirements

### Contents of Requests for Admission

A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to facts, the application of law to fact, or opinions about either and the genuineness of any described documents. *FRCP 36(a)(1).*

**Directed To Parties:** Requests for admission may be directed to any party to the action. *FRCP 36(a)(1).*

1. **Failure To Respond:** If the responding party fails to provide timely responses to RFA, that failure constitutes admissions to the requests. *FRCP 36(a)(3).*
2. **No Limit On Requests:** There is no limit on the number of RFA that a party may propound. *FRCP 36.*
3. **Documents Must Be Provided**
4. If a request seeks admission of the genuineness of documents, copies of the documents must be attached to the request or made available for inspection and copying. *FRCP 36(a)(2).*
5. **Scope of Discovery**
6. Unless otherwise limited by court order, the scope of discovery is as follows:
	1. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.
	2. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.
	3. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.
	4. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C). *FRCP 26(b)(1).*
7. **Limitations -- In General**
8. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under FRCP 30. By order or local rule, the court may also limit the number of requests under FRCP 36. *FRCP 26(b)(2)(A).*
9. **Limitations on Electronically Stored Information**

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery. FRCP 26(b)(2)(B).

1. **Factors to be Considered by the Court**

On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

1. The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
2. The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
3. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. *FRCP 26(b)(2)(C).*

## Trial Preparation -- Materials

1. **Documents and Tangible Things**

Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other partys attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

1. They are otherwise discoverable under Rule 26(b)(1); and
2. The party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means. *FRCP 26(b)(3)(A).*
3. **Protection Against Disclosure**

If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation. *FRCP 26(b)(3)(A).*

1. **Previous Statement**

Any party or other person may, on request and without the required showing, obtain the persons own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and FRCP 37(a)(5) applies to the award of expenses. A previous statement is either:

1. A written statement that the person has signed or otherwise adopted or approved; or
2. A contemporaneous stenographic, mechanical, electrical, or other recording or a transcription of it that recites substantially verbatim the persons oral statement. *FRCP 26(b)(3)(C).*

## Trial Preparation -- Experts

1. **Deposition of Expert Who May Testify**

A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided. *FRCP 26(b)(4)(A).*

## Trial-Preparation Protection for Draft Reports or Disclosures

Rule 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded. FRCP 26(b)(4)(B).

## Trial-Preparation Protection for Communications Between a Partys Attorney and Expert Witnesses

Rule 26(b)(3)(A) and (B) protects communications between the partys attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

1. Relate to compensation for the experts study or testimony;
2. Identify facts or data that the party’s attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party’s attorney provided and that the expert relied on in forming the opinions to be expressed. *FRCP 26(b)(4)(C).*
4. **Expert Employed Only for Trial Preparation**

Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

1. As provided in Rule 35(b); or
2. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means. *FRCP 26(b)(4)(D).*
3. **Payment**

Unless manifest injustice would result, the court must require that the party seeking discovery: Pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and for discovery, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the experts facts and opinions. *FRCP 26(b)(4)(E).*

## Trial Preparation -- Claiming Privilege

1. **Information Withheld**

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

1. Expressly make the claim; and
2. Describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. *FRCP 26(b)(5)(A)*.
3. **Information Produced**

If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. *FRCP 26(b)(5)(B).*

## Format of Papers

### First Paragraph

Customarily, the first paragraph sets forth the identity of the propounding party, the responding party, the set number, and any instructions for the responding party.

### Signature on Discovery Documents Required

Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. *FRCP 26(g)(1).*

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. *FRCP 26(g)(1).*

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or party’s attention. *FRCP 26(g)(2).*

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney’s fees, caused by the violation. *FRCP 26(g)(3).*

### Numbering

Requests for admission shall be numbered sequentially without repeating the numbers used on any prior set of requests propounded by that party. *LR 36-1.*

## FILING AND SERVICE - DO NOT FILE DISCOVERY MATERIALS

Depositions, interrogatories, requests for documents and requests for admission and their responses must not be filed until they are used in the proceeding or the court orders filing. FRCP 5(d).

**File Only Relevant Discovery Information**

1. When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed.
2. All such discovery documents shall be held by the attorney pending use for the period specified in LR 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial. *LR 26-2.*

**Retention of Original**

The original of the requests for admission served on the opposing party shall be held by the requesting attorney pending use or further order of the Court. *LR 36-3.*

## Service

Requests for admission must be served on the party from whom the admissions are sought and all other parties who have appeared in the action. *FRCP 36(a); FRCP 5(a)*.

1. **Method of Service and Due Date of Responses**
2. Personally served, responses to RFA are due **within 30 days of service.**
3. Mail service, or if served by any other means to which the parties have agreed in writing, responses are due **within 33 days of service.** *FRCP 36(a)(3); FRCP 6(d).*
4. **Calculating the Due Date or Deadline**
5. All deadlines stated in days, no matter the length of the period, are computed in the same way.
6. The day of the event that triggers the deadline is not counted.
7. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. *FRCP 6(a)(1).*
8. In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. *FRCP 6(a)(5).*

# RESPONSE TO REQUEST FOR ADMISSIONS

## Timing

**Method of Service and Due Date of Responses**

If personally served, responses to requests for admission are due within 30 days of service. If the requests are served by mail, or if served by any other means to which the parties have agreed in writing, responses are due within 33 days of service. FRCP 36(a)(3); FRCP 6(d).

**Calculating the Due Date or Deadline**

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

**Extension of Time to Respond to Discovery**

The time to respond may be shortened or extended as directed by the court, or agreed to in writing by the parties. FRCP 36(a)(3). Parties may extend or shorten discovery deadlines by agreement, except that where an extension would interfere with any time set for completion of discovery, hearing of a motion, or trial, the agreement requires approval of the court. FRCP 29.

## After Rule 26 Meeting

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.FRCP 26(d)(1).

### Sequence

Unless, on motion, the court orders otherwise for the parties and witnesses convenience and in the interests of justice, methods of discovery may be used in any sequence; and discovery by one party does not require any other party to delay its discovery.FRCP 26(d)(2).

### Discovery Cut-Off

The court must set a discovery cut-off date. FRCP 16(b)(3)(A).

## Rules & Requirements

**Admissions, Answers or Objections** must be provided to each request. FRCP 36(a).

### Objections

The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial. FRCP 36(a)(5).

Possible objections include, but are not limited to:

1. Relevance (the request seeks information that is outside the scope of permissible discovery);
2. Privilege (the request seeks information that is protected by the attorney-client, work product, or other privilege);
3. Privacy, (the request seeks information that is protected by an individual's right of privacy); and
4. That the request is unduly burdensome and oppressive (the cost and time necessary to respond to the request make response unfairly burdensome).

### Answer

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. FRCP 36(a)(4). A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. FRCP 36(a)(4).

The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. FRCP 36(a)(4).

### Effect of Admissions

Any matter admitted is deemed "conclusively established" unless the court on motion permits withdrawal or amendment of the admission.

Subject to FRCP 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding. FRCP 36(b).

### Admission By Failure To Respond

The failure to provide timely responses to requests for admission constitutes admissions to the requests. FRCP 36(a)(3).

### Failure To Admit, Sanctions

If a party fails to admit what is requested under FRCP 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorneys fees, incurred in making that proof. The court must so order unless:

1. The request was held objectionable under FRCP 36(a);
2. The admission sought was of no substantial importance;
3. The party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
4. There was other good reason for the failure to admit. FRCP 37(c)(2) (amended eff 12/1/13).

### Admission May Not Be Amended Without Leave of Court

The responding party may not withdraw or amend an admission except by leave of court granted by motion. FRCP 36(b).

### Duty to Supplement

A party who has made a disclosure under Rule 26(a) or who has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response:

In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or as ordered by the court.

FRCP 26(e).

### Protective Orders

The party to whom requests for admission have been directed may move for a protective order. FRCP 26(c).

### Scope of Discovery

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C). FRCP 26(b)(1).

### Limitations -- In General

By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under FRCP 30. By order or local rule, the court may also limit the number of requests under FRCP 36. FRCP 26(b)(2)(A).

### Limitations on Electronically Stored Information

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery. FRCP 26(b)(2)(B).

### Factors to be Considered by the Court

On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

1. The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
2. The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
3. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. FRCP 26(b)(2)(C).

## Trial Preparation -- Materials

### Documents and Tangible Things

Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other partys attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

1. They are otherwise discoverable under Rule 26(b)(1); and
2. The party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means. FRCP 26(b)(3)(A).

### Protection Against Disclosure

If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a partys attorney or other representative concerning the litigation. FRCP 26(b)(3)(A).

### Previous Statement

Any party or other person may, on request and without the required showing, obtain the persons own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and FRCP 37(a)(5) applies to the award of expenses. A previous statement is either:

1. A written statement that the person has signed or otherwise adopted or approved; or
2. A contemporaneous stenographic, mechanical, electrical, or other recording or a transcription of it that recites substantially verbatim the persons oral statement. FRCP 26(b)(3)(C).

## Trial Preparation -- Experts

### Deposition of Expert Who May Testify

A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided. FRCP 26(b)(4)(A).

## Trial-Preparation Protection for Draft Reports or Disclosures

Rule 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded. FRCP 26(b)(4)(B).

## Trial-Preparation Protection for Communications Between a Partys Attorney and Expert Witnesses

Rule 26(b)(3)(A) and (B) protects communications between the partys attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

1. Relate to compensation for the experts study or testimony;
2. Identify facts or data that the party’s attorney provided and that the expert considered in forming the opinions to be expressed; or
3. Identify assumptions that the party’s attorney provided and that the expert relied on in forming the opinions to be expressed. FRCP 26(b)(4)(C).

### Expert Employed Only for Trial Preparation

Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

1. As provided in Rule 35(b); or
2. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means. FRCP 26(b)(4)(D).

### Payment

Unless manifest injustice would result, the court must require that the party seeking discovery:

1. Pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and
2. For discovery, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the experts facts and opinions. FRCP 26(b)(4)(E).

## Trial Preparation -- Claiming Privilege

### Information Withheld

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

1. Expressly make the claim; and
2. Describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. FRCP 26(b)(5)(A).

### Information Produced

If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.FRCP 26(b)(5)(B).

## Format of Papers

### Quote Text of Request

The party answering or objecting to requests for admission shall quote each request in full immediately preceding the statement or any answer or objection thereto. LR 36-2.

### First Paragraph

Customarily, the first paragraph sets forth the identity of the propounding party, the responding party, the set number, and any instructions for the responding party.

### Signature on Responses to Request for Admission

Required. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. FRCP 26(g)(1).

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. FRCP 26(g)(1).

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or partys attention. FRCP 26(g)(2).

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorneys fees, caused by the violation. FRCP 26(g)(3).

## FILING AND SERVICE - DO NOT FILE DISCOVERY MATERIALS

Depositions, interrogatories, requests for documents and requests for admission and their responses must not be filed until they are used in the proceeding or the court orders filing. FRCP 5(d).

### File Only Relevant Discovery Information

When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed.

All such discovery documents shall be held by the attorney pending use for the period specified in Local Rule 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial. LR 26-2.

### Service

Requests for admission must be served on the party from whom the admissions are sought and all other parties who have appeared in the action. FRCP 36(a); FRCP 5(a).

### Method of Service and Due Date of Responses

If personally served, responses to requests for admission are due within 30 days of service. If the requests are served by mail, or if served by any other means to which the parties have agreed in writing, responses are due within 33 days of service. FRCP 36(a)(3); FRCP 6(d).

### Calculating the Due Date or Deadline

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

# INITIAL DISCLOSURES

## Timing

**14 Days After the Early Meeting**

A party must make the initial disclosures at or within 14 days after the parties Rule 26 conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure. FRCP 26.

### Later Added Parties

Parties joined or served after the Rule 26(f) conference must make Rule 26(a) disclosures within thirty (30) days of being served or joined, unless a different time is set by stipulation or court order. FRCP 26.

### Calculating the Due Date or Deadline

All deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

## Disclosure Rules And Requirements

### Disclosures Generally

Except as exempted by Rule 26 or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

1. The name and, if known, the address and telephone number of each individual likely to have discoverable information along with the subjects of that information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
2. A copy or a description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
3. A computation of each category of damages claimed by the disclosing party who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
4. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment. FRCP 26.

### Proceedings Exempt from Initial Disclosure

The following proceedings are exempt from initial disclosure:

1. An action for review on an administrative record;
2. A forfeiture action in rem arising from a federal statute;
3. A petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;
4. An action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;
5. An action to enforce or quash an administrative summons or subpoena;
6. An action by the United States to recover benefit payments;
7. An action by the United States to collect on a student loan guaranteed by the United States;
8. A proceeding ancillary to a proceeding in another court; and
9. An action to enforce an arbitration award. FRCP 26.

### Unacceptable Excuses

A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures. FRCP 26(a)(1)(E).

### Disclosure of Electronically Stored Information

Initial disclosures pursuant to Rule 26 must include electronically stored information. FRCP 26(a)(1)(A)(ii)(amended 12/01/07).

### The Duty to Preserve

The extent of the duty to preserve electronically stored information is the subject of a fast developing body of case law authority. To comply with federal discovery rules (and avoid the imposition of sanctions) very early in the action you must understand the type and substance of your client's electronically stored information, the operation of your client's information systems, and the extent of your duty to preserve the specific types of electronically stored information in your client's possession.

### Disclosure of Expert Testimony

In addition to the disclosures required by Rule 26(a)(1), a party must disclose the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705. FRCP 26(a)(2)(A) (amended eff 12/1/10).

### Written Report

The disclosure must be accompanied by a written report prepared and signed by the witness if the witness is one retained or specially employed to provide expert testimony or one whose duties as the party’s employee regularly involve giving expert testimony. The report must contain:

1. A complete statement of all opinions the witness will express and the basis and reasons for them;
2. The facts or data considered by the witness in forming them;
3. Any exhibits that will be used to summarize or support them;
4. The witnesses qualifications, including a list of all publications authored in the previous 10 years;
5. A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
6. A statement of the compensation to be paid for the study and testimony in the case. FRCP 26(a)(2)(B).

### Witnesses Who Do Not Provide a Written Report

If the witness is not required to provide a written report, the disclosure must state:

1. The subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and
2. A summary of the facts and opinions to which the witness is expected to testify. FRCP 26(a)(2)(C)

### Time to Disclose Expert Testimony

A party must make these disclosures at the times and in the sequence that the court orders.Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other partys disclosure. FRCP 26(a)(2)(D)

### Supplementing the Disclosure

The parties must supplement these disclosures when required under Rule 26(e). FRCP 26(a)(2)(E)

### Pretrial Disclosures

In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence separately identifying those items the party expects to offer and those it may offer if the need arises. FRCP 26(a)(3)(A).

### Time for Pretrial Disclosures; Objections

Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made except for one under Federal Rule of Evidence 402 or 403 is waived unless excused by the court for good cause. FRCP 26(a)(3)(B).

### Form of Disclosures

Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served. FRCP 26(a)(4).

### Duty To Supplement

A party who has made a disclosure under Rule 26 or who has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response:

In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or as ordered by the court. FRCP 26.

## Format of Papers

### Signature

Required. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. FRCP 26(g)(1).

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. FRCP 26(g)(1).

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or partys attention. FRCP 26(g)(2).

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorneys fees, caused by the violation. FRCP 26(g)(3).

## Filing and service

### Provided To All Parties But Not Filed

Rule 26(a) disclosures are provided to "the other parties", but are not filed with the court, unless they are to be used in a court proceeding or the court so orders. FRCP 5; FRCP 26.

# RULE 26(f) REPORT

## Timing

### Initial Meeting

Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b). FRCP 26(f)(1).

### Rule 26(f) Report

A report pursuant to Rule 26(f) must be submitted to the court within 14 days of the initial meeting. FRCP 26.

Calculating the Due Date or Deadline Pursuant to the FRCP.

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1).

When determining the last day of a filing period stated in days, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. FRCP 6(a)(3).

The end of the last day of a period is defined as midnight in the court's time zone for electronic filing, and closure of the clerk's office for filing by any other means. FRCP 6(a)(4).

In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

Legal holidays are set forth and defined at Rule 6(a)(6). FRCP 6(a)(6).

## Early Meeting And Report

**\*\*\*CONSULT JUDGES' RULES\*\*\***

Many Central District Judges have policies and procedures regarding the FRCP 26(f) report. A directory of Central District Judges' procedures and schedules can be found online. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26; discuss any issues about preserving discoverable information; and develop a proposed discovery plan.

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and **for submitting to the court within 14 days after the conference a written report outlining the plan.** The court may order the parties or attorneys to attend the conference in person. FRCP 26.

### Discovery Plan

A discovery plan must state the parties views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including if the parties agree on a procedure to assert these claims after production whether to ask the court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c). FRCP 26(f)(3).

### The Conference

In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. FRCP 26(f)(2).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person. FRCP 26(f)(2).

### Objection To Rule 26(a) Disclosure Requirements

At the Rule 26(f) conference, a party may object to the disclosures required by Rule 26(a) on the ground that the disclosures are "not appropriate in this action" and include such objection in the proposed discovery plan. The court will determine whether, and to what extent, the Rule 26(a) disclosures will be required and when. FRCP 26.

### Request For Waiver of Pretrial Procedures

In their Rule 26(f) report to the Court, the parties may advise the Court that the matter should not be subject to the pretrial procedures set forth in Local Rules 16-2 through 16-9, and may request the Court to order a waiver. The request shall contain the reasons for the waiver requested by counsel. LR 16-11.

### Additional Topics Required By Local Rule

Parties must discuss and include in their report:

**Complex Cases.** The complexity of the case, and whether all or part of the procedures of the Manual For Complex Litigation should be utilized. Counsel may propose to the Court modifications of the procedures in the Manual to facilitate the management of a particular action. LR 26-1(a).

Motion Schedule. The dispositive or partially dispositive motions which are likely to be made, and a cutoff date by which all such motions shall be made. LR 26-1(b).

**ADR.** Selection of one of the three ADR Procedures specified in L.R. 16-15.4 as best suited to the circumstances of the case, and when the ADR session should occur. For cases in the Court-Directed ADR Program, counsel are directed to furnish and discuss with their clients the Notice to Parties of Court-Directed ADR Program in preparation for this conference. A settlement conference with a magistrate judge is generally not available for such cases. LR 26-1(c).

**Trial Estimate.** A preliminary estimate of the time required for trial. LR 26-1(d).

**Additional Parties.** The likelihood of appearance of additional parties. LR 26-1(e).

**Expert witnesses.** The proposed timing of disclosures under F.R.Civ.P. 26(a)(2). LR 26-1(f).

In their written report required by F.R.Civ.P. 26(f), the parties shall include their views and proposals, including any areas of disagreement, on the matters listed in this local rule. The Court will consider this report in making a referral to ADR. LR 26-1.

## FILING AND SERVICE

### Electronic Filing Required in Most Cases

Except as provided in L.R. 5-4.2, all documents filed in civil cases must be filed electronically using the Court's CM/ECF System. Sending a document by e-mail does not constitute an electronic filing. LR 5-4.1

### Traditional Filing and Service Rules

### Filing and Service Required

All papers must be served on each of the parties. FRCP 5(a). Papers and certificate of service must be filed within a reasonable time after service. FRCP 5(d).

# INTEROGATORIES

## Timing

### After Rule 26 Meeting

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. FRCP 26(d)(1).

### Sequence

Unless, on motion, the court orders otherwise for the parties and witnesses convenience and in the interests of justice, methods of discovery may be used in any sequence; and discovery by one party does not require any other party to delay its discovery. FRCP 26(d)(2).

### Discovery Cut-Off

The court must set a discovery cut-off date. FRCP 16(b)(3)(A).

### Method of Service and Due Date of Responses

If personally served, responses to interrogatories are due within thirty (30) days of service. If the interrogatories are served by mail, or if served by any other means to which the parties have agreed in writing, responses are due within thirty-three (33) days of service. FRCP 33(b)(2); FRCP 6(d).

### Calculating the Due Date or Deadline

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

## Rules & Requirements

### Must Be Directed to Parties

A party may serve interrogatories on any other party. FRCP 33(a)(1).

### Contention Interrogatories

An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time. FRCP 33(a)(2).

### No More Than 25 Permitted

Absent stipulation or court order, a party may serve no more than 25 interrogatories (including subparts) on any other party. FRCP 33(a)(1).

### Scope of Discovery

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C). FRCP 26(b)(1).

### Limitations -- In General

By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under FRCP 30. By order or local rule, the court may also limit the number of requests under FRCP 36. FRCP 26(b)(2)(A).

### Limitations on Electronically Stored Information

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery. FRCP 26(b)(2)(B).

### Factors to be Considered by the Court

On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

1. The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
2. The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
3. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. FRCP 26(b)(2)(C).

## Trial Preparation -- Materials

### Documents and Tangible Things

Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other partys attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

1. They are otherwise discoverable under Rule 26(b)(1); and
2. The party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means. FRCP 26(b)(3)(A).

## Protection Against Disclosure

If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation. FRCP 26(b)(3)(A).

### Previous Statement

Any party or other person may, on request and without the required showing, obtain the persons own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and FRCP 37(a)(5) applies to the award of expenses. A previous statement is either:

1. A written statement that the person has signed or otherwise adopted or approved; or
2. A contemporaneous stenographic, mechanical, electrical, or other recording or a transcription of it that recites substantially verbatim the persons oral statement. FRCP 26(b)(3)(C).

## Trial Preparation -- Experts

### Deposition of Expert Who May Testify

A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided. FRCP 26(b)(4)(A).

## Trial-Preparation Protection for Draft Reports or Disclosures

Rule 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded. FRCP 26(b)(4)(B).

## Trial-Preparation Protection for Communications Between a Partys Attorney and Expert Witnesses

Rule 26(b)(3)(A) and (B) protects communications between the partys attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the experts study or testimony;

(ii) identify facts or data that the partys attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the partys attorney provided and that the expert relied on in forming the opinions to be expressed. FRCP 26(b)(4)(C).

### Expert Employed Only for Trial Preparation

Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

1. As provided in Rule 35(b); or
2. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means. FRCP 26(b)(4)(D).

### Payment

Unless manifest injustice would result, the court must require that the party seeking discovery: Pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and for discovery, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the experts facts and opinions. FRCP 26(b)(4)(E).

## Trial Preparation -- Claiming Privilege

### Information Withheld

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

1. Expressly make the claim; and
2. Describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. FRCP 26(b)(5)(A).

### Information Produced

If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. FRCP 26(b)(5)(B).

### The Duty to Preserve

The extent of the duty to preserve electronically stored information is the subject of a fast developing body of case law authority. To comply with federal discovery rules, (and avoid the imposition of sanctions), very early in the action you must understand the type and substance of your client's electronically stored information, the operation of your client's information systems, and the extent of your duty to preserve the specific types of electronically stored information in your client's possession.

### Good Faith Loss of Electronically Stored Information

Absent exceptional circumstances, a court may not impose sanctions under the Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. FRCP 37(e) (amended eff 12/1/13).

## Formatting of Papers

### First Paragraph

Customarily, the first paragraph sets forth the identity of the propounding party, the responding party, the set number, and any instructions for the responding party.

### Signature on Discovery Documents

Required. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. FRCP 26(g)(1).

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. FRCP 26(g)(1).

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or partys attention. FRCP 26(g)(2).

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorneys fees, caused by the violation. FRCP 26(g)(3).

### Numbering

Interrogatories must be numbered sequentially without repeating the numbers used on any prior set of interrogatories propounded by that party. Central Dist. LR 33-1.

## FILING AND SERVICE - Do Not File Discovery Materials

Depositions, interrogatories, requests for documents and requests for admission and their responses must not be filed until they are used in the proceeding or the court orders filing. FRCP 5(d).

### File Only Relevant Discovery Information

When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed.

All such discovery documents shall be held by the attorney pending use for the period specified in Local Rule 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial. Central Dist. LR 26-2.

### Retention of Originals

The original of the interrogatories served on the opposing party shall be held by the requesting attorney pending use or further order of the court. Central Dist. LR 33-3.

## Service

Interrogatories must be served on the party from whom responses are sought and all other parties who have appeared in the action. FRCP 33; FRCP 5.

### Method of Service and Due Date of Responses

If personally served, responses to interrogatories are due within thirty (30) days of service. If the interrogatories are served by mail, or if served by any other means to which the parties have agreed in writing, responses are due within thirty-three (33) days of service. FRCP 33(b)(2); FRCP 6(d).

### Calculating the Due Date or Deadline

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

# REQUEST FOR PRODUCTION

## Timing

### After Rule 26 Meeting

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. FRCP 26(d)(1).

### Sequence

Unless, on motion, the court orders otherwise for the parties and witnesses convenience and in the interests of justice, methods of discovery may be used in any sequence; and discovery by one party does not require any other party to delay its discovery. FRCP 26(d)(2).

### Discovery Cut-Off

The court must set a discovery cut-off date. FRCP 16(b)(3)(A).

### Method of Service and Time for Responses

Unless by mutual agreement, the inspection may not be scheduled for a time sooner than 30 days after the request is served, if personally served, and not sooner than 33 days after service by mail. FRCP 34; FRCP 6.

### Calculating the Due Date or Deadline

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

## Rules & Requirements

### Directed to Parties

A Rule 34 request may be served on any party to the action. FRCP 34(a).

## Nonparties

As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection. FRCP 34(c).

A Rule 34 request can include a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party’s possession, custody, or control:

Any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or any designated tangible things; or to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it. FRCP 34(a).

### Time, Place and Manner of Inspection

A Rule 34 request must set forth a reasonable time, place and manner for the inspection to take place. FRCP 34(b)(1)(B).

### Request May Include Form of Production of ESI

The request may specify the form or forms in which electronically stored information is to be produced. FRCP 34(b)(1)(C).

### Response May Include Objection to Requested Form of Production

A response may include an objection to the requested form or forms for producing electronically stored information. If objection is made to the requested form or forms of producing electronically stored information--or if no form was specified in the request--the responding party must state the form or forms it intends to use. FRCP 34(b)(2)(D).

### Producing ESI -- Form Ordinarily Maintained or Reasonably Usable Form

Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request; If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and A party need not produce the same electronically stored information in more than one form. FRCP 34(b)(2)(E).

### Time For Response

Unless by mutual agreement, the inspection may not be scheduled for a time sooner than thirty (30) days after the request is served, if personally served, and not sooner than thirty-three (33) days after service by mail. FRCP 34(b)(2)(A)(amended 12/01/07); FRCP 6(e).

### Scope of Discovery

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any partys claim or defense including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C). FRCP 26(b)(1).

### Limitations -- In General

By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under FRCP 30. By order or local rule, the court may also limit the number of requests under FRCP 36. FRCP 26(b)(2)(A).

### Limitations on Electronically Stored Information

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery. FRCP 26(b)(2)(B).

### Factors to be Considered by the Court

On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

1. The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
2. The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
3. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. FRCP 26(b)(2)(C).

## Trial Preparation -- Materials

### Documents and Tangible Things

Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other partys attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if: They are otherwise discoverable under Rule 26(b)(1); and The party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means. FRCP 26(b)(3)(A).

### Protection Against Disclosure

If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a partys attorney or other representative concerning the litigation. FRCP 26(b)(3)(A).

### Previous Statement

Any party or other person may, on request and without the required showing, obtain the persons own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and FRCP 37(a)(5) applies to the award of expenses. A previous statement is either:

1. A written statement that the person has signed or otherwise adopted or approved; or
2. A contemporaneous stenographic, mechanical, electrical, or other recording or a transcription of it that recites substantially verbatim the persons oral statement. FRCP 26(b)(3)(C).

## Trial Preparation -- Experts

### Deposition of Expert Who May Testify

A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided. FRCP 26(b)(4)(A).

## Trial-Preparation Protection for Draft Reports or Disclosures

Rule 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded. FRCP 26(b)(4)(B).

## Trial-Preparation Protection for Communications Between a Partys Attorney and Expert Witnesses

Rule 26(b)(3)(A) and (B) protects communications between the partys attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the experts study or testimony;

(ii) identify facts or data that the partys attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the partys attorney provided and that the expert relied on in forming the opinions to be expressed. FRCP 26(b)(4)(C).

### Expert Employed Only for Trial Preparation

Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

1. As provided in Rule 35(b); or
2. On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means. FRCP 26(b)(4)(D).

### Payment

Unless manifest injustice would result, the court must require that the party seeking discovery:

Pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

For discovery, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the experts facts and opinions. FRCP 26(b)(4)(E).

## Trial Preparation -- Claiming Privilege

### Information Withheld

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

1. Expressly make the claim; and
2. Describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. FRCP 26(b)(5)(A). \*\*AKA a privilege log\*\*

### Information Produced

If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. FRCP 26(b)(5)(B).

### The Duty to Preserve

The extent of the duty to preserve electronically stored information is the subject of a fast developing body of case law authority. To comply with federal discovery rules, (and avoid the imposition of sanctions), very early in the action you must understand the type and substance of your client's electronically stored information, the operation of your client's information systems, and the extent of your duty to preserve the specific types of electronically stored information in your client's possession.

### Good Faith Loss of Electronically Stored Information

Absent exceptional circumstances, a court may not impose sanctions under the Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. FRCP 37(e)

### Claiming Post Production Privilege

If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved. FRCP 26(b)(5)(B) (amended 12/1/07).

## Format of Papers

### Content of Requests

The request must describe with reasonable particularity each item or category of items to be inspected;

Must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

May specify the form or forms in which electronically stored information is to be produced. FRCP 34(b)(1).

### First Paragraph

Customarily, the first paragraph sets forth the identity of the propounding party, the responding party, the set number, and any instructions for the responding party.

### Signature on Discovery Documents

Required. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. FRCP 26(g)(1).

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. FRCP 26(g)(1).

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or partys attention. FRCP 26(g)(2).

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorneys fees, caused by the violation. FRCP 26(g)(3).

### Numbering

Requests for production shall be numbered sequentially without repeating the numbers used on any prior set of requests for production propounded by that party. LR 34-1.

## FILING AND SERVICE - Do Not File Discovery Materials

Depositions, interrogatories, requests for documents and requests for admission and their responses must not be filed until they are used in the proceeding or the court orders filing. FRCP 5(d).

### File Only Relevant Discovery Information

When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed.

All such discovery documents shall be held by the attorney pending use for the period specified in Local Rule 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial. LR 26-2.

### Retention of Original

The original of the requests for production of documents or to inspect tangible things served on the opposing party shall be held by the requesting attorney pending use or further order of the Court. LR 34-3.

### Service of Requests for Production

The propounding party must serve the responding party, and all other parties who have appeared in the action, with the request for production. FRCP 34; FRCP 5.

### Method of Service and Time for Responses

Unless by mutual agreement, the inspection may not be scheduled for a time sooner than 30 days after the request is served, if personally served, and not sooner than 33 days after service by mail. FRCP 34; FRCP 6.

### Calculating the Due Date or Deadline

All deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

# RESPONSES TO REQUEST FOR PRODUCTION

## Timing

### Method of Service and Time for Responses

Unless by mutual agreement, the inspection may not be scheduled for a time sooner than 30 days after the request is served, if personally served, and not sooner than 33 days after service by mail. FRCP 34; FRCP 6.

### Calculating the Due Date or Deadline

All deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

## After Rule 26 Meeting

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.FRCP 26(d)(1).

### Sequence

Unless, on motion, the court orders otherwise for the parties and witnesses convenience and in the interests of justice, methods of discovery may be used in any sequence; and discovery by one party does not require any other party to delay its discovery.FRCP 26(d)(2).

### Extension of Time To Respond

The time to respond may be shortened or extended as directed by the court, or agreed to in writing by the parties. FRCP 34(b)(2)(A).

### Discovery Stipulations

Unless the court orders otherwise, the parties may stipulate that procedures governing or limiting discovery be modified -- but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial. FRCP 29 .

### Discovery Cut-Off

The court must set a discovery cut-off date. FRCP 16(b)(3)(A).

## Rules and Requirements

### Responses

For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons. FRCP 34(b)(2)(B).

### Responding to a Request for Production of Electronically Stored Information

The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form or if no form was specified in the request the party must state the form or forms it intends to use. FRCP 34(b)(2)(D).

### Failure To Timely Respond Waives Objections

Case law authority holds that failure to timely respond to a request for production waives all objections.

### Objections

An objection to part of a request must specify the part and permit inspection of the rest. FRCP 34(b)(2)(C).

Objections may include:

1. Relevancy (the request seeks information that is outside the scope of permissible discovery);

2. Privilege (the request seeks information that is protected by the attorney-client, work product, or other privilege);

3. Privacy (the request seeks information that is protected by an individual's right of privacy);

4. Unduly burdensome and oppressive (the cost and time necessary to comply with the request are unfairly burdensome); and/or

5. That the request does not describe the documents or other items sought with reasonable particularity.

### "Items" That Can Be Included in Request

A Rule 34 request can include a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding partys possession, custody, or control:

1. Any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or
2. Any designated tangible things; or
3. To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it. FRCP 34(a).

### Scope of Discovery

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C). FRCP 26(b)(1).

### Limitations -- In General

By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under FRCP 30. By order or local rule, the court may also limit the number of requests under FRCP 36. FRCP 26(b)(2)(A).

### Limitations on Electronically Stored Information

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery. FRCP 26(b)(2)(B).

### Factors to be Considered by the Court

On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

1. The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
2. The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
3. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. FRCP 26(b)(2)(C).

## Trial Preparation -- Materials

### Documents and Tangible Things

Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other partys attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

1. They are otherwise discoverable under Rule 26(b)(1); and
2. The party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means. FRCP 26(b)(3)(A).

### Protection Against Disclosure

If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a partys attorney or other representative concerning the litigation. FRCP 26(b)(3)(A).

### Previous Statement

Any party or other person may, on request and without the required showing, obtain the persons own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and FRCP 37(a)(5) applies to the award of expenses. A previous statement is either:

1. A written statement that the person has signed or otherwise adopted or approved; or
2. A contemporaneous stenographic, mechanical, electrical, or other recording or a transcription of it that recites substantially verbatim the persons oral statement. FRCP 26(b)(3)(C).

## Trial Preparation -- Experts

### Deposition of Expert Who May Testify

A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided. FRCP 26(b)(4)(A).

## Trial-Preparation Protection for Draft Reports or Disclosures

Rule 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded. FRCP 26(b)(4)(B).

## Trial-Preparation Protection for Communications Between a Partys Attorney and Expert Witnesses

Rule 26(b)(3)(A) and (B) protects communications between the partys attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the experts study or testimony;

(ii) identify facts or data that the partys attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the partys attorney provided and that the expert relied on in forming the opinions to be expressed. FRCP 26(b)(4)(C).

### Expert Employed Only for Trial Preparation

Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only: As provided in Rule 35(b); or On showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means. FRCP 26(b)(4)(D).

### Payment

Unless manifest injustice would result, the court must require that the party seeking discovery: Pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and For discovery, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the experts facts and opinions.

FRCP 26(b)(4)(E).

## Trial Preparation -- Claiming Privilege

### Information Withheld

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

1. Expressly make the claim; and
2. Describe the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. FRCP 26(b)(5)(A).

### Information Produced

If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.FRCP 26(b)(5)(B).

### The Duty to Preserve

The extent of the duty to preserve electronically stored information is the subject of a fast developing body of case law authority. To comply with federal discovery rules, (and avoid the imposition of sanctions), very early in the action you must understand the type and substance of your client's electronically stored information, the operation of your client's information systems, and the extent of your duty to preserve the specific types of electronically stored information in your client's possession.

### Good Faith Loss of Electronically Stored Information

Absent exceptional circumstances, a court may not impose sanctions under the Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. FRCP 37(e) (amended eff 12/1/13).

### Claiming Post Production Privilege

If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved. FRCP 26(b)(5)(B) (amended 12/1/07).

### Duty to Supplement

A party who has made a disclosure under Rule 26(a) or who has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response:

In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or as ordered by the court. FRCP 26(e).

## Format of Papers

### Quote Text of Request for Production

The party responding or objecting to requests for production shall quote each request for production in full immediately preceding the statement of any response or objection thereto. LR 34-2.

### First Paragraph

Customarily, responses to requests for production identify in the first paragraph the propounding party, the responding party, and the set number of the requests. Thereafter, the responding party provides an agreement to comply, an objection, or a partial objection to each request.

### Signature on Discovery Documents

Required. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. FRCP 26(g)(1).

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. FRCP 26(g)(1).

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or partys attention. FRCP 26(g)(2).

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorneys fees, caused by the violation. FRCP 26(g)(3).

## FILING AND SERVICE - Do Not File Discovery Materials

Depositions, interrogatories, requests for documents and requests for admission and their responses must not be filed until they are used in the proceeding or the court orders filing. FRCP 5(d).

### File Only Relevant Discovery Information

When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed.

All such discovery documents shall be held by the attorney pending use for the period specified in Local Rule 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial. LR 26-2.

### Service

Responses must be served on all parties who have appeared in the action. FRCP 5.

### Method of Service and Time for Responses

Unless by mutual agreement, the inspection may not be scheduled for a time sooner than 30 days after the request is served, if personally served, and not sooner than 33 days after service by mail. FRCP 34; FRCP 6.

### Calculating the Due Date or Deadline

Under amended FRCP 6(a)(1), all deadlines stated in days, no matter the length of the period, are computed in the same way. The day of the event that triggers the deadline is not counted. All other days - including intermediate Saturdays, Sundays, and legal holidays - are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. FRCP 6(a)(1). In determining what is the "next" day, one must continue counting in the same direction - that is, forward when computing a forward-looking period and backward when computing a backward-looking period. FRCP 6(a)(5).

# NOTICE OF DEPOSITION

## Timing

### Noticing a Deposition

A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). FRCP 30(a)(1). A nonparty deponents attendance may be compelled by subpoena under Rule 45. FRCP 30(a)(1).

### When Leave of Court Required

A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

If the parties have not stipulated to the deposition and the deposition would result in more than 10 depositions being taken by a party; the deponent has already been deposed in the case; or the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or if the deponent is confined in prison. FRCP 30(a)(2).

### After Rule 26 Meeting

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. FRCP 26(d)(1).

### Sequence

Unless, on motion, the court orders otherwise for the parties and witnesses convenience and in the interests of justice, methods of discovery may be used in any sequence; and discovery by one party does not require any other party to delay its discovery. FRCP 26(d)(2).

### Discovery Cut-Off

The court must set a discovery cut-off date. FRCP 16(b)(3)(A).

## Deposition Rules and Requirements

### Required Notice - "Reasonable Notice"

A party who wants to depose a person by oral questions must give reasonable written notice to every other party. FRCP 30(b)(1).

### Contents of Notice

The notice must state the time and place of the deposition and, if known, the deponents name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. FRCP 30(b)(1).

### Producing Documents

If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition. FRCP 30(b)(2).

### Method of Recording

The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition. FRCP 30(b)(3).

With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise. FRCP 30(b)(3).

### Remote Means

The parties may stipulate or the court may on motion order that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions. FRCP 30(b)(4).

### Deposition of Organization

In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules. FRCP 30(b)(6).

### Schedule and Duration

Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination. FRCP 30(d)(1).

### Sanction

The court may impose an appropriate sanction including the reasonable expenses and attorneys fees incurred by any party on a person who impedes, delays, or frustrates the fair examination of the deponent. FRCP 30(d)(2).

### Motion to Terminate or Limit

At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order. FRCP 30(d)(3).

The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending. Rule 37(a)(5) applies to the award of expenses. FRCP 30(d)(3).

### Cost and Recording

The party taking the deposition bears the cost of recording the deposition. Any party, at its own expense, may designate another method of recording the deposition in addition to the one chosen by the deposing party. FRCP 30(b)(3).

## Format of Papers

### Signature

Required. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorneys own name or by the party personally, if unrepresented and must state the signers address, e-mail address, and telephone number. FRCP 26(g)(1).

### Certification

By signing, an attorney or party certifies that to the best of the persons knowledge, information, and belief formed after a reasonable inquiry with respect to a disclosure, it is complete and correct as of the time it is made; and with respect to a discovery request, response, or objection, it is:

1. Consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;
2. Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
3. Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. FRCP 26(g)(1).

### Failure to Sign

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorneys or partys attention. FRCP 26(g)(2).

### Sanction for Improper Certification

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorneys fees, caused by the violation. FRCP 26(g)(3).

## FILING AND SERVICE - Deposition Notice Not Filed

A deposition notice is not filed, unless necessary for a proceeding or on court order. FRCP 5(d). A deposition notice must be served on all parties of an action. FRCP 30(b); FRCP 5(a).

# SUBPOENA

## In General

### Court of Issuance

A subpoena must issue from the court where the action is pending. FRCP 45(a)(2) (amended eff 12/1/13).

### Attorney May Issue

An attorney may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.Alternatively, the clerk of court will issue a signed blank subpoena to a party that requests it. FRCP 45(a)(3) (amended eff 12/1/13).

### Geographical Scope of Subpoena Power

A subpoena may be served at any place within the United States. FRCP 45(b)(2) (amended eff 12/1/13).

1. Within the district of the issuing court;
2. Outside that district but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection;
3. Within the state of the issuing court if a state statute or court rule allows service at that place of a subpoena issued by a state court of general jurisdiction sitting in the place specified for the deposition, hearing, trial, production, or inspection; or
4. That the court authorizes on motion and for good cause, if a federal statute so provides. FRCP 45(b)(2)

### Place of Compliance - Trial, Hearing, or Deposition

A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

1. within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
2. within the state where the person resides, is employed, or regularly transacts business in person, if the person:

(i) is a party or a partys officer; or

(ii) is comoanded to attend a trial and would incur substantial expense. FRCP 45(c)(1)

### Place of Compliance - For Other Discovery

A subpoena may command: production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and inspection of premises at the premises to be inspected. FRCP 45(c)(2).

### Foreign Nationals

28 U.S.C. 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country. FRCP 45(b)(3) (amended eff 12/1/13).

## Timing - No Fixed Time Limit

Failure to allow a "reasonable time" for compliance is grounds to quash the subpoena. FRCP 45(d)(3)(A). It is customary to allow at least 10 days for compliance with a subpoena.

### After Rule 26 Meeting

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. FRCP 26(d)(1).

## Service and Fees

Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that persons attendance, tendering the fees for 1 days attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party. FRCP 45(b)(1) Language Requirements

### Required Language

### Every subpoena must:

1. State the name of the court from which it is issued;

2. State the title of the action;

3. State the name of the court in which the action is pending;

4. State the civil action number;

5. Must "command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises;" and

6. Must set forth the text of Rule 45 (c) and (d). FRCP 45(a)(1)(A)

## Form and Content of Subpoena

Every subpoena must:

1. State the court from which it issued;
2. State the title of the action, the court in which it is pending, and its civil-action number;
3. Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that persons possession, custody, or control; or permit the inspection of premises; and
4. Set out the text of Rule 45(c) and (d). FRCP 45(a)(1)(A) (amended eff 12/1/13).
5. Command to Attend a Deposition Notice of the Recording Method
6. A subpoena commanding attendance at a deposition must state the method for recording the testimony.FRCP 45(a)(1)(B) (amended eff 12/1/13).
7. Commands to Produce or to Permit Inspection; Form of Electronically Stored Information
8. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena.
9. A subpoena may specify the form or forms in which electronically stored information is to be produced. FRCP 45(a)(1)(C) (amended eff 12/1/13).

### Production Obligations

A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials. FRCP 45(a)(1)(D)

### Subpoenas and Electronically Stored Information

May Require Production of Electronically Stored Information

A subpoena may command production of electronically stored information. A subpoena may specify the form or forms in which electronically stored information is to be produced. FRCP 45(a)(1)(C) (amended eff 12/1/13).

### Form for Producing Electronically Stored Information Not Specified

If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. FRCP 45(e)(1)(B)

### Electronically Stored Information Produced in Only One Form

The person responding need not produce the same electronically stored information in more than one form. FRCP 45(e)(1)(C)

### Inaccessible Electronically Stored Information

The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of FRCP 26(b)(2)(C). The court may specify conditions for the discovery. FRCP 45(e)(1)(D) (renumbered eff 12/1/13).

### Failure to Provide Electronically Stored Information

Absent exceptional circumstances, a court may not impose sanctions under the rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. FRCP 37(e)

### Failure to Participate in Framing a Discovery Plan

If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorneys fees, caused by the failure. FRCP 37(f)

### Duty to Avoid Undue Burden

A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court for the district where compliance is requried must enforce this duty and impose an appropriate sanction which may include lost earnings and reasonable attorneys fees on a party or attorney who fails to comply. FRCP 45(d)(1)

## Service

### Proof of Service

Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server. FRCP 45(b)(4) Service and Fees

Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that persons attendance, tendering the fees for 1 days attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party. FRCP 45(b)(1).

### Witness and Mileage Fees

Witness and mileage fees are established by 28 U.S.C. 1821. 28 USC 1821.

## Production of Documents

### Form of Document Production

The subpoenaed party must produce documents or electronically stored information as it is kept in the usual course of business, or organized and labeled to correspond with the categories specified in the subpoena. FRCP 45(e)(1)(A)

### Claiming Privilege or Protection

### Information Withheld

A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

1. Expressly make the claim; and
2. Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.FRCP 45(e)(2)(A)

### Information Produced

If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved. FRCP 45(e)(2)(B).

## Challenges to Subpoena

### Motion to Quash or Modify

Circumstances Under Which Court Must Quash Subpoena. On timely motion, the issuing court for the district where compliance is required must quash or modify a subpoena that:

1. Fails to allow a reasonable time to comply;
2. Requires a person who is neither a party nor a partys officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
3. Requires a person to comply beyond the geographical limits specified in Rule 45(c);
4. Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
5. Subjects a person to undue burden. FRCP 45(d)(3)(A)(i)-(iv)

### Circumstances Under Which Court May Quash Subpoena

To protect a person subject to or affected by a subpoena, the issuing court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

1. Disclosing a trade secret or other confidential research, development, or commercial information; or
2. Disclosing an unretained experts opinion or information that does not describe specific occurrences in dispute and results from the experts study that was not requested by a party.
3. A person who is neither a party nor a partys officer to incur substantial expense to travel more than 100 miles to attend trial. FRCP 45(d)(3)(B) (amended and renumbered eff 12/1/13).

### Specifying Conditions as an Alternative

In the circumstances described in Rule 45(cd)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

1. Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
2. Ensures that the subpoenaed person will be reasonably compensated. FRCP 45(d)(3)(C)

### Motion for Protective Order

A subpoenaed party, or a party to whom the information sought pertains, may move for a protective order pursuant to Rule 26(c).

## Enforcement

### Command to Produce Materials or Inspection

Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial. FRCP 45(d)(2)(A)

### Objections

A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested.

The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply: At any time, on notice to the commanded person, the serving party may move the issuing court for the district where compliance is required for an order compelling production or inspection. These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance. FRCP 45(d)(2)(B)

### Contempt for Failure to Comply with Subpoena

The issuing court for the district where compliance is required (and the issuing court, after a motion is transferred) may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or order related to it. A non-party’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii). FRCP 45(g).

STATE – LOS ANGELES SUPERIOR COURT

# Complaint

## Pleading Rules

### Fact Pleading

Every cause of action must include a statement of facts in ordinary and concise language. CCP 425.10(a)(1). Concise statements of the essential elements that must be pled for most causes of action can be found in the California Civil Instructions ("CACI"), available online at http://www.courts.ca.gov/966.htm

### Common Counts

Common counts do not require fact pleading and include "For money had and received," "For goods sold and delivered," "For work and labor done," "For materials furnished," and "On an open book account." Caselaw authority holds that the essential elements of a common count are indebtedness in a certain sum, consideration and nonpayment.

### Numbering and Identification

Each separately stated cause of action, count, or defense must specifically state:

(1) Its number (e.g., first cause of action);

(2) Its nature (e.g., for fraud);

(3) The party asserting it if more than one party is represented on the pleading (e.g., by plaintiff Jones); and

(4) The party or parties to whom it is directed (e.g., against defendant Smith).

CRC 2.112 (renumbered and amended eff 1/1/07).

### Exhibits May Be Incorporated By Reference

Exhibits may be attached and incorporated by reference. Caselaw authority holds that exhibits are part of the pleading.

### Demand For Judgment

Every Complaint must include a demand for judgment. CCP 425.10(a)(2). The amount of money sought to be recovered must be stated, unless the action is to recover actual or punitive damages for personal injury or wrongful death. CCP 425.10(a)(2) and (b). In a personal injury or wrongful death case, the amount of the damages must not be stated, unless the action is a limited civil case.CCP 425.10(b). Default judgments cannot exceed "the amount demanded in the complaint." CCP 580.Customarily, prayers for general and special damages and attorneys' fees and/or interest and costs are stated separately.

### Punitive Damages

A claim for punitive damages must not state the amount of damages sought. Civ. Code 3295. Caselaw authority holds that a claim for punitive damages requires specific factual allegations that show that defendant acted with oppression, fraud or malice.

The procedure for seeking punitive damages on a default judgment is provided by Code Civ. Proc. 425.115. CCP 425.115.

### Verification

Verified complaints are required for certain causes of action.

### Actions Requiring Venue Allegations

Actions based on certain statutes require appropriate venue allegations.

## Special Requirements for Particular Matters

### Short Cause Cases

Short cause cases are governed by CRC 3.735 (amended eff 1/1/07).

### Uninsured Motorist Cases

To allow for arbitration of the plaintiff's claim, the California Rules of Court civil case management rules do not apply to a case designated by the court as "uninsured motorist" until 180 days after the designation. CRC 3.712

### Collections Cases

Collections cases are governed by CRC 3.740 (amended eff 1/1/09).

## Form & Format of Papers

## Caption Contents

Every pleading must set forth the name of the court and county in which the action is brought and the title of the action. CCP 422.30(a). Below the title of the court, in the space to the left of the center of the page, must appear the title of the case. In the title of the case on each initial complaint or cross-complaint, the name of each party must commence on a separate line beginning at the left margin of the page. On any subsequent pleading or paper, it is sufficient in the title of the case to state the name of the first party on each side, with appropriate indication of other parties, and state that a cross-action or cross-actions are involved, if applicable. CRC 2.111(4) (amended eff 1/1/08).Designation of the party's status as "an individual" or "a corporation" is usually included.

Plaintiff may name "Doe" defendants and allege in the body of the complaint that the plaintiff is ignorant of the true names of the defendants sued by fictitious names, and that such names are fictitious. CCP 474. Caselaw authority holds that the complaint must also allege that the Doe defendants were liable for the acts upon which the complaint was brought. Below the number of the case, must appear the nature of the paper, and, on all complaints and petitions, the character of the action or proceeding. CRC 2.111(6) (amended eff 1/1/08).

### Limited Civil Cases Must Be Designated In Caption

A limited civil case must be designated as such in the caption. CCP 422.30(b). Where the caption erroneously fails to designate a limited civil case, the court may, on motion or sua sponte, so classify the case and order plaintiff to pay the costs and fees of reclassification. CCP 403.040(a) and (c).

On the complaint, petition, or application filed in a limited civil case, immediately below the character of the action or proceeding, the amount demanded in the complaint, petition, or application, stated as follows: "Amount demanded exceeds $10,000" or "Amount demanded does not exceed $10,000." CRC 2.111(9). $10,000 is no longer the threshold dollar amount for limited civil actions. The amount is set by the California Code of Civil Procedure and is currently $25,000. CCP 85. Rule of Court 2.111(9) has not been amended to reflect this change. See Code of Civil Procedure Sections 85 et seq. regarding the definition of a limited civil case.

### Official Form Complaints

Judicial Council Official Form Complaints are available for many types of actions. The forms are available online at: http://www.courts.ca.gov/forms.htm.

### Signature

Every paper filed with the court must be signed by the attorney or unrepresented party submitting the paper. The signer's address and telephone number must be included. With the exception of discovery papers, the signature constitutes certification pursuant to Code of Civil Procedure 128.7. CCP 128.7.

## REQUIREMENTS.

Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20.

### Additional Documents

1. Civil Case Cover Sheet

The first paper filed in an action or proceeding must be accompanied by a case cover sheet. The cover sheet must be on a form prescribed by the Judicial Council and must be filed in addition to any cover sheet required by local court rule. If the plaintiff indicates on the cover sheet that the case is complex under California Rule of Court 3.400 et seq., the plaintiff must serve a copy of the cover sheet with the complaint. In all other cases, the plaintiff is not required to serve the cover sheet. The cover sheet is used for statistical purposes and may affect the assignment of a complex case. CRC 3.220.

1. Summons

Blank summons forms are available from the clerk and at http://www.courts.ca.gov/forms.htm. Summons must be directed to each defendant, signed by the clerk, issued under the seal of the court and served on each defendant. CCP 412.20 et seq.

"After payment of all applicable fees, the plaintiff may have the clerk issue one or more summons for any defendant. The clerk shall . . ." provide a copy of each summons issued to the plaintiff. CCP 412.10.

"After a summons has been served on a person, proof of service of the summons must be filed "unless the defendant has previously made a general appearance."CCP 417.30.

**The summons and complaint must be served on a defendant within three (3) years after the complaint is filed. Proof of service of the summons must be filed "within sixty (60) days after the time the summons and complaint must be served upon a defendant." CCP 583.210.**

1. ADR Information Sheet

The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR information package on any new parties to the action along with the cross-complaint. CRC 3.221(c) (renumbered eff 1/1/07).

1. Notice of Case Assignment

At the time that a civil case is filed, the clerk must provide a Notice of Case Assignment, which must indicate the name of the judge to whom the case has been assigned. Each plaintiff (and cross-complainant) must serve a copy of the notice, with the complaint (and cross-complaint), and give notice of any date set for a case management or status conference. LASC LR 3.3 (effective 5/17/13).

### Notice of Related Case

Duty to Provide Notice: A party must serve and file a Notice of Related Case whenever a party in a civil action knows or learns that the action or proceeding is related to another action or proceeding pending, dismissed, or disposed of by judgment in any state or federal court in California. CRC 3.300(b) (renumbered and amended eff 1/1/07).

Definition of Related Case

A pending civil case is related to another action or proceeding pending, dismissed, or disposed of by judgment, if the cases:

1. Involved the same parties and are based on the same or similar claims;
2. Arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact;
3. Involve claims against, title to, possession of, or damages to the same property; or
4. Are likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

### Complex Cases

Where one of the cases listed in a Notice of Related Cases has been assigned to a Complex Litigation department, the judge in the Complex Litigation department shall determine whether the cases will be ordered related and assigned to the Complex Litigation department. LASC LR 3.3(f)(1) .

### Probate and Family Law

Where the case listed in a Notice of Related Cases contains a probate or family law case, Department 1 shall determine whether the case shall be ordered related and, if so, to which department they shall be assigned if the cases are all pending in the Central District or pending in two different districts. If the cases are all pending in one district that is other than the Central District, the Supervising Judge of that district shall determine whether the cases shall be ordered related and, if so, to which department they shall be assigned. LASC LR 3.3(f)(2) .

### Motion to Relate Cases

In the event that the pertinent judge under California Rule of Court 3.300(h)(1)(A)(B)(C), does not order related any of the cases set forth in the Notice of Related Cases, any party may file a motion to have the cases related. Department 1 shall hear the motion, if the cases are all pending in the Central District or are pending in two or more different districts. If the cases are all pending in one district that is other than the Central District, the motion shall be heard by the Supervising Judge of that district. The motion must be served on each party in every case listed in the Notice of Related Cases, with proof of service attached. LASC LR 3.3(f)(3) .

### Inform Court of ADR Proceedings

Every counsel in cases that have been related must inform the court of all pending alternative dispute resolution (ADR) proceedings in the related cases. If one or more of the ADR proceedings is court-sponsored, every counsel must also inform the ADR Office that the cases have been related. LASC LR 3.3(f)(4) (repealed eff 5/17/13). ADR has been shutdown at LASC, so this would not be a factor in that Court for new cases.

### Opposition/Response to Notice of Related Case

Within ten (10) days of service of a Notice of Related Case, a party may serve a response in support or in opposition to the Notice. CRC 3.300(d) (amended eff 1/1/08).

### Improper Refiling

A party must not dismiss and then refile a case for the purpose of obtaining a different judge. Whenever a case is dismissed by a party or by the court prior to judgment and a new action is later filed containing the same or essentially the same claims and the same or essentially the same parties, the new action will be assigned, to the judge to whom the first case had been assigned. When multiple cases involving the same or essentially the same claims, and the same or essentially the same parties, are filed on the same date, the cases shall be assigned to the judge to whom the low numbered case (or first filed case) has been assigned, whether or not that case has been dismissed. LASC LR 3.3(d).

### Duty of Counsel

Every counsel in the second action referred to in subdivision (d) above, must immediately bring the fact of the dismissal and refiling to the attention of the court. Counsel for plaintiff or cross-complainant (if the earlier action is renewed in a cross-complaint) must do so at the time that pleading is filed. Counsel for all other parties must do so upon their first appearance, or as soon thereafter as they discover the facts. The notice must be given in a Notice of Related Case as provided in California Rules of Court, rule 3.300. LASC LR 3.3. (effective 5/17/13).

### Certificate of Grounds for Assignment

A civil action presented for filing in any district must be accompanied by a separate page bearing the title of the court and cause, stating which of the grounds specified in Local Rule 2.3 authorizes the filing in such district and must be signed by counsel, or the plaintiff if he is self-represented. If the ground is the residence of a party, his name and residence must be stated. A copy of the certificate must be served with the summons and complaint or petition. This certificate is in addition to the case cover sheet required by the California Rules of Court. LASC LR 2.3

## Filing & Service

### Requirement of Electronic Filing in Some Jurisdictions

Electronic filing is required in some jurisdictions for certain types of actions, and is available but optional for some types of documents in other jurisdictions. For specific up to date information regarding the availability and requirement of electronic filing, and for information regarding traditional and facsimile filing procedures. Electronic Filing--Not Available At All Locations. Consult the filing clerk for the applicable court location to learn if electronic filing is available at that location.

### Electronic Issuance of Summons

Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately upon receipt of the complaint notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.CCP 1010.6(b)(5). (Amended Stats. 2010, c. 156, Sec. 1, (S.B. 1274))

### Filing Fee

The Los Angeles County fee schedule is online at http://www.lasuperiorcourt.org/feesnet/ui/popup.aspx?ct=CV.

Venue Detailed requirements regarding the proper location for filing actions are found in Los Angeles County Superior Court Local Rule 2.3. LASC LR 2.3 (effective 5/17/13).

# ANSWER

## Timing

**Thirty (30) Days**

A responsive pleading to a complaint or cross-complaint must be filed and served within thirty (30) days of service of the complaint or cross-complaint. CCP 412.20(a)(3).

### Answer To Amended Complaint

An amended complaint must be answered within thirty (30) days of service, or as ordered by the court.CCP 471.5(a).

### Petition To Compel Arbitration

Where appropriate, a defendant may choose to file a petition to compel arbitration instead of an answer. If the petition is denied, the defendant then has fifteen (15) days to respond to the complaint. CCP 1281.7.

### Extension

The parties may stipulate to an additional fifteen (15) days to serve a pleading responsive to a complaint or cross-complaint. Govt. Code 68616(b). The parties may stipulate without leave of court to one (1) fifteen (15) day extension beyond the thirty (30) day time period prescribed for the response after service of the initial complaint. CRC 3.110(d) (renumbered eff 1/1/07). The court, on its own motion or on the application of a party, may extend or otherwise modify the times provided in California Rule of Court 3.110(b) through (d)(time to serve complaint, cross-complaint or pleading responsive to an initial complaint). An application for a court order extending the time to serve a pleading must be filed before the time for service has elapsed. The application must be accompanied by a declaration showing why service has not been completed, documenting the efforts that have been made to complete service, and specifying the date by which service is proposed to be completed. CRC 3.110(e).

## Pleading Rules

### Denials

An answer must include a general or specific denial of the material allegations of the complaint. CCP 431.30(b). Every material allegation of a complaint or cross-complaint must be effectively denied or it is deemed admitted. CCP 431.20(a).

### General Denial Permitted

A general denial is effective to controvert all material allegations of an unverified complaint. CCP 431.30(d).

### Specific Denials

A defendant may deny specific sentences, paragraphs or parts of a complaint, or a defendant may expressly admit certain parts of a complaint, and deny all allegations not expressly admitted. CCP 431.30(f).

Denials Based On Lack of Information Or Information and Belief

Where defendant lacks sufficient information to admit or deny an allegation, defendant may deny an allegation on that ground. CCP 431.30(d).Additionally, a defendant may deny an allegation on information and belief. CCP 431.30(f).

### Affirmative Defenses

Any "New Matter". An answer must include any "new matter" that constitutes a defense to a complaint or cross-complaint. CCP 431.30(b).Customarily, "new matters" are referred to as affirmative defenses. Caselaw authority holds that affirmative defenses are matters as to which defendant bears the burden of proof at trial.

For guidance regarding pleading affirmative defenses, consult the California Civil Instructions ("CACI"), available online at: http://www.courts.ca.gov/966.htm.

### Waiver

Except for lack of subject matter jurisdiction and failure to state facts sufficient to constitute a cause of action, affirmative defenses are waived if not pled. CCP 430.80(a).

### Numbering of Defenses

Each separately stated defense must specifically state:

(1) Its number (e.g., first cause of action);

(2) Its nature (e.g., for fraud);

(3) The party asserting it if more than one party is represented on the pleading (e.g., by

plaintiff Jones); and

(4) The party or parties to whom it is directed (e.g., against defendant Smith).

### Statute of Limitations

Regarding the statute of limitations defense, "it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section \_\_ (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code of Civil Procedure; . . ." CCP 458.

### Inconsistent Defenses

Caselaw authority holds that a defendant may plead alternative or inconsistent affirmative defenses.

### Affirmative Defenses Deemed Controverted

Defenses raised in an answer are deemed controverted by plaintiff. CCP 431.20(b).

### Answer To Verified Complaint

Verification Required, No General Denial. If the complaint in an unlimited civil case is verified, defendant's answer must be verified, i.e., it must attach a statement under oath or penalty of perjury ". . . that the same is true of his own knowledge, except as to matters stated therein on information and belief, and as to those matters that he or she believes it to be true." CCP 446. No general denial is permitted, the allegations must be admitted or denied individually. CCP 431.30(d).

### Limited Civil Cases

In a limited civil case, a general denial puts at issue all material allegations of the complaint, whether or not it is verified. CCP 431.30(d). Answers in limited civil cases need not be verified, even if the complaint is verified.CCP 92(b).

### Prayer

Customarily, the answer includes a prayer requesting that plaintiff take nothing by way of the complaint, for an award of costs and fees, and for any other or further relief that the court deems just and proper. If an award of attorneys' fees is sought, such request should also be stated in the prayer.

### Answer May Not Seek Affirmative Relief

An answer may not claim affirmative relief. A claim for relief must be asserted in a cross-complaint. CCP 431.30(c). See Los Angeles County SmartRules procedural guide: Cross-Complaint.

## Special Requirements for Particular Matters

### Short Cause Cases

Short cause cases are governed by CRC 3.735 (amended eff 1/1/07).

### Uninsured Motorist Cases

To allow for arbitration of the plaintiff's claim, the California Rules of Court civil case management rules do not apply to a case designated by the court as "uninsured motorist" until 180 days after the designation. CRC 3.712 (amended eff 2/26/13).

### Collections Cases

Collections cases are governed by CRC 3.740 (amended eff 1/1/09).

## Formatting of Papers

### Caption

Every pleading must contain a caption that sets forth the name of the court and county in which the action is brought. CCP 422.30(a).In a case having multiple parties, any answer, response or opposition must specifically identify the complaining, propounding, or moving party and the complaint, motion, or other matter being answered or opposed. CRC 2.111(6) (amended eff 1/1/08). The caption may identify the action by naming the first party on each side and indicating the presence of other parties. CCP 422.40.Customarily, the caption page identifies on whose behalf the answer is filed.

### Answer to Cross-Complaint

On any pleading or paper subsequent to the initial complaint or cross-complaint, it is sufficient in the title of the case to state the name of the first party on each side, with appropriate indication of other parties, and state that a cross-action or cross-actions are involved, if applicable. CRC 2.111(4) (amended eff 1/1/08).

### Special Answer To Cross-Complaint

A cross-defendant may file a separate document styled a "Special Answer" asserting defenses to the original complaint that defendant/cross-complainant failed to assert.CCP 428.70(b). A special answer must be filed and served at the same time as the answer to the cross-complaint. The special answer must be served both on the cross-complainant and the original plaintiff.CCP 428.70.

### Official Form Answers

Official Form answers are available for many types of civil actions including personal injury, wrongful death, property damage, breach of contract, fraud and unlawful detainer. The forms are available online at: http://www.courts.ca.gov/forms.htm.

### Signature

Every paper filed with the court must be signed by the attorney or unrepresented party submitting the paper. The signer's address and telephone number must be included. With the exception of discovery papers, the signature constitutes certification pursuant to Code of Civil Procedure 128.7. CCP 128.7.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

### Additional Documents

The following documents may need to be filed and/or served with the Answer.

1. Notice of Related Case
2. Duty to Provide Notice

A party must serve and file a Notice of Related Case whenever a party in a civil action knows or learns that the action or proceeding is related to another action or proceeding pending, dismissed, or disposed of by judgment in any state or federal court in California. CRC 3.300(b). Definition of Related Case: A pending civil case is related to another action or proceeding pending, dismissed, or disposed of by judgment, if the cases:

* 1. Involved the same parties and are based on the same or similar claims;
	2. Arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact;
	3. Involve claims against, title to, possession of, or damages to the same property; or
	4. Are likely for other reasons to require substantial duplication of judicial resources if heard by different judges. CRC 3.300(a)

Notice of Related Case - Complex Cases: Where one of the cases listed in a Notice of Related Cases has been assigned to a Complex Litigation department, the judge in the Complex Litigation department shall determine whether the cases will be ordered related and assigned to the Complex Litigation department. LASC LR 3.3(f)(1) .

Probate and Family Law: Where the case listed in a Notice of Related Cases contains a probate or family law case, Department 1 shall determine whether the case shall be ordered related and, if so, to which department they shall be assigned if the cases are all pending in the Central District or pending in two different districts. If the cases are all pending in one district that is other than the Central District, the Supervising Judge of that district shall determine whether the cases shall be ordered related and, if so, to which department they shall be assigned. LASC LR 3.3(f)(2) .

Motion to Relate Cases: In the event that the pertinent judge under California Rule of Court 3.300(h)(1)(A)(B)(C), does not order related any of the cases set forth in the Notice of Related Cases, any party may file a motion to have the cases related. Department 1 shall hear the motion, if the cases are all pending in the Central District or are pending in two or more different districts. If the cases are all pending in one district that is other than the Central District, the motion shall be heard by the Supervising Judge of that district. The motion must be served on each party in every case listed in the Notice of Related Cases, with proof of service attached. LASC LR 3.3(f)(3) .

### Inform Court of ADR Proceedings

Every counsel in cases that have been related must inform the court of all pending alternative dispute resolution (ADR) proceedings in the related cases. If one or more of the ADR proceedings is court-sponsored, every counsel must also inform the ADR Office that the cases have been related. LASC LR 3.3(f)(4) (repealed eff 5/17/13).

### Opposition/Response to Notice of Related Case

Within ten (10) days of service of a Notice of Related Case, a party may serve a response in support or in opposition to the Notice. CRC 3.300(d) (amended eff 1/1/08).

### Improper Refiling

A party must not dismiss and then refile a case for the purpose of obtaining a different judge. Whenever a case is dismissed by a party or by the court prior to judgment and a new action is later filed containing the same or essentially the same claims and the same or essentially the same parties, the new action will be assigned, to the judge to whom the first case had been assigned. When multiple cases involving the same or essentially the same claims, and the same or essentially the same parties, are filed on the same date, the cases shall be assigned to the judge to whom the low numbered case (or first filed case) has been assigned, whether or not that case has been dismissed. LASC LR 3.3(d).

### Duty of Counsel

Every counsel in the second action referred to in subdivision (d) above, must immediately bring the fact of the dismissal and refiling to the attention of the court. Counsel for plaintiff or cross-complainant (if the earlier action is renewed in a cross-complaint) must do so at the time that pleading is filed. Counsel for all other parties must do so upon their first appearance, or as soon thereafter as they discover the facts. The notice must be given in a Notice of Related Case as provided in California Rules of Court, rule 3.300. LASC LR 3.3.

## Filing & Service

### All Pleadings With Proof of Service

All pleadings subsequent to the complaint must be filed with the court, together with proof of service upon opposing parties or their counsel. CCP 465.

### Proof of Service

As used in the California Rules of Court, "proof of service" means a declaration stating that service has been made as provided in the California Rules of Court. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.CRC 1.21(c) (amended eff 1/1/07).

### Filing Fee

The Los Angeles County fee schedule is online at http://www.lasuperiorcourt.org/feesnet/ui/popup.aspx?ct=CV.

### Requirement of Electronic Filing in Some Jurisdictions

Electronic filing is required in some jurisdictions for certain types of actions, and is available but optional for some types of documents in other jurisdictions. For specific up to date information regarding the availability and requirement of electronic filing, and for information regarding traditional and facsimile filing procedures. All pleadings subsequent to the complaint must be served upon all adverse parties. CCP 465. Service of an answer may be made as provided by Code of Civil Procedure Sections 1010 et seq. and applicable Local Rules.

### On Attorney of Represented Party

Whenever a document is required to be served on a party, the service must be made on the party's attorney if the party is represented. CRC 1.21(a).

# CASE MANAGEMENT STATEMENT

## Timing

**Meet and Confer 30 Days Before Conference**

No later than 30 calendar days before the date set for the case management conference, the parties must meet and confer, in person or by telephone, to consider:

1. Related cases;
2. Whether all parties have been served, have appeared, or have been dismissed;
3. Additional parties or amendments;
4. Code of Civil Procedure section 90 et seq.;
5. Other matters (e.g., the bankruptcy of a party) that may affect the courts jurisdiction or processing of the case;
6. Arbitration or other ADR;
7. Early settlement conference;
8. Discovery and the date by which it will be completed;
9. Discovery issues;
10. Bifurcation;
11. Cross-complaints;
12. Statutory preference;
13. Jury trial;
14. Trial date;
15. Length of trial;
16. Nature of the injuries;
17. Damages, including any special or punitive damages;
18. Additional relief;
19. Insurance coverage issues.
20. CRC 3.727 (renumbered 1/1/07).
21. Additionally, the parties are to consider:
22. Discovery disputes and setting a discovery schedule;
23. Anticipated motions;
24. Facts and issues in the case that are uncontested and may be the subject of stipulation;
25. Facts and issues in the case that are in dispute;
26. Narrowing claims or defenses;
27. Settlement;
28. Trial dates;
29. Discovery of electronically stored information:
30. Preservation;
31. The form or forms of production;
32. The time of production;
33. The scope of discovery of the information;
34. Claims of privilege or attorney work product
35. Confidentiality, privacy, trade secrets, or proprietary status of information relating to a party or person not a party to the civil proceedings;
36. Cost of production.
37. Local Rules Regarding Timing

### Meet and Confer Required

No later than 30 calendar days before the date set for the case management conference or review, counsel must meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 and CRC 3.727. LASC LR 3.25(b)(1) (effective 5/17/13).

### File Case Management Statement 15 Days Prior

No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement using Judicial Council Form CM-110, and serve it on all parties in the case. (CRC 3.725.). LASC LR 3.25(b)(2).

## Form & Format of Papers

Case Management Statement Form

Parties must use the mandatory Case Management Statement (form CM-110, available online at: <http://www.courts.ca.gov/forms.htm>). All applicable items on the form must be completed. In lieu of each party filing a separate case management statement, any two or more parties may file a joint statement under California Rule of Court 3.725. CRC 3.725(b) (renumbered eff 1/1/07).

# MOTION

## Timing

Applicable Statute, Rule or Case Law

### Service of Motion Papers

Personal Service 16 Days Before Hearing

If papers are served by personal service, service must be made at least 16 court days before the hearing. CCP 1005(b).

### Extensions For Traditional Mail Service

If service is made by mail, service must be made at least 16 courts days before the hearing, plus:

5 calendar days if both the place of mailing and the place of address are within California,

10 calendar days if either the place of mailing or the place of address is outside California but within the United States, and

20 calendar days if either the place of mailing or the place of address is outside the United States.

CCP 1005(b).

### Extensions For Facsimile or Express Mail Service

There are two authorities with differing requirements regarding service by facsimile (but there is only source of timing requirements for service by express mail). According to the California Code of Civil Procedure, if service is made by facsimile, express mail, or other method of delivery providing for overnight delivery, service must be made at least 16 court days plus 2 calendar days before the hearing date. CCP 1005(b). According the California Rules of Court, "Except as provided in [subsection ] (e), any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of a document served by fax transmission is extended by 2 court days." CRC 2.306(d) (amended eff 7/1/08).Subsection (e) provides that the extension of two court days does not apply to extend the time for the filing of: (1)A notice of intent to move for new trial; (2)A notice of intent to move to vacate a judgment under CCP 663; or (3)A notice of appeal. CRC 2.306(e).

### Extension for Electronic Service--2 Court Days

If a document is served electronically, any period of notice, or any right or duty to act or respond within a specified period or on a date certain after service of the document, is extended by 2 court days. CRC 2.251(h)(2) (renumbered eff 7/1/13).

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Order Shortening Time

The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter times for the filing and service of papers than the times specified in CCP 1005. CRC 3.1300(b).

### Cut-Off Date

Judges often set a motion cut-off date or deadline.

### Scheduling the Hearing

Most judges require reservation of hearing dates. Reservations may be made by contacting the courtroom of the judge who will hear the motion. The list of telephone numbers of LASC judicial officers is online at: http://www.lasuperiorcourt.org/judicialofficers.

## Rules and Requirements

Applicable Statute, Rules or Caselaw

### Meet and Confer

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

# MOVING PAPERS

## Caption

### Demurrer

A demurrer must state, on the first page below the number of the case, the name of the party filing the demurrer and the name of the party who’s pleading is the subject of the demurrer. CRC 3.1320(e) (amended eff 1/1/07)

Subsequent Papers

On any pleading or paper subsequent to the initial complaint or cross-complaint, it is sufficient in the title of the case to state the name of the first party on each side, with appropriate indication of other parties, and state that a cross-action or cross-actions are involved, if applicable.CRC 2.111(4). (renumbered 1/1/08).

Additional Information

The first page of the motion or demurrer must specify, immediately below the number of the case, the date, time and location of the hearing and the name of the hearing judge, the title of any attached document other than an exhibit, the date the action was filed and the trial date." CRC 3.1110(b). (renumbered 1/1/07)

### Notice of Motion

Every motion must include a written notice of motion that sets forth when and where the motion will be presented, the grounds on which the motion will be made and the papers on which the motion is to be based. CCP 1010; CRC 3.1112(a) (amended eff 7/1/08).

A notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order. CRC 3.1110(a) (amended eff 1/1/07).

### Motion

Motion papers must include "the motion itself." CRC 3.1112(a). A motion must identify the moving party and the party to whom it is addressed, briefly state the basis for the motion, the relief sought, and the specific portion of the pleading, if any, that is challenged. A motion may be combined with a notice of motion and/or memorandum of points and authorities. The caption should indicate whether it is a separate or combined document. CRC 3.1112(d) and (c) (amended eff 7/1/08).

### Memorandum of Points and Authorities

**Required:** Every motion must be supported by a memorandum unless the motion is one of the types specifically exempted from this requirement under California Rule of Court 3.1114. CRC 3.1112(a) (amended eff 7/1/08), CRC 3.1113(a) (amended eff 7/1/11), CRC 3.1114(a) (amended 1/1/11). To the extent practicable, a memorandum and its supporting declarations should be attached to the notice of motion. CRC 3.1113(k) (amended eff 7/1/11).

**Content**

The memorandum must contain a statement of facts, and a concise statement of the law, evidence and arguments relied on in support of the position advanced. CRC 3.1113(b) (amended eff 7/1/11).

### 15 Page Limit on Briefs

Except in a summary judgment or summary adjudication motion, a memorandum of points and authorities in support of a motion may not exceed 15 pages, not including exhibits, declarations, attachments, tables of contents or authorities, or the proof of service. CRC 3.1113(d) (amended eff 7/1/11).

**Table of Contents:** A memorandum that exceeds 10 pages must include a table of contents and table of authorities. CRC 3.1113(f) (amended eff 7/1/11).

**Summary of Argument:** A memorandum that exceeds 15 pages must also include an opening summary of argument. CRC 3.1113(f) (amended eff 7/1/11).

**Citations to Authority and Exhibits:** Case citations must include the official report volume and page number and year of decision. CRC 3.1113(c) (amended eff 7/1/11).A judge may require that authority from outside California be lodged with the papers that cite the authority and attached as an exhibit. CRC 3.1113(i) (amended eff 7/1/11).References to exhibits must include the number or letter of the exhibit, the specific page and specific paragraph or line number, if applicable. CRC 3.1113(k) (amended eff 7/1/11).

**Reference to Previously Filed Papers:** Any paper previously filed must be referred to by date of execution and title. CRC 3.1110(d).

**Style of Citations:** Citations to cases and other authorities in all documents filed in the courts must be in the style established by either the California Style Manual or The Bluebook: A Uniform System of Citation, at the option of the party filing the document. The same style must be used consistently throughout the document. CRC 1.200.

**Signature:** Every paper filed with the court must be signed by the attorney or unrepresented party submitting the paper. The signer's address and telephone number must be included. With the exception of discovery papers, the signature constitutes certification pursuant to Code of Civil Procedure 128.7. CCP 128.7.

**Preemption of Local Rules**

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20

## REQUIREMENTS

### Evidence

### Written

Papers that may be filed in support of a motion include declarations, exhibits, appendices, and other documents or pleadings. CRC 3.1112(b) (amended eff 7/1/8).

Evidence received at a law and motion hearing must be by declaration, or request for judicial notice, without testimony, or cross-examination, unless the court orders otherwise for good cause shown. CRC 3.1306(a) (renumbered and amended 1/1/07). See also LASC LR 3.7 (amended eff 7/1/11).

### Request To Present Testimony

A party wishing to present oral evidence at a hearing must file, no later than 3 court days before the hearing, a written statement setting forth the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing.CRC 3.1306(b) (renumbered eff 1/1/07).

The statement must also include the reason why the evidence cannot be presented by declaration or affidavit. LASC LR 3.7 (amended eff 7/1/11).

### Declarations

### Deposition Testimony

The first page of any deposition testimony used as an exhibit must state the name of the deponent and the date of the deposition. The exhibit should include only the relevant pages of the transcript. The original page numbers must be clearly visible. The relevant testimony should be highlighted. CRC 3.1116 (renumbered eff 1/1/07).

### Judicial Notice

### Facts From The Record

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

### Proposed Order

A proposed order may be lodged and served with moving or opposition papers but must not be attached to them. CRC 3.1113(n) (amended eff 7/1/11). Proposed orders may be filed and submitted electronically as provided in CRC 3.1312. CRC 2.252(h) (renumbered eff 7/1/13).

## FILING AND SERVICE

### Time

In the Central District, all fee documents are to be filed at the filing window no later than 4:30 p.m.LASC LR 3.4(a) (amended eff 7/1/11).

### Electronic Filing May Be Required

Electronic filing is required in some jurisdictions for certain types of actions, and is available but optional for some types of documents in other jurisdictions. For specific up to date information regarding the availability and requirement of electronic filing, and for information regarding traditional and facsimile filing procedures.

### Filing Fee

The Los Angeles County fee schedule is online at http://www.lasuperiorcourt.org/feesnet/ui/popup.aspx?ct=CV.

### Proof of Service

Proof of service of moving papers must be filed no later than 5 court days before the hearing date.CRC 3.1300(c) (renumbered and amended eff 1/1/07).As used in the California Rules of Court, "proof of service" means a declaration stating that service has been made as provided in the California Rules of Court. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.CRC 1.21(c) (amended eff 1/1/07).

### Service

**On Each Party**

A copy of the document must be served on the attorney for each party separately represented, and on each self-represented party. CRC 1.21(b).

**On Attorney of Represented Party**

Service must be made on the party's attorney if the party is represented. CRC 1.21(a).

**Parties Responsible for Electronic Service**

Parties are responsible for electronic service. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.CRC 2.251(e)(1) (renumbered eff 7/1/13).

**Traditional Service Required for Nonparty**

A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.CRC 2.251(e)(2) (renumbered eff 7/1/13).

**Method of Service May Not Cause Disadvantage**

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Hearing and Disposition

### Appearance at the Hearing

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless the court orders otherwise. The court must rule on the motion as if the party had appeared. If a party fails to appear at a law and motion hearing without having given notice, the court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. CRC 3.1304(c) and (d) (renumbered eff 1/1/07).

### Matter Not To Be Heard

The moving party must immediately notify the court if a matter will not be heard on the scheduled date.CRC 3.1304(b).

Tentative Rulings: Some departments post tentative rulings. These can be accessed online at: http://www.lasuperiorcourt.org/tentativerulingnet/ui/main.aspx.

### Telephonic Appearance

Telephonic appearance for civil hearings is generally allowed. CRC 3.670(a) and (c)

# OPPOSITION

## Timing

9 Court Days Before the Hearing

All opposition papers must be filed and served at least 9 court days before the hearing. CCP 1005(b).

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Late Papers

The clerk may not reject untimely papers. If the court refuses to consider the paper, the order must so indicate. CRC 3.1300(d) (renumbered eff 1/1/07).

## Rules and Requirements

Applicable Statute, Rules or Caselaw

Meet and Confer

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Opposition Papers

### Caption

California Rule of Court 312(h) was deleted effective 1/1/07. It provided that motions or demurrers may have short captions that simply identify the first party on each side. This Rule was replaced with California Rule of Court 3.1320(c) that provides, "A demurrer must state, on the first page below the number of the case, the name of the party filing the demurrer and the name of the party whose pleading is the subject of the demurrer" CRC 3.1320(c)

It appears that with motions and papers other than demurrers, California Rule of Court 2.111(4) now governs. This rule provides that on any pleading or paper subsequent to the initial complaint or cross-complaint, it is sufficient in the title of the case to state the name of the first party on each side, with appropriate indication of other parties, and state that a cross-action or cross-actions are involved, if applicable.CRC 2.111(4) (amended eff 1/1/08).

No change, other than a renumbering, was made to the California Rule of Court addressing the other elements of a caption in the 1/1/07 revisions. This Rule provides: "The first page of the motion or demurrer must specify, immediately below the number of the case, the date, time and location of the hearing and the name of the hearing judge, the title of any attached document other than an exhibit, the date the action was filed and the trial date." CRC 3.1110(b)

### Memorandum of Points and Authorities

**Content**

The opposition memorandum must contain a statement of facts, a concise statement of the law, and the evidence, arguments, and authorities relied upon. CRC 3.1113(b) (amended eff 7/1/11).

**Fifteen (15) Page Limit on Briefs**

Except in a summary judgment or summary adjudication motion, an opposition memorandum may not exceed fifteen (15) pages, not including exhibits, declarations, attachments, tables, or proof of service. CRC 3.1113(d) A memorandum that exceeds ten (10) pages shall include a table of contents and table of authorities.CRC 3.1113(f).

A memorandum that exceeds fifteen (15) pages shall also include an opening summary of argument. CRC 3.1113(f).

**Citations to Authority and Exhibits**

Case citations must include the official report volume and page number and year of decision. CRC 3.1113(c) A judge may require that authority from outside California be lodged with the papers that cite the authority and attached as an exhibit. CRC 3.1113(i) (amended eff 7/1/11).

References to exhibits must include the number or letter of the exhibit, the specific page and specific paragraph or line number, if applicable. CRC 3.1113(k) (amended eff 7/1/11).

Reference to Previously Filed Papers

Any paper previously filed must be referred to by date of execution and title. CRC 3.1110(d).

### Style of Citations

Citations to cases and other authorities in all documents filed in the courts must be in the style established by either the California Style Manual or The Bluebook: A Uniform System of Citation, at the option of the party filing the document. The same style must be used consistently throughout the document. CRC 1.200 (added eff 1/1/08).

### Signature

Every paper filed with the court must be signed by the attorney or unrepresented party submitting the paper. The signer's address and telephone number must be included. With the exception of discovery papers, the signature constitutes certification pursuant to Code of Civil Procedure 128.7. CCP 128.7.

Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20

## Evidence

### Written

Papers that may be filed in support of a motion include declarations, exhibits, appendices, and other documents or pleadings. CRC 3.1112(b) (amended eff 7/1/8).

Evidence received at a law and motion hearing must be by declaration, or request for judicial notice, without testimony, or cross-examination, unless the court orders otherwise for good cause shown. CRC 3.1306(a) (renumbered and amended 1/1/07). See also LASC LR 3.7 (amended eff 7/1/11).

### Request To Present Testimony

A party wishing to present oral evidence at a hearing must file, no later than 3 court days before the hearing, a written statement setting forth the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing.CRC 3.1306(b) (renumbered eff 1/1/07). The statement must also include the reason why the evidence cannot be presented by declaration or affidavit. LASC LR 3.7 (amended eff 7/1/11).

### Declarations

### Deposition Testimony

The first page of any deposition testimony used as an exhibit must state the name of the deponent and the date of the deposition. The exhibit should include only the relevant pages of the transcript. The original page numbers must be clearly visible. The relevant testimony should be highlighted. CRC 3.1116 (renumbered eff 1/1/07).

### Judicial Notice

### Facts From The Record

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

### Objections To Evidence

Opposition papers may include objections to the evidence relied upon by the moving party.Customarily, objections to evidence are made in a separate document.

### Additional Documents

1. Proposed Order

A proposed order may be lodged and served with moving or opposition papers but must not be attached to them. CRC 3.1113(n) (amended eff 7/1/11). Proposed orders may be filed and submitted electronically as provided in CRC 3.1312. CRC 2.252(h) (renumbered eff 7/1/13).

### NOTICE OF RULING

## FILING AND SERVICE

### Time

In the Central District, opposition or reply papers must be filed not later than 4:30 p.m. on the last day permitted. LASC LR 3.4(a) (amended eff 7/1/11).

### Electronic Filing May Be Required

Electronic filing is required in some jurisdictions for certain types of actions, and is available but optional for some types of documents in other jurisdictions. For specific up to date information regarding the availability and requirement of electronic filing, and for information regarding traditional and facsimile filing procedures.

### Proof of Service

Proof of service of moving papers must be filed no later than 5 court days before the hearing date.CRC 3.1300(c) (renumbered and amended eff 1/1/07).As used in the California Rules of Court, "proof of service" means a declaration stating that service has been made as provided in the California Rules of Court. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.CRC 1.21(c) (amended eff 1/1/07).

### Service

Opposition and reply papers must be served by personal delivery, fax, express mail, or any method that is "reasonably calculated" to ensure delivery not later than the close of the next business day after the opposition or reply papers are filed. CCP 1005(c).

## Hearing and Disposition

### Appearance at the Hearing

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless the court orders otherwise. The court must rule on the motion as if the party had appeared. If a party fails to appear at a law and motion hearing without having given notice, the court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. CRC 3.1304(c) and (d) (renumbered eff 1/1/07).

### Matter Not To Be Heard

The moving party must immediately notify the court if a matter will not be heard on the scheduled date.CRC 3.1304(b).

### Tentative Rulings

Some departments post tentative rulings. These can be accessed online at: http://www.lasuperiorcourt.org/tentativerulingnet/ui/main.aspx.

### Telephonic Appearance

Telephonic appearance for civil hearings is generally allowed. CRC 3.670(a) and (c).

# REPLY

## Timing

5 Court Days Before the Hearing

Reply papers must be filed and served at least 5 court days before the hearing date. CCP 1005(b).

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Late Papers

The clerk may not reject untimely papers. If the court refuses to consider the paper, the order must so indicate. CRC 3.1300(d) (renumbered eff 1/1/07).

## Rules and Requirements

Applicable Statute, Rules or Caselaw

### Meet and Confer

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Reply Papers

### Caption

California Rule of Court 312(h) was deleted effective 1/1/07. It provided that motions or demurrers may have short captions that simply identify the first party on each side. This Rule was replaced with California Rule of Court 3.1320(c) that provides, "A demurrer must state, on the first page below the number of the case, the name of the party filing the demurrer and the name of the party whose pleading is the subject of the demurrer" CRC 3.1320(c) (amended eff 1/1/07).

It appears that with motions and papers other than demurrers, California Rule of Court 2.111(4) now governs. This rule provides that on any pleading or paper subsequent to the initial complaint or cross-complaint, it is sufficient in the title of the case to state the name of the first party on each side, with appropriate indication of other parties, and state that a cross-action or cross-actions are involved, if applicable.CRC 2.111(4) (amended eff 1/1/08).

No change, other than a renumbering, was made to the California Rule of Court addressing the other elements of a caption in the 1/1/07 revisions. This Rule provides: "The first page of the motion or demurrer must specify, immediately below the number of the case, the date, time and location of the hearing and the name of the hearing judge, the title of any attached document other than an exhibit, the date the action was filed and the trial date." CRC 3.1110(b) (renumbered eff 1/1/07).

### Memorandum of Points and Authorities

#### Content

A reply memorandum must contain a statement of facts, a concise statement of the law, and the evidence, arguments, and authorities relied upon. CRC 3.1113(b) (amended eff 7/1/11).

#### Ten (10) Page Limit on Reply Briefs

A reply memorandum may not exceed ten (10) pages, not including exhibits, declarations, attachments, tables, or proof of service. CRC 3.1113(d) (amended eff 7/1/11).

#### Citations to Authority and Exhibits

Case citations must include the official report volume and page number and year of decision. CRC 3.1113(c) (amended eff 7/1/11). A judge may require that authority from outside California be lodged with the papers that cite the authority and attached as an exhibit. CRC 3.1113(i) (amended eff 7/1/11). References to exhibits must include the number or letter of the exhibit, the specific page and specific paragraph or line number, if applicable. CRC 3.1113(k) (amended eff 7/1/11).

#### Reference to Previously Filed Papers

Any paper previously filed must be referred to by date of execution and title. CRC 3.1110(d).

#### Style of Citations

Citations to cases and other authorities in all documents filed in the courts must be in the style established by either the California Style Manual or The Bluebook: A Uniform System of Citation, at the option of the party filing the document. The same style must be used consistently throughout the document. CRC 1.200 (added eff 1/1/08).

#### Signature

Every paper filed with the court must be signed by the attorney or unrepresented party submitting the paper. The signer's address and telephone number must be included. With the exception of discovery papers, the signature constitutes certification pursuant to Code of Civil Procedure 128.7. CCP 128.7.

#### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

## Evidence

### Written

Papers that may be filed in support of a motion include declarations, exhibits, appendices, and other documents or pleadings. CRC 3.1112(b) (amended eff 7/1/8).

Evidence received at a law and motion hearing must be by declaration, or request for judicial notice, without testimony, or cross-examination, unless the court orders otherwise for good cause shown. CRC 3.1306(a) (renumbered and amended 1/1/07). See also LASC LR 3.7 (amended eff 7/1/11).

### Request To Present Testimony

A party wishing to present oral evidence at a hearing must file, no later than 3 court days before the hearing, a written statement setting forth the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing.CRC 3.1306(b) (renumbered eff 1/1/07).

The statement must also include the reason why the evidence cannot be presented by declaration or affidavit. LASC LR 3.7 (amended eff 7/1/11).

### Declarations

### Deposition Testimony

The first page of any deposition testimony used as an exhibit must state the name of the deponent and the date of the deposition. The exhibit should include only the relevant pages of the transcript. The original page numbers must be clearly visible. The relevant testimony should be highlighted. CRC 3.1116 (renumbered eff 1/1/07).

### Judicial Notice

### Facts From The Record

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

### Objections To Evidence

Reply papers may include objections to the evidence relied upon by the opposing party. Customarily, objections to evidence are made in a separate document.

## FILING AND SERVICE

### Time

Reply papers must be filed at least 5 court days before the hearing date. CCP 1005(b).

In the Central District, opposition or reply papers must be filed not later than 4:30 p.m. on the last day permitted. LASC LR 3.4(a) (amended eff 7/1/11).

### Electronic Filing May Be Required

Electronic filing is required in some jurisdictions for certain types of actions, and is available but optional for some types of documents in other jurisdictions. For specific up to date information regarding the availability and requirement of electronic filing, and for information regarding traditional and facsimile filing procedures,

### No Fee

There is no fee for filing reply papers.

### Proof of Service

Proof of service of moving papers must be filed no later than 5 court days before the hearing date.CRC 3.1300(c) (renumbered and amended eff 1/1/07).As used in the California Rules of Court, "proof of service" means a declaration stating that service has been made as provided in the California Rules of Court. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served is representing.CRC 1.21(c) (amended eff 1/1/07).

## Service

Opposition and reply papers must be served by personal delivery, fax, express mail, or any method that is "reasonably calculated" to ensure delivery not later than the close of the next business day after the opposition or reply papers are filed. CCP 1005(c).

## Hearing and Disposition

### Appearance at the Hearing

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless the court orders otherwise. The court must rule on the motion as if the party had appeared. If a party fails to appear at a law and motion hearing without having given notice, the court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. CRC 3.1304(c) and (d) (renumbered eff 1/1/07).

### Matter Not To Be Heard

The moving party must immediately notify the court if a matter will not be heard on the scheduled date.CRC 3.1304(b).

### Tentative Rulings

Some departments post tentative rulings. These can be accessed online at: http://www.lasuperiorcourt.org/tentativerulingnet/ui/main.aspx.

### Telephonic Appearance

Telephonic appearance for civil hearings is generally allowed. CRC 3.670(a) and (c) (amended 1/1/14).

# INTERROGAOTORIES

## Timing

### Defendant May Propound at Any Time

A defendant may propound written interrogatories at any time. CCP 2030.020(a).

### Plaintiff -- Usually 10 Days After Service of Summons

A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions 5 days after service of the summons on or appearance by, that party, whichever occurs first. CCP 2030.020(b). However, on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time. CCP 2030.020(c).

### Method of Service and Due Date of Responses

The party propounding interrogatories must serve a copy of them on the party to whom they are directed, and on all other parties who have appeared in the action, unless the court on motion with or without notice has relieved that party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome. CCP 2030.080.

Service may be made by fax on written agreement of the parties. CRC 2.306(a) (renumbered eff 1/1/08). Fax service completed after 5 p.m. is deemed to have occurred on the next court day. CRC 2.306(g) (renumbered eff 1/1/08).

Responses to interrogatories are due within 30 days (5 days for unlawful detainer actions) if the interrogatories were personally served, 35 days if the interrogatories were served by mail and 30 days plus 2 court days if the interrogatories were served by express mail or facsimile or electronically. CCP 2030.260; CCP 1013.

On motion of the propounding party, the court may shorten the time for response, or, on motion of the responding party the court may extend the time for response. CCP 2030.260.

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Discovery Cut-Off--30 Days Before Initial Trial Date

Discovery must be completed on or before the 30th day before the date initially set for the trial of the action. CCP 2024.020(a). In most cases, a continuance or postponement of the trial date does not operate to reopen discovery proceedings. CCP 2024.020(a). In some cases, the judge may set a different discovery cut-off date.

### Serve Interrogatories Such That Responses Are Due Before Discovery Cut-Off

Discovery is completed on the day a response is due or on the day a deposition begins. CCP 2024.010.As a result, discovery must be served such that responses are due before the discovery cut-off.

### Expert Discovery Cut-Off

Expert witness discovery cut-off is 15 days, and expert witness motion cut-off is 10 days, before the initial trial date. CCP 2024.030.

## Discovery Rules

### Each Interrogatory Must Be Complete

Each interrogatory shall be full and complete in and of itself. No preface or instruction shall be included with a set of interrogatories unless it has been approved under the Code of Civil Procedure. Any term specially defined in a set of interrogatories shall be typed with all letters capitalized wherever that term appears.No specially prepared interrogatory shall contain subparts, or a compound, conjunctive, or disjunctive question.CCP 2030.060(d).

### Contention Interrogatories Permitted

An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial. CCP 2030.010(b).

### Interrogatory Cannot Impose a Duty to Supplement Answer

An interrogatory may not be made a continuing one so as to impose on the party responding to it a duty to supplement an answer to it that was initially correct and complete with later acquired information. CCP 2030.060(g).

### Supplemental Interrogatories

In addition to the number of interrogatories permitted by the Code of Civil Procedure, a party may propound a supplemental interrogatory to elicit any later acquired information bearing on all answers previously made by any party in response to interrogatories (1) twice prior to the initial setting of a trial date, and (2) subject to the time limits on discovery proceedings and discovery motions, once after the initial setting of a trial date. However, on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental interrogatories. CCP 2030.070.

Supplemental interrogatories must include, immediately below the title of the case, the identity of the propounding and responding party, the set number and identification of the discovery ad supplemental interrogatories. CRC 3.1000(a) (renumbered eff 1/1/07).

### No More Than Thirty-Five (35) Special Interrogatories

A party may propound to another party (1) thirty-five (35) specially prepared interrogatories, and (2) any additional number of official form interrogatories, as described in the Code of Civil Procedure that are relevant to the subject matter of the pending action.Except as provided in the Code of Civil Procedure, no party shall, as a matter of right, propound to any other party more than thirty-five (35) specially prepared interrogatories. If the initial set of interrogatories does not exhaust this limit, the balance may be propounded in subsequent sets. Unless the propounding party has made the required declaration, the responding party need only respond to the first thirty-five (35) specially prepared interrogatories served, if the responding party states an objection to the balance on the ground that the limit has been exceeded.CCP 2030.030.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

### Local Interrogatory Guidelines

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Form & Format of Papers

### Format of Interrogatories

A party propounding interrogatories shall number each set of interrogatories consecutively. In the first paragraph immediately below the title of the case, there shall appear the identity of the propounding party, the set number, and the identity of the responding party. Each interrogatory in a set shall be separately set forth and identified by number or letter. CCP 2030.060.

## Filing & Service

### Do Not File Interrogatories or Responses

The interrogatories and the response thereto shall not be filed with the court. CCP 2030.280(a); CRC 3.250(a) and (b) (renumbered eff 1/1/07).

### Service

The party propounding interrogatories shall serve a copy of them (1) on the party to whom they are directed, and (2) on all other parties who have appeared in the action, unless the court on motion with or without notice has relieved that party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome. CCP 2030.080.

# INTERROGATORIES RESPONSES

## Timing

**30 Days, Extension For Manner of Service**

Responses to interrogatories are due within 30 days (5 days for unlawful detainer actions) if the interrogatories were personally served, 35 days if the interrogatories were served by mail and 30 days plus 2 court days if the interrogatories were served by express mail or facsimile or electronically. CCP 2030.260; CCP 1013.

On motion of the propounding party, the court may shorten the time for response, or, on motion of the responding party the court may extend the time for response. CCP 2030.260.

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Discovery Cut-Off--30 Days Before Initial Trial Date

Discovery must be completed on or before the 30th day before the date initially set for the trial of the action. CCP 2024.020(a). In most cases, a continuance or postponement of the trial date does not operate to reopen discovery proceedings. CCP 2024.020(a). In some cases, the judge may set a different discovery cut-off date.

Serve Interrogatories Such That Responses Are Due Before Discovery Cut-Off

Discovery is completed on the day a response is due or on the day a deposition begins. CCP 2024.010.As a result, discovery must be served such that responses are due before the discovery cut-off.

### Expert Discovery Cut-Off

Expert witness discovery cut-off is 15 days, and expert witness motion cut-off is 10 days, before the initial trial date. CCP 2024.030.

### Extension By Agreement

The party propounding interrogatories and the responding party may agree to extend the time for service of a response to a set of interrogatories, or to particular interrogatories in a set, to a date beyond that provided in the Code of Civil Procedure.CCP 2030.070.

This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response. Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any interrogatory to which the agreement applies in any manner specified in the Code of Civil Procedure. CCP 2030.070.

### Requests for Extension

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Discovery Rules

### Responses to Interrogatories

The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by (1) an answer containing the information sought to be discovered, (2) an exercise of the party's option to produce writings, or (3) an objection to the particular interrogatory. CCP 2030.210.

Each answer in the response shall be as complete and straightforward as the information reasonably available to the responding party permits.

If an interrogatory cannot be answered completely, it shall be answered to the extent possible. If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party. CCP 2030.220.

### Objections to Interrogatories

If only a part of an interrogatory is objectionable, the remainder of the interrogatory shall be answered. If an objection is made to an interrogatory or to a part of an interrogatory, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the information sought is protected work product that claim shall be expressly asserted. CCP 2030.240.

### Failure to Respond Timely Waives of Objections

If a party to whom interrogatories have been directed fails to serve a timely response, that party waives any right to exercise the option to produce writings, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product.

However, the court, on motion, may relieve that party from this waiver on its determination that (1) the party has subsequently served a response that is in substantial compliance with the Code of Civil Procedure, and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

CCP 2030.290.

### Failure to Respond May Result In Sanctions

The party propounding the interrogatories may move for an order compelling response to the interrogatories.The court shall impose a monetary sanction under against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction. In lieu of or in addition to that sanction, the court may impose a monetary sanction.CCP 2030.290.

### Designation of Records

If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this subdivision and to specify the writings from which the answer may be derived or ascertained.

This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them. CCP 2030.230.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20.

### Local Interrogatory Guidelines

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Form & Format of Papers

### Format of Responses

In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party. Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding interrogatory, but the text of that interrogatory need not be repeated. CCP 2030.210.

### Signature

The party to whom the interrogatories are directed shall sign the response under oath unless the response contains only objections. If that party is a public or private corporation, or a partnership, association, or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for work product during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response. The attorney for the responding party shall sign any responses that contain an objection.CCP 2030.050.

### Format of Responses to Supplemental Interrogatories

Responses to supplemental interrogatories must include, immediately below the title of the case, the identity of the propounding and responding parties, the set number and the nature of the discovery to which response is made. CRC 3.1000(a) (renumbered eff 1/1/07). Each supplemental response must be identified with the same number or letter and be in the same order as the request to which it responds. CRC 3.1000(b) (renumbered eff 1/1/07).

## Filing & Service

### Service

The responding party shall serve the original of the response on the propounding party. The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action, unless the court on motion with or without notice has relieved that party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome. CCP 2030.260.

### Do Not File Interrogatories or Responses

The interrogatories and the response thereto shall not be filed with the court. CCP 2030.280(a); CRC 3.250(a) and (b)

# REQUEST FOR ADMISSION

## Timing

### Defendant May Propound At Any Time

A defendant may propound requests for admission without leave of court at any time. CCP 2033.020. Plaintiff--Usually 10 Days After Service of Summons. A plaintiff may propound requests for admission at any time after 10 days after service of the summons, or, in unlawful detainer actions, 5 days after the service of the summons on, or appearance by, that party, whichever occurs first. However, on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make requests for admission at an earlier time. CCP 2033.020.

### Service of Requests and Time for Responses

Responses to requests for admission are due within 30 days (5 days in unlawful detainer actions) if the requests were personally served, 35 days if the requests were served by mail, and 30 days plus 2 court days if the requests were served by express mail or facsimile or electronically. CCP 2033.250; CCP 1013.

On motion of the requesting party the court may shorten the time for response, or on motion of the responding party, the court may extend the time for response. CCP 2033.250.

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Discovery Cut-Off--30 Days Before Initial Trial Date

Discovery must be completed on or before the 30th day before the date initially set for the trial of the action. CCP 2024.020(a). In most cases, a continuance or postponement of the trial date does not operate to reopen discovery proceedings. CCP 2024.020(a). In some cases, the judge may set a different discovery cut-off date.

### Serve Requests for Admission Such That Responses Are Due Before Discovery Cut-Off

Discovery is completed on the day a response is due or on the day a deposition begins. CCP 2024.010. As a result, discovery must be served such that responses are due before the discovery cut-off.

### Expert Discovery Cut-Off

Expert witness discovery cut-off is 15 days, and expert witness motion cut-off is 10 days, before the initial trial date. CCP 2024.030.

## Discovery Rules

### Requests For Admission

Requests may require the responding party to admit the genuineness of documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties. CCP 2033.010.

Each request for admission shall be full and complete in and of itself. No preface or instruction shall be included with a set of admission requests unless it has been approved by the Court. CCP 2033.060.

Any term specially defined in a request for admission shall be typed with all letters capitalized whenever the term appears.

No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request unless it has been approved by the Court. CCP 2033.060.

### Genuineness of Documents

A party requesting an admission of the genuineness of any documents shall attach copies of those documents to the requests, and shall make the original of those documents available for inspection on demand by the party to whom the requests for admission are directed. CCP 2033.060.

### Numerical Limit; Declaration for Additional Discovery

No party shall request, as a matter of right, that any other party admit more than thirty-five (35) matters that do not relate to the genuineness of documents. If the initial set of admission requests does not exhaust this limit, the balance may be requested in subsequent sets. CCP 2033.030.

Unless a declaration as described in CCP 2033.050 has been made, a party need only respond to the first thirty-five (35) admission requests served that do not relate to the genuineness of documents, if that party states an objection to the balance under CCP 2033.230 on the ground that the limit has been exceeded.

The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. CCP 2033.030.

Subject to the right of the responding party to seek a protective order, any party who attaches a supporting declaration as specified in the Code of Civil Procedure may request a greater number of admissions by another party if the greater number is warranted by the complexity or the quantity of the existing and potential issues in the particular case. CCP 2033.040.

If the responding party seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission. CCP 2033.040.

May Not Combine with Other Discovery

No party shall combine in a single document requests for admission with any other method of discovery.CCP 2033.060.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

## Form & Format of Papers

### Format

A party requesting admissions shall number each set of requests consecutively. In the first paragraph immediately below the title of the case, there shall appear the identity of the party requesting the admissions, the set number, and the identity of the requesting party, the set number, and the identity of the responding party. Each request for admission in a set shall be separately set forth and identified by letter or number. CCP 2033.060.

## Filing & Service

### Service of Requests for Admission

The party requesting admissions shall serve a copy of them on the party to whom they are directed and on all other parties who have appeared in the action. CCP 2033.070. Service may be made by fax on written agreement of the parties. CRC 2.306(a) (renumbered eff 1/1/08). Fax service completed after 5 p.m. is deemed to have occurred on the next court day. CRC 2.306(g) (renumbered eff 1/1/08).

### Do Not File

The requests for admission and the response to them shall not be filed with the court. The party requesting admissions shall retain both the original of the requests for admission, with the original proof of service affixed to them, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period. CCP 2033.270; CRC 3.250(a) and (b) (renumbered eff 1/1/07).

# REQUEST FOR ADMISSION RESPONSES

## Timing

### Service of Requests and Time for Responses

Responses to requests for admission are due within 30 days (5 days in unlawful detainer actions) if the requests were personally served, 35 days if the requests were served by mail, and 30 days plus 2 court days if the requests were served by express mail or facsimile or electronically. CCP 2033.250; CCP 1013.

On motion of the requesting party the court may shorten the time for response, or on motion of the responding party, the court may extend the time for response. CCP 2033.250.

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Discovery Cut-Off--30 Days Before Initial Trial Date

Discovery must be completed on or before the 30th day before the date initially set for the trial of the action. CCP 2024.020(a). In most cases, a continuance or postponement of the trial date does not operate to reopen discovery proceedings. CCP 2024.020(a). In some cases, the judge may set a different discovery cut-off date.

### Serve Requests for Admission Such That Responses Are Due Before Discovery Cut-Off

Discovery is completed on the day a response is due or on the day a deposition begins. CCP 2024.010. As a result, discovery must be served such that responses are due before the discovery cut-off.

### Expert Discovery Cut-Off

Expert witness discovery cut-off is 15 days, and expert witness motion cut-off is 10 days, before the initial trial date. CCP 2024.030.

### Extension By Agreement

The party requesting admissions and the responding party may agree to extend the time for service of a response to a set of admission requests, or to particular requests in a set, to a date beyond that provided by statute. This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response. Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any request for admission. Notice of this agreement shall be given by the responding party to all other parties who were served with a copy of the request. CCP 2033.260.

### Requests for Extension

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Discovery Rules

### Responses to Requests for Admission

The party to whom requests for admission have been directed shall respond in writing under oath separately to each request. Each response shall answer the substance of the requested admission, or set forth an objection to the particular request. Each answer in the response shall be as complete and straightforward as the information reasonably available to the responding party permits. Each answer shall (A) admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party, (B) deny so much of the matter involved in the request as is untrue, and (C) specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge. If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter. CCP 2033.220.

### Objections to Requests for Admission

If only a part of a request for admission is objectionable, the remainder of the request shall be answered. If an objection is made to a request or to a part of a request, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the matter as to which an admission is requested is protected work product under Code of Civil Procedure 2018, that claim shall be expressly asserted. CCP 2033.230.

### Numerical Limit on Requests

No party shall request, as a matter of right, that any other party admit more than thirty-five (35) matters that do not relate to the genuineness of documents. If the initial set of admission requests does not exhaust this limit, the balance may be requested in subsequent sets. Unless a declaration under the statute has been made, a party need only respond to the first thirty-five (35) admission requests served that do not relate to the genuineness of documents, if that party states an objection to the balance under on the ground that the limit has been exceeded.

The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. Subject to the right of the responding party to seek a protective order, any party who attaches a supporting declaration may request a greater number of admissions by another party if the greater number is warranted by the complexity or the quantity of the existing and potential issues in the particular case. If the responding party seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission. CCP 2033.030.

### Waiver of Objections to Requests for Admission

If a party to whom requests for admission have been directed fails to serve a timely response, that party thereby waives any objection to the requests, including one based on privilege or on the protection for work product. However, the court, on motion, may relieve that party from this waiver on its determination that (1) the party has subsequently served a response that is in substantial compliance with Code of Civil Procedure, and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. CCP 2033.280.

### Failure to Respond Timely May Lead to Sanctions

The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Code of Civil Procedure 2023. The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure. It is mandatory that the court impose a monetary sanction on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion. CCP 2033.290.

### Amendment of Responses

A party may withdraw or amend an admission made in response to a request for admission only on leave of court granted after notice to all parties. The court may permit withdrawal or amendment of an admission only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining that party's action or defense on the merits. The court may impose conditions on the granting of the motion that are just, including, but not limited to, an order that (1) the party who obtained the admission be permitted to pursue additional discovery related to the matter involved in the withdrawn or amended admission, and (2) the costs of any additional discovery be borne in whole or in part by the party withdrawing or amending the admission. CCP 2033.300.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20

## Form & Format of Papers

### Format of Responses to Requests For Admissions

In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the requesting party. Each answer or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding request, but the text of the particular request need not be repeated. CCP 2033.210.

### Responses to Supplemental Requests

Responses to supplemental requests must include, immediately below the title of the case, the identity of the propounding and responding parties, the set number and the nature of the discovery to which response is made. CRC 3.1000(a) (renumbered eff 1/1/07).Each supplemental response must be identified with the same number or letter and be in the same order as the request to which it responds. CRC 3.1000(b) (renumbered eff 1/1/07).

### Signature

The party to whom the requests for admission are directed shall sign the response under oath, unless the response contains only objections.

If that party is a public or private corporation, or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for work product during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response. The attorney for the responding party shall sign any response that contains an objection.CCP 2033.240.

## Filing & Service

### Service of Responses

The party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared. CCP 2033.250.

### Do Not File

The requests for admission and the response to them shall not be filed with the court. The party requesting admissions shall retain both the original of the requests for admission, with the original proof of service affixed to them, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period. CCP 2033.270; CRC 3.250(a) and (b) (renumbered eff 1/1/07).

# REQUEST FOR PRODUCTION

## Timing

### Defendant May Make Demand At Any Time

Defendant may make an inspection demand without leave of court at any time. CCP 2031.020 (amended eff 6/29/09).

Plaintiff--10 Days After Service of Summons. A plaintiff may make a demand for inspection, copying, testing, or sampling without leave of court at any time that is 10 days after the service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first. CCP 2031.020(b) (amended eff 6/29/09).

### On Motion

On motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make a demand for inspection, copying, testing, or sampling at an earlier time. CCP 2031.020(d) (amended eff 6/29/09).

### Service of Requests and Time for Responses

Responses to requests for production are due within 30 days (5 days in unlawful detainer actions) if the requests were personally served, 35 days if the requests were served by mail, and 30 days plus 2 court days if the requests were served by express mail or facsimile or electronically. CCP 2031.260(a) (amended eff 6/29/09); CCP 1013.

Unless, on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response. CCP 2031.260(a) (amended eff 6/29/09).

Service may be made by fax on written agreement of the parties. CRC 2.306(a)(renumbered eff 1/1/08). Fax service completed after 5 p.m. is deemed to have occurred on the next court day. CRC 2.306(g) (renumbered eff 1/1/08).

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Discovery Cut-Off--30 Days Before Initial Trial Date

Discovery must be completed on or before the 30th day before the date initially set for the trial of the action. CCP 2024.020(a). In most cases, a continuance or postponement of the trial date does not operate to reopen discovery proceedings. CCP 2024.020(a). In some cases, the judge may set a different discovery cut-off date.

### Serve Requests for Production Such That Responses Are Due Before Discovery Cut-Off

Discovery is completed on the day a response is due or on the day a deposition begins. CCP 2024.010. As a result, discovery must be served such that responses are due before the discovery cut-off.

### Expert Discovery Cut-Off

Expert witness discovery cut-off is 15 days, and expert witness motion cut-off is 10 days, before the initial trial date. CCP 2024.030.

## REQUEST FOR PRODUCTION RULES

### Describe Items or Categories to Be Produced

Designate the documents, tangible things, land or other property, or electronically stored information to be inspected, copied, tested, or sampled either by specifically describing each individual item or by reasonably particularizing each category of item. CCP 2031.030(c)(1) (amended eff 6/29/09).

### Specify Form of Electronically Stored Information

A party demanding inspection, copying, testing, or sampling of electronically stored information may specify the form or forms in which each type of electronically stored information is to be produced. CCP 2031.030(a)(2) (amended eff 6/29/09).

### Specify Time and Place For Inspection

The date specified for production must be at least thirty (30) days (five (5) days for unlawful detainer actions) from the service of the demand, thirty-five (35) days if service was made by mail and thirty (30) days plus two (2) court days if service was made by express mail or fax. CCP 2031.030(c)(2) (amended eff 6/29/09); CCP 1013.

The court for good cause shown may grant leave to specify an earlier date. CCP 2031.030(c)(2) (amended eff 6/29/09).

### Specify Reasonable Place for Inspection

Specify a reasonable place for making the inspection, copying, testing, or sampling, and performing any related activity. CCP 2031.030(c)(3) (amended eff 6/29/09).

### Specify Manner of Inspection

Specify any inspection, copying, testing, sampling, or related activity that is being demanded, as well as the manner in which that activity will be performed, and whether that activity will permanently alter or destroy the item involved. CCP 2031.030(c)(4) (amended eff 6/29/09).

### Supplemental Demands

In addition to demands for inspection, copying, testing, or sampling, a party may propound a supplemental demand any later acquired or discovered documents, tangible things, land or other property, or electronically stored information. CCP 2031.050(a) (amended eff 6/29/09).

A party may propound a supplemental demand twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010), once after the initial setting of a trial date. CCP 2031.050(b) (amended eff 6/29/09).

On motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental demands for inspection, copying, testing, or sampling.CCP 2031.050(c) (amended eff 6/29/09).

Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

### Return of Privileged Electronically Stored Information ("Clawback")

If electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, the party making the claim may notify any party that received the information of the claim and the basis for the claim. CCP 2031.285(a) (added 6/29/09).

### Return Information of Present to Court Under Seal

After being notified of a claim of privilege or of protection, a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim. CCP 2031.285(b) (added 6/29/09).

### No Disclosure or Use of Information Until Claim Resolved

Prior to the resolution of the motion brought under subdivision (d), a party shall be precluded from using or disclosing the specified information until the claim of privilege is resolved. CCP 2031.285(c)(1) (added 6/29/09).

A party who received and disclosed the information before being notified of a claim of privilege or of protection under subdivision (a) shall, after that notification, immediately take reasonable steps to retrieve the information. CCP 2031.285(c)(2) (added 6/29/09).

### Motion to Determine Legitimacy of Claim of Privilege

If the receiving party contests the legitimacy of a claim of privilege or protection, he or she may seek a determination of the claim from the court by making a motion within 30 days of receiving the claim and presenting the information to the court conditionally under seal. CCP 2031.285(d)(1) (added 6/29/09).

Until the legitimacy of the claim of privilege or protection is resolved, the receiving party shall preserve the information and keep it confidential and shall be precluded from using the information in any manner. CCP 2031.285(d)(2) (added 6/29/09).

### Local Production Request Guidelines

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Form & Format of Papers

### Caption of Inspection Demand

In the first paragraph immediately below the title of the case must appear the identities of the propounding and responding parties and the set number. CCP 2031.030(b) (amended eff 6/29/09); CRC 3.1000(a), re supplemental responses, (renumbered 1/1/07).

### Format of Inspection Demands

Inspection demands must be separately set forth and identified by number or letter. CCP 2031.030(c) (amended eff 6/29/09). Each set must be consecutively numbered. CCP 2031.030(a)(1) (amended eff 6/29/09).

## Filing & Service

### Service

The party demanding an inspection shall serve a copy of the inspection demand on the party to whom it is directed and on all other parties who have appeared in the action. CCP 2031.040 (amended eff 6/29/09). Service may be made by fax on written agreement of the parties. CRC 2.306(a) (amended eff 1/1/08). Fax service completed after 5 p.m. is deemed to have occurred on the next court day. CRC 2.306(g) (amended eff 1/1/08).

### Do Not File

The inspection demand and the response to it must not be filed with the court. CCP 2031.290(a). (amended 6/29/09); CRC 3.250(a) and (b) (renumbered eff 1/1/07).

# REQUEST FOR PRODUCTION RESPONSES

## Timing

### Service of Requests and Time for Responses

Responses to requests for production are due within 30 days (5 days in unlawful detainer actions) if the requests were personally served, 35 days if the requests were served by mail, and 30 days plus 2 court days if the requests were served by express mail or facsimile or electronically. CCP 2031.260(a) (amended eff 6/29/09); CCP 1013.

Unless, on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response. CCP 2031.260(a) (amended eff 6/29/09).

Service may be made by fax on written agreement of the parties. CRC 2.306(a)(renumbered eff 1/1/08).Fax service completed after 5 p.m. is deemed to have occurred on the next court day. CRC 2.306(g) (renumbered eff 1/1/08).

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Discovery Cut-Off--30 Days Before Initial Trial Date

Discovery must be completed on or before the 30th day before the date initially set for the trial of the action. CCP 2024.020(a). In most cases, a continuance or postponement of the trial date does not operate to reopen discovery proceedings. CCP 2024.020(a). In some cases, the judge may set a different discovery cut-off date.

### Serve Requests for Production Such That Responses Are Due Before Discovery Cut-Off

Discovery is completed on the day a response is due or on the day a deposition begins. CCP 2024.010.As a result, discovery must be served such that responses are due before the discovery cut-off.

### Expert Discovery Cut-Off

Expert witness discovery cut-off is 15 days, and expert witness motion cut-off is 10 days, before the initial trial date. CCP 2024.030.

### Extension By Agreement

The party demanding inspection, copying, testing, or sampling and the responding party may agree to extend the date for the inspection, copying, testing, or sampling or the time for service of a response to a set of demands, or to particular items or categories of items in a set, to a date or dates beyond those provided in Sections 2031.030, 2031.210, 2031.260, and 2031.280. CCP 2031.270(a). (amended eff 6/29/09).

This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for inspection, copying, testing, or sampling, or for the service of a response.CCP 2031.270(b). (amended eff 6/29/09).

Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any item or category of item in the demand to which the agreement applies in any manner specified in Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280. CCP 2031.270(c). (amended eff 6/29/09).

### Requests for Extension

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## RESPONSE TO REQUEST FOR PRODUCTION RULES

### Responses to Inspection Demands

The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection, copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A representation that the party lacks the ability to comply with the demand for inspection, copying, testing, or sampling of a particular item or category of item.

(3) An objection to the particular demand for inspection, copying, testing, or sampling.

CCP 2031.210(a). (amended eff 6/29/09).

### Objection the Electronically Stored Information "Not Reasonably Accessible"

If a party objects to the discovery of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the responding party will not search the source in the absence of an agreement with the demanding party or court order, the responding party shall identify in its response the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that are not reasonably accessible, the responding party preserves any objections it may have relating to that electronically stored information. CCP 2031.210(d). (eff 6/29/09).

### Representation of Compliance

A statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed will comply with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity demanded, will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production. CCP 2031.220. (amended eff 6/29/09).

### Inability to Comply

A representation of inability to comply must affirm that a diligent search and a reasonable inquiry has been made. This statement must specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement must set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item. CCP 2031.230. (amended eff 6/29/09).

### Objection to Inspection Demand

If only part of an item in a demand is objectionable, the response must contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category. CCP 2031.240(a). (amended eff 6/29/09).

If the responding party objects to the demand, the response shall do both of the following:

(1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand.

(2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked must be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim must be expressly asserted. CCP 2031.240(b). (amended eff 6/29/09).

### Failure to Respond Timely Waives Objections

If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the party to whom the demand is directed waives any objection to the demand, including one based on privilege or on the protection for work product. The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The partys failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

CCP 2031.300(a). (amended eff 6/29/09).

### Failure to Respond May Result In Sanctions

The party making the demand may move for an order compelling response to the demand. CCP 2031.300(b). (amended eff 6/29/09).

The court must impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction. In lieu of or in addition to this sanction, the court may impose a monetary sanction. CCP 2031.300(c). (amended eff 6/29/09).

### Sanctions and Electronically Stored Information

Absent exceptional circumstances, the court must not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system. CCP 2031.300(d)(1). (amended eff 6/29/09).

This subdivision shall not be construed to alter any obligation to preserve discoverable information. CCP 2031.300(d)(2). (amended eff 6/29/09).

### Return of Privileged Electronically Stored Information ("Clawback")

If electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, the party making the claim may notify any party that received the information of the claim and the basis for the claim. CCP 2031.285(a) (added 6/29/09).

### Return Information of Present to Court Under Seal

After being notified of a claim of privilege or of protection, a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim. CCP 2031.285(b) (added 6/29/09).

No Disclosure or Use of Information Until Claim Resolved

Prior to the resolution of the motion brought under subdivision (d), a party shall be precluded from using or disclosing the specified information until the claim of privilege is resolved. CCP 2031.285(c)(1) (added 6/29/09).

A party who received and disclosed the information before being notified of a claim of privilege or of protection under subdivision (a) shall, after that notification, immediately take reasonable steps to retrieve the information. CCP 2031.285(c)(2) (added 6/29/09).

### Motion to Determine Legitimacy of Claim of Privilege

If the receiving party contests the legitimacy of a claim of privilege or protection, he or she may seek a determination of the claim from the court by making a motion within 30 days of receiving the claim and presenting the information to the court conditionally under seal. CCP 2031.285(d)(1) (added 6/29/09).

Until the legitimacy of the claim of privilege or protection is resolved, the receiving party shall preserve the information and keep it confidential and shall be precluded from using the information in any manner. CCP 2031.285(d)(2) (added 6/29/09).

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

### Local Production Request Guidelines

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Form & Format of Papers

### Format of Responses to Document Demands

In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. CCP 2031.210(b). (amended eff 6/29/09).

Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated.CCP 2031.210(c). (amended eff 6/29/09).

### Response to Supplemental Requests

Responses to supplemental requests must include, immediately below the title of the case, the identity of the propounding and responding parties, the set number and the nature of the discovery to which response is made. CRC 3.1000(a) (renumbered eff 1/1/07). Each supplemental response must be identified with the same number or letter and be in the same order as the request to which it responds. CRC 3.1000(b) (renumbered eff 1/1/07).

### Signature on Response

The party to whom the demand for inspection, copying, testing, or sampling is directed shall sign the response under oath unless the response contains only objections. CCP 2031.250(a). (amended eff 6/29/09).

If that party is a public or private corporation or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for a party, that party waives any lawyer-client privilege and any protection for work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response. CCP 2031.250(b). (amended eff 6/29/09).

The attorney for the responding party shall sign any responses that contain an objection. CCP 2031.250(c). (amended eff 6/29/09).

## Filing & Service

### Served But Not Filed

Within 30 days after service of a demand, the party to whom the demand is directed shall serve the original of the response on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion the court has shortened or extended the time for response. CCP 2031.260(a). (amended and renumbered eff 6/29/09).

### Do Not File

The inspection demand and the response to it must not be filed with the court. CCP 2031.290(a). (amended 6/29/09); CRC 3.250(a) and (b) (renumbered eff 1/1/07).

## Production of Documents

### At Least Thirty (30) Days From Service of Demand

The date specified for production must be at least thirty (30) days (five (5) days for unlawful detainer actions) from the service of the demand, thirty-five (35) days if service was made by mail and thirty (30) days plus two (2) court days if service was made by express mail or fax. CCP 2031.030(c)(2) (amended eff 6/29/09); CCP 1013.

The court for good cause shown may grant leave to specify an earlier date. CCP 2031.030(c)(2) (amended eff 6/29/09).

Specify Reasonable Place for Inspection

Specify a reasonable place for making the inspection, copying, testing, or sampling, and performing any related activity. CCP 2031.030(c)(3) (amended eff 6/29/09).

Specify Manner of Inspection

Specify any inspection, copying, testing, sampling, or related activity that is being demanded, as well as the manner in which that activity will be performed, and whether that activity will permanently alter or destroy the item involved. CCP 2031.030(c)(4) (amended eff 6/29/09).

Organized Production

Any documents produced in response to a demand must either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. CCP 2031.280(a). (amended eff 6/29/09).

The documents must be produced on the date specified in the demand, unless an objection has been made to that date. If the date for inspection has been extended, the documents must be produced on the date agreed to. CCP 2031.280(b). (eff 6/29/09).

If a party responding to a demand for production of electronically stored information objects to a specified form for producing the information, or if no form is specified, the responding party must state in its response the form in which it intends to produce each type of information. CCP 2031.280(c). (eff 6/29/09).

Unless the parties otherwise agree or the court otherwise orders, the following shall apply:

(1) If a demand for production does not specify a form or forms for producing a type of electronically stored information, the responding party must produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

CCP 2031.280(d). (eff 6/29/09).

If necessary, the responding party at the reasonable expense of the demanding party must, through detection devices, translate any data compilations included in the demand into reasonably usable form. CCP 2031.280(b)(e).

# NOTICE OF DEPOSITION

## Timing

### Defendant

A defendant may serve a deposition notice without leave of court at any time. CCP 2025.210.

### Plaintiff

A plaintiff may serve a deposition notice without leave of court at any time after twenty (20) days after service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date. CCP 2025.210.

## Scheduling The Deposition

### Oral Deposition--10 Days' Notice

An oral deposition shall be scheduled for a date at least ten (10) days after service of the deposition notice. CCP 2025.270.

### Production of Personal Records--20 Days' Notice

If, as defined in CCP 1985.3(a), the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least twenty (20) days after issuance of that subpoena. CCP 2025.270.

### Court May Shorten or Extend Notice Period

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order. CCP 2025.270.

### Calculating the Deadline

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.CCP 12.

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is extended to and including the next day that is not a holiday. CCP 12a(a).

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a. CCP 12b.

### Must Object at Least Three (3) Days Before Deposition

A party served with a deposition notice waives any objections to the notice unless a written objection is served on the noticing party within three (3) calendar days of the date scheduled for the deposition. The objections must be personally served if served exactly three (3) days before the deposition. CCP 2025.410.

## Deposition Rules

### Location of Examination

If the deponent is a natural person or an organization that is a party to the action, the deposition must be taken within seventy-five (75) miles of the deponent's residence or principal place of business in California, or within the county where the action is pending and within 150 miles of the residence or principal place of business. If the deponent is a non-party organization, the deposition must take place within seventy-five (75) miles of the organization's principal business office in California, unless the organization consents to a different location. CCP 2025.250.

### Notice To Consumer

Where, as defined in CCP1985.3(a), the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in CCP 1985.3 and CCP 1985.6, and (3) a copy of the deposition subpoena. CCP 2025.240.

Where the consumer or employee is the subpoenaing party and the subject of the records subpoenaed, no notice to consumer or employee is required. CCP 1985.3(l); CCP 1985.6(k).

### Business Records From Non-Party

A party may obtain copies of business records from a non-party by serving a subpoena for business records on the custodian of records. CCP 2020.410.

A copy of the business records subpoena must be served on all parties to the action. CCP 2025.240.

### Deposition by Telephone

Any party may take an oral deposition by telephone, videoconference or other remote electronic means, provided, among other things, that notice is served with the notice of deposition or the subpoena. CRC 3.1010(a)(1)

### Stipulations Regarding Deposition

Stipulations regarding depositions are not filed with the court unless relevant to a particular proceeding. The deposing party must retain any stipulation. CRC 3.250(a) and (b) (renumbered eff 1/1/07). Unless the court orders otherwise, the parties may by written stipulation modify the procedures for discovery provided by the Code of Civil Procedure. CCP 2016.030.

### Failure to Object Timely Waives Objections

A party served with a deposition notice waives any objections to the notice unless a written objection is served on the noticing party within three (3) days of the date scheduled for the deposition. The objections must be personally served if served exactly three (3) days before the deposition. CCP 2025.410.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

### Deposition of a Corporation--One Deposition

The deposition of an organization is treated as one deposition even though more than one person may be required to testify pursuant to CCP 2025.230. CCP 94(b).

### Local Deposition Guidelines

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Form & Format of Notice

### Contents of Notice

A deposition notice must state the date, time and address where the deposition will take place, the deponent's name, and if not a party to the action, the deponent's address and telephone number. If the deponent's name is not known, the notice should contain a description sufficient to identify the person or class to which the person belongs.

The notice must also describe with particularity any materials or category of materials to be produced by the deponent.

The notice must state any intention to record the testimony by audio or video technology in addition to the stenographic method, and any intention to record the testimony by stenographic method through the instant visual display of the testimony. The notice must indicate if the deposing party reserves the right to use at trial the videotape deposition of a treating physician or expert witness.

If the deponent is not a natural person, the notice must describe the matters on which examination is requested with reasonable particularity. CCP 2025.220.

The deposition notice or its accompanying proof of service must list all parties to whom notice of the deposition was given. CCP 2025.240.

### Copy of Subpoena (If Non-Party Witness)

If the deponent is a nonparty witness compelled by subpoena, the deposition notice must include a copy of the subpoena. CCP 2025.240.

## Filing & Service

### Service

A notice of deposition must be served on all parties who have appeared in the action. CCP 2025.240.

### Do Not File

A deposition notice is not filed with the court unless relevant to a particular proceeding. The deposing party retains the original notice with proof of service. CRC 3.250 (renumbered eff 1/1/07).

# SUBPOENA

## Overview

To Compel Testimony or Documents From Non-Parties

". . . [T]he process by which a nonparty is required to provide discovery is a deposition subpoena." CCP 2020.010(b).

## Three Types of Subpoenas

A subpoena may compel (1) testimony, (2) the production of records and things, or (3) both. CCP 1985(a); CCP 2020.020.

### Attorney May Issue

An attorney may issue a subpoena. Alternatively, the clerk of court will issue a blank subpoena to a party that requests it.CCP 1985(c); CCP 2020.210.

### Use of Forms

Use of Judicial Council form subpoenas is mandatory. CRC 1.31(b) (renumbered eff 1/1/07). The forms are on the Judicial Council's website at http://www.courts.ca.gov/forms.htm (see under the "Subpoena" form group.)

### Residence of the Witness

If the witness resides in California, proper service of a deposition subpoena requires the individual served to appear, testify, produce any documents or things specified in the subpoena and, if necessary, appear at a court session to consider any issue arising from the witness' disobedience of the subpoena. CCP 1985(a); CCP 2020.220. If the witness does not reside in California, additional procedures are necessary to compel discovery.These depend on the state or country where the witness resides.

### Scope of Document Production

Subpoena Compelling Records and Testimony

A records and testimony subpoena requires a witness to "bring [to the deposition] any books, documents, or other things under the witness' control." CCP 1985. This language compels production of documents under the witness' control, wherever they might be located.

### Records Only Subpoena

A subpoena compelling the production of records only is "directed to the custodian of those records or another person qualified to certify the records." CCP 2020.420. It is not clear whether this language requires the custodian to produce responsive records that might be located outside his or her immediate possession.There is no known caselaw on point.

## Required Documents And Timing

### Subpoena Compelling Testimony Only

This table describes the required documents and the timing requirements for their service where the subpoenaing party seeks to compel testimony (but no documents) from a non-party witness.

### Required Document: Service Timing

"Deposition Subpoena For Personal Appearance," Judicial Council Form SUBP-015.

Percipient Witness: Within a reasonable time to travel to the place of deposition. CCP 1987; CCP 2020.220(a).

### Notice of Deposition

Percipient Witness: At least ten (10) days before the deposition. CCP 2025.270(a).

Witness and Mileage Fees (for information regarding the amount of the fees, see below)

Percipient Witness: At the time the subpoena is served, or when the witness provides testimony. (Section 1987 provides that the mileage fee and witness fee must be provided to the witness, if demanded, at the time the subpoena is served, while Section 2020.230 provides that the fees may be provided, at the option of the subpoenaing party, either at the time the subpoena is served, or when the witness provides testimony.) CCP 1987; CCP 2020.230(a).

### Subpoena Compelling Production of Business Records Only

This table describes the required documents and the timing requirements for their service where the subpoenaing party seeks to compel the production of documents (but no testimony regarding the documents) that pertain to a certain individual (the consumer or employee) and that are maintained by a third party (the custodian of records, here, the witness).

#### Required Document: Service Timing

"Deposition Subpoena For Production of Business Records," Judicial Council Form SUBP-010.

Consumer or Employee: Not less than ten (10) days prior to the date called for in the subpoena, and at least five (5) days prior to service on the custodian of records. CCP 1985.3(b); CCP 1985.6(b).

Custodian of Records: Must occur such that the production is scheduled no earlier than twenty (20) days after issuance of subpoena, or fifteen (15) days after service of the subpoena, whichever is later. CCP 2020.410(c). Additionally, the subpoena must be served "in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof." CCP 1985.3(d); CCP 1985.6(d).

Notice to Consumer (for language requirements, see below)

Consumer or Employee: Not less than ten (10) days prior to the date called for in the subpoena, and at least five (5) days prior to service (of the subpoena) on the custodian of records. CCP 1985.3(b); CCP 1985.6(b).

Proof of Service regarding Sections 1985.3 and 1985.6 notice requirements

Consumer or Employee: Not less than ten (10) days prior to the date called for in the subpoena, and at least five (5) days prior to service (of the subpoena) on the custodian of records. CCP 1985.3(b); CCP 1985.6(b).

Custodian of Records: Prior to the production of the records. Alternatively, the subpoenaing party may provide the consumer's authorization to release records. CCP 1985.3(c); CCP 1985.6(c).

Witness Fee (for information regarding the amount, see below)

Custodian of Records: At the time the subpoena is served. CCP 2020.230(b). Additional payment pursuant to Evidence Code Section 1563 is due when the records are delivered. Evid. Code 1563.

### Subpoena Compelling Both Testimony and Records

This table describes the required documents and the timing requirements for their service where the subpoenaing party seeks to compel the production of documents (but no testimony regarding the documents) that pertain to a certain individual (the consumer or employee) and that are maintained by a third party (the custodian of records, here, the witness).

#### Required Document: Service Timing

"Deposition Subpoena For Personal Appearance and Production of Documents and Things," Judicial Council Form SUBP-020.

Percipient Witness: Within a "reasonable time" prior to the deposition and providing a "reasonable opportunity" to locate and produce records. CCP 2020.220(a); CCP 1987.

Consumer or Employee: Not less than ten (10) days prior to the date called for in the subpoena, and at least five (5) days prior to service on the custodian of records. CCP 1985.3(b); CCP 1985.6(b).

Custodian of Records: "In sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof." CCP 1985.3(d); CCP 1985.6(d).

Notice of Deposition

Percipient Witness or Custodian of Records: At least ten (10) days before the deposition where no personal or employment records are sought, and at least twenty (20) days before the deposition if personal or employment records are sought. CCP 2025.270(a).

Notice to Consumer (for language requirements, see below)

Percipient Witness: Not required.

Consumer or Employee: Not less than ten (10) days prior to the date called for in the subpoena, and at least five (5) days prior to service (of the subpoena) on the custodian of records. CCP 1985.3(b); CCP 1985.6(b). If a notice of taking of deposition is also served, it may be set forth in a single document with the Notice to Consumer required by Sections 1985.3(e) and 1985.6(e). CCP 1985.3(e); CCP 1985.6(e).

### Proof of Service regarding Sections 1985.3 and 1985.6 notice requirements

### Percipient Witness: Not required.

Consumer or Employee: Not less than ten (10) days prior to the date called for in the subpoena, and at least five (5) days prior to service (of the subpoena) on the custodian of records. CCP 1985.3(b); CCP 1985.6(b).

Custodian of Records: Prior to the production of the records. Alternatively, the subpoenaing party may provide the consumer's authorization to release records. CCP 1985.3(c); CCP 1985.6(c).

## Subpoena Rules

### Subpoena of Electronically Stored Information

A subpoena in a civil proceeding may require that electronically stored information, as defined in CCP 2016.020, be produced and that the party serving the subpoena, or someone acting on the partys request, be permitted to inspect, copy, test, or sample the information. CCP 1985.8(a)(1) (amended eff 1/1/13).

### Form of Production of Electronically Stored Information

A party serving a subpoena requiring production of electronically stored information may specify the form or forms in which each type of information is to be produced. CCP 1985.8(b). (amended eff 1/1/13).

Unless the subpoenaing party and the subpoenaed party otherwise agree or the court otherwise orders, the following shall apply:

(1) If a subpoena requiring production of electronically stored information does not specify a form or forms for producing a type of electronically stored information, the person subpoenaed shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A subpoenaed person need not produce the same electronically stored information in more than one form.

CCP 1985.8(c) (amended eff 1/1/13).

### Claim that Electronically Stored Information Is "Not Reasonably Accessible"

The subpoenaed person opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense. CCP 1985.8(d) (amended eff 1/1/13).

If the person from whom discovery of electronically stored information is subpoenaed establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the subpoenaing party shows good cause, subject to any limitations imposed under subdivision (h). CCP 1985.8(e) (amended eff 1/1/13).

If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery. CCP 1985.8(f) (amended eff 1/1/13).

### Translation to Reasonably Usable Form

If necessary, the subpoenaed person, at the reasonable expense of the subpoenaing party, shall, through detection devices, translate any data compilations included in the subpoena into a reasonably usable form. CCP 1985.8(g) (amended eff 1/1/13).

### Limitation of Discovery of Electronically Stored Information

The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

CCP 1985.8(h) (amended eff 1/1/13).

### Claim of Privilege

If a subpoenaed person notifies the subpoenaing party that electronically stored information produced pursuant to a subpoena is subject to a claim of privilege or of protection as attorney work product, as described in Section 2031.285, the provisions of Section 2031.285 shall apply. CCP 1985.8(i) (amended eff 1/1/13).

### Avoidance of Undue Burden

A party serving a subpoena requiring the production of electronically stored information shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. CCP 1985.8(j) (amended eff 1/1/13).

An order of the court requiring compliance with a subpoena issued under this section shall protect a person who is neither a party nor a partys officer from undue burden or expense resulting from compliance. CCP 1985.8(k) (amended eff 1/1/13).

### Failure to Provide Electronically Stored Information Routinely Purged

Absent exceptional circumstances, the court shall not impose sanctions on a subpoenaed person or any attorney of a subpoenaed person for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.CCP 1985.8(l)(1) (amended eff 1/1/13).

This subdivision shall not be construed to alter any obligation to preserve discoverable information. CCP 1985.8(l)(2) (amended eff 1/1/13).

### Return of Privileged Electronically Stored Information ("Clawback")

I f electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, the party making the claim may notify any party that received the information of the claim and the basis for the claim. CCP 2031.285(a) (added 6/29/09).

### Return Information of Present to Court Under Seal

After being notified of a claim of privilege or of protection, a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim. CCP 2031.285(b) (added 6/29/09).

### No Disclosure or Use of Information Until Claim Resolved

Prior to the resolution of the motion brought under subdivision (d), a party shall be precluded from using or disclosing the specified information until the claim of privilege is resolved. CCP 2031.285(c)(1) (added 6/29/09).

A party who received and disclosed the information before being notified of a claim of privilege or of protection under subdivision (a) shall, after that notification, immediately take reasonable steps to retrieve the information. CCP 2031.285(c)(2) (added 6/29/09).

### Motion to Determine Legitimacy of Claim of Privilege

If the receiving party contests the legitimacy of a claim of privilege or protection, he or she may seek a determination of the claim from the court by making a motion within 30 days of receiving the claim and presenting the information to the court conditionally under seal. CCP 2031.285(d)(1) (added 6/29/09).

Until the legitimacy of the claim of privilege or protection is resolved, the receiving party shall preserve the information and keep it confidential and shall be precluded from using the information in any manner. CCP 2031.285(d)(2) (added 6/29/09).

### No Affidavit Required for Production of Business Records

"A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it." CCP 2020.410; CCP 1987.5.

### Copies of Documents for Other Parties

Other parties may purchase copies of any records produced pursuant to a subpoena. CCP 2020.440.

### Designation of Deposition Officer for Production of Business Records

The subpoenaing party may designate a professional photocopier (who must meet certain qualifications) as the "deposition officer" to whom the subpoenaed records will be delivered for copying. Alternatively, the subpoenaing party may leave the designation blank and must assume responsibility for the copying. CCP 2020.420.

### Records of Telephone Corporation

A subpoena for records maintained by a telephone corporation which is a public utility is not effective unless it includes a consent to release, signed by the consumer, as required by Public Utilities Code 2891. CCP 1985.3(f).

### Failure to Comply with Notice Requirements

Failure to comply with the requirements of Code of Civil Procedure Sections 1985.3 and 1985.6 is sufficient basis for a witness to refuse to produce records. CCP 1985.3(k); CCP 1985.6(j).

### Order Shortening Time

A subpoenaing party may move for an order shortening time and/or relieving the additional service requirements of Code of Civil Procedure Sections 1985.3 and 1985.6. The subpoenaing party must show due diligence, good cause and that the rights of the witnesses and consumers are preserved.CCP 1985.3(h); CCP 1985.6(g).

### Subpoenas Directed to Journalists

Section 1986.1 sets forth additional requirements for subpoenas directed to journalists. CCP 1986.1.

### Subpoenas Directed to Prisoners

The Code of Civil Procedure sets forth additional requirements for subpoenas directed to prisoners. CCP 1995; CCP 1996; CCP 1997.

### Penalites for Disobedience of Subpoena

Disobedience of a subpoena is punishable by contempt, fines, damages and possibly incarceration.CCP 1991; CCP 1991.1; CCP 1992; CCP 1993; CCP 2020.240.

### Local Subpoena Guidelines

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11).

## Format of Subpoena Papers

### Mandatory Forms

A party issuing a subpoena must use one of the forms provided by the California Judicial Council. The forms supply most of the required language.

The forms are on the Judicial Council's website at http://www.courts.ca.gov/forms.htm (see under the "Subpoena" form group.)

### Testimony Only

A subpoena that compels testimony only must state the time and place of the deposition, a summary of the nature of the deposition, the rights and duties of the deponent, the penalties for disobedience, and if the deposition will be recorded by audio or video tape or will be conducted using instant visual display.

If the deponent is an organization, the subpoena must describe "with reasonable particularity the matters on which examination is requested," and shall advise the organization of its duty to make the designation of employees or agents as required by CCP 2025.230. CCP 2020.310.

### Business Records Only

A deposition subpoena that commands only the production of business records for copying must designate the business records either by specifically describing each individual item or by "reasonably particularizing each category of item."Specific information identifiable only to the deponent's record system is not required. The subpoena must "be directed to the custodian of [] records or another person qualified to certify the records." It must command compliance no earlier than twenty (20) days after issuance of the subpoena, or fifteen (15) days after service of the subpoena, whichever date is later.

"The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: 'Do not release the requested records to the deposition officer prior to the date and time stated above.'"CCP 2020.430(d).

### Testimony and Production of Records

A deposition subpoena that commands attendance, testimony and the production of records, must comply with all the requirements of a subpoena compelling testimony only.Additionally, it must "designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item." It must also specify any testing or sampling that is sought. CCP 2020.510.

## Witness & Mileage Fees

### If Personal Attendance Required

If the subpoena requires personal attendance, the party noticing the deposition must provide to the deponent, by cash or check, the same witness and mileage fee required by the Government Code, (commencing with 68070) for attendance and testimony in court.CCP 2020.230(a).

### If Personal Attendance NOT Required

If the subpoena does not require personal attendance, payment in cash or by check of the amount specified by Evidence Code Section 1563(b)(6) must be made on service of the subpoena. CCP 2020.230(b). Additional payment pursuant to Evidence Code Section 1563 is required at the time the records are delivered. Evid. Code 1563.

## Required Notice to Employees and Consumers

### When Required

Notice is required when the party issuing the subpoena seeks

(1) "personal records of a consumer." CCP 1985.3.

(2) "personal information." CCP 1985.4. or

(3) "employment records" CCP 1985.6.

### The Notices

The subpoenaing party must provide to the consumer or employee to whom the records pertain:

(1) a copy of the deposition subpoena;

(2) the notice described below; and

(3) a proof of service attesting to service of the subpoena and notice.

**The notice must provide the following information:**

Subpoena For Consumer Records or Personal information

(1) records about the consumer are being sought from the witness named on the subpoena;

(2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and

(3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. CCP 1985.3(e).

The notice form is on the Judicial Council's website at http://www.courts.ca.gov/forms.htm (see under the "Subpoena" form group.)

**Subpoena For Employment Records**

(1) employment records about the employee are being sought from the witness named on the subpoena;

(2) the employment records may be protected by a right of privacy;

(3) if the employee objects to the witness furnishing the records to the party seeking the records the employee shall file papers with the court prior to the date specified for production on the subpoena; and

(4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. CCP 1985.6(e).

The notice form is on the Judicial Council's website at http://www.courts.ca.gov/forms.htm (see under the "Subpoena" form group.)

## Service of Subpoena

### Deposition Subpoena Must Be Personally Served

Personal service of a deposition subpoena is required. CCP 1987. If the deponent is a natural person, service must be made on that person. If the deponent is an organization, service must be made to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.CCP 2020.220(b).

### Notice to Consumer

Service must be made to the consumer or employee personally, or at his or her last known address, or in accordance with Code of Civil Procedure Sections 1010 et seq., or on the attorney of record if the individual is a party. CCP 1985.3(b)(1); CCP 1985.6(b)(1).

### Mail Service

Where mail service is permitted (with respect to the requirements of Code of Civil Procedure Sections 1985.3 and 1985.6), the extensions of time provided by Code of Civil Procedure Section 1013 apply. CCP 1013.

### Notice to Other Parties

The deposition subpoena and all supporting documents must be served on all parties who have appeared in the action. CCP 2025.220(a) and (b).

### Do Not File With Court

The original deposition subpoena and proof of service are retained by the serving party and not filed with the court. CRC 3.250 (renumbered eff 1/1/07).

## Out of State Actions and Witnesses

### Action Pending In-State, Witness in Foreign Jurisdiction

Consult local rules in that county.

### California Interstate Deposition and Discovery Act

### Issuance of California Subpoena for Use in Foreign Action

To request issuance of a subpoena, a party must submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted. CCP 2029.300(a). (eff 1/1/10)

In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery must

(1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena. The application shall be on a form prescribed by the Judicial Council.

(2) Pay the fee specified in Section 70626 of the Government Code.

CCP 2029.300(b). (eff 1/1/10)

### Subpoena Requirements

A subpoena issued under this section shall satisfy all of the following conditions:

(1) It shall incorporate the terms used in the foreign subpoena.

(2) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(3) It shall bear the caption and case number of the out-of-state case to which it relates.

(4) It shall state the name of the court that issues it.

(5) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

CCP 2029.300(d). (eff 1/1/10); CCP 2029.350(b). (eff 1/1/10)

### California Attorney May Issue

If a party to a proceeding pending in a foreign jurisdiction retains an attorney licensed to practice in this state, who is an active member of the State Bar, and that attorney receives the original or a true and correct copy of a foreign subpoena, the attorney may issue a subpoena under this article. CCP 2029.350(a). (eff 1/1/10)

### Service of Subpoena

A subpoena issued under this article must be personally served. CCP 2029.400. (eff 1/1/10)

Petition for Protective Order, To Quash, Modify Subpoena, Include Civil Case Cover Sheet

Any request for a protective order or to enforce, quash, or modify a subpoena, or for other relief may be filed in the superior court in the county in which discovery is to be conducted. CCP 2029.600(a). (eff 1/1/10). A request for relief pursuant to this section shall be referred to as a petition. CCP 2029.600(b). (eff 1/1/10).A petition for relief pursuant to this section shall be accompanied by a civil case cover sheet. CCP 2029.600(c). (eff 1/1/10)

On filing a petition under Section 2029.600, a petitioner who is a party to the out-of-state proceeding shall pay a first appearance fee. A petitioner who is not a party to the out-of-state proceeding shall pay the fee specified in subdivision (c) of Section 70626 of the Government Code. CCP 2029.610(a). (eff 1/1/10)

### Response to Petition

On responding to a petition under Section 2029.600, a party to the out-of-state proceeding shall pay a first appearance fee as specified in Section 70612 of the Government Code. A person who is not a party to the out-of-state proceeding may file a response without paying a fee. CCP 2029.610(c). (eff 1/1/10)

### Formatting Requirements

Any petition, response, or other document filed under this section must:

(1) It shall bear the caption and case number of the out-of-state case to which it relates.

(2) The first page shall state the name of the court in which the document is filed.

(3) The first page shall state the case number assigned by the court under subdivision (b).

(4) The first page shall state whether or not the person filing the document is a party to the out-of-state case.

CCP 2029.610(d). (amended 7/1/12)

### Subsequent Disputes

If a petition has been filed under Section 2029.600 and another dispute later arises relating to discovery being conducted in the same county for purposes of the same out-of-state proceeding, the deponent or other disputant may file a petition for appropriate relief in the same superior court as the previous petition. CCP 2029.620(a). (eff 1/1/10)

The first page of the petition shall clearly indicate that it is not the first petition filed in that court that relates to the out-of-state case. CCP 2029.620(b). eff 1/1/10)

If the petitioner in the new dispute is a party to the out-of-state case who previously paid a first appearance fee under this article, the petitioner shall pay a motion fee as specified in subdivision (a) of Section 70617 of the Government Code. If the petitioner in the new dispute is a party to the out-of-state case but has not previously paid a first appearance fee under this article, the petitioner shall pay a first appearance fee as specified in Section 70611 of the Government Code. CCP 2029.620(c)(1). (eff 1/1/10)

If the petitioner in the new dispute is not a party to the out-of-state case, the petitioner shall pay the fee specified in subdivision (c) of Section 70626 of the Government Code, unless the petitioner previously paid that fee. If the petitioner previously paid the fee specified in subdivision (c) of Section 70626 of the Government Code, the petitioner shall pay a motion fee as specified in subdivision (a) of Section 70617 of the Government Code. CCP 2029.620(c)(2). (eff 1/1/10)

If a person responding to the new petition is not a party to the out-of-state case, or is a party who previously paid a first appearance fee under this article, that person does not have to pay a fee for responding. If a person responding to the new petition is a party to the out-of-state case but has not previously paid a first appearance fee under this article, that person shall pay a first appearance fee as specified in Section 70612 of the Government Code. CCP 2029.620(d). (eff 1/1/10)

## Formatting Requirements

Any petition, response, or other document must:

(1) It shall bear the caption and case number of the out-of-state case to which it relates.

(2) The first page shall state the name of the court in which the document is filed.

(3) The first page shall state the same case number that the court assigned to the first petition relating to the out-of-state case.

(4) The first page shall state whether or not the person filing the document is a party to the out-of-state case.

CCP 2029.620(e). (amended 7/1/12)

A petition for relief pursuant to this section must be accompanied by a civil case cover sheet. CCP 2029.620(f). (eff 1/1/10)

## Challenging Subpoena

### Motion to Quash or Modify Subpoena, or for Protective Order

Challenges to a subpoena may be brought by a party or non-party, whether or not any documents sought by the subpoena qualify as consumer or employee records. CCP 1987.1.

### Where Consumer or Employments Records Are at Issue

### Challenge by Party

A consumer or employee whose records are sought and who is also a party to the action may bring a motion to quash or modify the subpoena. CCP 1985.3(g); CCP 1985.6(f).

### Challenge by Non-Party

A non-party consumer whose records are sought may serve on the subpoenaing party, the witness and the deposition officer written objections. CCP 1985.3(g); CCP 1985.6(f).

### No Production Until Court Order or Agreement

No witness or deposition officer is required to produce testimony or records after notice of a motion to quash or written objection to a subpoena until the court orders, or the parties agree, to a specific production. CCP 1985.3(g); CCP 1985.6(f).

### Enforcement of Subpoena Seeking Consumer Records

A party issuing a subpoena seeking consumer records may bring a motion under Code of Civil Procedure Section 1987.1 to enforce the subpoena. CCP 1985.3(g).

### Enforcement of Subpoena Seeking Employment Records

A party requesting employment records may bring a motion pursuant to Code of Civil Procedure Section 1987(c) to enforce a subpoena to which a witness has made objections. CCP 1985.6(f).

## Subpoena in Out of State Action

### Service of Subpoena on California Resident

While the service of subpoenas on witnesses for out of state actions is clearly authorized, there is no statute or local rule that lays out the precise process for obtaining and serving the subpoena.

### Contact Clerk of Court with Jurisdiction

The process for obtaining a subpoena in an out of state action has been developed over time by the clerks presiding in the county courts, (that is, there are no statutes or rules that govern the procedure). For this reason, the process is subject to variance from county to county and is subject to change without warning. Therefore, it is always good practice to discover the county in which your witness resides and to contact the clerk for that county to learn any local requirements that may differ from the basic statewide procedure.

### Dealing with Non-Party Witness

(1) Counsel should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition.

(2) Deposition subpoenas should be accompanied by notices of deposition with copies to all counsel.

(3) Where counsel obtains documents pursuant to a deposition subpoena, copies of the documents should be made available to the adversary at his or her expense even if the deposition is canceled or adjourned.

LASC Appendix 3.A Guidelines for Civility in Litigation

# RESPONSE TO SUBPOENA

## Rules & Requirements

### Overview of Subpoenas

During pre-trial litigation, a subpoena is the manner in which discovery is obtained from non-party witnesses. CCP 2020.010.A subpoena can be used to compel testimony and/or production of records from a non-party. CCP 2020.010; CCP 2020.020; CCP 2020.030. These records can be business records, consumer records, or employment records.CCP 2020.020; CCP 2020.410; CCP 2020.420; CCP 2020.430;CCP 1985.3;CCP 1985.6.

### Responding to a Subpoena Seeking Testimony

In response to a subpoena seeking testimony, a non-party may appear without objection (and make relevant objections at the deposition), bring a motion to quash, or seek a protective order. CCP 1987.1.

With respect to a protective order, the court may make any order as may be appropriate to protect the non-party from unreasonable or oppressive demands including unreasonable violations of a witness's or consumer's right of privacy. CCP 1987.1.

### Responding to a Business Records Subpoena

When served with a business records subpoena, a non-party may object to the subpoena or produce the documents. These alternatives are further discussed below.

Objecting: Move To Quash, Serve Written Objections, Seek A Protective Order, Or Appear And Object (If Applicable)

Well-settled case law establishes that in response to a business records subpoena, a non-party may move to quash all or part of the subpoena. Alternatively, a non-party may serve written objections to the document requests. By serving written objections, the non-party puts the burden on the subpoenaing party to bring a motion to compel production of the documents.

As yet another alternative, a non-party may seek a protective order. Pursuant to statute, the court may make any order as may be appropriate to protect the non-party from unreasonable or oppressive demands including unreasonable violations of a witness's or consumer's right of privacy.CCP 1987.1.

Finally, if a subpoena seeks testimony and business records, a non-party may appear at the deposition and object to the production of business records on appropriate grounds (i.e., privilege). Please note that a more effective way of opposing production of these records is through a motion to quash, a motion for a protective order, or serving written objections.

### Production Of Documents: Make Copies And Deliver

Where the subpoena directs the records custodian to mail copies to a professional photocopier or deposition officer, within the time specified in the deposition subpoena, the records custodian must deliver by mail or otherwise true, legible, and durable copy of all the records described in the subpoena together with an affidavit. Evid. Code 1560(b); CCP 2020.430.The affidavit requirements are described below.

The copies must be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly written on the envelope. The sealed envelope or wrapper must be enclosed in an outer envelope or wrapper, sealed, and directed to the deposition officer at the place designated in the subpoena for the taking of the deposition or at the officer's place of business. Evid. Code 1560(c).

### Production Of Documents: Make Records Available For Copying By Deposition Officer

As an alternative to these procedures, the subpoenaing party may direct the records custodian to make the records available for inspection or copying by the deposition officer at the witness' business address under reasonable conditions during normal business hours. Evid. Code 1560(e); CCP 2020.430. These records must be accompanied by appropriate affidavits, described below. Evid. Code 1561.

### Production Of Documents: Make Copies And Await Pickup

Alternatively, the subpoena may direct the records custodian to copy the available and produceable records and deliver them to the deposition officer at the records custodian's place of business. CCP 2020.430.This copy does not need to be delivered in a sealed envelope. CCP 2020.430.Such delivery may be predicated upon receipt of payment of reasonable costs if the records custodian provides an itemized statement of costs. CCP 2020.430.These records must be accompanied by appropriate affidavits, described below. Evid. Code 1561.

### Production Of Documents: Make Records Available For Copying By Subpoenaing Attorney

As yet another alternative, the subpoena may direct the records custodian to make the records available for inspection copying by the subpoenaing attorney or his/her representative at the business of the records custodian under reasonable conditions during normal business hours. CCP 2020.430; Evid. Code 1560(e). When provided with at least five business days' advance notice, the records custodian shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena. Evid. Code 1560(e). It shall be the responsibility of the attorney's representative to deliver any copy of the records as directed in the subpoena. Evid. Code 1560(e).

### Production Of Documents: Affidavit Requirements

The affidavit must state the following in substance:

1. The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.
2. The copy is a true copy of all the records described in the subpoena, or pursuant to subdivision (e) of Section 1560 the records were delivered to the attorney, the attorney's representative, or deposition officer for copying at the custodian's or witness' place of business, as the case may be.
3. The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.
4. The identity of the records.
5. A description of the mode of preparation of the records. Evid. Code 1561(a).
6. The records custodian must state in the affidavit if the business has none or only some of the records described in the subpoena. Evid. Code 1561(b).

### Production Of Documents: Recovering Reasonable Costs

All reasonable costs incurred by the non-party records custodian with respect to producing business records in response to the subpoena are chargeable to the subpoenaing party. Evid. Code 1563(b). What constitutes a reasonable cost is defined by statute. See Evid. Code 1563(b)(1) and (b)(6).

These costs do not have to be paid up front by the subpoenaing party; rather, the records custodian may demand payment of costs simultaneous with actual delivery of the subpoenaed records, and is under no obligation to deliver the records until payment is made. Evid. Code 1563(b)(2). The demand for payment must be accompanied by an itemized statement of costs. Evid. Code 1563(b)(3). Procedures exist by which the subpoenaing party may challenge the demand for payment. See Evid. Code 1563(b)(4).

If the subpoena is subsequently withdrawn, or is quashed, modified or limited on a motion made by a party other than the records custodian, the records custodian shall be entitled to reimbursement for reasonable costs to the time that the subpoenaing party has notified the records custodian that the subpoena has been withdrawn or quashed, modified or limited. In the event the subpoena is withdrawn or quashed, failure to pay reasonable costs 30 days after demand allows the records custodian to utilize statutory procedures in order to obtain payment. See Evid. Code 1563(b)(4) and (b)(5).

### Production Of Documents: Timing Of Document Delivery

Unless the parties stipulate to an earlier date, the records custodian shall not deliver the business records to the deposition officer prior to the date and time specified in the subpoena. CCP 2020.430.

### Responding To A Consumer Records Subpoena

If a subpoena seeks the personal records of a consumer, the consumer may follow the procedures discussed above in responding to the subpoena. CCP 1985.3(g). Alternatively, a consumer who is a party to the action may object to production by bringing a motion to quash. CCP 1985.3(g).A consumer who is a non-party may object to production by serving written objections if the consumer is a non-party. CCP 1985.3(g).Or, party and non-party consumers may seek protective orders. CCP 1987.1.

Non-party consumers who choose to serve written objections must serve them on the subpoenaing party, the witness, and the deposition officer. These objections must cite the specific grounds on which production should be prohibited. CCP 1985.3(g).Once these objections have been served, the subpoenaed records should not be produced except upon court order.CCP 1985.3(g).

With respect to protective orders, the court may make any order as may be appropriate to protect the non-party from unreasonable or oppressive demands including unreasonable violations of a witness's or consumer's right of privacy. CCP 1987.1.

Note that if a consumer records subpoena also seeks testimony, the consumer may appear at the deposition and object to the production of the subpoenaed records on appropriate grounds (i.e., privacy). However, to ensure the protection of the consumer's rights, bringing a motion to quash, seeking a protective order, or making written objections is a more effective route.

### Responding To An Employment Records Subpoena

If a subpoena seeks employment records, the employee may follow the procedures discussed above in responding to the subpoena. CCP 1985.6(f).Alternatively, employees who are parties may object to production by bringing a motion to quash. CCP 1985.6(f). Non-party employees may serve written objections. CCP 1985.6(f). Or, an employee may most likely seek a protective order. See CCP 1987.1.

Non-party employees who choose to serve written objections must serve them on the subpoenaing party, the witness, and the deposition officer. These objections must cite the specific grounds on which production should be prohibited. CCP 1985.6(f).Once these objections have been served, the subpoenaed records should not be produced except upon court order.CCP 1985.6(f).

Note that if an employment records subpoena also seeks testimony, the employee may appear at the deposition and object to the production of the subpoenaed records on appropriate grounds (i.e., privacy). However, to ensure the protection of the employee's rights, bringing a motion to quash, seeking a protective order, or making written objections is a more effective route.

# EXPARTE MOTIONS

## Timing

### Notice

A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice. CRC 3.1203(a) (amended eff 1/1/08). When notice of an ex parte application is given, the person giving notice must state with specificity the nature of the relief to be requested and the date, time, and place for the presentation of the application, and must attempt to determine whether the opposing party will appear to oppose the application. CRC 3.1204(a) (renumbered eff 1/1/07).

### Scheduling An Ex Parte Hearing

In the Central District, law and motion matters, including ex parte applications, will be heard by the Direct Calendar, Specialized Civil Court, and Master Calendar Court judges in their respective departments at 8:30 a.m. each day. LASC LR 3.5 (effective 5/17/13)

Information regarding ex parte procedures can be obtained from the courtroom of the judge who will hear the application. A directory of Los Angeles County judicial officers can be found at: http://www.lasuperiorcourt.org/judicialofficers.

### Notice to Opposing Party

The guidelines adopted by the Los Angeles County Bar Association are adopted as civility in litigation recommendations to members of the bar, and are contained in Appendix 3.A.LASC LR 3.26 (amended eff 7/1/11). Usually it is customary to notify the opposing counsel(s) by 10am. Either by fax, phone (speak actually to them), or by email.

### Downtown-Call for Court File Before the Hearing

For ex parte proceedings in the Central District (downtown Los Angeles branch, Stanley Mosk Courthouse) it is recommended that files be ordered by 4:30 p.m. the previous court day. To order files for an ex parte matter, leave a message for the records section on the ex parte file request line at (213) 893-1213. Files may also be ordered in person in Room 112 or by calling the records section main number at (213) 974-5181.

### Appearing By Telephone

NEW RULE AMENDMENT EFFECTIVE JANUARY 1, 2014

An applicant seeking an ex parte order choosing to appear by telephone must comply with CRC 3.670(d), and must provide copies of the moving papers and proposed order directly to the department in which the matter is to be considered. LASC LR 3.6 (amended eff 1/1/14).

## Ex Parte Procedures

### No Notice

The court may grant ex parte relief without notice to the opposing party. An ex parte application presented without notice must be accompanied by a declaration that, for reasons specified, the applicant should not be required to inform the opposing party. CRC 3.1204(b)(3) (renumbered eff 1/1/07).

### Identification of Attorneys

An ex parte application must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party if known to the applicant.CRC 3.1202(a) (renumbered eff 1/1/07).

### Affirmative Factual Showing Required

An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte. CRC 3.1202(c) (renumbered eff 1/1/07).

### Notice of Ex Parte Application

When notice of an ex parte application is given, the person giving notice must:

(1) State with specificity the nature of the relief to be requested and the date, time, and place for the presentation of the application; and

(2) Attempt to determine whether the opposing party will appear to oppose the application. CRC 3.1204(a).

### Declaration Re Notice

An ex parte application for an order must be accompanied by an affidavit or a declaration showing:(1) that the applicant informed the opposing party when and where the application would be made no later than 10:00 a.m. on the court day before the application was made and the notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected; or (2) that the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or (3) that, for reasons specified, the applicant should not be required to inform the opposing party. CRC 3.1204(b) (renumbered and amended eff 1/1/07).

If notice was provided later than 10:00 a.m. the court day before the ex parte appearance, the declaration regarding notice must explain the exceptional circumstances that justify the shorter notice, or, in unlawful detainer proceedings, when the notice given is reasonable. CRC 3.1204(c) (renumbered eff 1/1/07).

### Disclosure of Prior Application

If an ex parte application has been made to the court and has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, must include a full disclosure of any previous applications and the courts actions. CRC 3.1202(b) (renumbered eff 1/1/07).

## MOVING PAPERS

### Required Documents

A request for ex parte relief must be in writing and include all of the following:

(1) An application containing the case caption and stating the relief requested;

(2) A declaration in support of the application making the required factual showing;

(3) A declaration based on personal knowledge of the notice given;

(4) A memorandum; and

(5) A proposed order. CRC 3.1201 (renumbered and amended eff 1/1/07).

### Caption - Demurrer

A demurrer must state, on the first page below the number of the case, the name of the party filing the demurrer and the name of the party whose pleading is the subject of the demurrer. CRC 3.1320(e) (amended eff 1/1/07)

### Subsequent Papers

On any pleading or paper subsequent to the initial complaint or cross-complaint, it is sufficient in the title of the case to state the name of the first party on each side, with appropriate indication of other parties, and state that a cross-action or cross-actions are involved, if applicable. CRC 2.111(4). (renumbered 1/1/08).

### Additional Information

The first page of the motion or demurrer must specify, immediately below the number of the case, the date, time and location of the hearing and the name of the hearing judge, the title of any attached document other than an exhibit, the date the action was filed and the trial date." CRC 3.1110(b). (renumbered 1/1/07)

### Memorandum of Points and Authorities

#### Content

The memorandum must contain a statement of facts, and a concise statement of the law, evidence and arguments relied on in support of the position advanced. CRC 3.1113(b) (amended eff 7/1/11).

#### 15 Page Limit on Briefs

Except in a summary judgment or summary adjudication motion, a memorandum of points and authorities in support of a motion may not exceed 15 pages, not including exhibits, declarations, attachments, tables of contents or authorities, or the proof of service. CRC 3.1113(d) (amended eff 7/1/11).

#### Table of Contents

A memorandum that exceeds 10 pages must include a table of contents and table of authorities. CRC 3.1113(f) (amended eff 7/1/11).

#### Summary of Argument

A memorandum that exceeds 15 pages must also include an opening summary of argument. CRC 3.1113(f) (amended eff 7/1/11).

#### Citations to Authority and Exhibits

Case citations must include the official report volume and page number and year of decision. CRC 3.1113(c) (amended eff 7/1/11).

A judge may require that authority from outside California be lodged with the papers that cite the authority and attached as an exhibit. CRC 3.1113(i) (amended eff 7/1/11).

References to exhibits must include the number or letter of the exhibit, the specific page and specific paragraph or line number, if applicable. CRC 3.1113(k) (amended eff 7/1/11).

#### Reference to Previously Filed Papers

Any paper previously filed must be referred to by date of execution and title. CRC 3.1110(d).

### Style of Citations

Citations to cases and other authorities in all documents filed in the courts must be in the style established by either the California Style Manual or The Bluebook: A Uniform System of Citation, at the option of the party filing the document. The same style must be used consistently throughout the document. CRC 1.200 (added eff 1/1/08).

### Signature

Every paper filed with the court must be signed by the attorney or unrepresented party submitting the paper.The signer's address and telephone number must be included. With the exception of discovery papers, the signature constitutes certification pursuant to Code of Civil Procedure 128.7. CCP 128.7.

### Preemption of Local Rules

California Rule of Court 3.20 states that the Judicial Council preempts local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and form and format of papers. No trial court shall enact or enforce any local rules concerning these fields and all such local rules are null and void unless otherwise permitted or required by a statute or California Rule of Court. CRC 3.20 (renumbered and amended eff 1/1/07).

## Evidence

### Written

Papers that may be filed in support of a motion include declarations, exhibits, appendices, and other documents or pleadings. CRC 3.1112(b) (amended eff 7/1/8).

Evidence received at a law and motion hearing must be by declaration, or request for judicial notice, without testimony, or cross-examination, unless the court orders otherwise for good cause shown. CRC 3.1306(a) (renumbered and amended 1/1/07). See also LASC LR 3.7 (amended eff 7/1/11).

### Request To Present Testimony

A party wishing to present oral evidence at a hearing must file, no later than 3 court days before the hearing, a written statement setting forth the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing.CRC 3.1306(b) (renumbered eff 1/1/07).

The statement must also include the reason why the evidence cannot be presented by declaration or affidavit. LASC LR 3.7 (amended eff 7/1/11).

### Declarations

### Deposition Testimony

The first page of any deposition testimony used as an exhibit must state the name of the deponent and the date of the deposition. The exhibit should include only the relevant pages of the transcript.The original page numbers must be clearly visible. The relevant testimony should be highlighted. CRC 3.1116 (renumbered eff 1/1/07).

### Judicial Notice

### Facts From The Record

## Additional Documents

### Application

A request for ex parte relief must include an application containing the case caption and stating the relief requested. CRC 3.1201(1) (renumbered eff 1/1/07).

### Declaration Supporting Application

Papers seeking ex parte relief must include a declaration in support of the application making the required factual showing CRC 3.1201(2) (renumbered eff 1/1/07).

### Declaration Re Notice

Papers seeking ex parte relief must include a competent declaration based on personal knowledge of the notice given. CRC 3.1201(3) (renumbered eff 1/1/07).

### Proposed Order

Papers seeking ex parte relief must include a proposed order. CRC 3.1201(5) (renumbered eff 1/1/07).

A proposed order may be lodged and served with the moving papers but must not be attached to them.CRC 3.1113(n) (amended eff 7/1/11).

## FILING AND SERVICE

### Filing

Consult Judge's Procedures

In the Central District, law and motion matters, including ex parte applications, will be heard by the Direct Calendar, Specialized Civil Court, and Master Calendar Court judges in their respective departments at 8:30 a.m. each day. LASC LR 3.5 (effective 5/17/13)

Information regarding ex parte procedures can be obtained from the courtroom of the judge who will hear the application. A directory of Los Angeles County judicial officers can be found at: http://www.lasuperiorcourt.org/judicialofficers.

### Downtown Window Open at 8:00 a.m.

For ex parte proceedings in the Central District (downtown Los Angeles branch, Stanley Mosk Courthouse) if a filing fee needs to be paid or a file ordered for delivery to the courtroom, the Clerk's Offices will accept fees and file orders between 8:00 a.m. and 8:30 a.m. for ex parte matters only.

#### Filing Fee

The Los Angeles County fee schedule is online at http://www.lasuperiorcourt.org/feesnet/ui/popup.aspx?ct=CV.

### Service

Parties appearing at the ex parte hearing must serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing may be conducted unless such service has been made. CRC 3.1206 (renumbered eff 1/1/07).

## Hearing & Disposition

### Hearings start at 8:30 am Each Day

In the Central District, law and motion matters, including ex parte applications, will be heard by the Direct Calendar, Specialized Civil Court, and Master Calendar Court judges in their respective departments at 8:30 a.m. each day. LASC LR 3.5 (effective 5/17/13)

Information regarding ex parte procedures can be obtained from the courtroom of the judge who will hear the application. A directory of Los Angeles County judicial officers can be found at: http://www.lasuperiorcourt.org/judicialofficers.

### Appearance Mandatory

The moving party or counsel for the moving party must be personally present when the request for TRO is made. CRC 3.1150(d).

#### NEW RULE AMENDMENT EFFECTIVE JANUARY 1, 2014

Ex parte applicants must appear either in person or by telephone will be considered without a personal appearance except in the following cases:

Applications to file a memorandum of points and authorities longer than the applicable page limit;

Applications for extensions of time to serve pleadings;

Setting of hearing dates on alternative writs and orders to show cause; and

Stipulations by the parties or other orders of the court. CRC 3.1207 (amended eff 1/1/14).

## Telephonic Appearances

#### NEW RULE AMENDMENTS EFFECTIVE JANUARY 1, 2014

### Applicants

Applicants seeking an ex parte order may appear by telephone provided that:

The moving papers have been filed and

A proposed order submitted by at least 10:00 a.m. two court days before the ex parte appearance and,

If required by local rule, copies have been provided directly to the department in which the matter is to be considered (except as ordered by the court under (f)(2) and subject to (h)).

CRC 3.670(d)(1) (amended eff 1/1/14).

### Opposing Parties

Even if the applicant has not complied with the above requirements parties opposing an ex parte order may appear by telephone, except as ordered by the court under (f)(2) and subject to the provisions in (h). CRC 3.670(d)(2)

### Subsequent Requests

Any party other than an applicant choosing to appear by telephone at an ex parte appearance must notify the court and all other parties that have appeared in the action, no later than 2:00 p.m. on the court day before the appearance, of its intent to appear by telephone.

### Oral notice must be given in person or by telephone.

If the notice is in writing, it must be given by filing a Notice of Intent to Appear by Telephone with the court and by serving the notice at the same time on all other parties by any means authorized by law reasonably calculated to ensure delivery to the parties no later than the close of business on the court day before the appearance.

CRC 3.670(h)(4).