

Table of Contents

PART I. EFFECTIVE MOTION STRATEGY AND TACTICS

CHAPTER 1. INTRODUCTION

- § 1:1 How to handle motions
- § 1:2 Admit mistakes honestly
- § 1:3 Avoid distractions
- § 1:4 Avoid making the judge do extra work
- § 1:5 Avoid threats and insults to the judge
- § 1:6 Understand how “your” judge thinks
- § 1:7 Inconsistencies abound
- § 1:8 What litigators really do for a living
- § 1:9 Statewide uniformity
- § 1:10 Tell your story and have fun

CHAPTER 2. DOCUMENT PREPARATION AND SERVICE

I. WHAT IS A “MOTION”?

- § 2:1 Statutory requirements for motion
- § 2:2 Importance of mechanics
- § 2:3 Demurrers as motions

II. MOTION INGREDIENTS

- § 2:4 Six parts to motions
- § 2:5 Notice of motion—Two meanings of “notice”
- § 2:6 —Required contents of the notice and motion
- § 2:7 —Title requirements on first page
- § 2:8 —Figuring out the date, time, and place of hearing
- § 2:9 —Use the internet
- § 2:10 —Court schedule irregularities
- § 2:11 —Designation of accompanying papers
- § 2:12 —First paragraph of notice
- § 2:13 —Disappearance of local rules
- § 2:14 —Physical format of papers
- § 2:15 —Append every possible document?
- § 2:16 —Sanctions
- § 2:17 —Signature

- § 2:18 —Importance of following format rules
- § 2:19 Memorandum of points and authorities—Focus of motion preparation
- § 2:20 —Contents
- § 2:21 —Length limitations
- § 2:22 —Extra requirements of longer briefs
- § 2:23 —Cramming it in
- § 2:24 Declarations—General use
- § 2:25 —Form of certification
- § 2:26 —Good-bye to notaries
- § 2:27 —Title block on declaration
- § 2:28 —Hearsay issues
- § 2:29 —Special rules in summary judgment motions
- § 2:30 —Declarations re sanctions
- § 2:31 —References to declarations
- § 2:32 Exhibits
- § 2:33 Other evidentiary materials—In general
- § 2:34 —Discovery documents
- § 2:35 —Judicially noticeable materials
- § 2:36 —“Live” witnesses
- § 2:37 Proposed order no longer required—Former local practices
- § 2:38 —Preparing order after ruling
- § 2:39 Proof of service—A potential source of trouble
- § 2:40 —Declaration of mailing
- § 2:41 —Modern mailing practices
- § 2:42 —Presumption of receipt
- § 2:43 —Fax, express mail, email
- § 2:44 —Serve all parties
- § 2:45 —Personal service to lawyer’s office
- § 2:46 —Convenience of opposing counsel
- § 2:47 Situationally required papers—In general
- § 2:48 —Copies of out-of-state cases and other materials
- § 2:49 —Conservation of paper
- § 2:50 —Recent cases
- § 2:51 —Objections to evidence

III. ADDITIONAL MECHANICAL CONSIDERATIONS

- § 2:52 Recycled paper
- § 2:53 Citations
- § 2:54 Physical quality—Appearance and binding
- § 2:55 —Filling in the blanks
- § 2:56 Filing documents under seal—History

TABLE OF CONTENTS

- § 2:57 —Procedure for sealing records
- § 2:58 —Filing confidential records without moving to seal
- § 2:59 —Lodging confidential records
- § 2:60 —Motion to unseal
- § 2:61 —Impact on motion practice

IV. THE JUDGE AND THE RESEARCH ATTORNEY

- § 2:62 Persuasion of judges—Passion versus rudeness
- § 2:63 —Points and authorities
- § 2:64 —Rudeness toward the judge
- § 2:65 The research attorney—An extra consumer
- § 2:66 —Going “by the book”
- § 2:67 —Review of motion evidence
- § 2:68 —Mechanics

V. OPPOSITION AND REPLIES

- § 2:69 Opposition to motions—Do you always oppose?
- § 2:70 —Sanction requests
- § 2:71 Replies—Should you file a reply?
- § 2:72 —Reply timing
- § 2:73 —Courtesy copies

VI. DELIVERING THE MOTION

- § 2:74 Delivering the motion to the other parties—Required amount of notice
- § 2:75 —Serving oppositions and replies
- § 2:76 —Shortened time
- § 2:77 —No double extensions!
- § 2:78 Delivering the motion to the court—Service versus filing
- § 2:79 —16-court-day provision
- § 2:80 —Filing oppositions and replies and proof of service
- § 2:81 —Shortened time
- § 2:82 —Fax filing
- § 2:83 Electronic filing

CHAPTER 3. SANCTIONS IN MOTION PRACTICE

I. WHAT ARE SANCTIONS?

- § 3:1 Nature of sanctions
- § 3:2 “Contempt” distinguished

- § 3:3 Types of sanctions
- § 3:4 Ethical considerations

II. CONVERSION TO FEDERAL-STYLE SANCTION SYSTEM (SECTION 128.7)

- § 3:5 Major change in law
- § 3:6 Sanctions under Section 128.7
- § 3:7 Attorney certification of merit
- § 3:8 “Safe harbor” provision
- § 3:9 Separate motion
- § 3:10 Sanctions against attorneys, law firms, and parties
- § 3:11 Experience under Federal Rule 11
- § 3:12 Greater lawyer responsibility
- § 3:13 Similarities between sections “old” and “new” 128.5 and 128.7—Boundaries of sanction awards
- § 3:14 —Procedural guarantees
- § 3:15 —Evidentiary support

III. SANCTIONS UNDER OTHER STATUTES AND RULES

- § 3:16 What other sanction provisions continue to exist?
- § 3:17 Fast-track rules—Dramatic change in responsibilities
- § 3:18 —Development of local rules
- § 3:19 Sanctions in favor of opposing party—Rule violations
- § 3:20 —California Rules of Court
- § 3:21 Sanctions in favor of the court itself—Protection of judicial process
- § 3:22 —Notice
- § 3:23 —Interference with proceedings
- § 3:24 —“Unlimited” reimbursement of county?

IV. DISCOVERY SANCTIONS

- § 3:25 Philosophy of discovery sanctions—Compared to other sanctions
- § 3:26 —Multiple sanction statutes
- § 3:27 —“Heavier” sanctions
- § 3:28 —Judicial attitudes on discovery disputes
- § 3:29 Procedure—Notice
- § 3:30 —Who is the target?
- § 3:31 —Declaration regarding amount
- § 3:32 —“Meet and confer” requirement
- § 3:33 Special sanction situations—Requests for admissions
- § 3:34 —Electronically Stored Information

TABLE OF CONTENTS

- § 3:35 —Depositions
- § 3:36 Detailed written order

V. CHALLENGE CHECKLIST

- § 3:37 Trial court challenges
- § 3:38 Substantial sanctions appealable
- § 3:39 Denial not appealable
- § 3:40 Appellate antipathy toward sanctions
- § 3:41 Notice issues
- § 3:42 Inconsistency of treatment
- § 3:43 Opportunity to be heard

CHAPTER 4. ORAL ARGUMENT OF MOTIONS

I. COURTROOM CAST OF CHARACTERS

- § 4:1 Judges—Components of the job
- § 4:2 —Learning about “your” judge
- § 4:3 —Dealing with the difficult judge
- § 4:4 —Peremptory challenge—Procedure
- § 4:5 — —Timing
- § 4:6 — —Limitations
- § 4:7 — —Practical considerations
- § 4:8 — —Memories
- § 4:9 —“Living with” a judge
- § 4:10 Courtroom staff—Importance of staff relations
- § 4:11 —Staff does not make the rulings or rules
- § 4:12 —Addressing court staff
- § 4:13 —The problem staff
- § 4:14 —They’re busy
- § 4:15 —Common courtesies
- § 4:16 —Court reporter—Transcripts of hearings
- § 4:17 — —Budget cut
- § 4:18 —Research attorney

II. PREPARING FOR ORAL ARGUMENT

- § 4:19 Getting yourself ready—Stage fright and stress
- § 4:20 —Personal appearance
- § 4:21 Who should appear?—Person who wrote motion
- § 4:22 —Outsiders
- § 4:23 Preparing your argument—Reviewing paperwork
- § 4:24 —Motion binder

- § 4:25 —How to avoid repetition?
- § 4:26 Impact of tentative ruling
- § 4:27 Arriving at court—Be on time
- § 4:28 —Calling in

III. APPEARING IN COURT

- § 4:29 What argument is allowed?—Basic principles
- § 4:30 —Varying judicial styles
- § 4:31 —Courts that discourage any argument
- § 4:32 —Courts that encourage argument
- § 4:33 Personal appearance—Attributes
- § 4:34 —Things to remember
- § 4:35 —Vocal issues
- § 4:36 —Checking in
- § 4:37 What to do when the case is called—The “appearance”
- § 4:38 —Tell judge who you are
- § 4:39 —Have documents with you
- § 4:40 Courtroom conduct—Addressing the judge
- § 4:41 —Addressing opposing counsel
- § 4:42 —Interrupting
- § 4:43 —Paying attention
- § 4:44 —Political skills
- § 4:45 The end of the hearing—Don’t miss details
- § 4:46 —Notice of ruling
- § 4:47 —Taking under submission
- § 4:48 Appearing when unprepared—Sometimes unavoidable
- § 4:49 —Pressing to continue?
- § 4:50 —Collateral benefit from continuance request
- § 4:51 —Favorable tentative ruling
- § 4:52 —Unfavorable tentative ruling

IV. TENTATIVE RULINGS

- § 4:53 Varying judicial practices—What are tentative rulings?
- § 4:54 —Limited use in some courts
- § 4:55 —Advantages of no tentative rulings
- § 4:56 —Different styles of tentatives
- § 4:57 —Benefits and drawbacks of styles
- § 4:58 “Submitting” on the tentative ruling—What is submitting?
- § 4:59 —Advance submitting on tentative
- § 4:60 —Notice of nonappearance
- § 4:61 —Both sides “staying home”
- § 4:62 —Dealing with the unexpected

TABLE OF CONTENTS

- § 4:63 —Do not wait until hearing date
- § 4:64 —Submitting during hearing
- § 4:65 —Quit while you are ahead
- § 4:66 —Questions
- § 4:67 —Requests to amplify ruling

V. THE ARGUMENT ITSELF

- § 4:68 “Do’s” and “don’ts”—Flexibility required
- § 4:69 —Old salt risks
- § 4:70 —Avoid arguing after ruling
- § 4:71 —Threats
- § 4:72 —Appellate planning
- § 4:73 —“Thank you, your honor”
- § 4:74 Getting the judge’s attention—The classical “ho hum”
- § 4:75 —“For instance?”
- § 4:76 —“So what?”

VI. WHEN NO ONE APPEARS

- § 4:77 Taking off calendar—Common practice
- § 4:78 —Normal circumstances
- § 4:79 —Frequent violations of rules
- § 4:80 Failing to appear—Common but serious mistake
- § 4:81 —Relationship to “taking off calendar”
- § 4:82 —Substantial penalties
- § 4:83 —Multiple failures

PART II. MOTIONS THAT MAY ELIMINATE TRIAL

CHAPTER 5. MOTION TO QUASH SERVICE OF SUMMONS

I. WHAT IS A MOTION TO QUASH?

- § 5:1 Statutory basis and uses
- § 5:2 Challenging personal jurisdiction
- § 5:3 Motion to quash in unlawful detainer practice
- § 5:4 Special appearance
- § 5:5 —Challenge to judge permitted
- § 5:6 —Physical presence not an appearance
- § 5:7 —Service during physical presence?
- § 5:8 —*Pro hac vice*

- § 5:9 General appearance—Acts constituting
- § 5:10 —Waiver of rights
- § 5:11 —Inadvertent general appearance
- § 5:12 Anomalies in appearance rules—Ex parte proceedings
- § 5:13 —Cross-actions and consolidated actions
- § 5:14 Delay dismissal motions

II. IS MOTION NECESSARY?

- § 5:15 When applicable—For nonresident defendant
- § 5:16 —Following default judgment
- § 5:17 —Direct attack
- § 5:18 —Challenge by appeal
- § 5:19 —Collateral attack
- § 5:20 Unnecessary motion—Quashing summons
- § 5:21 —Motion rarely beneficial
- § 5:22 —Advice to defense counsel: accept service
- § 5:23 —Advice to plaintiff's counsel: re-serve
- § 5:24 When dismissal likely—Occasional major impact of
service defect
- § 5:25 —Use of dismissal motion alone
- § 5:26 —Danger in filing motion before three years

III. THE JUDGE'S PERSPECTIVE

- § 5:27 Nonresident challenges—Constitutional issues
- § 5:28 —Economic issues
- § 5:29 —Probable result
- § 5:30 Service of process defects—Unpopular “mechanical”
motions
- § 5:31 —Exception for old cases

IV. MAKING THE MOTION

- § 5:32 Timing—Statutory requirements
- § 5:33 —Notice and calendaring
- § 5:34 —Extension of time on denial
- § 5:35 Format—Special appearance
- § 5:36 —Required contents
- § 5:37 Points and authorities—Nonresident defendant's
argument
- § 5:38 —Burden of proof
- § 5:39 —Service of process
- § 5:40 Evidence—Declarations
- § 5:41 —Discovery responses

V. OPPOSING THE MOTION

- § 5:42 Points and authorities—Burden of proof

TABLE OF CONTENTS

- § 5:43 —Underlying arguments
- § 5:44 —Jurisdictional issues; nonresident defendants
- § 5:45 —Service of process issues
- § 5:46 Opposition evidence

VI. CHALLENGE CHECKLIST

- § 5:47 Trial court challenges
- § 5:48 Collateral attack
- § 5:49 Appellate remedies

CHAPTER 6. THE DEMURRER

I. WHAT IS A DEMURRER?

- § 6:1 Statutory basis and availability
- § 6:2 A pleading and a motion
- § 6:3 Demurrers to answers, cross-complaints and writs
- § 6:4 General demurrers
- § 6:5 Special demurrers

II. GROUNDS FOR DEMURRERS

- § 6:6 Failure to state a cause of action
- § 6:7 —Common defects in complaint
- § 6:8 —The “novel cause of action”
- § 6:9 —Misidentified cause of action acceptable
- § 6:10 —Affirmative defense established on complaint’s face
- § 6:11 Subject matter jurisdiction
- § 6:12 —California systems’ boundaries
- § 6:13 —Exclusive federal jurisdiction
- § 6:14 —Other states
- § 6:15 Uncertainty
- § 6:16 Kind of contract on which action based
- § 6:17 —Statute of frauds issues
- § 6:18 —Statute of limitations issues
- § 6:19 Additional technical grounds—Lack of legal capacity to sue and standing
- § 6:20 —Another action pending
- § 6:21 —Defect or misjoinder of parties
- § 6:22 —Missing certificate in certain malpractice cases
- § 6:23 —Attorney conspiracy cases
- § 6:24 —Pre-filing ADR
- § 6:25 —Pre-lawsuit government code claim

III. UNDERSTANDING THE FUNCTION OF DEMURRERS

- § 6:26 Court accepts truth of allegations against a demurrer
- § 6:27 Defenses present on the “face of the complaint”
- § 6:28 Judicial notice
- § 6:29 —Mechanical problems important
- § 6:30 —Existence, not truth, of judicially noticed materials
- § 6:31 —Conceptual misunderstandings
- § 6:32 —Admissions
- § 6:33 —Discovery responses and press accounts?
- § 6:34 —No place for document interpretation

IV. IS A DEMURRER NECESSARY?

- § 6:35 With multiple theories
- § 6:36 Advantages to an early attack
- § 6:37 Demurrers to avoid—Improper purpose
- § 6:38 —Bad reasons to demur
- § 6:39 Alternative tactics

V. THE JUDGE’S PERSPECTIVE

- § 6:40 Demurrer as “major motion”
- § 6:41 The unreadable complaint
- § 6:42 —The mega-complaint
- § 6:43 Sustained demurrers and appeals
- § 6:44 Judicial negotiation with plaintiff’s counsel
- § 6:45 Identify and overcome anti-demurrer sentiment

VI. DEMURRING AND OPPOSING DEMURRERS

- § 6:46 Demurrer as responsive pleading—Timing and Meet-and-confer requirements
- § 6:47 More than 30 days allowed in some contexts
- § 6:48 Timing—Required notice
- § 6:49 —Proceedings by moving party if demurrer overruled
- § 6:50 —Demurrer to answer
- § 6:51 Moving papers—The demurrer document
- § 6:52 —Notice of hearing
- § 6:53 Memorandum of points and authorities
- § 6:54 —Proposed order
- § 6:55 Opposing a demurrer—Amend voluntarily
- § 6:56 —Avoid requesting leave in opposition
- § 6:57 Hearing mandatory
- § 6:58 Demurrer sustained with leave to amend

TABLE OF CONTENTS

§ 6:59 Demurrer sustained without leave to amend

VII. CHALLENGE CHECKLIST

§ 6:60 Plaintiff's challenges to sustained demurrer—Leave to amend granted

§ 6:61 —Leave to amend denied

§ 6:62 Defendant's challenges to overruled demurrer

CHAPTER 7. MOTION FOR JUDGMENT ON THE PLEADINGS

I. WHAT IS A MOTION FOR JUDGMENT ON THE PLEADINGS?

§ 7:1 Late “general” demurrer

§ 7:2 Attacks defects on “face of the pleading”

§ 7:3 May be directed at answer

§ 7:4 Practical comparison of motion to demurrer

§ 7:5 Is motion necessary?

§ 7:6 Codification of motion

§ 7:7 Situations in which motion may be made

§ 7:8 —Motion when no prior demurrer filed

§ 7:9 —Motion after overruled demurrer; change in law

§ 7:10 —Motion after prior motion denied?

§ 7:11 Does the statute replace the common law motion?

II. USES OF MOTIONS FOR JUDGMENT ON THE PLEADINGS

§ 7:12 When demurrer could have been filed but was not—
Tardiness

§ 7:13 Change in counsel

§ 7:14 Intentional situations—Clear change in law

§ 7:15 —“Tactical” later challenge?

§ 7:16 Unclear scenarios—liberality where no “miscarriage of
justice”

§ 7:17 On judge's own motion

§ 7:18 As alternative to granting summary judgment

III. THE JUDGE'S PERSPECTIVE

§ 7:19 Generally viewed unfavorably

§ 7:20 Phases of a case

§ 7:21 Occasional benefits to the court

§ 7:22 The “different judge” issue—Appearance of forum
shopping

- § 7:23 —Judicial attitudes
- § 7:24 —Judicial comity
- § 7:25 —Need for disclosure
- § 7:26 —Legality of “second” motion not known to all judges

IV. MAKING THE MOTION

- § 7:27 Moving papers—Notice of motion
- § 7:28 —Memorandum of points and authorities
- § 7:29 —Declarations not appropriate
- § 7:30 —Judicial notice materials
- § 7:31 —Proposed order
- § 7:32 Motion at time of trial—Notice desirable
- § 7:33 —Some written materials desirable
- § 7:34 Timing—Earliest motion can be made
- § 7:35 —Latest motion can be made

V. OPPOSING THE MOTION

- § 7:36 Similar to general demurrer
- § 7:37 Timing

VI. CHALLENGE CHECKLIST

- § 7:38 Same as demurrer
- § 7:39 When judgment results
- § 7:40 Independent review
- § 7:41 Rare writ situations

CHAPTER 8. MOTION FOR SUMMARY JUDGMENT

I. WHAT IS A MOTION FOR SUMMARY JUDGMENT?

- § 8:1 Statutory basis
- § 8:2 General description—No factual dispute
- § 8:3 —Prevailing on motion results in final judgment
- § 8:4 —Development of motion’s importance
- § 8:5 Burden of persuasion on moving party
- § 8:6 Separate statement requirement—Moving party
- § 8:7 —Opposing party
- § 8:8 —Discovery motions distinguished
- § 8:9 Relationship to other motions—Motion for summary adjudication
- § 8:10 —Motion to strike

TABLE OF CONTENTS

- § 8:11 —Motion for judgment on the pleadings
- § 8:12 —Petition to compel arbitration
- § 8:13 Limitations on use—Consumer class actions
- § 8:14 —Certain subject matter cases

II. STRATEGIC CONSIDERATIONS

- § 8:15 Frivolous suits
- § 8:16 Wrongly named party
- § 8:17 Risk of educating opponent
- § 8:18 Other situations
- § 8:19 Subject matter conducive to summary judgment—
Collection matters
- § 8:20 Document-driven cases
- § 8:21 —Government claims
- § 8:22 —Mistaken capacity or relationship assertions
- § 8:23 When summary judgment not appropriate—Trial court
risks
- § 8:24 —Subject matter not conducive to summary judgment
- § 8:25 Cross-motions for summary judgment—When facts not
disputed
- § 8:26 —Compare “trial on stipulated facts”

III. THE JUDGE’S PERSPECTIVE

- § 8:27 Trial courts—Attitudes
- § 8:28 —Showcase for technical skills
- § 8:29 —Requests for continuance
- § 8:30 Appellate courts—Presumptions
- § 8:31 —Appellate attitudes

IV. MAKING THE MOTION

- § 8:32 Timing—“60-day hold”
- § 8:33 —30-day cutoff before trial
- § 8:34 Special notice requirements; filing
- § 8:35 —Tailoring timing in complex cases?
- § 8:36 —Tactical timing considerations
- § 8:37 Moving papers—Notice of motion
- § 8:38 —Memorandum of points and authorities
- § 8:39 Separate statement of undisputed facts
- § 8:40 Evidence supporting motion—Admissibility
- § 8:41 —Declarations
- § 8:42 —Expert declarations based on business records
- § 8:43 —Discovery responses
- § 8:44 —Admissions

- § 8:45 —Format of documentary evidence
- § 8:46 Judicially noticed material
- § 8:47 Reply memorandum
- § 8:48 Proposed order

V. OPPOSING THE MOTION

- § 8:49 Tactical considerations—Importance of response
- § 8:50 Dismissal as tactic
- § 8:51 Tactical considerations—Comprehensive versus “rifle-shot” opposition
- § 8:52 —Request for continuance
- § 8:53 Opposition documents—No oral opposition
- § 8:54 —Separately bound
- § 8:55 —Separate statement in opposition
- § 8:56 —Memorandum of points and authorities
- § 8:57 Evidence supporting opposition
- § 8:58 Objections to evidence
- § 8:59 How to make objections
- § 8:60 Sanctions for frivolous motions
- § 8:61 Proposed order

VI. RULING ON MOTION

- § 8:62 Hearing on motion allowed?
- § 8:63 Order granting summary judgment
- § 8:64 The judgment
- § 8:65 Curative amendment occasionally allowed

VII. CHALLENGE CHECKLIST

- § 8:66 Trial court challenges—When motion granted
- § 8:67 —When motion denied
- § 8:68 Appellate remedies—When motion granted
- § 8:69 —When motion denied

CHAPTER 9. ARBITRATION PETITIONS

I. WHAT ARE ARBITRATION PETITIONS?

- § 9:1 Alternative dispute resolution
- § 9:2 Arbitration and mediation
- § 9:3 Other forms of alternative dispute resolution
- § 9:4 Contractual versus judicial arbitration—Confusion of terms
- § 9:5 —Contractual arbitration

TABLE OF CONTENTS

- § 9:6 —Judicial arbitration
- § 9:7 —Hybrid arbitration
- § 9:8 Federal arbitration act
- § 9:9 —Relation to California law
- § 9:10 Agreement to arbitrate is everything—almost
- § 9:11 Function of arbitration petitions—Petition or motion
- § 9:12 —Petitions used only in problem situations

II. TYPES OF PETITIONS

- § 9:13 Petition to compel arbitration—Commencing the process
- § 9:14 —Where to file
- § 9:15 —Timing
- § 9:16 —Stays
- § 9:17 —Petition in lieu of answer
- § 9:18 —Order to arbitrate
- § 9:19 —Fraud and revocation of agreement
- § 9:20 —Waiver
- § 9:21 —Policy
- § 9:22 Petition to consolidate proceedings
- § 9:23 Petition to appoint arbitrator
- § 9:24 Petition to confirm award—If enforcement necessary
- § 9:25 —Low burden
- § 9:26 —Relaxed time limits
- § 9:27 —Dismissal of proceeding
- § 9:28 Petition to correct award—Simple error situations
- § 9:29 —Application to arbitrator for correction
- § 9:30 —Judge can inquire
- § 9:31 —Arbitrator exceeding powers
- § 9:32 —Vacating award on petition to correct
- § 9:33 Petition to vacate award—Extreme situations
- § 9:34 —General grounds for vacation
- § 9:35 —Extrinsic fraud ground
- § 9:36 —Exceeding powers ground
- § 9:37 —Refusal to hear evidence or grant continuance ground
- § 9:38 —Refusal to disqualify ground
- § 9:39 —Public policy ground?
- § 9:40 —Petitions scrutinized carefully
- § 9:41 —Correcting award on petition to vacate
- § 9:42 —Rehearing

III. IS PETITION NECESSARY?

- § 9:43 Arbitration in fast-track era

- § 9:44 Resolving problems without court help
- § 9:45 Neither party desires arbitration
- § 9:46 Premature petition to compel
- § 9:47 Limitation on discovery rights

IV. THE JUDGE'S PERSPECTIVE

- § 9:48 The judge's perspective

V. MAKING THE APPLICATION

- § 9:49 Papers—Demand to arbitrate
- § 9:50 —Petition to compel
- § 9:51 —Other petitions filed in same manner
- § 9:52 Filing and service
- § 9:53 Materials accompanying petition—Agreement
- § 9:54 —Points and authorities
- § 9:55 Timing

VI. OPPOSING THE PETITION

- § 9:56 Opposing petition to compel arbitration in general
- § 9:57 Reasons to prefer the courthouse
- § 9:58 Grounds for opposing petition to compel—Does agreement call for arbitration?
- § 9:59 —Party identity issues
- § 9:60 —Subject matter coverage issues
- § 9:61 —Unconscionability
- § 9:62 —Existing related litigation
- § 9:63 —Other grounds for opposition
- § 9:64 Opposing petitions to confirm
- § 9:65 Opposing petitions to correct and vacate

VII. CHALLENGE CHECKLIST

- § 9:66 Trial court challenges—By petitioner after petition denied
- § 9:67 —By respondent after petition granted
- § 9:68 —Motion for new trial
- § 9:69 Appellate challenges—Appeal
- § 9:70 —Statement of decision
- § 9:71 —Scope of review
- § 9:72 —Writ review
- § 9:73 Improper appellate actions costly

CHAPTER 10. MOTIONS TO DISMISS

I. WHAT ARE MOTIONS TO DISMISS?

- § 10:1 Nature of motions
- § 10:2 Mandatory or discretionary dismissal
- § 10:3 Dismissal “without prejudice”
- § 10:4 Impact of fast-track rules
- § 10:5 California Rules of Court, Rule 3.110

II. DISMISSAL FOR DELAY IN SERVING DEFENDANT

- § 10:6 Attorney fault; applicability of section 473
- § 10:7 Three-year mandatory statute (§ 583.210)
- § 10:8 —Commencing action
- § 10:9 —New parties
- § 10:10 —Return of summons within 60 days
- § 10:11 —Importance of the 60 days
- § 10:12 —Attorney misconduct no excuse
- § 10:13 Two-year discretionary statute (§ 583.420)
- § 10:14 —Fast-track courts
- § 10:15 —Excusable neglect
- § 10:16 —Tolling
- § 10:17 —General appearance

III. DISMISSAL FOR DELAY IN BRINGING CASE TO TRIAL

- § 10:18 Five-year mandatory statute (§ 583.310)
- § 10:19 —Exception for stipulations
- § 10:20 —Exception for judicial arbitration
- § 10:21 —Exception for court-ordered mediation
- § 10:22 —Exception when action stayed
- § 10:23 —Bankruptcy of other party
- § 10:24 —Exception for “impossible, impracticable, or futile”
- § 10:25 —Tolled during settlement
- § 10:26 Two-year discretionary statute (§ 583.420)
- § 10:27 —Fast-track rules
- § 10:28 —Rule 373(e)
- § 10:29 —Dismissal mandatory absent excuse?

IV. DISMISSAL FOR OTHER DELAYS OR VIOLATIONS

- § 10:30 Delay in retrial—Three-year mandatory statute (§ 583.320)

- § 10:31 —Two-year discretionary statute (§ 583.420)
- § 10:32 —Applicability of section 583.410 delay dismissal
- § 10:33 Dismissal for violation of rules (§ 583.150)
- § 10:34 —Non-delay dismissals
- § 10:35 Inherent authority of the court
- § 10:36 —Attorney fault an excuse?
- § 10:37 Discovery dismissals (§ 2023)
- § 10:38 Dismissal for failure to appear for trial (§ 581)
- § 10:39 Dismissal after demurrer or motion to strike (§ 581(f))
- § 10:40 Dismissal for failure to pay costs or post bond
- § 10:41 Voluntary dismissals (§ 581)

V. IS MOTION NECESSARY?

- § 10:42 Inverse relationship to fast track
- § 10:43 Mandatory motions
- § 10:44 Risk of helping opponent
- § 10:45 Limitation period open
- § 10:46 Other early motions
- § 10:47 “Thin” showing under statute and rules
- § 10:48 Appellate risk
- § 10:49 Different purpose of Rule 3.1340

VI. THE JUDGE’S PERSPECTIVE

- § 10:50 Appellate treatment
- § 10:51 Attorney fault and client detriment
- § 10:52 Motions often brought by the court

VII. MAKING THE MOTION

- § 10:53 Moving papers—Regular noticed motion
- § 10:54 —Discretionary motions
- § 10:55 —Demonstration of prejudice
- § 10:56 —Consideration of other factors
- § 10:57 Timing—Normal notice provisions
- § 10:58 —Special rule for two-year motions
- § 10:59 Court’s Own Motion

VIII. OPPOSING THE MOTION

- § 10:60 Mandatory dismissal motions
- § 10:61 Issue of attorney fault
- § 10:62 Policy favoring disposition on the merits

IX. CHALLENGE CHECKLIST

- § 10:63 Trial court challenges—By moving party after motion denied

TABLE OF CONTENTS

- § 10:64 —By opposing party after motion granted
- § 10:65 Appellate challenges—By moving party after motion denied
- § 10:66 —By opposing party after motion granted

CHAPTER 11. MOTION TO DETERMINE GOOD FAITH SETTLEMENT

I. WHAT IS A MOTION TO DETERMINE GOOD FAITH SETTLEMENT?

- § 11:1 Purpose to encourage settlements
- § 11:2 Effect of successful motion
- § 11:3 *[Reserved]*
- § 11:4 Included settlements
- § 11:5 Traditional motion—Notice
- § 11:6 —Burden of proof
- § 11:7 —Moving party
- § 11:8 Simplified procedure with section 877.6
- § 11:9 Elements of good faith settlement—Factors
- § 11:10 —Other issues in good faith motions

II. WHEN IS MOTION NECESSARY

- § 11:11 Any chance of challenge to the settlement
- § 11:12 When challenge is certain

III. THE JUDGE'S PERSPECTIVE

- § 11:13 Popular motions
- § 11:14 Not onerous to decide
- § 11:15 Policy limits settlements
- § 11:16 Identity of the judge deciding motion

IV. MAKING THE MOTION

- § 11:17 Timing—Traditional motion faster
- § 11:18 —No time limit
- § 11:19 Traditional motion—Standard notice
- § 11:20 —Memorandum of points and authorities
- § 11:21 —Evidence
- § 11:22 —Oral testimony
- § 11:23 Streamlined procedure under section 877.6(a)(2)
- § 11:24 —What to file
- § 11:25 —Procedure when contested
- § 11:26 —Procedure when not contested

- § 11:27 Determination does not dismiss cross-complaints
- § 11:28 —Motion to dismiss
- § 11:29 —Summary judgment
- § 11:30 —Judgment on the pleadings or demurrer
- § 11:31 Anti-settlement motion

V. OPPOSING THE MOTION

- § 11:32 Should you oppose?
- § 11:33 Reevaluate settlement
- § 11:34 Drafting opposition
- § 11:35 Right to continuance and discovery
- § 11:36 Contesting economic analysis

VI. CHALLENGE CHECKLIST

- § 11:37 If good faith motion granted—Trial court challenges
- § 11:38 —Appellate challenges include appeal and writ relief
- § 11:39 If motion denied—Trial court challenges
- § 11:40 —Appellate challenges

CHAPTER 12. MOTION TO ENFORCE SETTLEMENT

I. WHAT IS A MOTION TO ENFORCE SETTLEMENT?

- § 12:1 Statutory basis
- § 12:2 “Pending litigation”
- § 12:3 “Writing signed by the parties”—General rule
- § 12:4 —Insurance exception
- § 12:5 —Residential construction defect exception
- § 12:6 —“Outside the presence of the court”
- § 12:7 —Preliminary written agreement
- § 12:8 “Orally before the court”—General requirement
- § 12:9 —Attorney presence not sufficient (except construction defect cases)
- § 12:10 —Definition of “court”
- § 12:11 —Definition of “orally”
- § 12:12 Arbitration award as alternative
- § 12:13 Oral stipulation regarding later written agreement
- § 12:14 Hybrid settlement
- § 12:15 Elements of settlement
- § 12:16 Resolution of factual disputes—Trier of fact
- § 12:17 —Evidence

TABLE OF CONTENTS

- § 12:18 —Evidence from the judge
- § 12:19 Continuing jurisdiction of court
- § 12:20 Discretionary motion?

II. IS THE MOTION NECESSARY?

- § 12:21 Enforcement of settlement—Benefits of procedure
- § 12:22 —Judicial discretion
- § 12:23 Settlement no longer desirable—In general
- § 12:24 —Defendant's financial condition
- § 12:25 Settlement does not qualify—In general
- § 12:26 —Other options when motion inapplicable
- § 12:27 —Summary judgment unsatisfactory
- § 12:28 —Illegal subject matter

III. THE JUDGE'S PERSPECTIVE

- § 12:29 Comfortable motions
- § 12:30 Context of motion

IV. MAKING OR OPPOSING THE MOTION

- § 12:31 New order to show cause provision
- § 12:32 Timing—Notice
- § 12:33 —Five-year statute
- § 12:34 Moving papers—Standard documentation
- § 12:35 —Evidentiary material
- § 12:36 —Declarations
- § 12:37 Effective opposition—Statutory requirements unmet
- § 12:38 —Uncertain agreement
- § 12:39 —Dismiss the case?

V. CHALLENGE CHECKLIST

- § 12:40 Trial court challenges—Reconsideration
- § 12:41 —Section 473 relief
- § 12:42 Appellate challenges—Appeal
- § 12:43 —Writ
- § 12:44 —Waiver

CHAPTER 13. ENTRY OF DEFAULT AND DEFAULT JUDGMENT

I. WHAT ARE DEFAULTS AND DEFAULT JUDGMENTS?

- § 13:1 Statutory bases

- § 13:2 The default concept
- § 13:3 Entry of default
- § 13:4 Obtaining a default judgment—By clerk or court
- § 13:5 —Judgment on the merits
- § 13:6 —Res judicata and collateral estoppel effects
- § 13:7 —Not true motions
- § 13:8 Why defaults occur
- § 13:9 Default as sanction

II. PROCESS OF ENTERING DEFAULT JUDGMENT

- § 13:10 Entry by clerk on register of actions
- § 13:11 Clerk’s power and functions
- § 13:12 Judgments—Clerk’s judgment in limited situations
- § 13:13 —Judgment by the court

III. WHEN IS DEFAULT JUDGMENT DESIRABLE?

- § 13:14 Sufficiency and collectability of judgment
- § 13:15 Obstacles to keeping judgment—Motion to set aside
- § 13:16 —Bankruptcy and the threat of bankruptcy
- § 13:17 Economic analysis—Evaluation of defendant’s position
- § 13:18 —Careful tactical balancing
- § 13:19 —“Wronged” and vindictive plaintiffs
- § 13:20 Acts as a security device—Default judgment
- § 13:21 —Entry of default
- § 13:22 Pitfalls—Overreaching
- § 13:23 —“Sneaky” notice
- § 13:24 —No warning of intent

IV. THE JUDGE’S PERSPECTIVE

- § 13:25 Odd variety of views—The cavalier school
- § 13:26 —The default druids
- § 13:27 —Notice issues
- § 13:28 Importance of defaults in limited civil cases

V. SEEKING THE DEFAULT AND DEFAULT JUDGMENT

- § 13:29 Timing—Expiration of time to respond
- § 13:30 —Regular cases
- § 13:31 —Unlawful detainers
- § 13:32 Papers—Opportunity to correct errors
- § 13:33 —Judicial council forms

TABLE OF CONTENTS

§ 13:34	—No memorandum of points and authorities
§ 13:35	—Request for entry of default
§ 13:36	—Statement of damages
§ 13:37	—Punitive damages in statement
§ 13:38	—Proof of service
§ 13:39	Clerk’s judgment—Contractual cases
§ 13:40	—Judicial council form
§ 13:41	—The instrument
§ 13:42	—Dismissal of other defendants
§ 13:43	—Judgment
§ 13:44	—Attorney fees
§ 13:45	Hearing and judgment by the court—In general
§ 13:46	—Judicial council form
§ 13:47	—Setting the hearing
§ 13:48	—Prove-up by declarations
§ 13:49	—Other documents
§ 13:50	—When service of summons by publication
§ 13:51	Opposition not allowed

VI. CHALLENGE CHECKLIST

§ 13:52	Trial court challenges—Party who sought a default
§ 13:53	—Party against whom default or default judgment has been entered
§ 13:54	Appellate challenges—Party who sought a default
§ 13:55	—Party against whom default or default judgment has been entered

PART III. MOTIONS TO DETERMINE SCOPE OF CASE

CHAPTER 14. MOTION TO STRIKE PLEADINGS

I. WHAT IS A MOTION TO STRIKE?

§ 14:1	General description
§ 14:2	Statutory authority

II. MOTION TO STRIKE COMPLAINT

§ 14:3	Similarity to demurrer
§ 14:4	Distinction from demurrer—Striking <i>part</i> of a pleading
§ 14:5	Use with demurrer

- § 14:6 Answer allowed after denial
- § 14:7 Dismissal if motion granted without leave to amend

III. MOTION TO STRIKE PLEADINGS OTHER THAN COMPLAINT

- § 14:8 All or part of any pleading
- § 14:9 Motion to strike defendant's demurrer

IV. OTHER STATUTORY MOTIONS TO STRIKE

- § 14:10 Evidence
- § 14:11 Sanction for violation of local rules
- § 14:12 Sanction for discovery abuses
- § 14:13 Anti-SLAPP lawsuits
- § 14:14 The "principal thrust" of a case
- § 14:15 Availability of anti-SLAPP motion in federal court
- § 14:16 Dramatic increase in complexity and the "SLAPPback" lawsuit
- § 14:17 Attempted legislative limitation

V. ON COURT'S OWN MOTION

- § 14:18 Court's power without party's motion
- § 14:19 No time limits

VI. LIMITATIONS IN PARTICULAR ACTIONS

- § 14:20 Limited civil cases

VII. SUBJECTS OF MOTIONS TO STRIKE

- § 14:21 Punitive damages
- § 14:22 —Unsupported prayers
- § 14:23 —Excising particular party
- § 14:24 —Amount impermissibly alleged
- § 14:25 —Awards against certain types of parties
- § 14:26 Attorney fees and interest
- § 14:27 Impermissible in propria persona representation
- § 14:28 Sham complaint
- § 14:29 Lack of verification

VIII. THE JUDGE'S PERSPECTIVE

- § 14:30 Unnecessary motions
- § 14:31 Damage scope and settlement
- § 14:32 Appellate scrutiny

TABLE OF CONTENTS

§ 14:33 Overall performance weighed

IX. MAKING THE MOTION

- § 14:34 Papers—Notice
- § 14:35 —Points and authorities
- § 14:36 —Judicial notice materials
- § 14:37 —Declarations
- § 14:38 —Proposed order
- § 14:39 Use with demurrer—Concurrent filing
- § 14:40 —Court ruling on demurrer or motion to strike
- § 14:41 Timing—Attacking complaints
- § 14:42 —Attacking answers and demurrers
- § 14:43 —Other situations with no time limits

X. OPPOSING THE MOTION

- § 14:44 Is opposition necessary?
- § 14:45 Defending punitive damages and attorney fees claims
- § 14:46 —Effect on settlement
- § 14:47 —Issues more subjective than in opposition to demurrer
- § 14:48 Pleadings to be construed liberally
- § 14:49 Affirmative request for relief
- § 14:50 Opposing anti-SLAPP motions

XI. AMENDMENT OF PLEADING IF MOTION GRANTED

- § 14:51 Formal amendment
- § 14:52 Minor amendments by interlineation

XII. CHALLENGE CHECKLIST

- § 14:53 Plaintiff's trial court challenges if motion granted
- § 14:54 Plaintiff's appellate challenges if motion granted
- § 14:55 Defendant's challenges if motion denied
- § 14:56 Defendant's challenges if motion to strike answer granted

CHAPTER 15. MOTION TO AMEND OR SUPPLEMENT PLEADINGS

I. WHAT IS A MOTION TO AMEND?

- § 15:1 Statutory basis

- § 15:2 Practice—Liberal amendment policies
- § 15:3 —Lack of prejudice
- § 15:4 —Promptness important
- § 15:5 —Legal validity
- § 15:6 Amendment to complaint distinguished—Allowing a saving amendment
- § 15:7 —Not a new pleading
- § 15:8 —Inked change or separate document
- § 15:9 —For very minor matters

II. WHAT IS A MOTION TO SUPPLEMENT?

- § 15:10 Statutory basis
- § 15:11 Supplementing versus amending—Pretrial settlement
- § 15:12 —Events during suit
- § 15:13 —Confusion of terms
- § 15:14 —Liberal supplementation policies

III. RELATED PROCEDURES

- § 15:15 Other forms of amendment
- § 15:16 Amendment “of course”
- § 15:17 —Types of amendment
- § 15:18 —Procedure if demurrer filed
- § 15:19 —Filing, service, and opposition
- § 15:20 —Amending an answer
- § 15:21 Amendment to substitute true name of “Doe” defendant
- § 15:22 Amendment to correct, add, or delete party
- § 15:23 Amendment to meet sustained demurrer
- § 15:24 Amendment to “conform pleading to proof”
- § 15:25 Limitations on amendments—Substantive changes
- § 15:26 —Relation back

IV. IS THE MOTION NECESSARY?

- § 15:27 Effect of timing
- § 15:28 Call opposing counsel
- § 15:29 Potential for demurrer
- § 15:30 Amendment after defendant defaults

V. THE JUDGE’S PERSPECTIVE

- § 15:31 Motions not legally difficult
- § 15:32 Delay reduction problems
- § 15:33 The “consolidation gotcha”

TABLE OF CONTENTS

VI. MAKING OR OPPOSING THE MOTION

- § 15:34 Timing
- § 15:35 Moving papers—Notice of motion
- § 15:36 —Copy of proposed pleading
- § 15:37 —Memorandum of points and authorities
- § 15:38 —Declaration
- § 15:39 —Service of amendment
- § 15:40 Stipulating to amendment
- § 15:41 Conditional opposition
- § 15:42 Answer to amended complaint
- § 15:43 Opposition to motion
- § 15:44 Caution regarding sanctions

VII. CHALLENGE CHECKLIST

- § 15:45 Trial court challenges
- § 15:46 Appellate challenges—Appeal
- § 15:47 —Writ

CHAPTER 16. MOTION FOR SUMMARY ADJUDICATION OF ISSUES

I. WHAT IS A MOTION FOR SUMMARY ADJUDICATION?

- § 16:1 Statutory basis
- § 16:2 Nature of motion—Summary judgment contrasted
- § 16:3 —“Partial summary judgment”
- § 16:4 —Alternative motions
- § 16:5 —Issues common to summary judgment motion
- § 16:6 Meaning of statutory terms—“No merit”
- § 16:7 —“Cause of action”
- § 16:8 —“Affirmative defense”
- § 16:9 —Claim for punitive damages
- § 16:10 —Defendant’s duty
- § 16:11 Varieties of summary adjudication motions—Paring down the case
- § 16:12 —The shield
- § 16:13 —The sword
- § 16:14 —The fallback

II. IS SUMMARY ADJUDICATION NECESSARY?

- § 16:15 Stipulated Adjudication of Less than Entire Cause of Action

- § 16:16 Presence of weak issues
- § 16:17 Advantages of avoiding motion
- § 16:18 Alternative to eliminate weak issues—Motion in limine
- § 16:19 —Informal request
- § 16:20 —Discovery
- § 16:21 When to avoid motion—No collateral benefit
- § 16:22 —Risk of negative impression
- § 16:23 —Loss of trial fodder

III. THE JUDGE’S PERSPECTIVE

- § 16:24 Not popular motions
- § 16:25 Work-benefit ratio
- § 16:26 Trial made more difficult
- § 16:27 Appellate risks
- § 16:28 Dealing with negative judicial attitude

IV. MAKING THE MOTION

- § 16:29 Special notice requirements
- § 16:30 Documentation requirements
- § 16:31 —Separate statement of undisputed material facts
- § 16:32 —Memorandum of points and authorities
- § 16:33 —Preparation of order
- § 16:34 Timing

V. OPPOSING THE MOTION

- § 16:35 Importance of cause of action
- § 16:36 Removal of weak causes of action
- § 16:37 Advise court of nonopposition
- § 16:38 Opposing portions of motion
- § 16:39 Opposition technique
- § 16:40 Opposition documents
- § 16:41 Continuance request

VI. CHALLENGE CHECKLIST

- § 16:42 Trial court challenges—Party who made unsuccessful motion
- § 16:43 —Party who opposed successful motion
- § 16:44 Appellate challenges—Party who made unsuccessful motion
- § 16:45 —Party who opposed successful motion
- § 16:46 No need to seek writ
- § 16:47 Appellate challenges—Cross motions

TABLE OF CONTENTS

**PART IV. MOTIONS RELATING TO
PARTIES AND COUNSEL**

**CHAPTER 17. MOTION TO WITHDRAW OR
BE RELIEVED AS COUNSEL**

I. NATURE OF MOTION TO WITHDRAW

- § 17:1 Motion brought against own client
- § 17:2 Statutory authority

II. GROUNDS FOR MOTION

- § 17:3 Mandatory withdrawal—“Malicious, illegal or
meritless” case
- § 17:4 —Inability to proceed
- § 17:5 —The missing client
- § 17:6 Permissive withdrawal—Meritless claim
- § 17:7 —Nonpayment of fees or expenses
- § 17:8 —Breakdown in relationship

III. IS MOTION AVAILABLE OR NECESSARY?

- § 17:9 Consensual substitution of counsel
- § 17:10 —Absolute right?
- § 17:11 —Limitation for guardians ad litem
- § 17:12 —Abandonment
- § 17:13 Removal of attorney on client’s motion
- § 17:14 Motion as last resort

IV. THE JUDGE’S PERSPECTIVE

- § 17:15 Motion contested by client
- § 17:16 Judicial considerations

V. MAKING THE MOTION

- § 17:17 Required papers
- § 17:18 —Notice
- § 17:19 —Declaration
- § 17:20 —Exhibits
- § 17:21 Service
- § 17:22 —Service by mail
- § 17:23 —Address confirmation
- § 17:24 —Explanation of efforts to notify client of motion
- § 17:25 Order relieving counsel

- § 17:26 —Corporate clients and others
- § 17:27 —Effectiveness
- § 17:28 Timing—Early motion
- § 17:29 —Proceeding ex parte?
- § 17:30 —Late motions
- § 17:31 —Service

VI. OPPOSING THE MOTION

- § 17:32 Client opposition
- § 17:33 Other party opposition

VII. CHALLENGE CHECKLIST

- § 17:34 Trial court challenges
- § 17:35 Appellate challenges

CHAPTER 18. MOTION TO DISQUALIFY OR RECUSE OPPOSING COUNSEL

I. WHAT IS A MOTION TO DISQUALIFY?

- § 18:1 Nature of motion
- § 18:2 Statutory basis
- § 18:3 Case law
- § 18:4 Rules of professional conduct

II. BASES FOR MOTION

- § 18:5 Attorney conflict of interest—Confidential information
- § 18:6 —“Substantial relationship”
- § 18:7 —Information without relationship
- § 18:8 —Purely personal relationships
- § 18:9 —Information obtained through mediation
- § 18:10 —Other clients and potential clients
- § 18:11 —Information obtained through inadvertent discovery
- § 18:12 —Vicarious disqualification
- § 18:13 —Consent
- § 18:14 Contact with represented party—Transmittal of
information required
- § 18:15 —Current employees
- § 18:16 —Any employee?
- § 18:17 —Contact with experts
- § 18:18 —Social and political communications
- § 18:19 Attorney as witness—Traditional prohibition
- § 18:20 —Change in rules

TABLE OF CONTENTS

III. CASE LAW ON DISQUALIFICATION OF OPPOSING COUNSEL

- § 18:21 Inconsistencies
- § 18:22 Key cases

IV. ADVISABILITY OF MAKING MOTION

- § 18:23 Actual confidential information
- § 18:24 Substantial relationship
- § 18:25 Trial tactic

V. THE JUDGE'S PERSPECTIVE

- § 18:26 Motion viewed unfavorably
- § 18:27 Right to counsel
- § 18:28 Economics
- § 18:29 Change in direction

VI. MAKING THE MOTION

- § 18:30 Papers—Notice of motion
- § 18:31 —Declaration of client
- § 18:32 —Declaration of counsel
- § 18:33 —Memorandum of points and authorities
- § 18:34 Timing—Normal notice period
- § 18:35 —Late motion risks

VII. OPPOSING THE MOTION

- § 18:36 Should you oppose?
- § 18:37 Potential opposition arguments—Character of the information
 - § 18:38 —Nature of relationships
 - § 18:39 —Passage of time
 - § 18:40 —Bad faith of moving party
 - § 18:41 —Expense

VIII. CHALLENGE CHECKLIST

- § 18:42 Trial court challenges
- § 18:43 Appellate challenges—Appeal
- § 18:44 —Writ

CHAPTER 19. APPLICATION FOR PERMISSION TO APPEAR PRO HAC VICE

I. WHAT IS A PRO HAC VICE APPLICATION?

- § 19:1 Permission to appear

- § 19:2 Interjurisdictional practice
- § 19:3 Out-of-state lawyers—Legitimate “visitors”
- § 19:4 —Business activities
- § 19:5 —Appellate matters
- § 19:6 —Extent of foreign attorney’s involvement in case
- § 19:7 Registered foreign legal consultant

II. IS AN APPLICATION NECESSARY?

- § 19:8 Advantages
- § 19:9 Conferences
- § 19:10 Responsibility
- § 19:11 Getting Paid

III. THE JUDGE’S PERSPECTIVE

- § 19:12 Favorable view

IV. MAKING AND OPPOSING THE APPLICATION

- § 19:13 Papers—Notice of hearing
- § 19:14 —Application
- § 19:15 —Proof of service
- § 19:16 Whom to serve
- § 19:17 Timing
- § 19:18 Opposition rare

V. CHALLENGE CHECKLIST

- § 19:19 Trial court challenges
- § 19:20 Appellate challenges

PART V. MOTIONS RELATING TO CASE MANAGEMENT

CHAPTER 20. MOTION FOR CHANGE OF VENUE

I. WHAT IS A MOTION FOR CHANGE OF VENUE?

- § 20:1 Statutory basis
- § 20:2 Rarity
- § 20:3 Importance
- § 20:4 Issues often confused with venue—Jurisdiction
- § 20:5 —Forum non conveniens

TABLE OF CONTENTS

§ 20:6 —Branch courts

II. DETERMINING PROPER COUNTY

- § 20:7 In general
- § 20:8 Local actions
- § 20:9 —Other specific actions or proceedings
- § 20:10 Transitory actions
- § 20:11 —Multiple defendants
- § 20:12 —Contract actions or consumer obligations
- § 20:13 —Tort actions
- § 20:14 Specialized venue provisions—Governmental entity defendants
- § 20:15 —Corporations or partnership defendants
- § 20:16 —Employment discrimination actions
- § 20:17 —Foreign corporation defendants
- § 20:18 —Sham defendants disregarded
- § 20:19 —Miscellaneous venue statutes
- § 20:20 Exceptions
- § 20:21 —“Mixed action” rule
- § 20:22 —“Main relief” rule
- § 20:23 Rule against contractual venue selection clauses now in question

III. PROCEDURE TO TRANSFER CASE

- § 20:24 “Proper court” not always proper
- § 20:25 Grounds for transfer
- § 20:26 Discretionary transfer for witness convenience and interests of justice
- § 20:27 Mandatory or discretionary
- § 20:28 Timing of venue challenge
- § 20:29 Burden of proof

IV. IS MOTION NECESSARY?

- § 20:30 Economics
- § 20:31 Tactical advantage
- § 20:32 Delay

V. THE JUDGE’S PERSPECTIVE

- § 20:33 In general
- § 20:34 Witness convenience motions
- § 20:35 Knowing the judge
- § 20:36 Caseload issues

VI. MAKING OR OPPOSING THE MOTION

- § 20:37 Timing—"Proper court" motion
- § 20:38 —"Convenience of witnesses" motion
- § 20:39 —Standard notice
- § 20:40 Moving papers—Notice of motion
- § 20:41 —Posting transfer fees
- § 20:42 —Points and authorities and declarations
- § 20:43 —Use of pleadings
- § 20:44 Opposition—In general
- § 20:45 —Party versus nonparty witnesses

VII. CHALLENGE CHECKLIST

- § 20:46 Trial court challenges—Reconsideration
- § 20:47 —Section 473 relief
- § 20:48 Appellate challenges

CHAPTER 21. MOTIONS TO RECLASSIFY CASES

I. WHAT ARE MOTIONS TO RECLASSIFY?

- § 21:1 Unification of trial courts
- § 21:2 Old transfer motion and new reclassification motion—
How is reclassification different?
- § 21:3 —New and sometimes confusing language

II. RECLASSIFICATION MOTION IN UNIFIED COUNTIES

- § 21:4 Changing the "classification"—In general
- § 21:5 Changing the "jurisdictional classification"—Judicial
assignment issues
- § 21:6 —Differing civil procedure
- § 21:7 Where will motions arise?
- § 21:8 Limited jurisdiction—The \$25,000 ceiling
- § 21:9 —Sham injunction?
- § 21:10 Calculating the \$25,000—Prayer traditionally
determinative
- § 21:11 —Multiple parties
- § 21:12 —Interest, attorney fees, and costs
- § 21:13 —Punitive damages
- § 21:14 Indicia of "value" outside of pleadings—Settlement
discussions
- § 21:15 —Judicial arbitration results

TABLE OF CONTENTS

- § 21:16 Close calls
- § 21:17 Events likely to necessitate reclassification—Damages increase during case
- § 21:18 —Cross-complaint
- § 21:19 —Reality sets in

III. IS THE MOTION NECESSARY?

- § 21:20 Invasion of the court's province
- § 21:21 The conference alternative
- § 21:22 Remitting claimed damages

IV. THE JUDGE'S PERSPECTIVE

- § 21:23 Clearing the calendar
- § 21:24 Punishing overfiling

V. MAKING THE MOTION

- § 21:25 Standard documentation
- § 21:26 Reclassification and transfer statutes almost identical
- § 21:27 Reclassification motions—Differences not what they used to be
- § 21:28 —Points and authorities and evidence
- § 21:29 Timing
- § 21:30 —Required notice

VI. OPPOSING MOTIONS

- § 21:31 Motion to reclassify downward—Is opposition wise?
- § 21:32 —Comparison to other cases
- § 21:33 Reclassify upward

VII. CHALLENGE CHECKLIST

- § 21:34 Trial court challenges
- § 21:35 Appellate challenges

CHAPTER 22. MOTIONS TO CONSOLIDATE AND SEVER

I. WHAT IS A MOTION TO CONSOLIDATE?

- § 22:1 Statutory authority—State statute
- § 22:2 —Identical federal rule
- § 22:3 —Other consolidation statutes
- § 22:4 Different degrees of consolidation

- § 22:5 Stipulations
- § 22:6 Consolidation when cases not equally mature
- § 22:7 Challenge to assigned judge
- § 22:8 Challenge to opposing counsel

II. WHAT IS A MOTION TO SEVER?

- § 22:9 Statutory authority—State statute
- § 22:10 —Identical federal rule
- § 22:11 Unusual severance situations—Mandatory severance
- § 22:12 —Special defenses under § 597
- § 22:13 —Severance for appeal of underlying cases

III. RELATED PROCEDURES

- § 22:14 Coordination
- § 22:15 Bifurcation
- § 22:16 Consolidation and severance of arbitrations—In general
- § 22:17 —Uninsured motorists
- § 22:18 Joinder
- § 22:19 “Related” cases
- § 22:20 Conference alternatives—Informal motion
- § 22:21 —Notification
- § 22:22 Global settlement

IV. THE JUDGE’S PERSPECTIVE

- § 22:23 Judge’s management style
- § 22:24 Calendaring
- § 22:25 Global settlement
- § 22:26 Consolidation favored

V. MAKING THE MOTION TO CONSOLIDATE OR SEVER

- § 22:27 Points common to both motions—Timing
- § 22:28 —Discretionary motions
- § 22:29 —Ex parte applications
- § 22:30 Making consolidation motion—Notice
- § 22:31 —Points and authorities
- § 22:32 —Evidentiary declarations
- § 22:33 Making severance motion—Notice
- § 22:34 —Points and authorities
- § 22:35 —Evidentiary declarations

TABLE OF CONTENTS

VI. OPPOSING THE MOTION TO CONSOLIDATE OR SEVER

- § 22:36 Reciprocal character of consolidation and severance
- § 22:37 Oppose consolidation with severance arguments
- § 22:38 Oppose severance with consolidation arguments

VII. CHALLENGE CHECKLIST

- § 22:39 Trial court challenges—“Renewed” motion
- § 22:40 —Reconsideration
- § 22:41 —Section 473 relief
- § 22:42 —Limited availability
- § 22:43 Appellate challenges—Appeal
- § 22:44 —Writ

CHAPTER 23. MOTION TO BIFURCATE

I. WHAT IS A MOTION TO BIFURCATE?

- § 23:1 Statutory basis
- § 23:2 Bifurcation and severance distinguished

II. WHEN IS MOTION USED?

- § 23:3 Classic example of bifurcation
- § 23:4 Other examples of bifurcation
- § 23:5 Affirmative defenses
- § 23:6 Use of different jury
- § 23:7 Bifurcation within issues or causes of action
- § 23:8 Mandatory bifurcation—Medical malpractice cases
- § 23:9 —Punitive damages
- § 23:10 — —Use of same jury
- § 23:11 — —Use of alternate juror
- § 23:12 Trifurcation?

III. THE JUDGE’S PERSPECTIVE

- § 23:13 The bifurcation gamble—Longer trial for bifurcated case
- § 23:14 —Possibility of defense verdict
- § 23:15 —Possibility of settlement
- § 23:16 Plaintiffs’ views
- § 23:17 Defense views
- § 23:18 “Bifurcation for verdict”

IV. MAKING THE MOTION

- § 23:19 Timing—Motion by party

- § 23:20 —Motion by judge
- § 23:21 —Advantage of early motions when possible
- § 23:22 Moving papers—Notice of motion
- § 23:23 —Points and authorities
- § 23:24 —Evidentiary declarations
- § 23:25 —Potential for confusion
- § 23:26 Conference alternatives—In general
- § 23:27 —Economics
- § 23:28 —Notification
- § 23:29 —Ex parte variation

V. OPPOSING THE MOTION

- § 23:30 Convenience and economy arguments
- § 23:31 Length-of-trial arguments
- § 23:32 Justice arguments

VI. CHALLENGE CHECKLIST

- § 23:33 Trial court challenges—Informal challenge of order
- § 23:34 —Reconsideration
- § 23:35 —Section 473 relief
- § 23:36 Appellate challenges—Appeal
- § 23:37 —Writs

CHAPTER 24. MOTIONS FOR TRIAL PREFERENCE

I. WHAT ARE MOTIONS FOR PREFERENCES OR TO SPECIALLY SET?

- § 24:1 Statutory bases
- § 24:2 Preference for elderly and ill persons—No longer mandatory
- § 24:3 —Triggering age
- § 24:4 —Most common preference motion
- § 24:5 —Nature of health problems
- § 24:6 —Potentially terminal illness
- § 24:7 —“Substantial interest in action” test
- § 24:8 —Right to compel arbitration not trumped
- § 24:9 Preference for children under age 14—Mandatory priority
- § 24:10 —Statutes seemingly inconsistent
- § 24:11 —Lesser priority for malpractice
- § 24:12 —Relationship to dismissal statutes

TABLE OF CONTENTS

- § 24:13 Preferences in the “interests of justice”—
Discretionary
- § 24:14 —Avoiding five-year dismissal
- § 24:15 Preferences in specific actions—Injunctions in family
law cases
- § 24:16 —Declaratory relief
- § 24:17 —Unlawful detainer cases
- § 24:18 —Eminent domain
- § 24:19 —Judicial arbitration
- § 24:20 —Contractual arbitration
- § 24:21 —Felony victims
- § 24:22 —Homeowners’ associations
- § 24:23 —Obscure priorities

II. IS MOTION NECESSARY?

- § 24:24 Conference alternative
- § 24:25 When judicial arbitration appropriate
- § 24:26 Filing of formal motion

III. THE JUDGE’S PERSPECTIVE

- § 24:27 Preferences in the fast-track environment
- § 24:28 Judicial ambivalence
- § 24:29 Equal protection and due process
- § 24:30 Preferences in the “interests of justice”

IV. MAKING THE MOTION

- § 24:31 Timing
- § 24:32 Moving papers—Notice of motion
- § 24:33 —Points and authorities
- § 24:34 —Evidentiary declarations
- § 24:35 —Judicial notice materials

V. OPPOSING THE MOTION

- § 24:36 Should you oppose?
- § 24:37 Children’s cases
- § 24:38 Old-age cases
- § 24:39 Additional considerations
- § 24:40 Five-year dismissal avoidance

VI. CHALLENGE CHECKLIST

- § 24:41 Trial court challenges—Reconsideration
- § 24:42 —Section 473 relief

- § 24:43 Appellate challenges—Appeal
- § 24:44 —Writs

CHAPTER 25. MOTION TO CONTINUE TRIAL

I. WHAT IS A MOTION TO CONTINUE?

- § 25:1 Legal bases—Statutes
- § 25:2 —Court rules
- § 25:3 Special calendaring for personal injury cases in Los Angeles
- § 25:4 Motion practice *other than motions to continue* in Los Angeles
- § 25:5 Liberal treatment of motions to continue in Los Angeles personal injury cases
- § 25:6 The final status conference in Los Angeles personal injury cases
- § 25:7 Difficulties in sharing a “joint” in Los Angeles personal injury cases
- § 25:8 Other types of cases in Los Angeles Superior Court
- § 25:9 “Trailing” distinguished

II. MAXIMUM JUDICIAL DISCRETION

- § 25:10 Law does not limit judges’ discretion
- § 25:11 System attitude
- § 25:12 Impact of the fast-track revolution
- § 25:13 Variation in practices

III. USES OF MOTIONS TO CONTINUE

- § 25:14 “Circumstances beyond our control”
- § 25:15 An aid to settlement?
- § 25:16 An alternative to moving to continue

IV. WHEN TO AVOID THE MOTION

- § 25:17 Multiple continuances
- § 25:18 Last-minute continuances
- § 25:19 Discovery not extended

V. THE JUDGE’S PERSPECTIVE

- § 25:20 Respect the anti-continuance attitude
- § 25:21 Judicial trial-setting strategies
- § 25:22 —Trial date “mass”

TABLE OF CONTENTS

- § 25:23 —Trial date list
- § 25:24 —Trial-setting styles
- § 25:25 Issues in continuing trial dates—“Short continuance”
myth
- § 25:26 —Avoid creating gaps
- § 25:27 —Exploit timing anomalies
- § 25:28 —Differing responses of judges

VI. MAKING THE MOTION

- § 25:29 Formal notice rare
- § 25:30 Ex parte motion often the reality
- § 25:31 Motion at time of trial
- § 25:32 Moving papers—Points and authorities
- § 25:33 —Declaration
- § 25:34 —Offer to pay costs

VII. OPPOSING THE MOTION

- § 25:35 Balancing the “equities”
- § 25:36 Agreement or nonopposition

PART VI. CORRECTIVE MOTIONS

CHAPTER 26. MOTIONS TO SET ASIDE DEFAULT OR DISMISSAL

I. WHAT IS A MOTION TO SET ASIDE?

- § 26:1 Statutory basis
- § 26:2 “Default” means Default
- § 26:3 Variety of motions

II. WHAT IS A DISCRETIONARY § 473 MOTION?

- § 26:4 Excusable neglect or inadvertence
- § 26:5 Orders or other proceedings in addition to defaults
and dismissals
- § 26:6 Mistake
- § 26:7 Surprise
- § 26:8 Additional implied grounds—Fraud
- § 26:9 —Personal emergencies
- § 26:10 —Attorney errors in discretionary motions
- § 26:11 —Client errors
- § 26:12 —Legal representatives, assignees

- § 26:13 Relationship to fast track
- § 26:14 “Terms as may be just”

III. WHAT IS A MANDATORY § 473 MOTION?

- § 26:15 Attorney fault—Concept still developing
- § 26:16 —Out-of-state counsel’s mistakes included
- § 26:17 —House counsel
- § 26:18 —Causal relationship vital to demonstrate
- § 26:19 —Credibility still counts
- § 26:20 Attorney Fault—Not just clerk-entered defaults
- § 26:21 Attorney fault—Applies to dismissals entered as discovery sanction
- § 26:22 —Mistake need not be “excusable”
- § 26:23 —Mistake of law
- § 26:24 —Judgment after judicial arbitration
- § 26:25 Mandatory imposition of fees and costs
- § 26:26 Sanctions
- § 26:27 Procedural issues—Discovery on attorney fault issue
- § 26:28 Procedural issues—Sequential motions?
- § 26:29 Procedural issues—Mandatory finding on denial of motion
- § 26:30 Dismissals to which mandatory motion does not apply—Five-year mandatory dismissal
- § 26:31 Dismissals to which mandatory motion does not apply—Statutes of limitations and other “jurisdictional errors”
- § 26:32 —Discretionary dismissal for delay
- § 26:33 —Voluntary dismissal
- § 26:34 —Failure to tax costs
- § 26:35 —Summary judgment
- § 26:36 —Perhaps more to come?

IV. WHAT IS MOTION BASED ON LACK OF ACTUAL NOTICE OF ACTION?

- § 26:37 Section 473.5—In general
- § 26:38 —Notice must be “actual”
- § 26:39 —Avoidance of service
- § 26:40 —Freedom from inexcusable neglect
- § 26:41 Conditions

V. WHAT ARE OTHER BASES FOR MOTION?

- § 26:42 Motion based on court’s inherent equity power—
Extrinsic fraud or mistake

TABLE OF CONTENTS

- § 26:43 —Burden of proof
- § 26:44 —Three-prong test
- § 26:45 —Mega-mistakes
- § 26:46 Motion based on court’s inherent power to correct its own mistakes
- § 26:47 Independent action based on court’s inherent equity power
- § 26:48 Motion on void judgment—Stepchild of § 473
- § 26:49 —Constitutional rule
- § 26:50 Motions setting aside consumer defaults for improper venue

VI. IS THE MOTION TO SET ASIDE NECESSARY?

- § 26:51 Virtually required
- § 26:52 Economics are key
- § 26:53 Resolution without motion
- § 26:54 Settlement of case

VII. THE JUDGE’S PERSPECTIVE

- § 26:55 Mandatory motions a “hard sell”
- § 26:56 Forgiving psychology

VIII. MAKING THE MOTION

- § 26:57 Notice of motion
- § 26:58 Memorandum of points and authorities
- § 26:59 Attorney affidavit of fault
- § 26:60 Other evidentiary declarations
- § 26:61 Proposed responsive pleading
- § 26:62 Timing of discretionary motion of six months from dismissal or default
- § 26:63 Timing of mandatory attorney fault motion
- § 26:64 Lack of notice motion
- § 26:65 Equitable motion based on extrinsic fraud or mistake
- § 26:66 Void judgment
- § 26:67 Consumer default motions

IX. OPPOSING THE MOTION

- § 26:68 Is opposition wise?
- § 26:69 Opposing mandatory attorney fault motion
- § 26:70 Opposing discretionary motions
- § 26:71 Opposing other motions

X. CHALLENGE CHECKLIST

- § 26:72 Trial court challenges

§ 26:73 Appellate challenges

CHAPTER 27. MOTIONS FOR RECONSIDERATION

I. WHAT IS A MOTION FOR RECONSIDERATION?

- § 27:1 Statutory basis
- § 27:2 The big debate
- § 27:3 Sua sponte reconsideration
- § 27:4 Renewal motions—For moving party only
- § 27:5 —Denials of underlying motions “without prejudice”

II. IS STATUTE APPLICABLE?

- § 27:6 New law
- § 27:7 New facts
- § 27:8 New circumstances
- § 27:9 Duty to defend cases
- § 27:10 Other procedural requirements—10-day limit
- § 27:11 —Before entry of judgment
- § 27:12 —Same judge or court
- § 27:13 Rulings subject to motion
- § 27:14 Statutory deterrents—Contempt
- § 27:15 —Sanctions
- § 27:16 —Revocation of prior favorable ruling
- § 27:17 —No impact on earlier ruling
- § 27:18 Limited options to reconsideration—Motion under § 473
- § 27:19 —Motion for new trial
- § 27:20 —Appeal

III. THE JUDGE’S PERSPECTIVE

- § 27:21 Inappropriate use of motion

IV. MAKING THE MOTION

- § 27:22 Timing—Normal notice period
- § 27:23 —Within 10 days
- § 27:24 —Waiver of notice
- § 27:25 Moving papers—Notice of motion
- § 27:26 —Points and authorities
- § 27:27 —Declarations
- § 27:28 Urging court to proceed sua sponte

V. OPPOSING THE MOTION

- § 27:29 Should you oppose?

TABLE OF CONTENTS

- § 27:30 Are new facts real?
- § 27:31 Are new facts significant?

VI. CHALLENGE CHECKLIST

- § 27:32 Trial court challenges
- § 27:33 Appellate challenges—When motion granted
- § 27:34 —When motion denied
- § 27:35 —Time to appeal extended?
- § 27:36 —Writ

CHAPTER 28. MOTIONS TO CORRECT MISTAKES

I. WHAT ARE MOTIONS TO CORRECT MISTAKES?

- § 28:1 Statutory basis
- § 28:2 Discretionary relief
- § 28:3 Critical elements
- § 28:4 Burden of proof

II. IS MOTION NECESSARY?

- § 28:5 Unavailability of alternatives
- § 28:6 Varied applications
- § 28:7 Limitations on applicability—Statute of limitations
- § 28:8 —Discovery
- § 28:9 —Reargument of prior proceedings
- § 28:10 —Cannot extend critical or jurisdictional deadlines

III. THE JUDGE'S PERSPECTIVE

- § 28:11 Discretionary nature of motion
- § 28:12 Judicial style
- § 28:13 “Excusable neglect” dilemma
- § 28:14 Section 473 process and relief

IV. MAKING THE MOTION

- § 28:15 Timing—Normal notice period
- § 28:16 —Time of the essence
- § 28:17 —Move ex parte?
- § 28:18 Notice of motion
- § 28:19 Points and authorities—Focus on facts
- § 28:20 —Analogize to mandatory § 473 provisions
- § 28:21 —Lack of prejudice

- § 28:22 —Advocacy pointers
- § 28:23 Supporting declaration
- § 28:24 Proposed document

V. OPPOSING THE MOTION

- § 28:25 Show specific prejudice
- § 28:26 Economics
- § 28:27 Counterproposals

VI. CHALLENGE CHECKLIST

- § 28:28 Trial court challenges
- § 28:29 Appellate challenges—Appeal
- § 28:30 —Writs

PART VII. DISCOVERY MOTIONS

CHAPTER 29. DISCOVERY MOTIONS

I. WHAT DISCOVERY IS AVAILABLE IN CALIFORNIA?

- § 29:1 Broad scope of devices
- § 29:2 Trial “relevance” not the key
- § 29:3 Statutory authority
- § 29:4 Particular discovery devices—In general
- § 29:5 —Depositions
- § 29:6 —Interrogatories
- § 29:7 —Inspection demands
- § 29:8 —Requests for admissions
- § 29:9 —Physical and mental examinations
- § 29:10 —Exchange of expert witness information

II. WHAT ARE DISCOVERY MOTIONS?

- § 29:11 Judicial role—Discovery generally self-governing
- § 29:12 —Minor judicial involvement
- § 29:13 —Major judicial involvement
- § 29:14 When self-governance has not worked

III. EFFORTS AT INFORMAL RESOLUTION

- § 29:15 Requirements for all discovery motions—In general
- § 29:16 —Sanctions for omitting step
- § 29:17 —“Meet and confer”

TABLE OF CONTENTS

- § 29:18 —Disputes over meet-and-confer common
- § 29:19 —Not required if no effort at compliance
- § 29:20 Requirements for motions re depositions
- § 29:21 “Good faith attempt” in various discovery devices—
Interrogatories
- § 29:22 —Inspection demands
- § 29:23 —Requests for admissions
- § 29:24 —Physical and mental examinations
- § 29:25 —Expert witness information
- § 29:26 —Motions for protective order

IV. THE JUDGE’S PERSPECTIVE

- § 29:27 Most unpopular motions
- § 29:28 Discovery references
- § 29:29 Attitudes on sanctions
- § 29:30 The “attitude test”
- § 29:31 Your judge or your mother?

V. MAKING DISCOVERY MOTIONS

- § 29:32 Issues common to all discovery motions
- § 29:33 Referees
- § 29:34 Timing variances
- § 29:35 Motion cut-off date and reopening discovery
- § 29:36 Separate motions for separate devices
- § 29:37 Moving papers

VI. MOTIONS TO COMPEL COMPLIANCE WITH DEPOSITIONS

- § 29:38 Varied situations
- § 29:39 Sanctions in deposition motions
- § 29:40 Getting nonparty witnesses to cooperate
- § 29:41 Notice issues—Personal service for nonparties
- § 29:42 —Types of notice in general
- § 29:43 —Noticed motion
- § 29:44 —Citing to appear
- § 29:45 —The order to show cause
- § 29:46 Timing of motions on depositions
- § 29:47 Extra documentary requirements

VII. MOTIONS TO COMPEL COMPLIANCE WITH INTERROGATORIES

- § 29:48 Motions to compel compliance in general

- § 29:49 Motion to compel answers—When available
- § 29:50 —No “meet and confer” requirement
- § 29:51 —No time limit except motion cutoff
- § 29:52 Motion to compel further answers—When available
- § 29:53 —45-day time limit
- § 29:54 —“Meet and confer” requirement
- § 29:55 Order compelling response or further response
- § 29:56 Late, poor compliance and/or bad faith objections
- § 29:57 Presumptive monetary sanctions
- § 29:58 “Heavier” sanctions

VIII. MOTIONS TO COMPEL COMPLIANCE WITH PRODUCTION AND INSPECTION DEMANDS

- § 29:59 Nearly identical to interrogatory motions
- § 29:60 Agreement to comply
- § 29:61 Good cause for production
- § 29:62 Disorganized production

IX. MOTIONS TO COMPEL COMPLIANCE WITH REQUESTS FOR ADMISSIONS

- § 29:63 Timing and documents identical to interrogatory motions
- § 29:64 Motion that requested matters be deemed admitted
- § 29:65 Motion to compel further responses

X. MOTIONS TO COMPEL COMPLIANCE WITH PHYSICAL AND MENTAL EXAMINATIONS

- § 29:66 Various motions
- § 29:67 Demand procedure
- § 29:68 Motions similar to other discovery motions
- § 29:69 Mental and “other” physical examinations
- § 29:70 Good cause
- § 29:71 Notice of nature of examination
- § 29:72 Good faith attempt

XI. MOTIONS TO COMPEL COMPLIANCE WITH EXPERT WITNESS EXCHANGES

- § 29:73 Various motions
- § 29:74 Fee setting
- § 29:75 Informal resolution efforts
- § 29:76 Relief from failure to exchange
- § 29:77 Motions regarding change in scope of experts

TABLE OF CONTENTS

XII. MOTIONS FOR PROTECTIVE ORDERS

- § 29:78 Common elements of motions—Nature of protective orders
- § 29:79 —Grounds
- § 29:80 —Wide variety of relief
- § 29:81 —Motion requirements
- § 29:82 —Presumptive sanctions
- § 29:83 —Ordering discovery that was subject of motion
- § 29:84 Particular situations—Trade secrets protective orders
- § 29:85 —Deposition protective orders
- § 29:86 —Motion to quash deposition subpoena similar
- § 29:87 —No provision in physical exam statute
- § 29:88 —Criminal cases and other types of investigations may overlap

XIII. OPPOSING DISCOVERY MOTIONS

- § 29:89 Should you oppose?
- § 29:90 Requesting a reference
- § 29:91 Expense and equity
- § 29:92 Good cause issues
- § 29:93 Motions concerning expert exchanges

XIV. CHALLENGE CHECKLIST

- § 29:94 Trial court challenges—Reconsideration
- § 29:95 —Section 473 relief
- § 29:96 Appellate challenges—Appeal
- § 29:97 —Routine sanction orders not appealable
- § 29:98 —Writ

CHAPTER 30. DISCOVERY REFERENCES

I. WHAT ARE REFERENCES?

- § 30:1 General principles
- § 30:2 Political history
- § 30:3 “General” versus “special”
- § 30:4 Reporting to the court

II. TYPES OF REFERENCES

- § 30:5 Non-discovery references—Trial by reference or private judge
- § 30:6 —Accounting references
- § 30:7 —“Special proceedings”

- § 30:8 Discovery references—In general
- § 30:9 —Motion by court or party
- § 30:10 —Stipulation to reference or given referee
- § 30:11 —Selecting the referee
- § 30:12 Participating in selection while objecting to reference
- § 30:13 Discovery references—Use of court facilities
- § 30:14 —Public proceedings
- § 30:15 —Number of hours

III. APPROPRIATENESS OF REFERENCES

- § 30:16 Appropriate reference situations—Complex and repeat issues
- § 30:17 —Attorney misbehavior
- § 30:18 —Party’s inability to pay referee fees
- § 30:19 Advantages of references—Settlement
- § 30:20 —Certainty and time
- § 30:21 —Flexibility in motion practices
- § 30:22 —Really being heard
- § 30:23 —Referee’s “investment” in solving problem
- § 30:24 —Ambiance
- § 30:25 —Choice of judge
- § 30:26 Reference fees—Allocated in court’s order
- § 30:27 —Ability to pay
- § 30:28 —Attorney liable for fee or able to pay it?

IV. REVIEW OF REFEREE’S DECISION

- § 30:29 By the trial judge
- § 30:30 “Report and recommendations”
- § 30:31 “Request” for hearing
- § 30:32 Court’s order on the report and recommendations
- § 30:33 Hearing not required
- § 30:34 What review is required?
- § 30:35 Less formalistic approaches
- § 30:36 No appeal of denied motion to appoint referee

PART VIII. EX PARTE PROCEEDINGS

CHAPTER 31. EX PARTE PROCEEDINGS

I. WHAT IS AN EX PARTE APPLICATION?

- § 31:1 Nature of ex parte applications—Emergency or innocuous request

TABLE OF CONTENTS

- § 31:2 —Meaning of “ex parte”
- § 31:3 —“Notice” or “notification”
- § 31:4 —No “right to be heard”
- § 31:5 —Statutory and rule bases

II. SITUATIONS WARRANTING EX PARTE RELIEF

- § 31:6 Different categories of requests
- § 31:7 Major or emergency contested applications—
Contested emergency matters
- § 31:8 —Schedule conflicts
- § 31:9 —Witness issues
- § 31:10 —Miscellaneous statutory applications
- § 31:11 Major or emergency uncontested applications—In
general
- § 31:12 —Shortening time
- § 31:13 —Stays
- § 31:14 —Incompetence issues
- § 31:15 —Miscellaneous
- § 31:16 Innocuous requests—Meaning of “innocuous”
- § 31:17 —Handled by clerk
- § 31:18 —Innocuous matters requiring judicial attention
- § 31:19 —Page limits

III. APPROPRIATENESS OF EX PARTE RELIEF

- § 31:20 When ex parte relief not allowed
- § 31:21 Is ex parte application proper?—When notice possible
- § 31:22 —Genuine emergency?
- § 31:23 —Stipulation for relief
- § 31:24 —Discovery disputes

IV. THE JUDGE’S PERSPECTIVE

- § 31:25 Courts permissive
- § 31:26 Personalities
- § 31:27 Advantages to the judge
- § 31:28 Can aid lawyers and judge
- § 31:29 Need for attorney courtesy
- § 31:30 Judge’s assessment of notice
- § 31:31 Repeated ex parte applications

V. MAKING AN EX PARTE APPLICATION

- § 31:32 Is formal ex parte application necessary?—Innocuous
matters handled by clerk
- § 31:33 —Innocuous matters requiring judicial attention

- § 31:34 Making a formal application—Notification
- § 31:35 —Proceeding without notification
- § 31:36 —Hearing
- § 31:37 —Application documents
- § 31:38 —Declarations
- § 31:39 —Memorandum of points and authorities
- § 31:40 —Proposed order
- § 31:41 —Underlying motion

VI. OPPOSING AN EX PARTE APPLICATION

- § 31:42 Oral opposition
- § 31:43 Written opposition
- § 31:44 The boy who cried wolf

VII. CHALLENGE CHECKLIST

- § 31:45 Trial court challenge when relief granted
- § 31:46 Trial court challenge when relief denied
- § 31:47 Appellate challenges

Table of Laws and Rules

Table of Cases

Index