

# Table of Contents

## Volume 1

### PART I. GENERAL MOTIONS

#### CHAPTER 1. MOTION TO WITHDRAW AS COUNSEL

- § 1:1 Authority for motion
- § 1:2 Typical grounds for motion
- § 1:3 Key procedural requirements
- § 1:4 —Mandatory judicial council form requirement—  
Notice
- § 1:5 — —Memorandum of points and authorities not  
required
- § 1:6 — —Declaration
- § 1:7 — —Service
- § 1:8 — —Order
- § 1:9 Basis for opposition
- § 1:10 Client's right to discharge
- § 1:11 —Court's right to discharge
- § 1:12 Withdrawal from representation
- § 1:13 —Motion to withdraw, generally
- § 1:14 Conflict of interest
- § 1:15 Good faith representations of counsel
- § 1:16 In camera hearing re conflict
- § 1:17 Withdrawal from representation—Withdrawal  
and contingency fee agreements

#### CHAPTER 2. MOTION TO DISQUALIFY COUNSEL

- § 2:1 Authority for motion
- § 2:2 Typical grounds for motion
- § 2:3 Key procedural requirements
- § 2:4 Basis for opposition
- § 2:5 Selected recent cases
- § 2:6 Conflict of interest
- § 2:7 —Concurrent representation
- § 2:8 —Former representation
- § 2:9 — —Substantial relationship test for former  
representation

- § 2:10 — — —Refinement of substantial relationship  
test
- § 2:11 — — —Focus on nature of former representation
- § 2:12 — — —Prior and current “subjects” must be  
linked
- § 2:13 — — —Limited exceptions to disqualification  
requirement
- § 2:14 —Client disclosures
- § 2:15 — —Non-client information
- § 2:16 — —Arising from staff
- § 2:17 — —Arising from expert witness
- § 2:18 — —Family members/spouses
- § 2:19 —Third-party payor
- § 2:20 —Vicarious disqualification of an entire law office
- § 2:21 Disqualification for use of inadvertently disclosed  
privileged matters
- § 2:22 Conflict of interest—Vicarious disqualification of  
an entire law office—Vicarious disqualification  
and the public law office
- § 2:23 Motions used as tactical devices
- § 2:24 Consent
- § 2:25 —Implied consent
- § 2:26 —Consent in corporate representation
- § 2:27 —Consent in class actions
- § 2:28 Delay
- § 2:29 Appellate review

## **CHAPTER 3. MOTION TO DISQUALIFY ARBITRATOR**

- § 3:1 Disqualification under contractual arbitration—  
Authority for motion
- § 3:2 —Grounds for motion—Disclosure requirements
- § 3:3 — — —Ethics Standards
- § 3:4 —Key Procedural requirements
- § 3:5 Disqualification under judicial arbitration—  
Authority for motion
- § 3:6 —Grounds for motion
- § 3:7 —Key procedural requirements
- § 3:8 — —Special timing under § 170.1
- § 3:9 — —Special timing under § 170.6
- § 3:10 Basis for opposition

## **I. SELECTED RECENT CASES**

- § 3:11 Determining bias
- § 3:12 Grounds for disqualification
- § 3:13 Testing for bias
- § 3:14 Determining bias, generally—Burden of proving  
bias

## TABLE OF CONTENTS

- § 3:15 —Race, ethnicity or gender bias
- § 3:16 Appellate review

## CHAPTER 4. MOTION FOR RECONSIDERATION OR RENEWAL

- § 4:1 Authority for motion—Motions by party
- § 4:2 — —Motion for reconsideration by any party
- § 4:3 — —Motion for renewal (of prior motion) by party who originally made motion
- § 4:4 — — —Setting aside subsequent order
- § 4:5 —Motion by court
- § 4:6 — —Court’s inherent authority
- § 4:7 Key procedural requirements—Reconsideration or renewal
- § 4:8 Timing of motion
- § 4:9 Authorized sanctions
- § 4:10 Basis for opposition
- § 4:11 Order denying motion not separately appealable
- § 4:12 General
- § 4:13 —Section 1008 limited on constitutional grounds
- § 4:14 New or different facts
- § 4:15 —“Diligence” requirement re new or different facts—Diligence prior to 1992 amendment
- § 4:16 — —Diligence subsequent to 1992 amendment
- § 4:17 New or different law
- § 4:18 —“Diligence” requirement re new or different law
- § 4:19 Jurisdictional aspect of § 1008—Jurisdiction prior to 1992 amendment
- § 4:20 —Jurisdiction subsequent to 1992 amendment
- § 4:21 — —Section 1008 jurisdiction and court’s inherent power—“Intermediate” jurisdictional analysis—Overview of appellate decisions (Quest and Kerns)
- § 4:22 — — —“Statutory reform” jurisdictional analysis (Scott)
- § 4:23 —Compare section 473: No ground for reconsideration
- § 4:24 Procedural aspects of § 1008—Reconsideration by different judge
- § 4:25 —“Denial” or “grant and reaffirm”
- § 4:26 —Timeliness of reconsideration—Timeliness prior to 1992 amendment
- § 4:27 — —Timeliness subsequent to 1992 amendment
- § 4:28 — — —Timing and entry of judgment
- § 4:29 Appellate review of § 1008 reconsideration
- § 4:30 Compare: Inherent power to change decision

## CHAPTER 5. MOTION TO EXTEND TIME

- § 5:1 Authority for motion

- § 5:2 —Key procedural requirements
- § 5:3 Additional authority: Code Civ. Proc. § 473
- § 5:4 Basis for opposition
- § 5:5 Selected recent cases

## CHAPTER 6. MOTION FOR NEW JUDGE

- § 6:1 Motion based on cause—Authority for motion
- § 6:2 —Grounds for motion
- § 6:3 —Key timing and procedural requirements
- § 6:4 Motion based on attorney affidavit of prejudice (“Peremptory challenge”)—Authority for motion
- § 6:5 —Key timing and procedural requirements
- § 6:6 —Effect of peremptory challenge motion
- § 6:7 —Limitation: One challenge rule
- § 6:8 Motion based on attorney affidavit of prejudice (“Peremptory challenge”)—Basis for Opposition—Continuation Rule
- § 6:9 Motion based on attorney affidavit of prejudice (“Peremptory challenge”)—Challenges in coordinated proceeding

### I. SELECTED RECENT CASES

- § 6:10 Motion challenging judge—Disqualification of a judge for cause [Section 170.1]
- § 6:11 — —Waiver of claimed conflict—Inaction by party claiming conflict of interest
- § 6:12 — —Disqualification of judge hearing appeal in limited jurisdiction cases
- § 6:13 —Legal or factual views not grounds [Section 170.2]
- § 6:14 —Procedure on failure of judge to disqualify self [Section 170.3(c)]
- § 6:15 —Appellate review by writ [Section 170.3(d)]
- § 6:16 — —Proper parties
- § 6:17 — — —Judge as petitioner
- § 6:18 — —Standard of review
- § 6:19 — —Powers of disqualified judge to act [Section 170.4]
- § 6:20 — — —Relation of Section 170.3 to Section 170.4
- § 6:21 Peremptory challenges [Section 170.6]
- § 6:22 —Effect of challenge
- § 6:23 —Challenge procedures
- § 6:24 — —Timing of challenge
- § 6:25 — —Challenges “following reversal on appeal”
- § 6:26 — —Challenges applicable to respondents and appellants
- § 6:27 —Exceptions to Section 170.6(2)
- § 6:28 — —Master calendar rule exception

## TABLE OF CONTENTS

- § 6:29 — —All purpose assignment rule exception
- § 6:30 — — —Govt. Code § 68616 in direct calendar courts
- § 6:31 — — —Govt. Code § 68616 and “first appearance”
- § 6:32 — — —Govt. Code § 68616 and remand
- § 6:33 — — —Interaction with local rules
- § 6:34 — —The 10 day/5 day rule exception
- § 6:35 — —Exceptions to “one challenge rule” [Section 170.6(4)]
- § 6:36 —Restrictions where judge already determined contested factual issue
- § 6:37 — —Compare: Matter not relating to factual issue
- § 6:38 — —Late-appearing parties and “continuation rule”
- § 6:39 Peremptory Challenges [Section 170.6]—Example of cases where continuation rule applied to preclude subsequent 170.6 challenge
- § 6:40 —Example of cases where continuation rule did not apply to preclude subsequent 170.6 challenge
- § 6:41 —Transfer of later-filed case to new judge
- § 6:42 Peremptory challenges [Section 170.6]—Section 170.6 and coordinated actions—Court Rule 3.516 alters the restrictions of Section 170.6
- § 6:43 — —Rule 3.516 as more permissive than Section 170.6
- § 6:44 — —Rule 3.516 as more restrictive than Section 170.6
- § 6:45 —Section 170.6 and special proceedings

## CHAPTER 7. MOTION FOR RELIEF FROM ORDER OF JUDGMENT

- § 7:1 Motion based on attorney’s mistake, inadvertence, surprise or excusable neglect—Authority for motion—Discretionary provisions
- § 7:2 — —Mandatory provisions
- § 7:3 —Key procedural requirements
- § 7:4 — —Compare: procedural requirements in real property cases
- § 7:5 —Timing of motion under § 473(b)
- § 7:6 —Fees, costs and penalties
- § 7:7 —Common cases
- § 7:8 —Basis for opposition
- § 7:9 Motion to set aside default judgment—Defective notice [Code Civ. Proc. § 473.5]—Authority for motion
- § 7:10 — —Timing of motion

CALIFORNIA LAW AND MOTION AUTHORITIES

- § 7:11 — —Key procedural requirements
- § 7:12 — —Fees, costs and penalties
- § 7:13 — —Basis for opposition
- § 7:14 Improper venue [Code Civ. Proc. § 585.5(b)]—  
Authority for motion
- § 7:15 —Timing of motion
- § 7:16 —Key procedural requirements
- § 7:17 —Fees, costs and penalties
- § 7:18 —Excusable neglect [Code Civ. Proc. § 473]
- § 7:19 —Ethical obligation to warn of default
- § 7:20 Selected recent cases
- § 7:21 Pre-amendment statutory provisions—Excusable  
neglect
- § 7:22 —Timeliness requirements
- § 7:23 —Mandatory Relief Provision
- § 7:24 —Application to Default Judgments Only
- § 7:25 1991 amendments—Timeliness requirement
- § 7:26 —Relief from underlying default
- § 7:27 —Legislative intent to limit relief available to  
attorneys
- § 7:28 1992 amendments: adding “dismissal”
- § 7:29 Discretionary and mandatory provisions—  
Discretionary provision
- § 7:30 —Burden of establishing excusable neglect
- § 7:31 —Mandatory provision
- § 7:32 — —Attorney affidavit provision
- § 7:33 — —Attorney causation requirement
- § 7:34 — — —Insurer mistake
- § 7:35 — — —Paralegal error attributed to attorney
- § 7:36 — — —No excusable neglect showing required
- § 7:37 — — —Dismissal must be “against” a client
- § 7:38 — — —Not an open invitation to correct all  
professional mistakes
- § 7:39 — — —Exception for attorney’s extreme  
misconduct
- § 7:40 — — —Motion must distinguish type of relief  
requested
- § 7:41 — — —Entered by “the clerk”
- § 7:42 Application of § 473 to different types of  
dismissals
- § 7:43 —§ 473 and discretionary dismissal statutes
- § 7:44 —§ 473 and failure to serve
- § 7:45 —§ 473 and voluntary dismissal
- § 7:46 —§ 473 and summary judgment
- § 7:47 —§ 473 and defense award at arbitration
- § 7:48 —§ 473 and failure to comply with statute of  
limitations
- § 7:49 — —Compare: dismissal after granting summary  
judgment

## TABLE OF CONTENTS

§ 7:50	Substantive and procedural aspects of § 473— Reasonableness of mistake
§ 7:51	— — Compare: positive misconduct by attorney
§ 7:52	— Substantial compliance with § 473
§ 7:53	— — “Accompanied by” a copy of the answer
§ 7:54	— — Six-month limitation on filing
§ 7:55	— — — Reasonable time and delay excuse
§ 7:56	— — — Reasonable time and lack of prejudice to plaintiff
§ 7:57	— — — Reasonable time and substantial justification for delay
§ 7:58	— — — Note: relief for failure to meet procedural time limit
§ 7:59	— — — Note: two-year limitations period of § 473.5
§ 7:60	— — Discretion of trial court
§ 7:61	— — Prejudice to defendant
§ 7:62	— — Relation of Code Civ. Proc. § 473 to discovery matters
§ 7:63	Appellate review of orders providing relief from judgment—Pre-1981 review—Meritorious defense
§ 7:64	— Post-1981 review—Meritorious defense requirement abolished
§ 7:65	— — Abuse of discretion standard
§ 7:66	— — Trial on the merits
§ 7:67	— — Jurisdictional errors
§ 7:68	Equitable basis for relief from judgment
§ 7:69	Direct and collateral attacks on default judgments: <i>Molen</i> decision

## CHAPTER 8. EX PARTE APPLICATION

§ 8:1	Authority for application
§ 8:2	Grounds for relief
§ 8:3	Special notice requirement
§ 8:4	Key procedural requirements
§ 8:5	Basis for opposition

## I. SELECTED RECENT CASES

§ 8:6	Ex parte applications
-------	-----------------------

## CHAPTER 9. MOTION SHORTENING TIME RE SERVICE OF PAPERS

§ 9:1	Authority for motion
§ 9:2	— Service and filing requirements for motions, generally
§ 9:3	Key procedural requirements

## **I. SELECTED RECENT CASES**

§ 9:4 Generally

## **CHAPTER 10. MOTION FOR JUDICIAL NOTICE**

- § 10:1 Authority for motion—Basic authority
- § 10:2 —Acceptance of judicially noticed facts
- § 10:3 —Persons learned in subject matter
- § 10:4 Grounds for motion—Mandatory judicial notice
- § 10:5 —Permissive judicial notice
- § 10:6 Key procedural requirements
- § 10:7 Basis for opposition

## **I. SELECTED RECENT CASES**

- § 10:8 Judicial notice
- § 10:9 Matters that may be judicially noticed—Records of judicial departments
- § 10:10 — —Compare: Factual assertions in prior cases
- § 10:11 — — —Hearsay statements
- § 10:12 —Administrative board files
- § 10:13 —Acts of legislative department
- § 10:14 — —Legislative history
- § 10:15 —Acts of executive department
- § 10:16 —Undisputed geographical facts
- § 10:17 —Public and private acts and proclamations
- § 10:18 Limitations on judicial notice
- § 10:19 —Examples of improper matters
- § 10:20 Judicial notice on appeal

## **CHAPTER 11. SELECTED WRIT APPLICATIONS**

- § 11:1 Application for writ of attachment—Authority for motion
- § 11:2 —Grounds for motion
- § 11:3 —Authority for motion—Claims subject to and not subject to attachment
- § 11:4 — —Individual's guarantee of debt of corporation
- § 11:5 —Key procedural requirements—Contents of application
- § 11:6 — —Contents of declaration
- § 11:7 — —Information provided to defendant by notice and hearing
- § 11:8 — —Hearing and service on defendant required
- § 11:9 — —Amount to be secured by attachment
- § 11:10 — — —Discretion of court to include costs and



## TABLE OF CONTENTS

	attorney's fees in amount to be secured by attachment
§ 11:11	—Opposition to application
§ 11:12	Application for writ of possession—Authority for motion
§ 11:13	—Grounds for motion
§ 11:14	—Key procedural requirements—Contents of application
§ 11:15	— —Information provided to defendant by notice and hearing
§ 11:16	— —Filing and service of affidavits and briefs
§ 11:17	— —Prerequisites to issuance of writ
§ 11:18	— — —Undertaking required
§ 11:19	— — —Waiver of requirement of plaintiff's undertaking
§ 11:20	— — —Probable cause necessary for entry to private place
§ 11:21	— —Determination by court; Continuance of hearing
§ 11:22	— —Requirements of writ
§ 11:23	— —Obtaining writ by ex parte application
§ 11:24	— —Order for transfer of possession; Contempt of court
§ 11:25	— —Temporary restraining orders re possession
§ 11:26	— —Levy and custody
§ 11:27	—Opposition authorities
§ 11:28	Application for writ of mandate (Code Civ. Proc. §§ 1085 et seq.)—Authority for motion
§ 11:29	— —A note on terminology
§ 11:30	—Typical functions of writ of mandate
§ 11:31	— —Compare—Writ of administrative mandate
§ 11:32	— —Courts that may issue writ
§ 11:33	—Key procedural requirements—Prerequisites to issuance of writ of mandate
§ 11:34	— —Application and service requirements
§ 11:35	— —Exhaustion of administrative remedies required
§ 11:36	— —Filing of administrative record and taxable costs
§ 11:37	— —Burden of proof
§ 11:38	— —Timing of writ petition
§ 11:39	—Contents of petition and writ—Contents of petition
§ 11:40	— —Contents of writ
§ 11:41	— — —Service of writ
§ 11:42	—Answer to petition
§ 11:43	—Hearing
§ 11:44	Application for writ of administrative mandate

- (Code Civ. Proc. § 1094.5)—Authority for motion—General authority for writ review
- § 11:45 — —Authority for review of final administrative decisions
- § 11:46 —Function of administrative writ review—Effect of writ petition to set aside administrative decision
- § 11:47 — —Compare—Traditional mandate under Code Civ. Proc. § 1085
- § 11:48 —Grounds for administrative mandate—Court’s inquiry
- § 11:49 — —Establishing abuse of discretion
- § 11:50 — — —Establishing abuse of discretion in hospital cases
- § 11:51 — — —Where allegations of discrimination
- § 11:52 — —Where unfair procedures alleged
- § 11:53 — — —Where lack of findings by administrative body alleged
- § 11:54 — —Where evidence improperly excluded at hearing
- § 11:55 —Key procedural requirements—Filing of administrative record
- § 11:56 — —Admission of new evidence
- § 11:57 — —Application for stay in conjunction with writ petition
- § 11:58 — — —Requirements of application for stay
- § 11:59 — —Timing requirements—Unreasonable delay [common law]
- § 11:60 — — —Statutory time requirements
- § 11:61 — —Service of writ
- § 11:62 — —Procedures in special cases
- § 11:63 —Judgment for applicant—Damages
- § 11:64 Generally
- § 11:65 Nature of remedy
- § 11:66 Property subject to attachment
- § 11:67 Notice requirement
- § 11:68 Burden of proof
- § 11:69 Offset claims
- § 11:70 Undertaking
- § 11:71 Attorney’s fees
- § 11:72 Scope of judicial review
- § 11:73 Appellate Review

## CHAPTER 12. SELECTED MOTIONS RE UNDERTAKINGS

- § 12:1 Motion for undertaking by design professionals—Authority for motion
- § 12:2 —Grounds for motion

## TABLE OF CONTENTS

§ 12:3	— —When undertaking not applicable
§ 12:4	—Key procedural requirements—Declaration required showing claim is frivolous
§ 12:5	— —Dismissal of action where undertaking not filed within time set by court
§ 12:6	— —When more than one defendant
§ 12:7	— —Effect of undertaking
§ 12:8	Motion for undertaking by medical professional or hospital—Authority for motion
§ 12:9	— —Joinder
§ 12:10	—Grounds for motion
§ 12:11	— —When undertaking not applicable—Small claims
§ 12:12	—Key procedural requirements—Declaration required showing claim is frivolous
§ 12:13	— —Dismissal of action where undertaking not filed within time set by court
§ 12:14	— —When more than one defendant
§ 12:15	— —Effect of undertaking
§ 12:16	— — —Motion for undertaking precludes motion for summary judgment
§ 12:17	— — —Motion for summary judgment precludes motion for undertaking
§ 12:18	Motion for undertaking where plaintiff is non-resident—Authority for motion
§ 12:19	—Grounds for motion
§ 12:20	—Key procedural requirements—Points and authorities and declaration required
§ 12:21	— —Dismissal of action where undertaking not filed within time set by court
§ 12:22	— —Motion for stay
§ 12:23	— —Order not appealable
§ 12:24	—Indigent plaintiff

## CHAPTER 13. VEXATIOUS LITIGANT MOTIONS

§ 13:1	Motion for order requiring security—Authority for motion
§ 13:2	—Grounds for motion
§ 13:3	— —Scope of hearing
§ 13:4	—Procedural requirements—Order to furnish security
§ 13:5	— —Dismissal for failure to furnish security
§ 13:6	— —Stay of proceedings
§ 13:7	Motion to prohibit vexatious litigant from filing new litigation—Authority for motion
§ 13:8	—Grounds for motion
§ 13:9	—Procedural requirements—Clerk’s duties

- § 13:10 — —Stay of litigation if case filed without  
prefiling order
- § 13:11 —Sanctions—Contempt of court
- § 13:12 Standard on appellate review
- § 13:13 Basis for opposition

## **I. SELECTED RECENT CASES**

- § 13:14 Vexatious litigants—General
- § 13:15 The vexatious litigation statutes—Code Civ.  
Proc. § 391
- § 13:16 — —“Vexatious litigant” defined
- § 13:17 — —Vexatious litigant’s employment of attorney
- § 13:18 — —Statute’s application to civil proceedings
- § 13:19 — — —Application to appeals and writs
- § 13:20 — — —Litigation in last seven years
- § 13:21 —Code Civ. Proc. §§ 391.1-391.7—General
- § 13:22 — —Motion for order to post security under  
§ 391.1
- § 13:23 — —Scope of hearing under § 391.2
- § 13:24 — —Order to file security under § 391.3
- § 13:25 — —Dismissal for failure to file security under  
§ 391.4
- § 13:26 — —Stay of proceedings under § 391.6
- § 13:27 — —Leave of court to file after designation  
under § 391.7
- § 13:28 — —Erasing declaration of vexatious litigant
- § 13:29 — —Reviewing vexatious litigant determination

## **PART II. PRELIMINARY MOTIONS**

### **CHAPTER 14. MOTION FOR CONSOLIDATION, COORDINATION OR JOINER**

- § 14:1 Motion to consolidate actions—Authority for  
motion
- § 14:2 — —Compare: Consolidating arbitration cases
- § 14:3 —Key procedural requirements
- § 14:4 —Grounds for motion
- § 14:5 —Basis for opposition
- § 14:6 Motion to coordinate actions—Complex cases—  
Authority for motion
- § 14:7 — —Key procedural requirements
- § 14:8 — — —Judicial council rules
- § 14:9 — — —Grounds for motion: Required standards
- § 14:10 —Compare - Transfer and coordination of non-  
complex cases—Authority for motion

## TABLE OF CONTENTS

- § 14:11 — —Grounds for Motion: Required Standards
- § 14:12 — —Key procedural requirements
- § 14:13 —Judicial council rules
- § 14:14 —Stay of action pending coordination
- § 14:15 —Basis for opposition
- § 14:16 Motion to join parties—Permissive joinder—  
Authority for motion—Permissive joinder of  
plaintiffs
- § 14:17 — — —Permissive joinder of defendants
- § 14:18 — —Separate trials or other relief
- § 14:19 —Compulsory joinder—Authority for motion
- § 14:20 — —Basis for opposition
- § 14:21 — —“Indispensable party”
- § 14:22 — — —Factors for determining when party  
“indispensable”
- § 14:23 — — —Joinder when arbitration pending
- § 14:24 —Key procedural requirements

## I. SELECTED RECENT CASES

- § 14:25 Consolidation
- § 14:26 Coordination—Generally
- § 14:27 —Requirements of coordinated proceeding
- § 14:28 — —Role of the judicial council
- § 14:29 — — —Judicial council rules
- § 14:30 — — —Practical application of judicial council  
rules
- § 14:31 — — —Rule 3.516 and judge disqualification  
under section 170.6
- § 14:32 — — —Rule 3.516 as more permissive than  
section 170.6
- § 14:33 — — —Rule 1515 [now 3.516] as more  
restrictive than section 170.6
- § 14:34 —Review of coordination orders
- § 14:35 — —Standard of review
- § 14:36 Joinder—Joinder of plaintiffs
- § 14:37 —Joinder of defendants
- § 14:38 Standard of review
- § 14:39 Stay orders and tolling of five-year statute

## CHAPTER 15. MOTION TO SEVER OR BIFURCATE TRIAL

- § 15:1 Motion for separate trials—Authority for motion
- § 15:2 Motion to bifurcate trial or issues—Authority for  
motion—Preliminary trial of special defenses
- § 15:3 — — —Effect of preliminary trial on special  
defenses
- § 15:4 — — —Effect of preliminary trial on defense of  
other action pending

- § 15:5 — — —Effect when plaintiff successful in trial of special defenses
- § 15:6 — — —Note: Mandatory bifurcation in medical malpractice cases
- § 15:7 — —Discretionary separation of issues
- § 15:8 — — —Effect of prior trial of liability
- § 15:9 — — —Purpose of prior trial of liability
- § 15:10 — — —Timing of motion under section 598
- § 15:11 — —Bifurcation of punitive damages issues
- § 15:12 — —Prior trial of issues of law
- § 15:13 Basis for opposition

## **I. SELECTED RECENT CASES**

- § 15:14 Severance of actions
- § 15:15 —Severed actions and appealability
- § 15:16 Bifurcation of punitive damages under CC section 3295
- § 15:17 —Trying liability and punitive damages to same jury

## **CHAPTER 16. MOTION FOR STAY**

- § 16:1 Authority for motion: Multiple bases for stay—  
Stay when matter ordered to arbitration
- § 16:2 — —Key procedural requirements
- § 16:3 —Stay when coordination pending
- § 16:4 —Stay when inconvenient forum
- § 16:5 — —Timing of motion
- § 16:6 — —Related authority
- § 16:7 —Stay as discovery sanction
- § 16:8 —Stay relating to appeal of judgment or order
- § 16:9 Duty to notify court of stay—Notice of Stay
- § 16:10 —Notice when stay vacated
- § 16:11 —Sanctions for failure to file notice
- § 16:12 Pending arbitration

## **CHAPTER 17. MOTION TO TRANSFER ACTION**

- § 17:1 Authority for motion—Lack of subject matter jurisdiction
- § 17:2 — —Evidence allowed at hearing
- § 17:3 —Improper court
- § 17:4 — —Authorized sanctions
- § 17:5 —Grounds for change of venue
- § 17:6 —Transfer when actions coordinated
- § 17:7 Time to plead following denial of motion
- § 17:8 Motion constitutes appearance in action
- § 17:9 Writ of mandate relief available

## TABLE OF CONTENTS

- § 17:10 Other venue and transfer provisions
- § 17:11 Transfer costs and fees
- § 17:12 —Dismissal for non-payment of transfer costs and fees
- § 17:13 —Costs of transfer in Section 396 motions
- § 17:14 Basis for opposition

## I. SELECTED RECENT CASES

- § 17:15 Transfer by courts lacking jurisdiction
- § 17:16 —Looking beyond prayer for damages to determine jurisdiction (*Walker*)
- § 17:17 —Writ of mandate review of jurisdictional transfer orders—Transfer by superior court
- § 17:18 — —Transfer by municipal court
- § 17:19 —Transfer between municipal and small claims courts (*Rosenberg*)
- § 17:20 Transfer from improper court (Venue provisions)
- § 17:21 —Code Civ. Proc. Section 395
- § 17:22 —Code Civ. Proc. Section 394
- § 17:23 — —Remedial nature of statute
- § 17:24 — —A “removal” statute
- § 17:25 — —Actions based on negligent injury
- § 17:26 — —Appropriate parties
- § 17:27 — —First clause of Section 394
- § 17:28 — —Second and third clauses of Section 394
- § 17:29 —Section 394 and other venue provisions
- § 17:30 —Transfer fees
- § 17:31 —Corporate venue provision [Code Civ. Proc. Section 395.5]
- § 17:32 — —Compare: Unincorporated association venue provision [Code Civ. Proc. Section 395.2]
- § 17:33 — —FEHA venue provision [GC Section 12965]
- § 17:34 —Waiver of improper venue [Code Civ. Proc. Section 396b]
- § 17:35 —When impartial trial cannot be had [Code Civ. Proc. Section 397(b)]
- § 17:36 —Standard of review of venue decisions

## CHAPTER 18. MOTION TO DECLARE CASE EXEMPT FROM CASE DISPOSITION TIME GOALS

- § 18:1 Authority for motion—Exceptional cases
- § 18:2 —Expedited cases
- § 18:3 Grounds for motion
- § 18:4 Generally

## CHAPTER 19. MOTION TO CONTINUE HEARING OR TRIAL

- § 19:1 Authority for motion

- § 19:2 Grounds for motion—Factors considered by court
- § 19:3 COVID-related extension of deadlines in trial continuances
- § 19:4 Key procedural requirements
- § 19:5 Other sources for continuance—Stipulation of parties
- § 19:6 —Absence of material evidence or witnesses
- § 19:7 —When pleadings amended
- § 19:8 Basis for opposition to motion: Continuances disfavored
- § 19:9 Selected recent cases
- § 19:10 Disagreement with *Doria Mining* “sparingly granted” standard
- § 19:11 No entitlement to stipulated continuance
- § 19:12 —Judicial council recommendations re continuances
- § 19:13 —Acceptable reasons for continuances
- § 19:14 Standard of review

## CHAPTER 20. INJUNCTIVE RELIEF

- § 20:1 General authority for injunction
- § 20:2 Grounds for injunction
- § 20:3 —When injunction not authorized
- § 20:4 —Modification of final injunction
- § 20:5 Preliminary injunction
- § 20:6 Key procedures for obtaining TRO and preliminary injunctions

### I. SELECTED RECENT CASES

- § 20:7 Injunctive relief
- § 20:8 Adequacy of remedy at law
- § 20:9 Standing to seek injunctive relief
- § 20:10 —Standing of an association
- § 20:11 Standing to challenge preliminary injunction
- § 20:12 Preliminary injunction
- § 20:13 —Mandatory vs. prohibitory injunctions
- § 20:14 —Posted security
- § 20:15 —Interim harm
- § 20:16 —No statement of decision necessary
- § 20:17 —Scope of injunctive relief
- § 20:18 —Standard of review on appeal
- § 20:19 Permanent injunction
- § 20:20 —Likelihood of future violations
- § 20:21 —Standard of review on appeal
- § 20:22 Modification of injunctions
- § 20:23 —Compare: Modification of arbitration injunctions



## TABLE OF CONTENTS

- § 20:24 — —Proper forum for modification of arbitration injunctions

## CHAPTER 21. MOTION TO APPOINT GUARDIAN AD LITEM

- § 21:1 Authority for motion  
§ 21:2 Authority for motion of guardian ad litem under pseudonym  
§ 21:3 Key procedural requirements  
§ 21:4 —Judicial council forms  
§ 21:5 Selected recent cases  
§ 21:6 Powers of guardian ad litem  
§ 21:7 Discretion to rescind or modify order  
§ 21:8 Compare: Guardian ad litem on appeal

## CHAPTER 22. MOTION TO APPEAR *PRO HAC VICE*

- § 22:1 Authority for motion  
§ 22:2 Key procedural requirements  
§ 22:3 —Fee requirement  
§ 22:4 Conduct of attorney  
§ 22:5 Basis for opposition  
§ 22:6 Other appearances—Military counsel  
§ 22:7 —Arbitration counsel  
§ 22:8 —Registered foreign legal consultant  
§ 22:9 —Certified law student

### I. SELECTED RECENT CASES

- § 22:10 *Pro hac vice* counsel  
§ 22:11 —Compare: Appearances under Probate Code  
§ 22:12 —Compare: Foreign legal consultants  
§ 22:13 —Compare: Practice in federal court  
§ 22:14 Nunc pro tunc orders  
§ 22:15 Jurisdiction based on *pro hac vice*

## CHAPTER 23. MOTION FOR RELIEF FROM GOVERNMENT CLAIMS FILING STATUTES

- § 23:1 Authority for motion—Written claim requirement  
§ 23:2 —Relief from written claim  
§ 23:3 — —Compare: Late claims  
§ 23:4 Considerations for granting relief  
§ 23:5 Key procedural requirements—Filing location  
§ 23:6 —Contents of petition

- § 23:7 —Timing considerations—Timing regarding filing
- § 23:8 — —Filing suit after petition granted
- § 23:9 —Service of petition
- § 23:10 Basis for opposition
- § 23:11 Selected recent cases
- § 23:12 Timeliness of petition
- § 23:13 Evidence considered
- § 23:14 Mistake, inadvertence, surprise or excusable neglect
- § 23:15 —Mistake
- § 23:16 — —Diligence
- § 23:17 — —Prejudice
- § 23:18 — —Reasonableness
- § 23:19 — —Mistake of law
- § 23:20 —Excusable neglect
- § 23:21 — —Wrong public entity
- § 23:22 When injured party a minor
- § 23:23 Filing suit after grant of order
- § 23:24 Appellate review

## **CHAPTER 24. MOTION TO SEAL COURT RECORDS**

- § 24:1 Authority for motion
- § 24:2 Typical grounds for motion—Application and standards
- § 24:3 — —Where rules do not apply
- § 24:4 —Court records presumed open to public
- § 24:5 —Findings required for sealing records
- § 24:6 Key procedural requirements—Points and authorities and declaration required
- § 24:7 —Service of motion/application
- § 24:8 —Lodging required
- § 24:9 —Filing redacted version of motion and other papers
- § 24:10 Procedures upon granting motion to seal record—Order
- § 24:11 —Custody of sealed records
- § 24:12 Motion to unseal records
- § 24:13 Basis for opposition
- § 24:14 Public access presumed for court records
- § 24:15 —Judicial examination of sealing court records
- § 24:16 —Judicial council rules regarding sealing court records—Rules 2.550 and 2.551 governing trial courts
- § 24:17 — —Compare: Family Code Section 214
- § 24:18 — —Judicial Counsel Rule 8.46 governing reviewing courts

## TABLE OF CONTENTS

- § 24:19 Motion to unseal records
- § 24:20 —Appellate review of unsealing documents

## CHAPTER 25. RECLASSIFICATION MOTIONS

- § 25:1 Motion for reclassification—Reclassification of case from unlimited to limited
- § 25:2 — —Actions treated as limited civil cases
- § 25:3 — —Authority for motion—When motion made within time to amend initial pleading
- § 25:4 — — —When motion made after time to file amended pleading
- § 25:5 — —Grounds for motion—Case classified in incorrect judicial classification
- § 25:6 — — —Grounds for motion after time to amend initial pleading
- § 25:7 — — —Effect of judgment or demand exceeding limited case jurisdiction
- § 25:8 — —Reclassification by clerk—Where filing of amended complaint compels reclassification
- § 25:9 — —Reclassification on court's own motion
- § 25:10 — —Stipulation for reclassification
- § 25:11 — —Procedural requirements—Judicial Council rules
- § 25:12 — — —No reclassification fee required
- § 25:13 — —Effect of reclassification
- § 25:14 — —Review of grant or denial of motion
- § 25:15 — —Basis for opposition
- § 25:16 — —Reclassification of case from limited to unlimited—Actions treated as unlimited cases
- § 25:17 — —Authority for motion—When motion made within time to amend initial pleading
- § 25:18 — — —When motion made after time to file amended pleading
- § 25:19 — —Grounds for motion—Case classified in incorrect judicial classification
- § 25:20 — — —Grounds for motion after time to amend initial pleading
- § 25:21 — — —Effect of judgment or demand exceeding limited case jurisdiction
- § 25:22 — —Reclassification by clerk—Where filing of amended complaint compels reclassification
- § 25:23 — — —Where filing of cross-complaint compels reclassification
- § 25:24 — —Reclassification on court's own motion
- § 25:25 — —Reclassification of case from limited to unlimited—Reclassification of case from limited to unlimited—Stipulation for reclassification

- § 25:26 — —Procedural requirements—Judicial Council rules
- § 25:27 — — —Payment of reclassification fees required
- § 25:28 — — —Amount of reclassification fee
- § 25:29 — —Effect of reclassification
- § 25:30 — —Review of grant or denial of motion
- § 25:31 — —Basis for opposition
- § 25:32 Selected recent cases
- § 25:33 Amount in controversy
- § 25:34 Procedure
- § 25:35 Trial court’s authority
- § 25:36 Payment of fees
- § 25:37 Appeal—Time to bring writ
- § 25:38 —Appellate review

## **PART III. SUMMONS AND PLEADING MOTIONS**

### **CHAPTER 26. MOTION TO QUASH SERVICE OF SUMMONS**

- § 26:1 Authority for motion
- § 26:2 Timing and key procedural requirements
- § 26:3 Determining if service proper—Personal service
- § 26:4 —Substituted service—Business office
- § 26:5 — —When unable to deliver with “reasonable diligence”
- § 26:6 —Service by mail
- § 26:7 —Service by publication
- § 26:8 —On person outside state
- § 26:9 —On person outside country
- § 26:10 Extending time to plead after motion to quash
- § 26:11 Burden of proof of personal jurisdiction
- § 26:12 —Need for competent evidence
- § 26:13 Waiver of right to challenge personal jurisdiction
- § 26:14 —Waiver by general appearance
- § 26:15 — —Compare: Discovery on jurisdictional issue
- § 26:16 Appellate review of a motion to quash
- § 26:17 —Order denying motion to quash

### **CHAPTER 27. MOTION TO AMEND PLEADINGS**

- § 27:1 General authority for motion
- § 27:2 Grounds for motion—Mistake in parties
- § 27:3 —Unpleaded causes of action
- § 27:4 —DOE amendment after statute runs

## TABLE OF CONTENTS

§ 27:5	—After demurrer sustained
§ 27:6	—After motion to strike granted
§ 27:7	—After judgment on pleadings granted
§ 27:8	—Amending PAGA Complaint to substitute named plaintiff
§ 27:9	Key procedural requirements
§ 27:10	—Note: One amendment allowed as matter of course
§ 27:11	Statutory amendments re punitive damages— Action against health care provider—Authority for motion
§ 27:12	— —Grounds for motion
§ 27:13	— —Timing for motion
§ 27:14	— —Definition of “health care provider”
§ 27:15	—Action against religious corporation— Authority for motion
§ 27:16	— —Grounds for motion
§ 27:17	— —Timing of motion
§ 27:18	—Procedural requirements
§ 27:19	Basis for opposition

## I. SELECTED RECENT CASES

§ 27:20	Amending complaints pursuant to § 473
§ 27:21	—Amending name of party
§ 27:22	Amended pleading supersedes original pleading
§ 27:23	—Exception to superseding: When amendment a “sham”
§ 27:24	— —Sham pleadings and changed legal theory of recovery
§ 27:25	Time to amend complaint after demurrer
§ 27:26	—Unwarranted delay in amending
§ 27:27	—Amendment during trial
§ 27:28	“Relation back” of amended complaint
§ 27:29	— <i>Klopstock</i> standard: Relation back if not wholly different facts
§ 27:30	—Broadening <i>Klopstock</i> standard: Relation back if same general set of facts
§ 27:31	— —Distinguishing <i>Coats</i> case
§ 27:32	Amendments re punitive damages—Punitive damages and health care providers
§ 27:33	— —Evidence on motion
§ 27:34	— —Actions covered by statute—Intentional torts
§ 27:35	— — —Fraud
§ 27:36	— — —Battery
§ 27:37	— — —Compare: Sexual battery
§ 27:38	— — —Exception: Gynecological services
§ 27:39	— — —Exception: Hospital services

- § 27:40 — — —Intentional infliction of emotional distress
- § 27:41 — — —Status of plaintiffs and defendants—  
Plaintiff's status as patient
- § 27:42 — — —Plaintiff's status as non-patient
- § 27:43 — — —Defendant's status as health care provider
- § 27:44 Appellate review of denial to amend

## **CHAPTER 28. MOTION TO SUPPLEMENT PLEADINGS**

- § 28:1 Authority for motion—Supplemental complaint or answer
- § 28:2 —Leave to file late answer
- § 28:3 —Leave to file cross-complaint
- § 28:4 — — —Asserting new cause of action
- § 28:5 Key procedural requirements

### **I. SELECTED RECENT CASES**

- § 28:6 Supplemental pleadings generally permitted
- § 28:7 Nature of supplemental complaint
- § 28:8 No requirement to file supplemental complaint
- § 28:9 Procedural requirements
- § 28:10 Procedural challenges
- § 28:11 Facts occurring after pleading
- § 28:12 Supplemental answer
- § 28:13 Burden of proof
- § 28:14 Appellate review

## **CHAPTER 29. DEMURRER**

- § 29:1 Authority for demurrer
- § 29:2 Grounds for demurrer—Demurrer to complaint or cross-complaint
- § 29:3 —Demurrer to answer
- § 29:4 Timing of demurrer
- § 29:5 Key procedural requirements
- § 29:6 —Meet and confer, conference of parties, limit on amendments, declaration requirement
- § 29:7 —Timing of response after demurrer ruling
- § 29:8 —Demurrer should be heard at same time as motion to strike
- § 29:9 Basis for opposition to motion—Leave to amend
- § 29:10 — — —Dismissal following failure to amend
- § 29:11 —Motion to strike demurrer
- § 29:12 Selected recent cases
- § 29:13 Special vs. general demurrers
- § 29:14 Defects on face of complaint

## TABLE OF CONTENTS

§ 29:15	—Matters subject to judicial notice
§ 29:16	—Another action pending
§ 29:17	— —Action pending in different state
§ 29:18	—Defects regarding status of parties—Standing
§ 29:19	— —Misjoinder of parties
§ 29:20	— —Lacking certificate of merit
§ 29:21	—Defects regarding legal duty
§ 29:22	Failure to exhaust administrative remedies
§ 29:23	Demurrers based on affirmative defense
§ 29:24	—Unclean hands: The <i>Blain</i> test
§ 29:25	—Statute of limitations
§ 29:26	—Privilege
§ 29:27	Leave to amend when demurrer granted
§ 29:28	—When demurrer sustained without leave to amend
§ 29:29	—When demurrer sustained with leave to amend
§ 29:30	Defendant’s response when demurrer overruled
§ 29:31	Second demurrer to same cause of action
§ 29:32	Appellate review of demurrer orders
§ 29:33	—Demurrers involving governmental tort cases
§ 29:34	—“Abuse of discretion” standard
§ 29:35	—Asserting right to amend for first time on appeal

## CHAPTER 30. MOTION TO STRIKE

§ 30:1	Authority and grounds for motion—Striking all or part of pleadings
§ 30:2	— —Compare: Moving to strike all or part of a demurrer
§ 30:3	—Striking pleadings in limited jurisdiction cases
§ 30:4	—Striking pleadings as discovery sanction
§ 30:5	—Striking pleadings when authorized by local rule
§ 30:6	Key procedural requirements
§ 30:7	—Meet and Confer, conference of parties, limitations, declaration requirement
§ 30:8	—Motion must be heard at same time as demurrer
§ 30:9	Basis for opposition to motion: Leave to amend
§ 30:10	Selected recent cases
§ 30:11	Dismissal after motion to strike granted without leave to amend
§ 30:12	—Sanctions other than dismissal
§ 30:13	Striking punitive damages
§ 30:14	Amendment to cure defects
§ 30:15	Appellate review

## **CHAPTER 31. MOTION FOR JUDGMENT ON THE PLEADINGS**

- § 31:1 Authority for motion
- § 31:2 Grounds for motion—General grounds
- § 31:3 —Scope of relief
- § 31:4 Key procedural requirements
- § 31:5 —Meet and Confer, conference of parties,  
limitations, declaration requirement
- § 31:6 Timing of motion—After time for demurrer  
expired
- § 31:7 —After demurrer overruled or when no  
demurrer made
- § 31:8 —30-day cut-off prior to trial
- § 31:9 Basis for opposition to motion: Leave to amend
- § 31:10 When motion granted without leave to amend

### **I. SELECTED RECENT CASES**

- § 31:11 Generally
- § 31:12 Timing of motion
- § 31:13 Grounds similar to demurrer
- § 31:14 Defects on face of complaint
- § 31:15 —Matters subject to judicial notice
- § 31:16 Curing defects by amendment
- § 31:17 Standard of review

## **CHAPTER 32. MOTION TO INTERVENE**

- § 32:1 Authority for motion
- § 32:2 —Compare mandatory intervention
- § 32:3 Key procedural requirements—Same as original  
complaint
- § 32:4 —Timeliness requirement
- § 32:5 —Time to plead following service of complaint in  
intervention
- § 32:6 Intervention re arbitration proceedings
- § 32:7 Selected recent cases
- § 32:8 Generally—Compare intervention under the  
Federal Rules of Civil Procedure
- § 32:9 Standard of review

## **CHAPTER 33. INTERPLEADER MOTIONS**

- § 33:1 Authority for interpleader
- § 33:2 —Multiple claims
- § 33:3 Key procedural requirements—Deposit of  
amount payable in court
- § 33:4 —Motion for discharge from liability



## TABLE OF CONTENTS

§ 33:5	Effect of interpleader
§ 33:6	Purpose of interpleader
§ 33:7	Selected recent cases
§ 33:8	Two-step procedure
§ 33:9	Same thing, debt or duty
§ 33:10	No privity requirement
§ 33:11	Recovery of attorney fees and costs
§ 33:12	Effect of other proceedings on interpleader

## CHAPTER 34. MOTION TO STRIKE SLAPP SUIT

§ 34:1	Authority for motion
§ 34:2	Typical grounds for motion—Purpose of statute/ broad construction
§ 34:3	—Acts subject to anti-SLAPP statute
§ 34:4	—Basis of court’s determination on motion to strike
§ 34:5	Key procedural requirements—Timing of motion
§ 34:6	—Definitions
§ 34:7	—Notice of motion stays discovery
§ 34:8	—Motion to conduct specified discovery after motion to strike
§ 34:9	—Appealability
§ 34:10	—Duty to transmit caption page to judicial council
§ 34:11	Attorney’s fees and costs
§ 34:12	Basis for opposition

## I. SELECTED RECENT CASES

§ 34:13	Overview
§ 34:14	Purpose of motion
§ 34:15	The special motion to strike Code Civ. Proc. § 425.16—Broad construction
§ 34:16	—Early resolution of meritless claims
§ 34:17	—Implications on discovery
§ 34:18	—Burdens of proof under SLAPP statute
§ 34:19	—No need to demonstrate <i>intent to chill</i> defendant’s rights
§ 34:20	— — Compare: No need to demonstrate <i>chilling effect</i>
§ 34:21	—Timing of special motion to strike
§ 34:22	—60-day rule applies to amended complaint
§ 34:23	—Extra 5-day rule
§ 34:24	—No amendment of complaint following grant of motion
§ 34:25	—Joinder in special motion to strike
§ 34:26	—Relation of time constraints to remands and transfers

CALIFORNIA LAW AND MOTION AUTHORITIES

- § 34:27 —Intertwined causes of action
- § 34:28 — —*M.G.* case—Intertwined causes of actions treated as one
- § 34:29 — —*Shekhter* case—Single cause of action can be stricken
- § 34:30 — —Compare *ComputerXpress* case—No application of SLAPP statute
- § 34:31 Construing phrases in statute
- § 34:32 —An act of “that person”
- § 34:33 — —“Arising from” an “act in furtherance of” a person’s right
- § 34:34 — — —“Persons” and media defendants
- § 34:35 — — —Person and public entities
- § 34:36 — — —Where person acts illegally
- § 34:37 — — —Newsgathering and an “act in furtherance of”
- § 34:38 — —Not applicable to certain enforcement actions
- § 34:39 —Before “official proceeding”
- § 34:40 — —Application in litigation context
- § 34:41 — — —Compare: Cross-complaints
- § 34:42 — — —“Gravamen” of cause of action is critical rather than its nature
- § 34:43 — — —Exemption of causes of action under § 425.17
- § 34:44 — — —Compare: Commercial speech and public interest
- § 34:45 — — —Striking a malicious prosecution cause of action
- § 34:46 — — —Striking a legal malpractice cause of action
- § 34:47 —Matters involving a public issue, or of public interest
- § 34:48 — —Resolution of “public interest” controversy
- § 34:49 — —SLAPP statute not applicable to products liability claim where “collateral allusions” to protected activity
- § 34:50 —A public forum
- § 34:51 — —Disagreeing with *Damon*
- § 34:52 Probability of prevailing
- § 34:53 —Requirement of admissible evidence
- § 34:54 No special motion against public prosecutor
- § 34:55 Attorney fees and costs
- § 34:56 —Attorney fees for a party in pro per
- § 34:57 —Attorney fees for prevailing party
- § 34:58 — —Prevailing party in voluntary dismissal cases
- § 34:59 — —Compare: No voluntary dismissal of appeal
- § 34:60 —Attorney fees on appeal

## TABLE OF CONTENTS

- § 34:61 —Timing of request for attorney fees
- § 34:62 —No stay of enforcement of judgment awarding attorney fees
- § 34:63 —Sanctions for frivolous SLAPP
- § 34:64 SLAPP suits in federal diversity cases
- § 34:65 Appellate review of § 425.16 motions
- § 34:66 Appellate review of Section 425.16 motions—Automatic stay on appeal

## **CHAPTER 35. MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION [LIS PENDENS]**

- § 35:1 Authority for motion
- § 35:2 Typical grounds for motion—Void and invalid lis pendens
- § 35:3 —No real property claim
- § 35:4 —Failure to establish probable validity of claim
- § 35:5 Key procedural requirements—Evidence and declarations
- § 35:6 —Undertakings—Conditional expungement
- § 35:7 — —Undertaking as condition of maintaining notice
- § 35:8 — —Exoneration or modification
- § 35:9 —Effective date and recording of order
- § 35:10 —Attorney's fees and costs
- § 35:11 Basis for expungement
- § 35:12 Standard of review
- § 35:13 Burden for expungement

## **PART IV. DISCOVERY MOTIONS**

### **CHAPTER 36. GENERAL DISCOVERY MOTIONS**

- § 36:1 Purpose and scope of discovery—Purpose
- § 36:2 —Scope
- § 36:3 Permitted discovery—Discovery in superior court actions
- § 36:4 — —Limitations on discovery
- § 36:5 —Discovery in limited civil cases
- § 36:6 — —Additional limited jurisdiction case discovery
- § 36:7 — — —Stipulation for additional limited jurisdiction case discovery
- § 36:8 — — —Grounds for motion
- § 36:9 —Discovery in arbitration proceedings
- § 36:10 — —Arbitrator's power to hear discovery motions

CALIFORNIA LAW AND MOTION AUTHORITIES

- § 36:11 Petition for discovery prior to commencement of action
- § 36:12 —Contents of petition for pre-commencement discovery
- § 36:13 —Service requirements for petition
- § 36:14 Motion to limit discovery—General limitations
- § 36:15 —Limits based on admissibility and relevance
- § 36:16 — —“Admissible evidence” defined
- § 36:17 — —“Relevant evidence” defined
- § 36:18 —Limits based on privacy
- § 36:19 — —Disclosure of associations and affiliations
- § 36:20 — —Disclosure of medical history
- § 36:21 — —Disclosure of financial information
- § 36:22 — —Disclosure of personnel records
- § 36:23 — —Consumer privacy protections
- § 36:24 —Taking advantage of opponent’s industry
- § 36:25 —Propounding same discovery
- § 36:26 —Privileges—Attorney work product
- § 36:27 — —Attorney-client
- § 36:28 Motion to change timing and sequence of discovery—When discovery begins
- § 36:29 —When discovery ends—Trial cut-off, generally
- § 36:30 — — —When discovery “complete”
- § 36:31 — —Expert witness discovery cut-off
- § 36:32 — —Arbitration cut-off, generally
- § 36:33 — — —Discovery after arbitration award
- § 36:34 — — —“Good cause” defined
- § 36:35 —Court’s authority to establish sequence and timing
- § 36:36 —Motion to extend time to complete discovery and file motions—Request to extend cut-off dates
- § 36:37 — —Court’s discretion to grant motion
- § 36:38 — —Stipulation to extend or reopen discovery
- § 36:39 Motion to shorten or extend time for responses— Authority for motion—Depositions
- § 36:40 — —Interrogatories
- § 36:41 — —Inspection demands
- § 36:42 — —Physical or mental examination
- § 36:43 — —Requests for admission
- § 36:44 — —Expert witness exchange
- § 36:45 — —Notice to appear and produce documents
- § 36:46 Motion to reopen discovery—Reopening discovery after new trial date set
- § 36:47 — —Grounds for motion
- § 36:48 — —Stipulation to reopen discovery
- § 36:49 —Reopening discovery after arbitration award
- § 36:50 —Sanctions

## TABLE OF CONTENTS

§ 36:51	Motion for protective order—Authority for motion
§ 36:52	—Grounds for motion—Interrogatories, inspection demands and RFAs
§ 36:53	— —Depositions
§ 36:54	— —Mental and physical examinations
§ 36:55	— —Subpoenas
§ 36:56	— —Expert witness demands
§ 36:57	— —Protective order re discovery of defendant’s financial condition [Civ. Code § 3295(a)]
§ 36:58	— — —Effect of protective order
§ 36:59	— — —Basis for Opposition—Motion by Plaintiff
§ 36:60	—Key procedural requirements
§ 36:61	—Authorized sanctions
§ 36:62	Subpoena motions—Motion to quash subpoena—Authority for motion
§ 36:63	— — —Consumer’s personal records
§ 36:64	— —Authorized sanctions
§ 36:65	—Motion to enforce compliance with subpoena—Authority for motion
§ 36:66	— —Order seeking production of documents
§ 36:67	— —Order seeking consumer records
§ 36:68	— —Authorized sanctions
§ 36:69	Motion for appointment of referee—Motion when parties do not consent—Authority for motion
§ 36:70	— —Key procedural requirements
§ 36:71	—Reference by consent of parties
§ 36:72	—Grounds for disqualifying referee
§ 36:73	—Basis for opposition to motion—Objection to referee
§ 36:74	— —Payment of referee fees
§ 36:75	Discovery cutoff

## I. SELECTED RECENT CASES

§ 36:76	Discovery cutoff—Additional discovery [Code Civ. Proc. § 2024.050]
§ 36:77	—Additional discovery [Code Civ. Proc. §§ 2024.010 et seq.]—No automatic reopening of discovery after trial continuance or postponement
§ 36:78	—Additional discovery [Code Civ. Proc. § 2024(e)]—Compare: Additional discovery when new trial date set after mistrial or new trial
§ 36:79	Subpoenas—Subpoenaing personal records
§ 36:80	— —Government agency as “subpoenaing parties”
§ 36:81	—Compelling production of documents

- § 36:82 —Compelling non-resident witnesses
- § 36:83 —Compare: Subpoena during pretrial discovery
- § 36:84 Referees, generally
- § 36:85 —Scope of reference
- § 36:86 — —“General” reference
- § 36:87 — —“Special” reference
- § 36:88 —Nature of reference—Consensual reference
- § 36:89 — —Directed reference
- § 36:90 — — —Section 639(a)
- § 36:91 — — —Section 639(b)
- § 36:92 — — —Section 639(c)
- § 36:93 — — —Section 639(d)
- § 36:94 — — —Section 639(e)
- § 36:95 — —Appointment of a referee in complex litigation
- § 36:96 — —Indiscriminate reference of all discovery matters
- § 36:97 — —Prohibition of reference for summary judgment motion (*Baumohl*)
- § 36:98 — — —*Baumohl’s* rejection of waiver and estoppel arguments
- § 36:99 — — —*Baumohl’s* written or on-the-record consent requirement
- § 36:100 —Referee’s fees, generally
- § 36:101 — —Indigent parties
- § 36:102 — — —Counsel not required to advance costs of reference
- § 36:103 — — —Trial court determines fee allocation, not referee
- § 36:104 — — —One party not required to finance cost of reference
- § 36:105 — —Referees not appointed under section 639
- § 36:106 —Referee recommendations
- § 36:107 Protective orders—Production of documents
- § 36:108 —Depositions
- § 36:109 —Discovery of defendant’s profits and financial condition
- § 36:110 Purpose of discovery

## CHAPTER 37. DEPOSITION MOTIONS

- § 37:1 Motion to compel party’s attendance at deposition—Authority for motion
- § 37:2 —Key procedural requirements
- § 37:3 —Authorized sanctions—Against deponent—Motion by noticing party
- § 37:4 — — —Motion by other attending party
- § 37:5 — —Against noticing party—Non-appearance
- § 37:6 — — —Failure to serve deposition subpoena

## TABLE OF CONTENTS

§ 37:7	— —Disobeying court order
§ 37:8	— —Misuse of discovery process
§ 37:9	— —Notice requirements for sanctions motion
§ 37:10	— — —Separate statement requirement
§ 37:11	—Basis for opposition to motion—Protective order
§ 37:12	— —Quashing subpoena
§ 37:13	— —Failure to appear or to write opposition
§ 37:14	Motion to direct compliance with deposition subpoena—Authority for motion
§ 37:15	—Key procedural requirements
§ 37:16	— —Separate statement requirement
§ 37:17	—Authorized sanctions—Contempt and other damages—Disobeying subpoena
§ 37:18	— — —Disobeying court order
§ 37:19	— —Misuse of discovery process
§ 37:20	— — —Separate statement requirement
§ 37:21	— —Notice requirements for sanctions motion
§ 37:22	—Basis for opposition to motion—Protective order
§ 37:23	— —Quashing subpoena
§ 37:24	— —Failure to appear or to write opposition
§ 37:25	Motion to compel answers or production of documents at deposition—Authority for motion
§ 37:26	—Notice and timing requirements
§ 37:27	—Key procedural requirements
§ 37:28	— —Separate statement requirement
§ 37:29	— —Lodging requirement
§ 37:30	—Authorized sanctions—Unsuccessful motion or opposition to motion
§ 37:31	— —Disobeying court order
§ 37:32	— —Misuse of discovery process
§ 37:33	— —Notice requirements for sanctions motion
§ 37:34	— — —Separate statement requirement
§ 37:35	—Basis for opposition to motion: Protective order
§ 37:36	— —Failure to appear or to write opposition
§ 37:37	Motion to increase number of hours for deposition—Authority for motion
§ 37:38	Motion to take subsequent deposition
§ 37:39	Motion to increase travel limits for party deponent—General rule
§ 37:40	—Exception: More distant location
§ 37:41	—Key procedural requirements
§ 37:42	—Factors considered
§ 37:43	—Authorized sanctions
§ 37:44	Selected recent cases
§ 37:45	Informal resolution requirement

- § 37:46 —Compare: Informal resolution under federal discovery law
- § 37:47 —Procedure for informal resolution

## CHAPTER 38. INTERROGATORY MOTIONS

- § 38:1 Motion to compel responses to interrogatories [when response untimely]—Authority for motion
- § 38:2 — —Timing and content of required response
- § 38:3 —Waiver of objections
- § 38:4 — —Relief from waiver of objections
- § 38:5 —Key procedural requirements
- § 38:6 — —No “meet and confer” requirement
- § 38:7 — —No specific motion timing restrictions
- § 38:8 — —No separate statement required where party fails to respond to discovery
- § 38:9 —Authorized sanctions—Unsuccessful motion or opposition to motion
- § 38:10 — —Disobeying court order
- § 38:11 — —Misuse of discovery process
- § 38:12 — — —Separate statement requirement
- § 38:13 — —Notice requirements for sanctions motions
- § 38:14 —Basis for opposition to motion: Protective order
- § 38:15 — —Failure to appear or to write opposition
- § 38:16 Motion to compel further responses to interrogatories—Authority for motion
- § 38:17 —Timing of motion
- § 38:18 —Key procedural requirements
- § 38:19 — —Separate statement requirement
- § 38:20 —Authorized sanctions—Unsuccessful motion or opposition to motion
- § 38:21 — —Disobeying court order
- § 38:22 — —Misuse of discovery process
- § 38:23 — — —Separate statement requirement
- § 38:24 — —Notice requirements for sanctions motions
- § 38:25 —Basis for opposition to motion: Protective order
- § 38:26 — —Failure to appear or to write opposition
- § 38:27 Propounding additional interrogatories—Limit on specially prepared interrogatories
- § 38:28 — —Exception: Supplemental interrogatories for later-acquired information
- § 38:29 — —Exception: Declaration for additional specially prepared interrogatories
- § 38:30 — —Grounds for additional interrogatories
- § 38:31 —Motion for additional supplemental interrogatories



## TABLE OF CONTENTS

- § 38:32 —Key procedural requirements
- § 38:33 — —Separate statement requirement
- § 38:34 —Basis for opposition to motion: Unwarranted number of interrogatories/protective order
- § 38:35 — —Failure to appear or to write opposition
- § 38:36 Timing requirements, pre-1986 revisions
- § 38:37 Interpreting 45-day requirement, post-1986 revisions
- § 38:38 —Failure to file timely motion
- § 38:39 Informal resolution requirement
- § 38:40 —Review of informal resolution

## CHAPTER 39. PRODUCTION REQUEST MOTIONS

- § 39:1 Motion to compel production of documents and things [when response untimely]—Authority for motion
- § 39:2 — —Timing and content of response and statement of compliance
- § 39:3 —Waiver of objections
- § 39:4 — —Relief from waiver of objections
- § 39:5 —Key procedural requirements
- § 39:6 — —No “meet and confer” requirement
- § 39:7 — —No specific motion timing restrictions
- § 39:8 — —No separate statement required where party fails to respond to discovery or where a party is allowed to submit a concise statement in lieu of a separate statement
- § 39:9 —Authorized sanctions—Unsuccessful motion or opposition to motion
- § 39:10 — —Disobeying court order
- § 39:11 — —Misuse of discovery process
- § 39:12 — — —Separate statement requirement
- § 39:13 — —Notice requirements for sanctions motion
- § 39:14 —Basis for opposition to motion: Protective order
- § 39:15 — —Failure to appear or to write opposition
- § 39:16 Motion to compel further responses to demand for production—Authority for motion
- § 39:17 — —Content of required statement of compliance
- § 39:18 — —Failure to properly identify documents produced
- § 39:19 —Timing of motion
- § 39:20 —Key procedural requirements
- § 39:21 — —Separate statement requirement
- § 39:22 —Authorized sanctions—Unsuccessful motion or opposition to motion

- § 39:23 — —Disobeying court order
- § 39:24 — —Misuse of discovery process
- § 39:25 — —Notice requirements for sanctions motion
- § 39:26 —Basis for opposition to motion: protective order
- § 39:27 — —Failure to appear or to write opposition
- § 39:28 Motion to compel compliance with demand for production—Authority for motion
- § 39:29 — —Content of required statement of compliance
- § 39:30 —Key procedural requirements
- § 39:31 — —Separate statement requirement
- § 39:32 — —No specific motion timing restrictions
- § 39:33 —Authorized sanctions—Unsuccessful motion or opposition to motion
- § 39:34 — —Disobeying court order
- § 39:35 — —Misuse of discovery process
- § 39:36 — —Notice requirements for sanctions motion
- § 39:37 Motions re supplemental demands—Authority for supplemental demands
- § 39:38 —Authority for motion to propound additional supplemental inspection demands
- § 39:39 —Authority for motion to compel response to supplemental demands

## **I. SELECTED RECENT CASES**

- § 39:40 Compelling production of documents, pre-1986 revisions
- § 39:41 Compelling production of documents, post-1986 revisions
- § 39:42 —Opposition to motion to compel

## **CHAPTER 40. ADMISSION REQUEST MOTIONS**

- § 40:1 Motion to deem matters admitted [when response untimely]—Authority for motion
- § 40:2 — —Timing and content of required response
- § 40:3 —Waiver of objections
- § 40:4 — —Relief from waiver of objections
- § 40:5 —Key procedural requirements
- § 40:6 — —No “meet and confer” requirement
- § 40:7 — —No specific motion timing restrictions
- § 40:8 — —No separate statement required where party fails to respond to discovery or where a party is allowed to submit a concise statement in lieu of a separate statement
- § 40:9 —Authorized sanctions—Mandatory monetary sanction
- § 40:10 — —Misuse of discovery process

## TABLE OF CONTENTS

§ 40:11	— —Notice requirements for sanctions motion
§ 40:12	—Basis for opposition to motion: Protective order
§ 40:13	— —Failure to appear or to write opposition
§ 40:14	Motion to compel further responses to requests for admissions—Authority for motion
§ 40:15	—Timing of motion
§ 40:16	—Key procedural requirements
§ 40:17	— —Separate statement requirement
§ 40:18	—Authorized sanctions—Unsuccessful motion or opposition to motion
§ 40:19	— —Disobeying court order
§ 40:20	— —Misuse of discovery process
§ 40:21	— —Notice requirements for sanctions motion
§ 40:22	— — —Separate statement requirement
§ 40:23	—Recovery of costs for failing to properly admit matter
§ 40:24	—Basis for opposition to motion: Protective order
§ 40:25	— —Failure to appear or to write opposition
§ 40:26	Motion to withdraw or amend admissions— Authority for motion
§ 40:27	—Grounds for motion
§ 40:28	—Effect of granting motion
§ 40:29	Motion to propound additional requests for admission—Limit on number of requests for admission
§ 40:30	— —Exception: Declaration for additional requests for admission
§ 40:31	—Authority for motion for additional requests for admission
§ 40:32	—Basis for opposition to motion: Protective order
§ 40:33	— —Failure to appear or to write opposition

## I. SELECTED RECENT CASES

§ 40:34	RFAs under former statutory provisions
§ 40:35	RFAs Under amended statutory provisions
§ 40:36	Failure to serve timely response
§ 40:37	—Mandatory sanctions
§ 40:38	—No relief under Code Civ. Proc. § 473
§ 40:39	—Withdrawal and amendment of admissions
§ 40:40	— —Withdrawal and amendment of “deemed admissions” under § 2033.300— <i>Wilcox</i> rule
§ 40:41	— — —Harmonizing § 2033.300 with related sections
§ 40:42	— — —Relief from deemed admissions
§ 40:43	— — —Disapproval of <i>courtesy claims</i> and progeny

- § 40:44 —Response without appropriate signature or verification
- § 40:45 — —Code Civ. Proc. § 473 no source of relief for faulty verification
- § 40:46 Motion to deem matters admitted
- § 40:47 —No timing requirements for bringing motion
- § 40:48 —Restrictions on shortening time for motion
- § 40:49 Procedure when motion granted—Summary judgment motion follows admission of facts dispositive of case
- § 40:50 Costs and fees
- § 40:51 —Factors considered by court regarding costs and fees
- § 40:52 — —“Substantial importance” of admission
- § 40:53 — —Failure to make reasonable investigation
- § 40:54 — —Good faith of party

## **CHAPTER 41. PHYSICAL AND MENTAL EXAMINATION MOTIONS**

- § 41:1 Right to physical or mental examination, generally—Authority for examination
- § 41:2 —Physical examinations in personal injury cases
- § 41:3 — —Examination without leave of court
- § 41:4 — —Court order required for mental examinations and certain physical examinations
- § 41:5 — —Parties may stipulate to examination
- § 41:6 —Timing of notice of examination
- § 41:7 —Timing and content of plaintiff’s response to demand
- § 41:8 —Waiver of objections
- § 41:9 — —Relief from waiver of objections
- § 41:10 —Demand for report of examination—Demand by party who submits to examination
- § 41:11 — —Demand by party that requested examination
- § 41:12 Motion to compel response to demand (when untimely response)—Authority for motion
- § 41:13 —Key procedural requirements—No “meet and confer” requirement
- § 41:14 — —No specific motion timing restrictions
- § 41:15 — —No separate statement required where no objection to medical examination
- § 41:16 —Authorized sanctions—Unsuccessful motion or opposition
- § 41:17 — —Failing to submit to examination
- § 41:18 — —Disobeying court order
- § 41:19 — —Misuse of discovery process

## TABLE OF CONTENTS

- § 41:20 — —Notice requirements for sanctions motion
- § 41:21 — — —Separate statement requirement
- § 41:22 —Basis for opposition to motion—Improper examiner
- § 41:23 — —Failure to appear or to write opposition
- § 41:24 Motion to compel compliance with examination demand (for refusal or modification)—Authority for motion
- § 41:25 —Key procedural requirements
- § 41:26 — —Separate statement required where motion made “over objection” to medical examination
- § 41:27 —No special timing restrictions for bringing motion
- § 41:28 —Sanctions—Unsuccessful motion or opposition
- § 41:29 — —Failing to submit to examination
- § 41:30 — —Misuse of discovery process
- § 41:31 — —Notice requirements for sanctions motion
- § 41:32 — — —Separate statement requirement
- § 41:33 —Basis for opposition to motion—Improper examiner
- § 41:34 — —Failure to appear or to write opposition

## I. SELECTED RECENT CASES

- § 41:35 Motion for order compelling mental or physical examination—Authority for motion
- § 41:36 —Key procedural requirements
- § 41:37 — —Separate statement required where motion made “over objection” to medical examination
- § 41:38 —Authorized sanctions—Failing to submit to examination
- § 41:39 — —Misuse of discovery process
- § 41:40 — —Notice requirements for sanctions motion
- § 41:41 — — —Separate statement requirement
- § 41:42 —Basis for opposition to motion—Mental condition not in controversy
- § 41:43 — — —No speculation regarding mental condition
- § 41:44 — —Improper examiner
- § 41:45 — —Protective order
- § 41:46 — —Failure to appear or to write opposition
- § 41:47 Motion for protective order—Authority for motion
- § 41:48 —Grounds for protective order—Mental condition not in controversy
- § 41:49 — — —No speculation regarding mental condition
- § 41:50 — —Improper examiner
- § 41:51 — —Improper examination or disruptive

- behavior by observer—Right to have observer present at examination
- § 41:52 — — —Motion when examination halted due to abusive or unauthorized examination
- § 41:53 — — —Motion when examination halted due to disruption by observer
- § 41:54 —Key procedural requirements
- § 41:55 —Authorized sanctions—Unsuccessful motion or opposition to motion
- § 41:56 — —Misuse of discovery process
- § 41:57 — —Notice requirements for sanctions motion
- § 41:58 — — —Separate statement requirement
- § 41:59 Motion to compel delivery of medical reports
- § 41:60 —Compelling reports by party who submitted to examination
- § 41:61 — —Compare: Compelling reports by party who requested examination
- § 41:62 —Key procedural requirements
- § 41:63 — —No specific motion timing restrictions
- § 41:64 —Authorized sanctions—Unsuccessful motion or opposition
- § 41:65 — —Disobeying court order
- § 41:66 — —Exclusion of medical testimony of examiner that does not provide report
- § 41:67 — — —Compare: Exclusion of testimony for non-compliance with court order
- § 41:68 — —Misuse of discovery process
- § 41:69 — —Notice requirements for sanctions motion
- § 41:70 — — —Separate statement requirement
- § 41:71 General
- § 41:72 Mental condition must be “in controversy”
- § 41:73 Multiple examinations possible
- § 41:74 Demand for written report
- § 41:75 —Examining party required to prepare report
- § 41:76 Examining doctor cannot be shielded from deposition
- § 41:77 No authority for videotaped examinations

## CHAPTER 42. DISCOVERY SANCTION MOTIONS

- § 42:1 Basis for discovery sanctions—Misuse of the discovery process—Authority for motion
- § 42:2 — — —“Misuse of the discovery process” defined
- § 42:3 — —Authorized sanctions
- § 42:4 —Unsuccessful motion to compel discovery
- § 42:5 — —Unsuccessful motion for protective order
- § 42:6 —Motion based on disobeying discovery order to compel

## TABLE OF CONTENTS

- § 42:7 —Violation of local rule
- § 42:8 —Sanctions may be awarded even where no opposition to motion
- § 42:9 Key procedural requirements
- § 42:10 —Separate statement requirement—Issue or evidentiary sanctions
- § 42:11 Additional sources for sanctions

## I. SELECTED RECENT CASES

- § 42:12 Sanctions for misuse of discovery process
- § 42:13 Scope of discovery sanctions
- § 42:14 —No “willful” requirement
- § 42:15 —Discovery sanctions not penal
- § 42:16 — —Compare: Discovery sanctions vs. expense award
- § 42:17 —No sanctions for non-noticing parties (“incidental beneficiaries”)
- § 42:18 Monetary sanctions
- § 42:19 —Sanctions directed against attorney
- § 42:20 — —Sanctions and a pro se attorney
- § 42:21 — —Sanctions and party represented pro bono
- § 42:22 —Sanctions directed against party
- § 42:23 More drastic sanctions
- § 42:24 —Evidence preclusion
- § 42:25 — —Pretrial discovery abuse
- § 42:26 — — —Preclusion of testimony
- § 42:27 — —Discovery abuse: When found at trial
- § 42:28 — —Discovery abuse: When found post-trial
- § 42:29 —Issue sanctions
- § 42:30 —Terminating sanctions
- § 42:31 — —No dismissal for failure to pay monetary sanctions
- § 42:32 — —Dismissal for refusal to comply with discovery order
- § 42:33 —Sanctions by temporary judge
- § 42:34 Reasonable attempt at resolution
- § 42:35 Appellate review of discovery sanctions
- § 42:36 —Burden of showing sanctions undeserved

## CHAPTER 43. DISCOVERY MOTIONS IN PUNITIVE DAMAGE CASES

- § 43:1 When exemplary (punitive) damages allowable in tort actions
- § 43:2 Protective order re discovery of profits and financial condition
- § 43:3 Authority for motion for pretrial discovery of defendant’s profits and financial condition

- § 43:4 —Typical grounds for motion
- § 43:5 —Key procedural requirements—Affidavits required
- § 43:6 — —Court’s discretion to conduct hearing
- § 43:7 —Basis for opposition
- § 43:8 Defendant’s right to bifurcate admission of evidence of defendant’s profits or financial condition

## **I. SELECTED RECENT CASES**

- § 43:9 Purpose
- § 43:10 Construction with federal laws
- § 43:11 Timing
- § 43:12 Scope of judicial authority
- § 43:13 Protective orders
- § 43:14 Prima facie evidence
- § 43:15 Substantial probability of prevailing on claim
- § 43:16 Motion to exclude
- § 43:17 Bifurcation
- § 43:18 Financial statements
- § 43:19 Review

## **Volume 2**

## **PART V. EXPERT WITNESS MOTIONS**

### **CHAPTER 44. GENERAL EXPERT WITNESS MOTIONS**

- § 44:1 Motion to augment witness lists—Authority For motion
- § 44:2 —Authority for motion—Note: Exchanging expert witness information
- § 44:3 —Grounds for motion
- § 44:4 —Timing of motion
- § 44:5 — —Note: General discovery time limits regarding expert witnesses
- § 44:6 —Key procedural requirements
- § 44:7 —Authorized sanctions—Unsuccessful motion or opposition to motion
- § 44:8 — —Misuse of discovery process
- § 44:9 — —Notice requirements for sanctions motion
- § 44:10 —Basis for opposition
- § 44:11 Motion to submit tardy expert witness information—Authority for motion



## TABLE OF CONTENTS

§ 44:12	—Grounds for motion
§ 44:13	—Timing and procedural requirements
§ 44:14	— —Note: General discovery time limits regarding expert witnesses
§ 44:15	—Authorized sanctions—Unsuccessful motion or opposition to motion
§ 44:16	— —Misuse of discovery process
§ 44:17	— —Notice requirements for sanctions motion
§ 44:18	— — —Separate statement requirement
§ 44:19	Motion for order to set or challenge expert fees— Motion to set fees re deposition testimony
§ 44:20	— —Grounds for motion
§ 44:21	— —Key procedural requirements
§ 44:22	— —Authorized sanctions—Unsuccessful motion or opposition to motion
§ 44:23	— — —Misuse of discovery process
§ 44:24	—Motion to set fees re trial testimony
§ 44:25	— —Grounds for motion
§ 44:26	— —Key procedural requirements
§ 44:27	Motion to exclude expert witness testimony— Authority for motion
§ 44:28	—Basis for opposition to motion: Other provisions satisfied
§ 44:29	Motion for court-appointed expert—Authority for motion
§ 44:30	— —License requirement
§ 44:31	— —Payment of court-appointed expert fees
§ 44:32	Augmenting expert witness lists
§ 44:33	—Appellate review of augmentation
§ 44:34	Tardy expert witness declaration
§ 44:35	Witness fees—“Reasonable and customary” expert fees
§ 44:36	— —Discrepancies in client and opposition charges: <i>Rancho Bernardo</i> decision
§ 44:37	— —Designating party must pay “unreasonable” portion of fee: <i>Marsh</i> decision
§ 44:38	— —Other payments required by designating party
§ 44:39	Excluding testimony—Failure to comply with Code Civ. Proc. § 2034
§ 44:40	—Exclusion of expert testimony based on inadequate disclosures—Appellate conflict prior to <i>Bonds</i> 1999 supreme court decision
§ 44:41	— — —Prior law: <i>Casteneda</i> and <i>Martinez</i> appellate decisions
§ 44:42	— — —Prior law: <i>Bonds</i> appellate decision
§ 44:43	— —Resolution of conflict <i>Bonds</i> Supreme Court decision

## **PART VI. MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION**

### **CHAPTER 45. MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION**

- § 45:1 Motion for summary judgment
- § 45:2 —Compare: Motion for summary adjudication
- § 45:3 — —Disposing of less than complete cause of  
action, affirmative defense or issue of duty
- § 45:4 — — —key procedural requirements
- § 45:5 — —Determining when a cause of action “has no  
merit”
- § 45:6 — —Summary adjudication procedures
- § 45:7 — — —Note: Limitation following prior denial of  
summary adjudication
- § 45:8 Grounds for summary judgment
- § 45:9 Timing of motion
- § 45:10 Key procedural requirements—Separate  
statement of material facts in support of  
motion
- § 45:11 —Only one motion for summary judgment  
allowed
- § 45:12 —Separate statement of material facts in  
opposition to motion
- § 45:13 — —Opposition must show competent evidence
- § 45:14 Special notice and service requirements
- § 45:15 Evidence and objections—Content of affidavits  
and declarations
- § 45:16 —Objecting to evidence
- § 45:17 — —Special timing requirements when  
submitting written objections
- § 45:18 —Burden of proof
- § 45:19 —Incorporation by reference
- § 45:20 Continuances
- § 45:21 —Ex parte application
- § 45:22 Basis for opposition to motion, generally—  
Drastic remedy
- § 45:23 —Doubts favor opposing party
- § 45:24 Sanctions for bad faith or delaying tactics
- § 45:25 Procedures following grant or denial of motion
- § 45:26 Compare: Motion for Judgment under Code Civ.  
Proc. § 631.8 (applicable to non-jury trials)

### **I. SELECTED RECENT CASES**

- § 45:27 Summary judgment, generally
- § 45:28 —§ 437c limited on constitutional grounds

## TABLE OF CONTENTS

§ 45:29	Purpose of summary judgment
§ 45:30	—Drastic procedure
§ 45:31	—Motion does not address merits of action
§ 45:32	Distinguishing other forms of relief—Compare: Demurrer and judgment on the pleadings
§ 45:33	— —Compare: Joinder in motion
§ 45:34	— —Opportunity to amend
§ 45:35	Summary adjudication and 1990 amendments
§ 45:36	—Issue of duty, generally
§ 45:37	— —Tort duty
§ 45:38	— —Courts split regarding contract duty— Contract duty appropriate for summary adjudication ( <i>Linden</i> )
§ 45:39	— — —Compare: Insurance contract duty and summary adjudication ( <i>Regan</i> )
§ 45:40	—“Claim for damages”
§ 45:41	1992 and 1993 amendments, generally
§ 45:42	—Codification of “complete defense” law
§ 45:43	—Burden of proof and 1992-93 amendments
§ 45:44	— —Relation of burden shifting amendments to federal law
§ 45:45	— —Burden when “factually inadequate discovery”
§ 45:46	Timing of motion when trial date continued
§ 45:47	Pleadings define factual issues
§ 45:48	—Compare: Admissions in opposing party’s pleading
§ 45:49	—Note: Opportunity to amend pleadings
§ 45:50	Separate statement of disputed facts
§ 45:51	—Practical considerations of separate statement
§ 45:52	—Contents of separate statement
§ 45:53	—Opposition’s separate statement
§ 45:54	—Separate statement more important in complex cases
§ 45:55	—Failure to comply with separate statement
§ 45:56	— —Court must first review all papers submitted
§ 45:57	— —Disagreement with <i>Kulesa</i> and the “golden rule”
§ 45:58	— —Summary judgment disfavored for failure to file opposition statement
§ 45:59	Supporting affidavits and declarations
§ 45:60	—Declarations of opinion witnesses
§ 45:61	—Declarations based on speculation
§ 45:62	—Declarations based on mistake
§ 45:63	—Declarations subject to collateral estoppel
§ 45:64	—Declarations contradicting prior admissions

- § 45:65 — — *D’Amico* viewed with caution
- § 45:66 Admissible evidence, generally
- § 45:67 — Deposition testimony
- § 45:68 — — Compare: Deposition testimony from another case
- § 45:69 — Courts divided on use of former testimony—  
When transcript testimony from another case admissible (*Williams*)
- § 45:70 — — When transcript testimony from another case inadmissible (disagreement with *Williams*)
- § 45:71 Burden of proof
- § 45:72 — Moving party’s burden
- § 45:73 — — Disproving essential element
- § 45:74 — — — Motions premised on factually devoid discovery responses
- § 45:75 — — — Compare: No duty to volunteer information
- § 45:76 — — — Compare: Information within defendant’s possession
- § 45:77 — — — Compare: Factually vague discovery responses
- § 45:78 — — When complete defense exists
- § 45:79 — Opposition’s burden
- § 45:80 — — When the burden shifts
- § 45:81 — — Specific facts required in opposition
- § 45:82 — — — Compare: Excuse of mistaken facts
- § 45:83 — — Material facts required
- § 45:84 — — Timeliness of opposition evidence
- § 45:85 — — Failure to submit opposition
- § 45:86 — — Standard for punitive damages
- § 45:87 Moving party’s reply
- § 45:88 Summary judgment hearing—Oral argument required
- § 45:89 — — Remedy of peremptory writ for court’s failure to allow oral argument
- § 45:90 — — Sufficiency of notice of hearing on motion
- § 45:91 — — — Waiver of claim of inadequate notice
- § 45:92 — — — Correct procedure for claim of inadequate notice
- § 45:93 — — — Late-added defendants—Relation of notice requirements to trial date
- § 45:94 — Evidentiary objections and waiver of objections
- § 45:95 — — Disagreement with *Biljac*
- § 45:96 — Denial of motion—Order denying motion
- § 45:97 — Granting of motion
- § 45:98 — — Order on granting motion: statement of reasons

## TABLE OF CONTENTS

§ 45:99	— — Court’s discretion to grant motion on new issue
§ 45:100	— — Key procedural requirements must be followed
§ 45:101	— — — Local rules cannot conflict with § 437c
§ 45:102	— Continuance of hearing
§ 45:103	— — Oral request for continuance at hearing
§ 45:104	— — Continuance for further discovery
§ 45:105	— — — Deposing opposing party’s (non-expert) declarants
§ 45:106	— — — Deposing Expert declarants of either party
§ 45:107	— — Voluntary dismissals inappropriate to gather evidence to defeat summary judgment
§ 45:108	— — — Compare: dismissal before opposition due
§ 45:109	— Renewing motion for summary judgment
§ 45:110	— — Relation to § 1008 reconsideration motions
§ 45:111	— Motion timing in complex litigation cases [ <i>First State Ins.</i> ]
§ 45:112	Summary judgment standard of review
§ 45:113	— De novo review of summary judgment grant
§ 45:114	— — Reviewing grant of summary adjudication
§ 45:115	— — Appellate court’s independent judgment
§ 45:116	— — “Correct on any ground”
§ 45:117	— — Reviewing evidentiary objections
§ 45:118	— Writ of mandate review
§ 45:119	— Abuse of discretion standard incorrect
§ 45:120	— — Exceptions to “no abuse of discretion” standard
§ 45:121	— — — State of mind [Code Civ. Proc. § 437c(e)]
§ 45:122	— — — Premature motions [Code Civ. Proc. § 437c(e)]
§ 45:123	— Motion for new trial following grant of summary judgment
§ 45:124	— — Motion for reconsideration, compared
§ 45:125	— — Appealability of order granting new trial

## PART VII. DISMISSAL AND SETTLEMENT MOTIONS

### CHAPTER 46. MOTION TO DISMISS ACTION

§ 46:1	Motion for mandatory dismissal—Dismissal for delay in service of summons—Time requirements for service of process
§ 46:2	— — Authority for motion

- § 46:3 — — Dismissal mandatory
- § 46:4 — — Time extensions or exclusions for service
- § 46:5 — Dismissal for delay in bringing action to trial—Time requirements for bringing action to trial
- § 46:6 — — — Note: Time requirements for bringing new trial
- § 46:7 — — Authority for motion
- § 46:8 — — Dismissal mandatory
- § 46:9 — — Time extensions or exclusions for bringing to trial
- § 46:10 — — — Effect of tolling
- § 46:11 Motion for discretionary dismissal—Authority for motion
- § 46:12 — Grounds for motion
- § 46:13 — Key procedural requirements
- § 46:14 Compare: Other authorities for dismissal motion—Inconvenient forum
- § 46:15 — Dismissal as response to complaint
- § 46:16 — Dismissal as discovery sanction
- § 46:17 — After demurrer or motion to strike
- § 46:18 Basis for opposition to dismissal motion
- § 46:19 — Further prosecution after motion filed
- § 46:20 — Policy favoring trial on the merits
- § 46:21 — Exemption from fast track rules
- § 46:22 — Court’s discretion: “Substantial justice”

## I. SELECTED RECENT CASES

- § 46:23 Dismissal for failure to amend after demurrer
- § 46:24 Mandatory dismissal for delay in service
- § 46:25 — “Service” under Code Civ. Proc. § 583
- § 46:26 — Timeliness of service under Code Civ. Proc. § 583—Summons and complaint
- § 46:27 — — — Exceptions to service time requirements
- § 46:28 — — Return of summons
- § 46:29 — — — Exceptions for return of summons
- § 46:30 — Tolling of the three-year period
- § 46:31 — — Determining when defendant is “not amenable to process”
- § 46:32 — — — *Quaranta* holding
- § 46:33 — — — *Perez* holding
- § 46:34 — — — Supreme Court resolution: *Watts v. Crawford*
- § 46:35 — — When stay in effect
- § 46:36 — — When validity of service being litigated
- § 46:37 — — When service impossible, impracticable or futile
- § 46:38 — — — Cases where tolling allowed

## TABLE OF CONTENTS

§ 46:39	— — —Cases where tolling disallowed
§ 46:40	—Equitable estoppel and delay in service
§ 46:41	Mandatory dismissal for failure to bring to trial
§ 46:42	—Five-year dismissal statute, generally
§ 46:43	— —When “action” commences
§ 46:44	— —“Brought to trial” defined
§ 46:45	— — —Proceedings that do not qualify as “trial”
§ 46:46	— — —Proceedings that qualify as “trial”
§ 46:47	— —Plaintiff’s diligence in moving case forward
§ 46:48	— — —Party bears responsibility for counsel’s delay
§ 46:49	— — —Plaintiff’s diligence subsequent to arbitration
§ 46:50	— — —Preferential trial setting
§ 46:51	— —Computation of five-year period, generally
§ 46:52	— —Tolling of five-year period
§ 46:53	— — —Contractual or judicial arbitration
§ 46:54	— — —Compare: Submission to mediation
§ 46:55	— — —Lack of jurisdiction
§ 46:56	— — —Impossibility
§ 46:57	— — —Tolling for default judgment
§ 46:58	— — —Compare: “In default” vs. “default judgment”
§ 46:59	— — —Reasonable diligence
§ 46:60	— — —Plaintiff’s abandonment
§ 46:61	— — —Same action asserted in different forums
§ 46:62	— — —Continuances
§ 46:63	— — —Settlement
§ 46:64	— — —Note: No tolling for “ordinary and usual” proceedings
§ 46:65	— —Dismissal subsequent to appeal
§ 46:66	— —Standard of review—Failure to prosecute
§ 46:67	Discretionary dismissal for delay in prosecution
§ 46:68	—Trial on the merits favored
§ 46:69	—Delay in serving summons
§ 46:70	—Delay in bringing to trial
§ 46:71	— —Determining “commencement” of action: Relation-back rules
§ 46:72	— —Scope of trial court’s discretion
§ 46:73	— — —Differing standards of excuse
§ 46:74	—No discretion where absence of showing of excusable delay ( <i>Denham</i> rule)
§ 46:75	— —Compare: Cases where discretion allowed despite lack of showing of excusable delay
§ 46:76	—Plaintiff’s showing of excusable delay
§ 46:77	— —Credibility and reasonableness of plaintiff’s showing
§ 46:78	— — — <i>Putnam</i> two-prong test

- § 46:79 — — —Subsequent criticism of *Putnam* test
- § 46:80 — — —Pendency of other litigation
- § 46:81 — — —Plaintiff's financial condition
- § 46:82 — — —When counsel's neglect is not imputed to client [*Daley*]
- § 46:83 — — —*Daley* exception: De facto attorney abandonment
- § 46:84 — — —*Daley* exception: Client must be free from negligence
- § 46:85 — — —Waiver and estoppel when defendant given an open extension to respond
- § 46:86 — — —When court sets a trial date within five years
- § 46:87 —Burden of producing evidence, generally—Plaintiff's burden of showing excusable delay in opposing motion
- § 46:88 — — —Evidence of prejudice to defendant
- § 46:89 —Dismissal and California Rules of Court
- § 46:90 — — —Cal. Rules of Court, rule 372
- § 46:91 — — —Cal. Rules of Court, rule 373 [now 3.1342]
- § 46:92 — — —Cal. Rules of Court, rule 373—Shortening of the 45 day requirement
- § 46:93 — — —Cal. Rules of Court, rule 3.1385
- § 46:94 —Dismissal and fast track rules
- § 46:95 —Dismissal based on local rules
- § 46:96 —Relationship of Code Civ. Proc. § 36 to discretionary dismissal
- § 46:97 —Standard of review
- § 46:98 Dismissal pursuant to Cal. Rules of Court, rule 226 [now 10.910]
- § 46:99 Due process considerations

## CHAPTER 47. MOTION TO SET ASIDE DISMISSAL

- § 47:1 Motion for § 473 relief—Authority for motion
- § 47:2 —Timing of motion
- § 47:3 —Key procedural requirements
- § 47:4 Motion for reconsideration—Authority for motion
- § 47:5 —Timing of motion
- § 47:6 —Key procedural requirements
- § 47:7 Motion to vacate judgment—Authority for motion
- § 47:8 —Timing of motion
- § 47:9 —Key procedural requirements
- § 47:10 Motion for new trial—Authority for motion
- § 47:11 —Timing of motion
- § 47:12 —Key procedural requirements



## TABLE OF CONTENTS

- § 47:13 Common grounds for motion
- § 47:14 Other authority: Policy favoring trial on the merits
- § 47:15 Motion for new trial
- § 47:16 Motion for relief under Code Civ. Proc. § 473
- § 47:17 —Relation to discretionary dismissal statutes

## CHAPTER 48. MOTION FOR GOOD FAITH SETTLEMENT

- § 48:1 Authority for motion—Hearing on issue of good faith of settlement
- § 48:2 —Notice of settlement with application for determination of good faith of settlement
- § 48:3 — —Key procedural requirements
- § 48:4 — —Basis for opposition or grant of motion
- § 48:5 Evidence supporting or opposing motion
- § 48:6 —*Tech-Bilt* factors
- § 48:7 Effect of good faith determination
- § 48:8 —Compare: Sliding scale recovery agreements
- § 48:9 Writ of mandate review
- § 48:10 Code Civ. Proc. § 877, generally—History of statute
  - § 48:11 — —Purpose of statute
  - § 48:12 — —Statute not applicable when only single tortfeasor or obligor
  - § 48:13 — —“Parties” to settlement agreement
  - § 48:14 — —Cross-defendants
  - § 48:15 — —“Likely” defendants
  - § 48:16 — —Courts split on cross-complainants—Cross-complainants covered by statute
  - § 48:17 — — —Cross-complainants not covered by statute
  - § 48:18 — — —Most courts hold insurers not covered by statute
  - § 48:19 — — —*Diamond Heights* exception: Insurers covered by statute
- § 48:20 Entitlement to good faith hearing
- § 48:21 —Effect of timing of settlement—Relation to summary judgment
  - § 48:22 — —§ 877 applicable to pre-verdict settlements
  - § 48:23 — —Liability finding in bifurcated trial not requisite “finality” (*Price Pfister*)
  - § 48:24 — — —Compare *Halpin*: Liability verdict in bifurcated trial considered final
  - § 48:25 — — —Compare: Cases Where finality not questioned
- § 48:26 Determination of “good faith”
- § 48:27 —Proportional liability of settling party

- § 48:28 —Burden on party objecting to settlement
- § 48:29 Effect of good faith settlement
- § 48:30 —Setoff/offset for nonsettling defendants
- § 48:31 —Allocation of settlement proceeds
- § 48:32 — —No “offset” between defendants only
- § 48:33 — —Valuation of noncash consideration for settlement
- § 48:34 — — —Possibility of double recovery
- § 48:35 — —Where parties fail to allocate
- § 48:36 —Relation of proposition 51 to § 877 setoffs
- § 48:37 — —Allocation by the court
- § 48:38 — —Divergence in settlement-verdict amount
- § 48:39 —Financial condition of settling party
- § 48:40 —Collusion, fraud or tortious conduct
- § 48:41 —Conduct of nonsettling defendant
- § 48:42 — —Necessity of a “nonsettling defendant”
- § 48:43 —Impact on non-parties
- § 48:44 —Court costs and offset “claims”
- § 48:45 When further claims barred by statute
- § 48:46 —Dismissal of cross-complaints
- § 48:47 —Equitable indemnity
- § 48:48 — —Implied contractual indemnity
- § 48:49 — —Compare: Indemnity by settlor following settlement
- § 48:50 — —Compare: Direct actions required against settling defendant
- § 48:51 When joint-tortfeasor claims not barred by statute—Express indemnity provisions
- § 48:52 —Indemnity provision by statute
- § 48:53 — —Statute must create right to indemnity
- § 48:54 —Claims other than “further claims” of joint-tortfeasor
- § 48:55 Right to review settlement agreement
- § 48:56 —Compare: Uncontested settlements
- § 48:57 Calculating offset in multiparty cases (sliding scale agreements)
- § 48:58 —Typical alignment of parties in sliding scale agreements
- § 48:59 —Legislative recognition of sliding scale agreements
- § 48:60 —Sliding scale settling defendants as witnesses
- § 48:61 —Role of sliding scale settling defendants at trial
- § 48:62 Appellate review of good faith settlement
- § 48:63 —Writ of mandate proper means of review
- § 48:64 — —*Exclusive* means of review
- § 48:65 — — —Disagreement with *Main Fiber Products*—Where timely writ filed, appellate review later available

## TABLE OF CONTENTS

- § 48:66 —Compare: Cases involving multiple insurers
- § 48:67 —Timeliness of writ
- § 48:68 —Standard of review of determination of good faith
- § 48:69 —Review of determination of allocation

## CHAPTER 49. MOTION TO ENFORCE SETTLEMENT

- § 49:1 Authority for motion
- § 49:2 Grounds for motion
- § 49:3 Basis for sanctions: Unnecessary delay
- § 49:4 Basis for opposition

### I. SELECTED RECENT CASES

- § 49:5 Enforcing stipulated settlements—History of settlement enforcement procedures
- § 49:6 —Current rule [Code Civ. Proc. § 664.6]
- § 49:7 —Alternative means of enforcement
- § 49:8 —Jurisdictional issues
- § 49:9 “Parties” to stipulation
- § 49:10 —Whether attorneys considered parties—Law prior to 1995 *Levy* decision
- § 49:11 — —*Levy* rule: Attorneys are not parties
- § 49:12 — — —Direct participation of party required (*Johnson*)
- § 49:13 — —*Levy* not applicable to insurance counsel
- § 49:14 — —*Levy* rule: Attorneys are not parties—Exception: Insured’s consent required when policy gives approval right
- § 49:15 — —Agency principles not applicable
- § 49:16 — — —Compare: Corporate parties and agents
- § 49:17 —“Pending litigation” requirement
- § 49:18 — —Settlements arising from private dispute resolution
- § 49:19 —Signed by all parties to settlement
- § 49:20 Oral settlement agreements—Party’s participation required (*Johnson*)
- § 49:21 — —All parties do not have to agree in same manner
- § 49:22 —“Before the court”
- § 49:23 — —Proceedings before a referee or mediator
- § 49:24 — —Court’s retention of jurisdiction to enforce agreement after dismissal
- § 49:25 Settlement agreements governed by contract law
- § 49:26 Opposing stipulated judgments
- § 49:27 Standard of review of statutory settlement agreements

## **PART VIII. MOTIONS FOR COSTS OR SANCTIONS**

### **CHAPTER 50. MOTION FOR COSTS**

- § 50:1 Memorandum of costs—Authority for costs
- § 50:2 — — Allowable costs
- § 50:3 — — Non-allowable costs
- § 50:4 — — Conditions for allowing costs
- § 50:5 — — — Allowable if incurred
- § 50:6 — — — Shall be reasonably necessary
- § 50:7 — — — Shall be reasonable in amount
- § 50:8 — — — Court’s discretion to allow or deny costs
- § 50:9 — — — Attorney’s fees as costs
- § 50:10 — Key procedural requirements: Memorandum of costs
- § 50:11 — Determining reasonableness of costs
- § 50:12 Motion to strike or tax costs—Authority for motion
- § 50:13 — Grounds and timing of motion
- § 50:14 — Key procedural requirements
- § 50:15 — Costs automatic if no motion filed
- § 50:16 Offer to compromise pursuant to Code Civ. Proc. § 998—Authority for offer to compromise
- § 50:17 — Key procedural requirements
- § 50:18 — When 998 offer rejected by plaintiff—If defendant receives more favorable result
- § 50:19 — — Costs deducted from plaintiff’s judgment or award
- § 50:20 — When 998 offer rejected by defendant—If plaintiff receives more favorable result
- § 50:21 Other authority for costs—Where judgment could have been obtained in lower court
- § 50:22 — Where judgment in de novo trial not more favorable
- § 50:23 — — Motion for relief from costs under § 1141.21
- § 50:24 — Actions on contract or book account
- § 50:25 — Motion to quash subpoena for personal identifying information in certain cases
- § 50:26 Attorneys fees—No inherent right to recover attorney’s fees
- § 50:27 — Attorney’s fees authorized by statute— Damages arise from felony
- § 50:28 — — Advancing public interest
- § 50:29 — — PAGA action
- § 50:30 — — Claim for implied indemnity
- § 50:31 — — Action against peace officers
- § 50:32 — — Enforcement actions by Attorney General

## TABLE OF CONTENTS

§ 50:33 — —Damages from trespass

## I. SELECTED RECENT CASES

- § 50:34 General
- § 50:35 —Statutory right to costs
- § 50:36 —Procedural requirements—No strict format requirement
- § 50:37 — —Timing requirements
- § 50:38 — —Time limits not jurisdictional
- § 50:39 Costs to prevailing party—Section 1032:  
Pre-1986
- § 50:40 —1986 amendments
- § 50:41 —Interaction of compare: Civ. Code § 1717 and  
Code Civ. Proc. § 1032
- § 50:42 —“Prevailing party” generally
- § 50:43 — —Party with “net monetary recovery”
- § 50:44 — — —*Pirkig*: When recovery reduced due to  
settlement offset
- § 50:45 — — —Compare: When damages unproven
- § 50:46 — —Defendant in whose favor dismissal entered
- § 50:47 — —Where “neither plaintiff nor defendant  
obtains relief”
- § 50:48 — —Where plaintiff files  
complaint-in-intervention
- § 50:49 — —Joint and several cost award against  
multiple losing parties
- § 50:50 Costs “as a matter of right”
- § 50:51 —Allowable costs
- § 50:52 — —When contractual provisions provide rights  
beyond scope of statute
- § 50:53 — —Attorney fees
- § 50:54 — — —Fees authorized by law
- § 50:55 — — —Fees authorized by contract
- § 50:56 — —Necessary depositions and travel expenses
- § 50:57 — —Trial exhibits
- § 50:58 — —Court reporters’ fees
- § 50:59 — —Fees of experts ordered by court
- § 50:60 —Nonallowable costs
- § 50:61 — —Experts not ordered by court
- § 50:62 — — —Note: Courts split over whether  
contractual attorney’s fees include expert fees
- § 50:63 — — —Compare: Fee shifting statutes
- § 50:64 — — —Compare: Under FEHA
- § 50:65 — — —Compare: Federal law
- § 50:66 — —Investigation expenses
- § 50:67 — —Postage, telephone, photocopying and fax  
charges
- § 50:68 —Costs otherwise “reasonably necessary”

- § 50:69 — —Examples of costs allowed under  
§ 1033.5(c)(4)—Arbitrator and special master  
fees
- § 50:70 — — —Photographs and blueprints
- § 50:71 — — —Mediation expenses
- § 50:72 — — —Messenger fees
- § 50:73 Cost shifting statutes
- § 50:74 —One-way cost shifting provisions
- § 50:75 —Cost shifting under ERISA
- § 50:76 —Cost shifting and settlements under Code Civ.  
Proc. § 998
- § 50:77 — —Section 998 and plaintiff's pre-offer costs
- § 50:78 — —Section 998 and defendant's post-offer costs
- § 50:79 — —Rejection of informal settlement offers
- § 50:80 — —Interplay of statutes with FEHA
- § 50:81 —Cost shifting under Song-Beverly Act,  
generally
- § 50:82 — —*Murillo*: Prevailing defendant not expressly  
restricted from recovering costs
- § 50:83 —Cost shifting under Public Records Act
- § 50:84 Motion for attorney fees as costs—Timing of  
motion
- § 50:85 — —Impact of improper or late filing
- § 50:86 —Impact of appeal on costs
- § 50:87 — —No retroactivity of rule 870.2
- § 50:88 — —Not “judgment for money” with respect to  
stay provision
- § 50:89 — —Trial court's continuing jurisdiction to  
determine costs
- § 50:90 — —Notice of appeal and subsequent award of  
costs and fees
- § 50:91 —Motion under § 1717 (§ 1032(a)(4))
- § 50:92 Court's discretion to grant costs
- § 50:93 —Review of trial court's discretionary award
- § 50:94 Costs in pretrial dismissal cases
- § 50:95 —When dismissal part of § 877.6 settlement
- § 50:96 — —Dismissal of cross-defendants
- § 50:97 —Determining prevailing party in dismissal  
case

## **CHAPTER 51. MOTION FOR DEFENSE COSTS FOR BAD FAITH ACTION UNDER TORT CLAIMS ACT**

- § 51:1 Authority for motion
- § 51:2 Typical grounds for motion—Purpose of statute
- § 51:3 —“Good faith and reasonable cause” standards
- § 51:4 —Judgments subject to award of defense costs

## TABLE OF CONTENTS

§ 51:5 Key procedural requirements

## I. SELECTED RECENT CASES

- § 51:6 General
- § 51:7 —Timing of § 1038 motion
- § 51:8 Applies to frivolous initiation and maintenance of action
- § 51:9 Burden of parties—Burden on moving public entity
- § 51:10 —Burden on plaintiff
- § 51:11 Requirements of good faith and reasonable cause—Subjective requirement of good faith
- § 51:12 — —Appellate review of good faith
- § 51:13 —The objective requirement of reasonable cause
- § 51:14 — —Appellate review of reasonable cause
- § 51:15 Section 1038 and “either/or” controversy

## CHAPTER 52. MOTION FOR SANCTIONS

- § 52:1 Motion pursuant to Code Civ. Proc. § 128.5—  
Authority for motion
- § 52:2 —Effective date and definitions
- § 52:3 —Key procedural requirements
- § 52:4 —Punitive damages
- § 52:5 Motion pursuant to Code Civ. Proc. § 128.7  
[cases filed after December, 1994]—Authority  
for motion
- § 52:6 — —Risk to moving party
- § 52:7 —Grounds for motion
- § 52:8 —Key procedural requirements
- § 52:9 — —Effective date
- § 52:10 —Authorized sanctions and limitations
- § 52:11 —Punitive damages
- § 52:12 Motion based on discovery statutes—General  
authority for motion [Code Civ. Proc.  
§ 2023.030]
- § 52:13 —Grounds for motion—Misuse of discovery  
process, defined
- § 52:14 — — —Authorized sanctions
- § 52:15 — —Unsuccessful motion to compel discovery
- § 52:16 — — —Unsuccessful motion for protective order
- § 52:17 — —Disobeying discovery order
- § 52:18 —Key procedural requirements
- § 52:19 — —Separate statement requirement—Issue or  
evidentiary sanctions
- § 52:20 — —Sanctions may be awarded even where no  
opposition to motion
- § 52:21 Motion based on non-compliance with order  
[Code Civ. Proc. § 177.5]—Authority for motion

- § 52:22 — —Key procedural requirements
- § 52:23 —Compare: Discovery orders
- § 52:24 Motion based on non-compliance with rules of  
court or local rule [Code Civ. Proc. § 575.2]—  
Authority for motion
- § 52:25 —Basis for opposition
- § 52:26 Code Civ. Proc. § 128.5

## **I. SELECTED RECENT CASES**

- § 52:27 Code Civ. Proc. § 128.5—Law prior to 1981  
enactment of § 128.5
- § 52:28 —Origin and purpose of § 128.5
- § 52:29 — —Effective dates
- § 52:30 —Attorney fees “incurred by another party”
- § 52:31 — —Sanctions for pro per attorney
- § 52:32 — —Sanctions not payable to trial court
- § 52:33 —Subjective bad faith requirement
- § 52:34 — —Interpreting bad faith
- § 52:35 —No sanctions for “malicious defense”
- § 52:36 —No sanctions without due process
- § 52:37 —Court’s discretion
- § 52:38 — —Order imposing sanctions
- § 52:39 —Appellate review of § 128.5 sanctions
- § 52:40 Sanctions under Code Civ. Proc. § 128.7
- § 52:41 —Relation to § 128.5
- § 52:42 — —Historical background
- § 52:43 — —General provisions
- § 52:44 — — —Section 128.7 and continuing jurisdiction
- § 52:45 — —Substantive relationship to § 128.5
- § 52:46 — —Notice requirements
- § 52:47 — —Section 128.7 and federal rule 11
- § 52:48 —Certification requirement
- § 52:49 —Motion by party or court
- § 52:50 —Nature of § 128.7 sanctions
- § 52:51 —“Safe-harbor” provision
- § 52:52 — —Court-initiated sanctions and safe harbor  
provision
- § 52:53 — —Compare: Safe harbor and rule 11
- § 52:54 — —Safe-harbor notice requirements
- § 52:55 — — —Compare: Rule 11 notice requirements
- § 52:56 —Section 128.7 due diligence requirement
- § 52:57 — —Delaying motion until after case conclusion  
or dispositive ruling on pleading
- § 52:58 — — —Compare: Dismissal after sanction  
motion brought
- § 52:59 — —Compare: Rule 11 and dispositive rulings
- § 52:60 Violation of court order [Code Civ. Proc. § 177.5]



## TABLE OF CONTENTS

- § 52:61 Sanctions under “fast track” rules—General authority [Gov. Code § 68608(b)]
- § 52:62 —Dismissal sanctions under fast track
- § 52:63 — —Limitations on dismissals under fast track
- § 52:64 — — —Impact of Code Civ. Proc. § 575 on fast track dismissals
- § 52:65 —Standard of review for challenges to trial management orders
- § 52:66 Sanctions under local rules *[Deleted]*
- § 52:67 —Sanctions pursuant to Cal. Rules of Court, rule 2.30
- § 52:68 — —Limitation on attorney’s fees under rule 2.30
- § 52:69 —Sanctions pursuant to Code Civ. Proc. § 575
- § 52:70 — —Counsel misconduct cannot impact client’s case or defense
- § 52:71 Discovery sanctions

## PART IX. ARBITRATION MOTIONS

### CHAPTER 53. PETITION TO COMPEL ARBITRATION

- § 53:1 Petition based on contractual arbitration agreement—Authority for petition or opposition
- § 53:2 —Grounds for petition or opposition
- § 53:3 —Key procedural requirements
- § 53:4 — —Timing of petition and response
- § 53:5 — —Service of petition
- § 53:6 — —Place of filing petition—When petition filed prior to arbitration
- § 53:7 — — —When petition filed after commencement of arbitration
- § 53:8 — — —When matter pending in superior court
- § 53:9 Petition based on uninsured motorist action
- § 53:10 Motion to stay legal action pending arbitration
- § 53:11 Jurisdiction to compel compliance with arbitration agreement
- § 53:12 —Petition to compel arbitration, generally
- § 53:13 — —Evidence of agreement
- § 53:14 — —Revocation of agreement
- § 53:15 — —Burden of parties
- § 53:16 —Non-signatories to arbitration agreement
- § 53:17 — —Arbitration clauses in real estate agreements
- § 53:18 — — —Compare *Bello*: no strict mutuality requirement

- § 53:19 — — —Mutuality required if expressed in contract
- § 53:20 —Trial court as trier of fact
- § 53:21 —Waiver of right to compel arbitration
- § 53:22 — —Burden of proof regarding waiver
- § 53:23 — —Factors regarding waiver
- § 53:24 — — —Delay in seeking arbitration
- § 53:25 — — —Conduct inconsistent with arbitration
- § 53:26 — — —Prejudice to plaintiffs
- § 53:27 — —Review of waiver of right to compel
- § 53:28 —Compare: Forfeiture of right to compel arbitration
- § 53:29 —Statute of limitations for compelling arbitration
- § 53:30 —When FAA governs question of arbitrability
- § 53:31 Failure to pay fees and costs of initiating arbitration—sanctions—breach
- § 53:32 Appeal of order to compel compliance with arbitration agreement

## **CHAPTER 54. MOTION TO CONTINUE ARBITRATION**

- § 54:1 Authority for motion
- § 54:2 Grounds for motion
- § 54:3 Denial of continuance as basis for vacating award
- § 54:4 Selected recent case citations

## **CHAPTER 55. PETITION TO CONFIRM, CORRECT OR VACATE ARBITRATION AWARD**

- § 55:1 Petition to confirm award—Authority for petition to confirm award
- § 55:2 — —Effect of confirmed award: Entry of judgment
- § 55:3 — —Effect of unconfirmed award: Same as written contract
- § 55:4 —Grounds for petition to confirm award
- § 55:5 —Timing requirements
- § 55:6 —Key procedural requirements
- § 55:7 Petition to correct award (by court)—Authority for petition to correct award
- § 55:8 — —Compare: Correction by arbitrator
- § 55:9 —Grounds for petition to correct award
- § 55:10 — —Limitations on correcting award
- § 55:11 —Timing requirements
- § 55:12 — —Note: Petition on hold until correction or denial by arbitrators

## TABLE OF CONTENTS

- § 55:13 —Key procedural requirements
- § 55:14 Petition to vacate award—Authority for petition to vacate award
- § 55:15 — —Compare: Motion to vacate judgment based on arbitration award
- § 55:16 —Grounds for petition to vacate award
- § 55:17 — —Limitations on vacating award
- § 55:18 —Timing requirements
- § 55:19 —Key procedural requirements
- § 55:20 —Order for rehearing

## I. SELECTED RECENT CASES

- § 55:21 *Moncharsh* and judicial authority to review arbitration awards
- § 55:22 —Correcting, confirming and vacating awards, generally
- § 55:23 — —Correcting award
- § 55:24 — — —When arbitrator exceeds powers
- § 55:25 — — —Correction by arbitrator
- § 55:26 — — —When proceeding not “contract arbitration”
- § 55:27 — —Vacating award
- § 55:28 — — —When arbitrator exceeds powers
- § 55:29 — —Confirming award
- § 55:30 —Compare: Courts split on whether arbitrators may modify injunctions
- § 55:31 —Standard of judicial review

## CHAPTER 56. MOTION TO REOPEN DISCOVERY AFTER ARBITRATION

- § 56:1 Authority for motion/stipulation
- § 56:2 Grounds for motion
- § 56:3 Post-election arbitration discovery allowable
- § 56:4 Selected recent case citations

## CHAPTER 57. MOTION TO EXEMPT CASE FROM JUDICIAL ARBITRATION

- § 57:1 Authority for motion
- § 57:2 Grounds for motion
- § 57:3 Amended pleading as grounds for removal from arbitration
- § 57:4 Amount in controversy—Timing of determination
- § 57:5 —Offer of proof of amount in controversy
- § 57:6 —Scope of trial court’s authority
- § 57:7 Tolling effect
- § 57:8 Standard of review

## **PART X. TRIAL AND POST-TRIAL MOTIONS**

### **CHAPTER 58. PRELIMINARY TRIAL MOTIONS**

- § 58:1 Motion to specially set or advance trial date—  
Authority for motion
- § 58:2 —Grounds and notice requirements
- § 58:3 Motion for preference—Authority for motion
- § 58:4 —Grounds for motion—Party over age 70
- § 58:5 — —Party under age 14
- § 58:6 — —Survival of party in doubt
- § 58:7 — —Motion in “interests of justice”
- § 58:8 —Key procedural requirements
- § 58:9 — —Special procedure: affidavit in support of  
motion for age preference
- § 58:10 —Timing of motion
- § 58:11 —Effect of granting motion
- § 58:12 Motion for jury trial (following waiver of jury  
trial)—Party’s right to jury trial
- § 58:13 —Authority for motion
- § 58:14 —Procedures re demand for jury trial
- § 58:15 —What constitutes waiver
- § 58:16 Motions re mandatory settlement conferences—  
Motion to set mandatory settlement  
conference—Authority for motion
- § 58:17 — —Key procedural requirements re settlement  
conferences—Who must attend
- § 58:18 — —Settlement conference statement  
required
- § 58:19 —Motion to be excused from mandatory  
settlement conference—Authority for motion
- § 58:20 — —Sanctions for non-attendance
- § 58:21 Motion to amend pretrial case management  
conference order—Case management  
conference orders, generally
- § 58:22 —Authority for motion

### **I. SELECTED RECENT CASES**

- § 58:23 Motion for preference—Generally
- § 58:24 —Considerations in ruling on motion
- § 58:25 —Relationship of section 36 to mandatory and  
discretionary dismissal statutes
- § 58:26 —Conflict with punitive damages statute
- § 58:27 —Denial of motion for preference
- § 58:28 —Preference motion and privacy rights/medical  
records

## TABLE OF CONTENTS

§ 58:29 Specially setting trial date

### **CHAPTER 59. IN LIMINE MOTIONS**

- § 59:1 Authority for motion
- § 59:2 —Purpose: to preclude presentation of improper evidence
- § 59:3 General grounds for motion—Relevance
- § 59:4 —Undue prejudice
- § 59:5 —Evidence barred by discovery rules
- § 59:6 Effect of improper denial of motion
- § 59:7 Compare: motion to exclude all evidence
- § 59:8 Basis for opposition

### **I. SELECTED RECENT CASES**

- § 59:9 Nature and purpose of motion in limine
- § 59:10 —Compare: objection to all evidence
- § 59:11 Timing of motion in limine: before *or* during trial
- § 59:12 Inappropriate motions in limine
- § 59:13 —Failure to support motion in limine

### **CHAPTER 60. MOTION FOR JURY VIEW**

- § 60:1 Authority for motion
- § 60:2 Effect of motion
- § 60:3 Discretion of court—In general
- § 60:4 —Grant or denial of view
- § 60:5 Statements to jury at viewing
- § 60:6 Change in condition of object
- § 60:7 Use of knowledge gained—By judge
- § 60:8 —By jury
- § 60:9 Review

### **CHAPTER 61. MOTION TO EXCLUDE WITNESS FROM COURTROOM**

- § 61:1 Authority for motion
- § 61:2 Basis for opposition—Court’s discretion
- § 61:3 —Party exclusion
- § 61:4 Violation of exclusion order

### **CHAPTER 62. MOTION FOR DIRECTED VERDICT OR NONSUIT**

- § 62:1 Motion for directed verdict—Authority for motion
- § 62:2 —Grounds for motion
- § 62:3 — —Motion on some, but not all, issues
- § 62:4 —Timing of motion: after all parties have presented their evidence

- § 62:5 —Effect of granting motion
- § 62:6 — —Effect when defendant without fault
- § 62:7 —Motion after discharge of jury, where no verdict rendered
- § 62:8 Motion for nonsuit—Authority for motion
- § 62:9 —Grounds for motion
- § 62:10 — —Motion on some, but not all, issues
- § 62:11 —Timing of motion: after plaintiff's opening statement or presentation of evidence
- § 62:12 —Effect of granting motion
- § 62:13 — —Effect when motion granted for defendant without fault
- § 62:14 Basis for opposition to motion

## **I. SELECTED RECENT CASES**

- § 62:15 Directed verdict
- § 62:16 —Distinguished from motion for nonsuit
- § 62:17 —Appellate review of directed verdict
- § 62:18 Motion for nonsuit
- § 62:19 —Factors considered by court in motion for nonsuit
- § 62:20 —Standard of review for grant of nonsuit

## **CHAPTER 63. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT**

- § 63:1 Authority for motion
- § 63:2 Grounds for motion
- § 63:3 Timing of motion
- § 63:4 —Compare: Timing of motion for new trial
- § 63:5 —Hearing on JNOV and new trial motions
- § 63:6 Basis for opposition to motion: Court cannot reweigh evidence
- § 63:7 Selected recent cases
- § 63:8 Timing of motion
- § 63:9 Limited basis for granting motion
- § 63:10 Denying motion
- § 63:11 Reviewing JNOV

## **CHAPTER 64. NEW TRIAL MOTION**

- § 64:1 Authority for motion
- § 64:2 Grounds for motion
- § 64:3 Timing and notice of motion
- § 64:4 Key procedural requirements
- § 64:5 —Grounds to be stated by court in order
- § 64:6 Evidence on motion
- § 64:7 Additur and remittitur on motion for new trial—

## TABLE OF CONTENTS

- Statutory authority—Additur (where damages inadequate)
- § 64:8 — —Remittitur (where damages excessive)
- § 64:9 Deadline for acceptance or rejection; procedures
- § 64:10 Additur and remittitur on motion for new trial—  
Nature and purpose of additur and remittitur
- § 64:11 —Timing of acceptance of additur or remittitur

## I. SELECTED RECENT CASES

- § 64:12 Statutory requirements for new trial
- § 64:13 Notice of intention to move for new trial
- § 64:14 —Motion for new trial filing fees
- § 64:15 Grounds for granting new trial
- § 64:16 —“Surprise” as grounds for new trial
- § 64:17 Ruling on a motion for a new trial
- § 64:18 —Time for ruling under Code Civ. Proc. § 660
- § 64:19 — —Time limits jurisdictional
- § 64:20 — — —Triggering 75-day period
- § 64:21 — —Notice of entry of judgment under Section 660
- § 64:22 — —Section 660 and proof of service
- § 64:23 — — —Relation to notice of entry under Section 664.5
- § 64:24 — — —Section 664.5 and proof of service
- § 64:25 —Specification of reasons for granting motion
- § 64:26 — —10-day statutory period added to 75-day requirement of Code Civ. Proc. § 660
- § 64:27 Appellate review of motion for new trial
- § 64:28 —Order granting new trial
- § 64:29 Appellate review of motion for new trial Order granting new trial When based on issue of jury misconduct
- § 64:30 Appellate review of motion for new trial—Order denying new trial
- § 64:31 — —When based on issue of jury misconduct

## CHAPTER 65. MOTIONS RE JUDGMENTS

- § 65:1 Motion to stay enforcement of judgment or order—Authority for motion
- § 65:2 — —When another action pending
- § 65:3 — —Appeal of judgment or order
- § 65:4 —Key procedural requirements—Duty to notify court of stay—Notice of stay
- § 65:5 — — —Notice when stay vacated
- § 65:6 — —Authorized sanctions: failure to comply with notice requirements

CALIFORNIA LAW AND MOTION AUTHORITIES

- § 65:7 Motion to vacate judgment and verdict—  
Authority for motion
- § 65:8 —Key procedural requirements
- § 65:9 —Timing of motion
- § 65:10 —Additional authority for motion—Erroneous  
admission of evidence
- § 65:11 — —Erroneous Exclusion of Evidence
- § 65:12 — —Defective notice
- § 65:13 — —Court’s inherent powers
- § 65:14 Motion to amend judgment—Authority for  
motion—Amendment based on Code Civ. Proc.  
§ 663
- § 65:15 — —Amendment based on Code Civ. Proc.  
§ 473(b)
- § 65:16 — —Amendment to designate proper defendant
- § 65:17 — —Amendment based on court’s inherent  
powers
- § 65:18 Motions re renewal of judgments—Enforcement  
of judgments-time limits, generally
- § 65:19 —Renewal of judgments, generally—Extension  
of period of enforceability
- § 65:20 — — —Limitation
- § 65:21 — — —Certain judgments renewable only once
- § 65:22 — —Application for renewal of judgment
- § 65:23 — — —Timing of application for renewal
- § 65:24 — — —Contents of application for renewal
- § 65:25 — — —Entry of renewal
- § 65:26 — —Procedural requirements—Service of notice  
of renewal
- § 65:27 — — —Filing proof of service
- § 65:28 — —Enforcement proceedings; continuance
- § 65:29 — —Application filing date-commencement of  
period for bringing action
- § 65:30 —Motion to vacate renewal of judgment—  
Authority for motion
- § 65:31 — —Grounds for motion
- § 65:32 — — —Renewal of judgment in different amount
- § 65:33 — —Basis for opposition
- § 65:34 Motion for contribution—Authority for  
contribution
- § 65:35 — —Right to compel contribution
- § 65:36 — —Judgment for contribution
- § 65:37 — —Determining liability for contribution
- § 65:38 —Timing of motion
- § 65:39 —Key procedural requirements

**I. SELECTED RECENT CASES**

- § 65:40 Motion to stay enforcement of judgment or order



## TABLE OF CONTENTS

§ 65:41	Motion to vacate judgment
§ 65:42	—Aggrieved party
§ 65:43	—Filing time limits on motion to vacate
§ 65:44	Contribution, generally
§ 65:45	—Relationship between indemnity and contribution
§ 65:46	—Contribution subordinated to right of indemnity
§ 65:47	— —Prior indemnity claim not res judicata to subsequent contribution claim
§ 65:48	—Indemnity or contribution not brought in good faith under Code Civ. Proc. § 1038

## **Table of Laws and Rules**

## **Table of Cases**

## **Index**