

CALIFORNIA PRACTICE GUIDE CIVIL TRIALS AND EVIDENCE 2026 UPDATE

This 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail.

Check for Case/Statutory/Rules Developments: This Update went to press in October 2026. Some new cases may not have been final at that time and may be affected by later developments. In addition, unless specifically noted, this Update does not include case, legislative or rules changes taking effect after our press date. Counsel should check subsequent case histories and independently verify the current state of the law, including any developments that may affect the analysis in this Practice Guide.

As always, we welcome your comments and suggestions regarding this Practice Guide. *Please keep them coming!*

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2026 UPDATE HIGHLIGHTS

CHAPTER 3

CHALLENGING THE JUDGE

Challenge for Cause Based on Due Process Violation

[3:42.2] **Due process violation found:** A trial judge sent ex parte text messages during a murder trial to a former colleague at the district attorney's office who had been watching the trial, asking why the prosecutor was not calling the bailiff to testify as a rebuttal witness and suggesting someone talk to the prosecutor about "not calling" the bailiff. These actions offended Defendant's due process right to a criminal trial before an impartial judge and required automatic reversal of Defendant's conviction regardless of any prejudice suffered. [*People v. Rockhill* (2025) 115 CA5th 1230, 1245-1247, 338 CR3d 793, 805-807]

Ground for CCP §170.6 Challenge

[3:171] **Bad faith "blanket" challenges subject to judicial scrutiny:** The California Supreme Court has determined that the trial court is not powerless to act in the face of bad faith "blanket" CCP §170.6 challenges to a judge in all cases. The court can consider as-applied challenges to alleged blanket §170.6 challenges on separation of powers grounds. Specified burden-shifting procedures must be followed in a hearing by the trial court, where findings must be made. [*J.O. v. Sup.Ct. (San Joaquin County Public Conservator)* (2026) 19 C5th 753, 778-779, 781-785, 344 CR3d 557, 578, 580-583]

CHAPTER 4

FINAL CHAMBERS CONFERENCE AND MOTIONS IN LIMINE

Consolidation of Separate Lawsuits in Same Court

[4:432.22] **Complete consolidation:** See *Villa Zinfandel, LLC v. Bearman* (2025) 116 CA5th 848, 854, 868, 339 CR3d 605, 610, 621—where unlawful detainer case filed as limited civil action was consolidated for all purposes with unlimited civil action, trial court did not err in awarding damages in consolidated action greater than \$35,000 cap applicable to limited actions.

CHAPTER 5

JURY SELECTION

Random Selection of Prospective Jurors

[5:128] **Effect of material departure from procedure:** See *Matthews v. Ryan* (2026) 118 CA5th 155, 164, 341 CR3d 218, 224—defendant's failure to object to "volunteer" method by which trial court seated jurors for voir dire forfeited his challenge on appeal.

Court's Sua Sponte Excusal of Jurors

[5:217.2] **Failure to conduct sua sponte inquiry not error:** In

a capital murder case, where a juror who volunteered at an animal shelter stated during voir dire that she felt she could not be impartial “if it came to an animal,” the trial court did not err in failing to conduct a sua sponte inquiry into the juror’s ability to remain impartial after a witness’ brief and immediately stricken testimony that defendant shot at birds. [*People v. Demolle* (2026) 19 C5th 1117, 1149-1150, 1156-1158, 344 CR3d 878, 916, 921-923]

Challenging Prospective Jurors for Actual Bias

[5:471.1] **Friendship with party:** By concluding the defense’s challenge for cause as to a juror who had a “friendship” with one of the murder victims could only be granted if it found one of the circumstances delineated in CCP §229, the trial court failed to consider other pertinent authority, including CCP §225(b)(1)(C)’s definition of actual bias. In applying CCP §§225 and 229(f), the court applies an objective standard, taking into account the totality of circumstances. When a prospective juror has been personally acquainted with a party, victim, or witness, this is particularly significant and merits close consideration. [*People v. Deen* (2026) 19 C5th 151, 175-176, 178, 342 CR3d 750, 766-767, 769 (also discussed at ¶5:467)]

Peremptory Challenges

Prohibition on bias-based peremptory challenges, generally

- [5:527.11] **Application of prohibition against bias-based peremptory challenges in certain civil trials:** *Effective January 1, 2026*, CCP §231.7 applies in certain types of civil jury trials, including civil cases involving a civil rights violation, actions for civil commitment of a person, and civil cases for damages arising from a hate crime. [Amended CCP §231.7(k)]
- [5:527.13] **Court must specify reasons for ruling on record:** See *People v. Alston* (2026) 118 CA5th 575, 585-588, 341 CR3d 645, 651-653—reversible error where trial court failed to make any findings or set forth its reasons for denying defense’s objection to peremptory challenge based on presumptively invalid reason of distrust of law enforcement; “some explanation is required.”

Presumptive invalidity

- [5:527.15] **Presumptive invalidity under CCP §231.7(e)(10):** See *People v. Espiritu* (2026) 119 CA5th 1128, 1141, 343 CR3d 118, 127—reversible error where trial court failed to consider whether prosecutor’s use of peremptory challenge to strike potential juror because she was nurse was potentially subject to presumption of invalidity; see also ¶5:532.4 of the *Highlights Summaries*.
- [5:527.18] **Presumptive invalidity under two-step inquiry:** In a criminal trial, the prosecutor used a peremptory challenge to strike a Latino prospective juror, citing behavior-based reasons such as inattentiveness and lack of engagement. The trial court confirmed the prosecutor’s observations but did not require

any explanation as to why these behaviors mattered to the case. The California Supreme Court noted that both confirmation of the behavior and an explanation of its relevance are required to rebut the presumption of invalidity for behavior-based reasons under CCP §231.7. The ultimate inquiry should consider whether an objective observer would view race or other protected status as a factor in the peremptory challenge, based on a totality of the circumstances. [*People v. SanMiguel* (2026) 20 C5th 254, —, —, 346 CR3d 429, 437-438, 452-453 (also discussed at ¶5:527.17, 5:527.17b, and 5:527.25)]

Standard of review

- [5:527.25] **Erroneous sustaining of objection to peremptory challenge not subject to automatic reversal:** Whereas an *erroneous denial* of an objection to a peremptory challenge is “deemed prejudicial” under CCP §231.7(j) and the judgment must be reversed, an *error in granting* an objection to a peremptory challenge is *not* subject to automatic reversal. [*People v. Guzman* (2025) 115 CA5th 464, 477, 482, 338 CR3d 205, 212, 216]

Effect of inarticulate objection

- [5:532.3-532.4] **Failure to clearly object forfeits issue on appeal:** See *People v. Hernandez* (2025) 115 CA5th 256, 267-268, 337 CR3d 837, 846—defendant forfeited challenges to exclusion of jurors based on ethnicity and gender by failing to object in trial court based on these categories; compare *People v. Espiritu* (2026) 119 CA5th 1128, 1138, 343 CR3d 118, 124—where a party raises a CCP §231.7 objection to exercise of peremptory challenge but does not specifically allege presumptive invalidity, issue is not forfeited on appeal; see also ¶5:527.15 of the *Highlights Summaries*.

Trial court’s assessment of objection

- [5:534.6] **Prosecutor’s failure to ask questions on voir dire before exercising challenge not pretextual:** See *People v. Barrett* (2025) 17 C5th 897, 938-939, 333 CR3d 757, 809—prosecutor’s stated concerns arose from questionnaire responses that spoke for themselves and did not require additional clarification; fact that prosecutor questioned other jurors about same topic (discomfort about sitting in judgment of others) and dismissed them for cause supported trial court’s conclusion that peremptory strike was not motivated by racial discrimination.

Rebutting prima facie case

- [5:540.1] **Failure to hold adversarial hearing:** See *Pitchford v. Cain* (2026) 608 US 391, 397-401, 146 S.Ct. 1345, 1351-1353—reversal and remand required where trial court erroneously omitted third step of *Batson* by not affording defense counsel sufficient opportunity to rebut prosecutor’s proffered race-neutral reasons for striking four prospective Black jurors and failing to determine whether prosecutor’s stated reasons were pretextual.

Appellate review

- [5:546.18] **Not structural error to erroneously sustain objection to single peremptory challenge:** See *People v. Tokhunts* (2025) 115 CA5th 1101, 1114-1115, 1118, 338 CR3d 706, 715, 718.

CHAPTER 6

OPENING STATEMENT

Improper Conduct During Opening Statement

[6:50.1] **Matters known to be unsupported by evidence:** A new trial was properly granted where P's counsel stated in the opening that the evidence would show that an altercation at a hotel caused P's incontinence, with full knowledge that no expert testimony would corroborate that conclusion at trial. [*Allen v. Patel* (2025) 117 CA5th 432, 445-446, 341 CR3d 1, 12-13]

CHAPTER 8C

FOUNDATION

Competency to Testify

[8:226] **English-language declaration not competent evidence:** See *Detrick v. Shimada* (2026) 120 CA5th 170, 173, 177, 343 CR3d 517, 520, 523—where defendant did not read, write or speak English, her English-language declaration re dismissal of prior malpractice action was not competent evidence where it lacked foundational information re translation and interpreter attestation.

[8:231] **Persons with grave disability not presumed incompetent:** See *Esparza v. Sup.Ct. (People)* (2026) 118 CA5th 426, 434, 341 CR3d 509, 514—incompetence to testify under Ev.C. §701 may not be presumed from prior grave disability finding under Lanterman-Petris-Short Act.

Writings

[8:351] **Authentication by contents of writing—text messages:** See *Adoption of X.D.* (2025) 114 CA5th 812, 831-833, 337 CR3d 348, 364-365—screenshots of text messages from father to his sister, received by mother, were sufficiently authenticated through (1) mother's testimony that she knew that father threatened to kill her and unborn child, as referenced in screenshot, and (2) corroborating evidence that father admitted to his phone number and nickname used in screenshot; see also ¶8:1049, 8:3216.1d of the *Highlights Summaries*.

Expert Opinion Testimony

[8:744.1c] **Opinion must be based on reliable matter:** In a products liability case brought by plaintiff diagnosed with mesothelioma, the trial court did not abuse its discretion in admitting plaintiffs' expert's testimony about testing methods and results re the presence of asbestos in talc product. Although the opposing party's experts

challenged the testimony, detection of asbestos had been evolving for 50 years and it was not shown that plaintiffs' expert's testimony and methods were illogical, clearly unreliable, or based on invalid scientific theories. [*LAOSD Asbestos Cases* (2026) 118 CA5th 1041, 1054-1057, 342 CR3d 173, 186-188 (*also discussed at* ¶8:733)]

CHAPTER 8D

HEARSAY EVIDENCE

Statements Not Offered to Prove the Truth of the Matter Asserted

[8:1049] **Statements offered to show effect on someone else:** See *Adoption of X.D.* (2025) 114 CA5th 812, 833, 337 CR3d 348, 366—screenshots of father's text messages threatening to kill mother and unborn child were relevant for nonhearsay purpose of showing mother's mental state and reasonable fear of father, explaining why she refused to communicate with father and lied about pregnancy and birth (*also discussed at* ¶8:1150); *see also* ¶8:351, 8:3216.1d of the Highlights Summaries.

Hearsay Admissible in Certain Proceedings

[8:1072.2] **Rule disallowing hearsay to prove whether commitment offense involved use of force or violence does not apply retroactively:** See *In re Grinder* (2025) 114 CA5th 845, 867, 336 CR3d 760, 779 (Mentally Disordered Offender Act; Pen.C. §2960).

Judicial Admissions Exception

[8:1237.4] **Judicial admissions doctrine inapplicable to pleading allegations superseded by amendments:** See *Marriage of Starr* (2026) 118 CA5th 52, 63-64, 341 CR3d 328, 337—date of separation alleged in wife's amended petition for dissolution of marriage was not judicial admission where, despite husband's stipulation to amended petition, parties did not agree about separation date and neither party conducted litigation as if there was meeting of minds re date.

Exception for Prior Statements by Witnesses

[8:1331] **Hearsay statement inconsistent with witness' current testimony:** D's trial testimony that he killed victim in self-defense was inconsistent with D's prior statements in notes, as testified to by other prison inmates, that he would "deal" with victim and that he found it funny that victim was making knife D would use to stab him. [*People v. Barrett* (2025) 17 C5th 897, 973, 333 CR3d 757, 837]

Past Recollection Recorded Exception

[8:1365] **Insufficient memory necessary:** No abuse of discretion to admit a witness' prior identification statement made to police officer re unadjudicated battery of another where, after 17 years, the witness' recollection of specifics was vague and he had no recollection of the batterer's physical characteristics. [*People v. Demolle* (2026) 19 C5th 1117, 1178-1180, 344 CR3d 878, 939-940 (*also discussed at* ¶9:205)]

[8:1368] **Testimony as to truth of facts stated:** Although the trial court erred in allowing a police officer to testify to the contents of a police report re prior victim's prior identification of defendant as his batterer, error was harmless. [*People v. Demolle*, supra, 19 C5th at 1179-1181, 344 CR3d at 940-941]

Official Records and Writings Exception

[8:1702.10] **Police reports—limitation:** Police reports and related law enforcement documents grouped as police reports were improperly admitted hearsay where the findings in the reports included nonparty witness statements recorded by police that were considered for the truth of the matter asserted and for which no hearsay exception applied. [*People v. Dixon* (2026) 118 CA5th 116, 136, 341 CR3d 359, 374]

CHAPTER 8E

OTHER EXCLUSIONS AND LIMITATIONS

Tort Privileges Compared

[8:1852.6] **“Litigation privilege”:** See *Fazel v. Pete Fowler Const. Services, Inc.* (2026) 121 CA5th 315, 320-322, 345 CR3d 625, 628-629—privilege applied to construction company's repair recommendations in expert report prepared in course of litigation; *Kim v. New Life Oasis Church* (2025) 115 CA5th 659, 668, 338 CR3d 473, 480—privilege applied to recording of lis pendens so long as lis pendens identifies action previously filed and action affects title or right to possession of real property.

Waiver of Privilege

[8:1924.6] **Litigant's disclosures to own counsel in employment action:** See *Guardian Storage Centers, LLC v. Simpson* (2026) 119 CA5th 509, 526-527, 531, 342 CR3d 692, 706-707, 709—disclosures of adversary's privileged information by nonattorney litigants to counsel for purposes of pursuing lawsuit were improper.

[8:1937.1] **Implied waiver of attorney-client privilege by claiming “advice of counsel”:** See *Paknad v. Sup.Ct. (Intuitive Surgical, Inc.)* (2026) 119 CA5th 1256, 1263-1264, 343 CR3d 458, 464-466—both attorney-client privilege and work product protection are waived when party chooses to defend itself by putting otherwise privileged information at issue (*also discussed at ¶8:1953.2*).

[8:1941] **No implied waiver of attorney-client privilege where communication not in issue:** See *Guardian Storage Centers, LLC v. Simpson* (2026) 119 CA5th 509, 522, 342 CR3d 692, 702—no implied waiver where privilege holder's claims were not based on content of privileged emails.

Right of Privacy

[8:2755.1] **Identity of litigants seeking to proceed pseudonymously may be subject to disclosure:** Parties may seek to proceed pseudonymously upon showing an overriding interest that overcomes the right of public access. [*Roe v. Smith* (2025)]

116 CA5th 227, 239, 243-245, 248, 339 CR3d 152, 159, 162-164, 166—although allegations in defamation case of sexual misconduct when adult plaintiffs were minors qualified as highly sensitive and private matters, this was outweighed by public’s right of access]

Statute of Frauds

[8:3064] **Oral and implied joint venture agreements:** See *Clarke v. Yu* (2026) 119 CA5th 199, 207, 342 CR3d 465, 472—oral and implied joint venture agreements are subject to statute of frauds if agreement, by its terms, cannot be performed within one year from its making.

Parol Evidence Rule

[8:3115.2] **Language of writing not reasonably susceptible to meaning claimed by proponent of parol evidence:** See *Marriage of McConnell & Jahnke* (2026) 120 CA5th 1274, 1282, 345 CR3d 281, 288—term in memorandum of understanding awarding wife home and debts thereon was not reasonably susceptible to husband’s interpretation that term required wife to remove him from mortgage.

CHAPTER 8F

DISCRETIONARY EXCLUSION

Undue Prejudice

[8:3216.1d] **Unsavory character evidence:** In an adoption proceeding, the trial court erred in excluding evidence of screenshots of text messages in which biological father threatened to kill mother and their unborn child. The probative value of the screenshots was not substantially outweighed by a risk of undue prejudice where there was damaging evidence on both sides. The screenshots explained the mother’s conduct and were relevant to the key issue of whether the biological father was a *Kelsey S.* father. [*Adoption of X.D.* (2025) 114 CA5th 812, 834-835, 337 CR3d 348, 367; see also ¶8:351, 8:1049 of the *Highlights Summaries*]

Confusing or Misleading Evidence

[8:3240-3241] **Probative evidence admitted:** See *Yan v. City of Diamond Bar* (2026) 119 CA5th 21, 26, 35-36, 342 CR3d 311, 314, 322—plaintiff was injured when branches from City-owned tree fell on him; probative value of prior branch failures of other trees in vicinity was not substantially outweighed by danger of undue prejudice or by risk of confusing issues (*also discussed at* ¶8:145); *Donlen v. Ford Motor Co.* (2013) 217 CA4th 138, 150-151, 158 CR3d 180, 190—in Truck Buyer’s breach of warranty action, trial court did not err by admitting evidence of similar postwarranty repair where its probative value (in tending to show transmission had not been repaired to conform to warranty during warranty period) was not substantially outweighed by possibility of confusing issues or misleading jury.

CHAPTER 8G

PROCEDURAL CONSIDERATIONS

Rebuttable Presumptions Affecting Burden of Proof

[8:3590.4] **Official duty regularly performed:** See *Myers v. Department of Motor Vehicles* (2026) 120 CA5th 470, 483-484, 488, 344 CR3d 343, 353-354, 357—driver rebutted presumption that chemical breath test results were reliable where officer’s failure to continuously observe driver for 15 minutes before administration of first chemical breath test related directly to reliability of test results.

[8:3601] **Failure to comply with law as prerequisite for “negligence per se”:** See *Jimenez v. Hayes Apartment Homes, LLC* (2025) 115 CA5th 1072, 1078, 1088, 338 CR3d 719, 723, 731—nonsuit was improper on negligence per se claim where defendants were not exempt under Building Code regulation and thus were required to install fall prevention device on apartment’s upper floor windows from which children fell, which they failed to do.

[8:3611.1; 8:3611.10] **Rebuttable presumptions of parentage:** See *Steven N. v. Priscilla C.* (2026) 119 CA5th 639, 664, 342 CR3d 796, 816—presumed father status was proper based on attempt to marry even though presumed father’s marriage to child’s birth parent was invalid; *Adoption of X.D.* (2025) 114 CA5th 812, 837-839, 337 CR3d 348, 369-370—Fam.C. §7611 presumption did not apply where unwed biological father failed to promptly come forward to show his full commitment to parental responsibilities and father’s actions were physically and emotionally harmful to mother.

[8:3621] **Sale of real property by trustee:** Upon completion of a trustee’s sale and delivery of a deed, there is a rebuttable presumption that the sale has been conducted regularly and fairly. To overcome this presumption, the party challenging the sale must plead and prove an improper procedure and resulting prejudice. [*Villa Zinfandel, LLC v. Bearman* (2025) 116 CA5th 848, 859-860, 339 CR3d 605, 614]

Burden of Persuasion (“Burden of Proof”)

[8:3638.11] **Administrative decisions:** See *Town of Apple Valley v. Apple Valley Ranchos Water* (2026) — C5th —, —, —, — CR3d —, —, — (2026 WL 2470168, *7-8, 17)—in private utility taking by public entity in which rebuttable presumptions apply, “questions of public necessity and more necessary public use are factual questions to be resolved by the trial court, as the trier of fact, under a preponderance of the evidence standard” and rebuttal burden falls on party challenging condemnation.

Burden of Producing Evidence

[8:3663.5] **Burden shifted by barriers to proof; simultaneous wrongdoers acting independently:** See *Mitchell v. Hutchinson* (2025) 112 CA5th 1012, 1014, 1018-1019, 334 CR3d 417, 420, 423-424—in action against multiple hillside owners, D1 met initial

summary-judgment burden by showing Ps could not identify from which property rocks fell, shifting burden to Ps to show rocks came from D1's property or that all Ds acted tortiously; as Ps did neither, burden never shifted back to D1 to disprove causation.

Standard ("Degree") of Proof

[8:3685.3] **"Preponderance of evidence" standard; elder financial abuse (attorney fees and costs):** See *Gamo v. Merrell* (2025) 113 CA5th 656, 661, 335 CR3d 772, 775—while Welf. & Inst.C. §15657.5(a) unilateral fee provision bars prevailing defendants from obtaining attorney fees on financial elder abuse claims, it does not bar prevailing defendants from obtaining cost-of-proof fees incurred in proving plaintiff refused to admit certain discovery requests for admission without good reason.

[8:3705.5] **"Clear and convincing evidence" standard; elder abuse:** The clear and convincing evidence standard may be replaced with a preponderance of the evidence standard if the plaintiff prevails on a discovery motion pursuant to CCP §2023.030(b) due to defendant's spoliation of evidence, or if a judge or arbitrator determines that defendant has committed spoliation of evidence. [Amended Welf. & Inst.C. §15657, new §15657.02]

CHAPTER 11

EXAMINATION OF EXPERT WITNESSES

Direct Examination of Expert Witnesses

[11:4] **Admissibility of expert opinion based on hearsay:** An expert's opinion which relied on the California Manual on Uniform Traffic Control Devices was inadmissible where the manual was not offered as evidence, excerpts from the manual were hearsay, the expert did not establish that this type of hearsay was ordinarily relied on by experts in his field, excerpts did not support the opinion, and the opinion about what was required by the manual was inadmissible opinion on questions of law or legal conclusions. [*Pagan v. City of San Rafael* (2026) 119 CA5th 853, 866-867, 343 CR3d 190, 200-201]

Challenging Admissibility of Expert Witness Testimony—Motions in Limine

[11:72.1] **Expert witness not properly designated:** See *McDonald v. Zargaryan* (2025) 117 CA5th 344, 351-352, 340 CR3d 285, 290—abuse of discretion for court to permit untimely disclosed expert to testify notwithstanding opportunity to depose expert after trial had begun and before testimony where no reasonable justification was given for delay in disclosure; *Jogani v. Jogani* (2026) 118 CA5th 823, 831-832, 885-886, 342 CR3d 68, 79, 121—trial court abused its discretion in not excluding damages expert's testimony about lost investment gain opinion that was not disclosed prior to trial.

CHAPTER 12

MOTIONS DURING TRIAL

Motions During Trial

[12:402.10] **Motion for terminating sanctions:** The trial court's grant of terminating sanctions was upheld where, although CCP §473(b)'s mandatory relief provision applied to the trial court's order granting an unopposed motion for dismissal as a terminating sanction, plaintiff failed to meet his burden of establishing entitlement to such mandatory relief. [*Rodriguez v. WNT, Inc.* (2025) 116 CA5th 791, 806, 810, 339 CR3d 657, 669-670, 673 (*also discussed at* ¶18:513.6)]

CHAPTER 13

CLOSING ARGUMENT

Improper Closing Argument

[13:82] **Arguing matters outside record:** See *Jogani v. Jogani* (2026) 118 CA5th 823, 854, 342 CR3d 68, 96—trial court's ruling during closing allowing plaintiff to tell jury about defendants' failure to produce documents re partnership required by prior discovery orders but telling defendants not to dwell on aspects of their lack of partnership paperwork, even if arbitrary, was not prejudicial to defendants as it was impossible to believe jury did not understand defendants' main point that there were no writings evidencing partnership.

CHAPTER 14

JURY INSTRUCTIONS

Appellate Review of Instructions

[14:257.10] **“Prejudicial error”:** In an action involving real estate and diamond partnerships, a single jury instruction on cross-claims which “lumped” breach of contract, breach of fiduciary duty, and conversion claims together, did not likely confuse the jury as to the applicable statute of limitations on the breach of fiduciary duty claims and was not prejudicial error. The instruction, as well as defendants' closing argument, explained that there were three different types of claims and three different statutes of limitations, and the use of the words “contract” and “fiduciary” cued the jury as to which standard applied to which claim. [*Jogani v. Jogani*, *supra*, 118 CA5th at 857-859, 342 CR3d at 99-100]

CHAPTER 16

JURY DELIBERATIONS

Statement of Decision

[16:82; 16:91; 16:100; 16:128; 16:147-147.1; 16:148; 16:158.2; 16:160.1-160.2; 16:189.10-189.14] **Significant amendments to CCP §632 take effect 1/1/27:** The statement of decision discussion addresses significant amendments to CCP §632 which

are operative January 1, 2027. The Judicial Council is required to adopt or amend court rules necessary to implement the new provisions and must prepare forms for requesting a statement of decision. These new and amended CCP §632 provisions include, but are not limited to, the following: (1) timely submission of a request for a statement of decision; (2) the court's option if a timely request is not made; (3) written or oral requests; (4) a party's preparation of a draft statement of decision; (5) extending or shortening the time limits for preparation; and (6) objections to statement of decisions served by the court. [New and amended CCP §632(a), (c), (d), (e), (g), (h) (all eff. 1/1/27); *see also discussion at* ¶16:161, 16:172, 16:190.5]

Entry of Judgment

[16:219.1] **Entry by clerk (eff. 1/1/27):** *Effective January 1, 2027*, for court trials, the judgment must be entered by the clerk, in conformity to the court's decision, (1) within 30 days after the filing of the court's decision, where no statement of decision was requested, *or* (2) within 30 days after the statement of decision becomes final, where a statement of decision is requested. A judgment is not effectual for any purpose until entered. [New and amended CCP §664(b), (c) & (d) (eff. 1/1/27)]

CHAPTER 17

VERDICTS, JUDGMENTS AND COSTS

Entry of Judgment

[17:140] **Based on statement of decision (nonjury trials) (eff. 1/1/27):** *Effective January 1, 2027*, the court clerk is required to enter judgment in conformity to the statement of decision, by the following dates: (1) where no statement of decision is requested, *within 30 days* after filing the court's decision; (2) where a statement of decision is requested, *within 30 days* after the statement of decision becomes final. [New CCP §664(b) (eff. 1/1/27)]

Costs

[17:399.1] **Validity of single CCP §998 offer presenting two sets of terms:** Where a single CCP §998 offer presents two independent and alternative sets of terms from which the offeree can choose, the offer is valid provided that (1) it is structured so that it clearly presents the alternatives available to the offeree; *and* (2) at least one of the independent sets of terms is sufficiently certain to permit an accurate valuation at the time the offer is made. [*Gorobets v. Jaguar Land Rover North America, LLC* (2026) 20 C5th 501, —, —, 346 CR3d 818, 825, 839-840]

“Private Attorney General” Fee Awards as Costs

[17:613.1] **Fee award improper:** In an employee's action for wrongful discharge arising out of his “failed” polygraph examination, the trial court properly exercised its discretion in denying attorney fees under CCP §1021.5 where the causes of action related to the *employee* and not on behalf of a large class of persons and his financial incentive to pursue the action was “unmistakable.”

[*McDoniel v. Kavry Mgmt., LLC* (2025) 114 CA5th 949, 977-978, 337 CR3d 516, 540-541]

[17:650] **Intervenors as “opposing parties”:** Intervenors in an environmental group’s litigation were “opposing parties” against whom fees could be assessed where they had a direct pecuniary interest and did not limit their participation to advising the court but actively participated in every proceeding, filed respondent’s brief on the merits, responded to amici, and participated in appellate argument. [*Raptors are the Solution v. CropLife America* (2026) 120 CA5th 237, 253-256, 343 CR3d 849, 862-864]

Civ.C. §1717 Fee Recovery

[17:790.1] **Reversing initial decision not to mediate does not preclude prevailing party attorney fee award:** See *Evleshin v. Meyer* (2025) 115 CA5th 1021, 1038-1040, 338 CR3d 669, 683-685—strict interpretation of real estate contract barring party from refusing presuit mediation request, regardless of circumstances following refusal, does not serve “the public policy of promoting mediation as a preferable alternative to judicial proceedings” (internal quotes omitted).

Fee Awards in Welf. & Inst.C. §15657.5 Actions

[17:955] **Attorney fees not barred by unilateral fee provision:** A Welf. & Inst.C. §15657.5(a) unilateral fee provision did not bar petitioner/cross-respondent from an award of attorney fees incurred for defending claims that overlapped entirely with his successful prosecution of his own financial elder abuse claim. [*Haun v. Pagano* (2026) 118 CA5th 667, 678-680, 341 CR3d 707, 715-716]

[17:955.1] **Cost-of-proof fees and Welf. & Inst.C. §15657.5 prevailing plaintiff fees:** A prevailing defendant is not barred under Welf. & Inst.C. §15657.5 prevailing plaintiff provision from obtaining their cost-of-proof fees against plaintiff incurred in proving facts that plaintiffs refused to admit in discovery without good reason where each serve different purposes and can be applied concurrently. [*Gamo v. Merrell* (2025) 113 CA5th 656, 666-668, 335 CR3d 772, 779-781]

CHAPTER 18

POST-TRIAL MOTIONS

Motion for New Trial

[18:139.5-139.6] **“Irregularity in the proceedings of the adverse party or counsel”:** The trial court did *not* abuse its discretion in *granting* defendant’s motion for a new trial based on plaintiff’s counsel misconduct, which included: making false and misleading statements during the hearing on motions in limine; informing the jury of injuries during opening statements where no evidence was provided; introducing extremely graphic and inflammatory evidence of alleged injury during testimony; and making improper arguments during closing in violation of the golden rule and reptile theory. [*Allen v. Patel* (2025) 117 CA5th 432, 443, 454, 341 CR3d 1, 11, 19]

But the trial court abused its discretion in *denying* plaintiff's motion for a new trial where defendant withheld all discovery on alleged engine defects which formed the basis of plaintiff's action and falsely asserted under oath that it had no responsive documents, preventing plaintiff from having a fair trial. [*Higginson v. Kia Motors America, Inc.* (2026) 118 CA5th 316, 344-352, 341 CR3d 732, 756-762]

[18:140.7] **Jury misconduct:** In a capital murder case, the trial court did *not* err in denying defendant's motion for a new trial: the defense investigator's postverdict interviews of some jurors were largely inadmissible hearsay; jurors could have reasonably misunderstood ambiguous questions on the juror questionnaire; a juror's omissions on the questionnaire appeared inadvertent rather than intentional concealment; a juror's brief references to personal experiences during deliberations suggested permissible commonsense evaluation of evidence rather than improper outside evidence; and jurors' general discussions of defendant's possible release from prison did not amount to misconduct. [*People v. Stayner* (2026) 19 C5th 395, 562-567, 344 CR3d 1, 153-157]

[18:159] **Excessive damages (CCP §657(5)):** See *Glick v. City of Los Angeles* (2026) 122 CA5th 151, —, —, 347 CR3d 26, 28-30, 32-34—trial court abused its discretion when granting defendant's new trial motion on damages where it determined 7-figure noneconomic damages award was too high for "garden-variety emotional distress" and rejected as inadmissible plaintiff's own testimony re his future economic damages.

Motion to Amend Judgment

[18:526.1] **Motion to add additional judgment debtors:** In a landlord-tenant dispute, the trial court properly granted the landlord's motion to amend the judgment to name the tenant's brothers, their wives, and a corporation as judgment debtors. The individuals were the tenant's partners in an undisclosed "one-for-all" family partnership and the corporation was the partnership's vehicle for property leasing. [*8451 Melrose Property, LLC v. Akhtarzad* (2026) 121 CA5th 1258, 1268, 1286-1287, 1290-1291, 346 CR3d 495, 500, 515, 518-519]