

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Introductory Material

Meeting Statutory Deadlines:
During and After Litigation

by Martin L. Dean

October 2009

Scope of Guide

This Action Guide covers deadlines encountered both *during* litigation (*e.g.*, filing proof of service, answering a complaint, conducting discovery, noticing motions) and *after* litigation (*e.g.*, filing appeals and enforcing judgments).

Abbreviations

Civ Proc Before Trial
Debt Collection

California Civil Procedure Before Trial (4th ed Cal CEB 2004)
Debt Collection Practice in California (2d ed Cal CEB 1999)

About the Author

MARTIN L. DEAN is an attorney and arbitrator in San Francisco, adjunct professor of law at the University of San Francisco School of Law, president of Essential Publishers, Inc., a software company, and a frequent lecturer and author on law office management and technology, and malpractice prevention. He received his J.D. in 1967 from the University of Wisconsin School of Law.

Acknowledgments

CEB appreciates and gratefully acknowledges the valuable contribution of **Gail F. Flatt**, the author of the previous version of this Action Guide. Gail is a partner in the law firm of Provencher & Flatt, LLP, in Santa Rosa, where she practices general civil litigation. She received her J.D. in 1982 from Empire College School of Law. Ms. Flatt is past president of the Sonoma County Bar Association (1989), and past president of the Redwood Empire Trial Lawyers Association (1990).

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Richard C. Raines, of the Danville firm of Gagen, McCoy, McMahon, Koss, Markowitz & Raines. Mr. Raines specializes in real estate and business litigation and wrote Handling Depositions (Cal CEB Action Guide Winter 2003).

Elaine Screechfield, docket department supervisor in the San Francisco office of Morrison & Foerster. She is active in the San

Francisco Association for Docket/Calendar Clerks and is a frequent lecturer for the Bay Area Legal Secretaries Forum.

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When Calculating Deadlines Generally

STEP 1. COMPUTE DEADLINES

COUNT THE DAYS

To compute any deadline for any act provided by law (CCP §12):

- a. Exclude the first day (the day accrual begins); and
- b. Include the last day, *except* if the last day is a state holiday, in which case you (CCP §§12, 12a, 13):
 - (1) Also exclude the holiday (see below for definition of holiday); and
 - (2) Perform the act on the next court day.

Example: If your client is served with a complaint on May 22, 2009, exclude May 22 and count 30 days. The 30th day is June 21, a Sunday. File the answer to the complaint on or before June 22, 2009, the next court day.

When Counting Backwards

Be especially careful in calculating *backwards* from a date: exclude that date, then begin to count backwards.

Example 1: When the trial is on June 29th (and the trial judge is known in advance), filing a CCP §170.6 motion on June 24th is timely, because you exclude the 29th as the "first day," count backwards 5 days, and include the 24th as the "last day."

Example 2: If the "last day" is a holiday (including a Saturday or Sunday) *go back* to the immediately preceding working day, *e.g.*, Friday, if the last day is a Saturday or Sunday. See Pamela H. v Superior Court (1977) 68 CA3d 916, 919, 137 CR 612.

ADD DAYS FOR SERVICE BY MAIL

When applicable, add days for mailing under CCP §§1005(b) and 1013. To see whether CCP §§1005 and 1013 apply, use the information below relating to the type of deadline in your case.

ADD DAYS FOR SERVICE BY EXPRESS MAIL/FAX SERVICE

When applicable, add either **2 calendar days** (CCP §1005(b)) or **2 court days** (CCP §1013) for service by:

- a. Express Mail or any other method providing for overnight delivery; or
- b. Facsimile transmission (fax).

Caution: You may serve by fax only if the parties agree and confirm their agreement in writing. CCP §1013(e). The extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

ADD DAYS FOR ELECTRONIC SERVICE

When applicable, add **2 court days** for electronic service. CCP §1010.6(a)(6); Cal Rules of Ct 2.260.

Caution: The extension provided for in CCP §1010.6(a)(6) applies in the absence of any exceptions based on statutes or rules of court.

When Electronic Service Permitted

Electronic service is permitted when service by mail, Express Mail, overnight delivery, or facsimile transmission is permitted. Cal Rules of Ct 2.260(a)(1).

Agreement to Accept Electronic Service

A party indicates agreement to accept electronic service by either (Cal Rules of Ct 2.260(a)(2)(A)-(B)):

- a. Filing and serving a notice that the party accepts electronic service; or
- b. Electronically filing any document with the court.

Electronic Service in Complex Cases

In addition, in complex cases, the court may order that documents filed electronically in a central electronic depository that is available to all parties are deemed served on all parties. Cal Rules of Ct 3.751.

WHEN TO EXCLUDE HOLIDAYS FROM COMPUTATION

If a statute or rule indicates "*court days*," *do not count holidays* in your computation.

"HOLIDAYS" DEFINED

Holidays are:

- a. Saturdays (CCP §§12a, 13b);
- b. Sundays (CCP §10);
- c. Any day that the city, county, state, or public office in which you are to perform the act is closed for the whole business day (CCP §12b); and
- d. All other days designated as holidays in Govt C §§6700-6701 (CCP §§12a, 135).

WHEN DOCUMENT IS "FILED"

- a. Generally, the date of "filing" means the date that the clerk file-stamped on the document on the day the clerk received the document. Ten Eyck v Industrial Forklifts Co. (1989) 216 CA3d 540, 544, 265 CR 29. (Note that for incarcerated pro se litigants, the "prison mailbox rule" applies. See Silverbrand v County of Los Angeles (2009) 46 C4th 106, 119, 92 CR3d 595 (notice of appeal deemed filed when delivered to prison authorities for mailing to superior court); Moore v Twomey (2004) 120 CA4th 910, 918, 16 CR3d 163 (same for civil complaint).)
- b. When a document is filed electronically, it is first "received" at the date and time that the court sends the electronic filer confirmation of the court's receipt of the document. Cal Rules of Ct 2.259(a)(1). Then, if the document complies with all applicable filing requirements (including fees), the court sends the electronic filer confirmation of the date and time that the document was filed. Cal Rules of Ct 2.259(a)(2).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Filing Complaint/STEP 2. IF APPROPRIATE, FILE MOTION TO CHALLENGE JUDGE ASSIGNED TO CASE 'FOR ALL PURPOSES'

Deadlines After Filing Complaint

STEP 2. IF APPROPRIATE, FILE MOTION TO CHALLENGE JUDGE ASSIGNED TO CASE "FOR ALL PURPOSES"

WHEN APPROPRIATE

Move to challenge judge assigned "for all purposes" ([CCP §170.6\(2\)](#)):

- a. In counties where a case is assigned to a judge "for all purposes"; and
- b. When you determine that the judge assigned to the case is prejudiced against ([CCP §170.6\(1\)](#)):
 - (1) Any party or attorney; or
 - (2) The interest of any party or attorney.

DEADLINE TO CHALLENGE

Challenge must be made within **10 calendar days** after ([CCP §170.6\(2\)](#)):

- a. You have notice of the identity of the judge who receives the all-purpose assignment; or
- b. Your client's appearance, if your client appears *after* assignment.

NOTE

When a judge is *not* assigned "for all purposes," see [step 37](#), below, for deadlines to challenge the trial judge.

Further Research: See 2 Witkin, California Procedure, *Courts* §§122-127 (5th ed 2009); [California Trial Practice: Civil Procedure During Trial §§6.26-6.78 \(3d ed Cal CEB 1995\)](#).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Filing Complaint/STEP 3. COMPLETE SERVICE OF COMPLAINT OR CROSS-COMPLAINT

STEP 3. COMPLETE SERVICE OF COMPLAINT OR CROSS-COMPLAINT

DEADLINES

Most Cases

In all civil cases except unlawful detainer actions, proceedings under the Family Code, or other proceedings with different mandated service requirements, you have **60 calendar days** after filing the complaint to (Cal Rules of Ct 3.110(b)):

- a. Serve the complaint and summons on the defendant; and
- b. File the proof of service with the court.

When Complaint Is Amended to Add Defendant

When the complaint is amended to add a defendant, within **30 days** after filing the amended complaint (Cal Rules of Ct 3.110(b)) you must:

- a. Serve complaint and summons on the newly added defendant; and
- b. File the proof of service with the court.

NOTE

Under Govt C §68616(a), local rules can require service of the complaint *no sooner* than 60 days after filing. However, local rules may authorize a longer time period (see discussion below). In addition, the court must grant an extension of the time for service on a showing that service could not reasonably be achieved within the time required with the exercise of due diligence consistent with the amount in controversy (see discussion below). Govt C §68616(a).

Case Based on Statute

If your case is based on a statute:

- a. Check the statute for special service requirements; and
- b. Comply with those requirements. See, *e.g.*, Govt C §65009(c) (action challenging legislative decision must be served on legislative body within **90 days** after date of decision).

EFFECT OF FAILURE TO SERVE WITHIN 60 DAYS

Unless the court has granted an order extending the time to serve a complaint or cross-complaint, the failure to serve and file pleadings within 60 days as required in Cal Rules of Ct 3.110(b) may result in an Order to Show Cause being issued by the court as to why sanctions must not be imposed. Cal Rules of Ct 3.110(f). But see Note, step 28, below.

EXTENSION OF DEADLINES FOR SERVICE

The court may extend the time for service on a showing that service could not reasonably be completed within the required time with the exercise of due diligence consistent with the amount in controversy. Govt C §68616(a); Cal Rules of Ct 3.110(e).

Apply for Extension

To apply for an extension, you must (Cal Rules of Ct 3.110(e)):

- a. File an application before the deadline for service has elapsed; and
- b. Accompany it with a declaration:
 - (1) Showing why service has not been completed;

- (2) Documenting the efforts made to complete service; and
- (3) Specifying the date by which service is proposed to be completed.

Check Local Rules

a. Trial courts may adopt local rules extending deadlines for service, but these rules cannot *shorten* the time for service. Govt C §68616(a). See, *e.g.*, Sacramento Ct R 11.04 (permitting service of complaint within 75 days of filing).

b. If local rules allow parties to agree to extend time:

- (1) Prepare any required documents setting forth your reasons that service *either*:
 - (a) Has not been completed; or
 - (b) Cannot be completed within the required time; and
- (2) File those documents.

DEADLINE TO FILE PROOF OF SERVICE

File proof of service within **60 days** after filing the complaint. Cal Rules of Ct 3.110(b).

Further Research: On service of summons, see CCP §§413.10-417.40; California Civil Procedure Before Trial, chap 17 (4th ed Cal CEB 2004); Handling Service of Process (Serving Summons in Civil Proceedings) (Cal CEB Action Guide November 2009).

EFFECT OF FAILURE TO SERVE SUMMONS AND COMPLAINT WITHIN 2 OR 3 YEARS

If you fail to serve summons and complaint within 2 or 3 years:

- a. *Discretionary dismissal:* Within **2 years** after plaintiff files the action, you must serve the complaint and summons; otherwise, the court, at its discretion, *may* dismiss the case. CCP §583.420(a)(1).
- b. *Mandatory dismissal:* Within **3 years** after plaintiff files the action, you must serve a complaint and summons or court *must* dismiss action. CCP §§583.210, 583.250.

NOTE

Serve the complaint and summons soon enough after plaintiff files the action to permit the case *to be brought to trial* within 2 years after filing, because the court may dismiss the case for failure to prosecute if you fail to *bring it to trial* or conditionally settle it within 2 years. See CCP §583.420(a)(2)(B). See also step 24, below, for discussion of motions to dismiss for delay in prosecution.

When Mandatory Dismissal Deadline Does Not Apply

The mandatory dismissal deadline for lack of service does *not* apply if defendant (CCP §583.220):

- a. Enters into a stipulation in writing recognizing the jurisdiction of the court over the parties;
- b. Makes a general appearance in the action; or
- c. Shows intent to submit to the general jurisdiction of the court (see General Ins. Co. v Superior Court (1975) 15 C3d 449, 453, 124 CR 745; Comment to CCP §583.220), *except* that defendant does *not* show that intent by:
 - (1) Stipulating under CCP §583.230 to extend the time within which service must be made;
 - (2) Moving to dismiss; or
 - (3) Receiving an extension of time to plead after a motion to dismiss.

CALCULATE DISMISSAL DEADLINES

When you calculate the discretionary or mandatory dismissal deadlines, *exclude* periods in the following circumstances:

If Defendant Cannot Be Located

Exclude any period in which defendant was *not amenable to process* (CCP §583.240(a)), *i.e.*:

- a. You have diligently attempted to locate and serve defendant, *even if he or she is out of state*; and
- b. Defendant truly was not available (see Watts v Crawford (1995) 10 C4th 743, 748, 42 CR2d 81 (discussion of CCP §583.240(a) and meaning of "not amenable to process"); Buchanan v Buchanan (1979) 99 CA3d 587, 592, 160 CR 577 (mere absence from state does not render defendant unavailable)).

If Stay of Proceedings

Exclude any period when the proceedings were stayed and the stay affected service, *e.g.*, by bankruptcy proceedings filed by defendant. CCP §583.240(b).

If Challenge to Service

Exclude any period when the validity of service was being litigated. CCP §583.240(c).

If Other Impediment

Exclude any period when service, owing to causes beyond your control, was (CCP §583.240(d)):

- a. Impossible;
- b. Impracticable; or
- c. Futile.

Example: Defendant was evading service. Wyoming Pac. Oil Co. v Preston (1958) 50 C2d 736, 740, 329 P2d 489.

For further discussion, see step 24, below.

Further Research: On dismissal for delay in prosecution, see CCP §§583.110-583.430; Civ Proc Before Trial, chap 39.

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Defendant's Deadlines After Service

STEP 4. FILE MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT

FIRST APPEARANCE FEE

- a. Courts require payment of a first appearance fee, *i.e.*, a fee accompanying the first paper filed with the court, regardless of the type of responsive pleading filed, *e.g.*, answer or motion to quash.
- b. Check with the court clerk for the appropriate fee before filing. See the Uniform Civil Fees and Standard Fee Schedule Act of 2005 (Govt C §§70600-70678).

DEADLINE TO FILE MOTION

File motion to quash:

- a. Usually, within **30 days** after plaintiff serves your client with the complaint (CCP §412.20(a)(3)); or
- b. Within any further time that the court may allow for good cause (CCP §418.10(a)).

NOTE

See step 7, below, for different deadlines for motions in unlawful detainer actions.

DEADLINE FOR HEARING ON MOTION

A motion to quash must be heard no later than **30 days** after you file the notice. CCP §418.10(b).

Caution: Service requirements for notice of a motion to quash are governed by CCP §1005 and require at least **16 court days'** notice, which may increase according to the method of service. Make sure to serve the notice in time to allow sufficient time for the method of service used.

DEADLINE TO FILE ANSWER

If the court denies the motion, and you do not file a petition for a writ of mandate (see below), file the answer:

- a. Within **15 days** after service of written notice of entry of the order denying the motion (CCP §418.10(b)); or
- b. Within the time extended by the court for good cause shown for an additional period not exceeding 20 days (CCP §418.10(b)).

DEADLINE TO FILE PETITION

If the court denies the motion to quash, file a petition for a writ of mandate (CCP §418.10(c)):

- a. Within **10 days** after service of written notice of the entry of the order denying the motion; or
- b. Within the time extended by the court for good cause shown for an additional period not exceeding 20 days.

DEADLINE TO FILE ANSWER AFTER WRIT

If a writ petition is filed, defendant's time to answer the complaint is extended until (CCP §418.10(c)):

- a. **10 days** after service of written notice of the final judgment in the mandate proceeding (see California Civil Writ Practice §18.76 (4th ed Cal CEB 2008)); or
- b. Within the time extended by the court for good cause for an additional period not exceeding 20 days.

NOTE

See steps 45-47, below, for other deadlines concerning appellate writs.

Further Research: See CCP §§418.10, 1167.4; California Civil Procedure Before Trial, chap 19 (4th ed Cal CEB 2004).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Defendant's Deadlines After Service/STEP 5. RESPOND TO COMPLAINT OR CROSS-COMPLAINT

STEP 5. RESPOND TO COMPLAINT OR CROSS-COMPLAINT

DEADLINE TO FILE ANSWER

File an answer within **30 days** of the date plaintiff or cross-complainant serves:

- a. Summons and complaint (CCP §412.20(a)(3));
- b. Cross-complaint (CCP §432.10); or
- c. Amended complaint or cross-complaint (CCP §§471.5(a), 586).

Stipulate to Extend

- a. The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint. Govt C §68616(b); Cal Rules of Ct 3.110(d).
- b. The parties may obtain additional extensions as authorized by the court's local rules. Govt C §68616(b)

Court May Extend Time to Respond

The court, on its own motion or the motion of a party, may extend the time for response. Cal Rules of Ct 3.110(e).

Ascertain First Appearance Fee

Check with local county clerk for fee to pay with first appearance. *First appearance* refers not just to an answer, but to your first paper filed with the court, *e.g.*, stipulation, motion.

DEADLINE TO FILE DEMURRER

File a demurrer within **30 days** after plaintiff or cross-complainant serves:

- a. Summons and complaint (CCP §430.40(a));
- b. Cross-complaint (CCP §432.10); or
- c. Amended complaint or cross-complaint (CCP §§430.40(a), 586).

NOTE

Be aware that you may file a demurrer to a cause of action without answering other causes of action, but if you demur to one cause of action without also answering the remaining causes of action, after the court rules on the demurrer you must respond to *all* causes of action (see below). CCP §430.50(a); Cal Rules of Ct 3.1320(b), (j).

DEADLINE TO FILE RESPONSE AFTER DEMURRER

a. After ruling on a demurrer, the court may either:

- (1) Specify a time to respond (CCP §472b); or
- (2) Not specify a time to respond, in which case you are deemed to have been granted **10 days** in which to respond (Cal Rules of Ct 3.1320(g)).

b. In either case, the time to respond runs not from the date of the court's ruling but from the date of *service of notice* of the court's ruling, unless (CCP §472b):

- (1) Notice is waived in open court; and

(2) The waiver is entered in the minutes.

NOTE

The same deadlines apply if the demurrer was not directed to all the causes of action in the complaint. See Cal Rules of Ct 3.1320(j) ("unless otherwise ordered, defendant has 10 days to move to strike, demur, or otherwise plead to the complaint or the remaining causes of action").

Prevailing Party Gives Notice

The prevailing party gives notice of the ruling on demurrer, unless the court orders otherwise or the parties waive notice. Cal Rules of Ct 3.1312(a).

Plaintiff's Deadline to Amend

See step 11, below, for plaintiff's deadlines to amend the complaint after demurrer.

DEADLINE TO FILE MOTION TO STRIKE

File motion to strike:

a. Within the usual time allowed for defendant to answer or respond to complaint or cross-complaint, *i.e.*, **30 days** (CCP §435(b)(1); Cal Rules of Ct 3.1322(b)); or

b. In the court's discretion, at any other time (CCP §436).

NOTE

If you demur as well as move to strike, notice the motion to be heard at the same time as the demurrer. Cal Rules of Ct 3.1322(b).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Defendant's Deadlines After Service/STEP 6. FILE MOTION FOR CHANGE OF VENUE

STEP 6. FILE MOTION FOR CHANGE OF VENUE

DEADLINE TO FILE MOTION

File a motion for change of venue within the usual time allowed to answer or respond to complaint or cross-complaint, *i.e.*, **30 days**. CCP §396b(a).

NOTE

You may bring a motion to *transfer for convenience of witnesses* within a reasonable time *after* the answer is filed. See *Buran Equip. v Superior Court* (1987) 190 CA3d 1662, 1665, 236 CR 171; 3 Witkin, California Procedure, Actions §942 (5th ed 2009).

DEADLINE TO RESPOND TO COMPLAINT AFTER MOTION

If Denied

Respond to complaint within **30 calendar days** after court denies motion for change of venue. Cal Rules of Ct 3.1326.

If Granted

If court grants motion, respond to complaint within **30 calendar days** after date new court mails (Cal Rules of Ct 3.1326):

- a. Notice that court received the case; and
- b. New case number.

Further Research: See California Civil Procedure Before Trial, chaps 8, 20 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Defendant's Deadlines After Service/STEP 7. DEFENDANT'S MOTIONS AND RESPONSE TO COMPLAINT IN UNLAWFUL DETAINER ACTIONS

STEP 7. DEFENDANT'S MOTIONS AND RESPONSE TO COMPLAINT IN UNLAWFUL DETAINER ACTIONS

DEADLINE TO FILE MOTION TO QUASH SERVICE

File motion to quash in unlawful detainer action:

- a. On or before the last day to plead, *i.e.*, **5 days** after plaintiff serves complaint (CCP §§1167, 1167.3); or
- b. Within any further time that the court may allow for good cause (CCP §1167.3).

WHEN TO SET HEARING

Set the hearing not less than **3 days**, nor more than **7 days**, after the date you file the notice. CCP §1167.4(a).

IF MOTION DENIED

If the court denies the motion to quash, file the answer:

- a. **5 days** after plaintiff or court serves written notice of entry of the order denying the motion (CCP §1167.4(b)); or
- b. Within the time extended by court for good cause for a period not exceeding **15 days** (CCP §1167.4(b)).

NOTE

See step 4, above, for deadlines to petition for writ of mandate, if court denies motion to quash service.

DEADLINE TO FILE ANSWER

- a. File the answer within **5 days** after plaintiff serves summons and complaint (CCP §§1167, 1167.3);
- b. Calculate the 5 days by (CCP §1167):
 - (1) *Including* Saturdays and Sundays; but
 - (2) *Not including* all other judicial holidays.

NOTE

If the day for filing the response is a Saturday or Sunday, file it the next business day. CCP §1167.

DEADLINE TO FILE DEMURRER

File demurrer within **5 days** after plaintiff serves summons and complaint. CCP §1167.

DEADLINE TO FILE ANSWER AFTER DEMURRER

File answer within **5 days** after court overrules demurrer, unless court orders another date for filing answer. Cal Rules of Ct 3.1320(g).

DEADLINE TO FILE MOTION TO STRIKE

File motion to strike within the time allowed to answer or respond to complaint or cross-complaint, *i.e.*, **5 days** after plaintiff or cross-complainant serves the complaint or cross-complaint. CCP §1167.

DEADLINE TO FILE MOTION FOR CHANGE OF VENUE

File motion for change of venue within the time allowed to answer or respond to complaint or cross-complaint, *i.e.*, **5 days** after

plaintiff or cross-complainant serves the complaint or cross-complaint. CCP §1167.

Further Research: See California Landlord-Tenant Practice, chap 10 (2d ed Cal CEB 1997). See also Handling Unlawful Detainers (Cal CEB Action Guide April 2007).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Defendant's Deadlines After Service/STEP 8. FILE CROSS-COMPLAINT

STEP 8. FILE CROSS-COMPLAINT

PROCEDURAL DEADLINE

Without Leave of Court

You may file a cross-complaint:

- a. *Against plaintiff or cross-complainant, without leave of court:* Before or with the answer to the complaint or cross-complaint. CCP §428.50(a).
- b. *Against a third party, without leave of court:* Any time before the court has set a trial date. CCP §428.50(b).

With Leave of Court

If you missed the deadline for filing without leave of court, you must bring a noticed motion requesting that, in the interests of justice, the court allow you to file a cross-complaint. CCP §428.50(c).

SERVICE OF CROSS-COMPLAINT

If Defendant Has Already Appeared

If defendant in the cross-complaint has already appeared in the action (CCP §428.60(2); Cal Rules of Ct 3.110(c)):

- a. Serve defendant before filing the cross-complaint.
- b. The cross-complaint must be accompanied by a proof of service at the time it is filed.

If New Parties Are Added

If the cross-complaint adds new parties (CCP §428.60(1); Cal Rules of Ct 3.110(c)):

- a. Serve the cross-complaint on all parties within **30 days** of filing;
- b. File the proof of service within **30 days** of filing the cross-complaint.

COURT MAY EXTEND DEADLINE FOR SERVICE

The court, on its own motion or the motion of a party, may extend the time for service of a cross-complaint. Cal Rules of Ct 3.110(e).

Apply for Extension

To apply for an extension, you must (Cal Rules of Ct 3.110(e)):

- a. File an application before the deadline for service has elapsed; and
- b. Accompany it with a declaration:
 - (1) Showing why service has not been completed;
 - (2) Documenting the efforts made to complete service; and
 - (3) Specifying the date by which you propose to complete service.

STATUTE OF LIMITATIONS TO FILE CROSS-COMPLAINT

Against Plaintiff

a. If the statute of limitations barred your client's cause of action against plaintiff before plaintiff filed suit, then the statute of limitations bars the cross-complaint. Liberty Mut. Ins. Co. v Fales (1973) 8 C3d 712, 715 n4, 106 CR 21.

b. The statute of limitations does *not* bar a cross-complaint against plaintiff *if both* (Sidney v Superior Court (1988) 198 CA3d 710, 714, 244 CR 31):

(1) Cross-complaint is subject-matter related to the complaint; and

(2) Statute of limitations did not bar your client's cause of action at the time the complaint was filed.

NOTE

Be aware that defendant may, in the *answer*, claim any money plaintiff owes defendant as an *offset* against money that plaintiff seeks in action, even if defendant's claim would have been barred by the statute of limitations. See CCP §431.70 (no affirmative relief, only offset).

Against Third Parties

Plaintiff's filing of the complaint does *not* toll the statute of limitations against third party cross-defendants (Trinidad v Superior Court (1973) 29 CA3d 857, 859, 106 CR 48), so determine appropriate statute of limitations based on *both*:

a. Defendant's identity; and

b. Substantive law governing the cause of action.

STATUTE OF LIMITATIONS FOR EQUITABLE INDEMNITY

Statute of limitations for equitable indemnity depends on the *substantive* basis of the indemnity, *e.g.*, contractual, professional negligence.

Accrual

The equitable indemnity cause of action accrues when claimant has suffered actual monetary loss through payment of a judgment or settlement (Christian v County of Los Angeles (1986) 176 CA3d 466, 471, 222 CR 76), *except*:

a. Action against a governmental entity accrues on the date defendant (now also cross-complainant) was served with complaint in the underlying action (Govt C §901); and

b. You cannot bring an action against a party for indemnity or contribution if the court has already determined that the party settled in good faith (CCP §877.6(c)). See step 27, below, on filing motion for good faith settlement.

NOTE

Although the cause of action does not accrue until claimant suffers an actual monetary loss, you may file a cross-complaint for indemnity with your answer if it is against a third party, or at any time before the court has set a date for trial, in order to avoid having to file a motion later. The cross-complaint may have the salutary effect of bringing parties into the action who will contribute to its settlement!

Further Research: See California Civil Procedure Before Trial, chap 26 (4th ed Cal CEB 2004).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Plaintiff/Cross-Complainant During Litigation/STEP 9. REQUEST WRIT OF ATTACHMENT

Deadlines for Plaintiff/Cross-Complainant During Litigation

STEP 9. REQUEST WRIT OF ATTACHMENT

WHEN TO FILE APPLICATION

Plaintiff may apply for a right to attach order and a writ of attachment (CCP §§484.010, 485.210(a), 492.020(a)):

- a. When filing complaint; or
- b. At any time after filing.

DEADLINE TO SERVE APPLICATION

Ex Parte Application

- a. Notify all parties no later than 10:00 a.m. on the court day before the ex parte appearance, absent exceptional circumstances. Cal Rules of Ct 3.1203(a).
- b. You must serve the ex parte application on the parties appearing at the hearing "at the first reasonable opportunity." Cal Rules of Ct 3.1206.

NOTE

California Rules of Court 3.1200-3.1207 provides requirements for content of notice, required documents, affirmative factual showings, service of papers, and personal appearance.

Noticed Hearing—First Writ

Serve notice of hearing and application on first writ (CCP §§484.040, 1005(a)(1), (b)):

- a. *Personal service*: **16 court days** before hearing if you personally serve the application;
- b. *Mail service*:
 - (1) **16 court days plus 5 calendar days** if you serve by mail to or from an address within California;
 - (2) **16 court days plus 10 calendar days** if you serve by mail to or from an address outside California, but within the United States;
 - (3) **16 court days plus 20 calendar days** if you serve by mail to or from an address outside the United States.
- c. *Fax/overnight delivery*: **16 court days** before hearing **plus 2 calendar days** if you serve notice by fax, Express Mail, or other method providing for overnight delivery.
- d. *Electronic service*: **16 court days** before hearing **plus 2 court days** if you serve notice electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260.

Noticed Hearing—Subsequent Writs

If you seek a writ based on a prior right to attach order, serve notice of hearing and copy of application at least **15 days** before the hearing. CCP §484.330.

DEFENDANT'S DEADLINES

After Ex Parte Application Granted

If the court grants ex parte application:

a. *Personal property*: Defendant has **30 days** to claim exemption after the levying officer serves defendant with the notice of attachment. CCP §485.610(a).

b. *Real property*: Defendant has **10 days** to claim exemption after levying officer serves defendant with notice of levy. CCP §§485.610(a), 487.030, 703.510-703.520.

Oppose Right to Attach Order

If plaintiff proceeds by noticed hearing, defendant has **5 court days** before the date set for the hearing to oppose application. CCP §484.060(a).

File Claim of Exemption

If plaintiff proceeds by noticed hearing, defendant must file and serve claim of exemption not less than **5 days** before the date set for the hearing. CCP §§484.070(e), 484.350(d).

PLAINTIFF'S DEADLINE FOR OPPOSITION TO CLAIM OF EXEMPTION

Plaintiff must file and serve any opposition to claim of exemption **2 days** before the date set for the hearing. CCP §§484.070(f), 484.360(a).

DEADLINE TO LEVY ON WRIT

The levying officer may *not* levy on any property described in the writ *after 180 days* from the date the writ was issued. CCP §699.530(b).

Further Research: See Obtaining a Writ of Attachment (Cal CEB Action Guide December 2006).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Plaintiff/Cross-Complainant During Litigation/STEP 10. REQUEST DEFAULT IF DEFENDANT DOES NOT FILE TIMELY RESPONSE

STEP 10. REQUEST DEFAULT IF DEFENDANT DOES NOT FILE TIMELY RESPONSE

DEADLINE

Request Default

- a. If a responsive pleading is not served within **30 days**, and no extension of time has been granted either by stipulation or order of the court, plaintiff, within **10 days** after the time for service of the response has lapsed, must file a request for entry of default.
- b. Failure to timely file the request may result in an Order to Show Cause being issued as to why sanctions must not be imposed. Cal Rules of Ct 3.110(g).

Further Research: See California Civil Procedure Before Trial, chap 38 (4th ed Cal CEB 2004).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Plaintiff/Cross-Complainant During Litigation/STEP 11. AMEND COMPLAINT OR CROSS-COMPLAINT

STEP 11. AMEND COMPLAINT OR CROSS-COMPLAINT

WHEN YOU MAY AMEND

Without Leave of Court

If the statute of limitations has not expired, you can amend once without leave of court before (CCP §472):

- a. Defendant files answer; or
- b. Hearing on demurrer, if applicable. See step 8, above, for discussion of statute of limitations on cross-complaint against plaintiff.

With Leave of Court

Before the statute of limitations expires, you can amend if you first file a noticed motion requesting leave of court and showing that amendment will:

- a. Further justice (CCP §§473(a)(1), 576); and
- b. *Not* prejudice opposing party (see *Douglas v Superior Court* (1989) 215 CA3d 155, 158, 263 CR 473).

WHEN UNRELATED CAUSE OF ACTION

If you want to file a cross-complaint on an unrelated cause of action:

- a. File new cause of action within the limitation period as if it were a separate action.
- b. Determine appropriate limitation period by:
 - (1) Identifying defendant; or
 - (2) Applying substantive law.

NO BAR IF NEW CAUSE OF ACTION RELATES BACK TO COMPLAINT

The statute of limitations will not bar the amended *complaint* if the new cause of action "relates back" (see *Smeltzley v Nicholson Mfg. Co.* (1977) 18 C3d 932, 936, 136 CR 269), *i.e.*, if:

- a. The amended complaint is based on the same general set of facts as the causes of action in the original complaint;
- b. The amended complaint seeks recovery for the same injuries;
- c. The amended complaint refers to the same incident; and
- d. The original complaint was timely.

PLAINTIFF'S DEADLINE TO AMEND AFTER DEMURRER

In General

Following the court's ruling on demurrer, unless the court orders otherwise, plaintiff's time in which to amend is (Cal Rules of Ct 3.1320(g)):

- a. **10 days**, unless the court orders otherwise (time runs from the date of service of the notice of decision on the demurrer, unless notice is waived in open court and the waiver is entered in the minutes (CCP §472b)); or
- b. **5 days**, in actions in forcible entry, forcible detainer, or unlawful detainer.

If Reversal of Order Sustaining Demurrer Without Leave to Amend

If an order sustaining a demurrer without leave to amend is reversed or otherwise remanded by a reviewing court, the amended complaint must be filed within **30 days** after the clerk of the reviewing court mails notice of the issuance of the remittitur. CCP §472b.

WHEN ADDING PARTY PREVIOUSLY IDENTIFIED AS DOE DEFENDANT

Amendment adding a new party previously identified as a Doe defendant under CCP §474 relates back to the original filing date (see *Austin v Massachusetts Bonding & Ins. Co.* (1961) 56 C2d 596, 602, 15 CR 817; *Sobeck & Assocs. v B & R Invs.* (1989) 215 CA3d 861, 867, 264 CR 156), *unless* plaintiff had actual knowledge of defendant's identity (see *Munoz v Purdy* (1979) 91 CA3d 942, 947, 154 CR 472).

Further Research: See *Chase v State* (1977) 67 CA3d 808, 812, 136 CR 833, for exception to relation-back rule in action against the state under the Government Claims Act (Govt C §§810-998.3) (formerly known as the Tort Claims Act).

LIMITATIONS ON AMENDING CROSS-COMPLAINT

The statute of limitations will not bar an amended *cross-complaint* against the *plaintiff* (*Sidney v Superior Court* (1988) 198 CA3d 710, 715, 244 CR 31) if cross-complaint:

- a. Is broadly related to the subject matter of the original complaint; and
- b. Was not barred at the time plaintiff filed the complaint, *e.g.*, any compulsory cross-complaint. See step 8, above, for discussion of cross-complaints.

NOTE

Courts rarely deny leave to amend. It is error to deny leave to amend if a motion to amend is timely made and will not prejudice the opposing party. *Douglas v Superior Court* (1989) 215 CA3d 155, 158, 263 CR 473; *Morgan v Superior Court* (1959) 172 CA2d 527, 530, 343 P2d 62.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Plaintiff/Cross-Complainant During Litigation/STEP 12. RESPOND TO DEFENDANT'S ANSWER

STEP 12. RESPOND TO DEFENDANT'S ANSWER

DEMUR TO ANSWER

Demur to defendant's answer within **10 days** after defendant or cross-defendant serves the answer to the complaint or cross-complaint. CCP §430.40(b).

MOTION TO STRIKE ANSWER

Move to strike answer within time allowed to respond, *i.e.*, within **10 days** after defendant or cross-defendant serves the answer. CCP §§435(b)(1), 430.40(b).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 13. CONDUCT AND COMPLETE DISCOVERY

Deadlines for Discovery

STEP 13. CONDUCT AND COMPLETE DISCOVERY

EARLIEST DATE FOR DISCOVERY

For Plaintiff

After you as plaintiff serve the summons or defendant appears in the action, *wait*:

- a. **20 days** to serve *deposition* notice (CCP §2025.210(b));
- b. **10 days** to serve other discovery requests (CCP §§2030.020(b), 2031.020(b), 2033.020(b));
- c. **5 days** to serve other discovery requests in unlawful detainer cases (CCP §§2030.020(c), 2031.020(c), 2033.020(c)).

For Defendant

Defendant may:

- a. Serve deposition notice any time after the *earlier* of (CCP §2025.210(a)):
 - (1) Being served; or
 - (2) Making general appearance;
- b. Serve other discovery requests any time (see CCP §§2030.020(a), 2031.020(a), 2033.020(a)).

LATEST DATE FOR DISCOVERY

Discovery Must Be Completed

Complete discovery:

- a. **15 days** before date of arbitration hearing (Cal Rules of Ct 3.822(b));
- b. **30 days** before *initial* trial date (CCP §2024.020(a)):
 - (1) A continuance or postponement of the trial date does not reopen discovery unless the court grants an extension on motion of a party (CCP §§2024.020(b), 2024.050) (on moving to extend time limits, see below);
 - (2) After an arbitration award, only expert witness discovery under CCP §§2034.010-2034.730 is allowed, except by stipulation of the parties or leave of court on a showing of good cause (CCP §1141.24; see step 29, below, for deadlines on judicial arbitration); or
- c. **5 days** before trial in unlawful detainer cases (CCP §2024.040(b)(1)).

NOTE

Check local court rules to learn the discovery cutoff for your case, but be aware that you may have a right to complete discovery up to 30 days before the initial trial date. See Wagner v Superior Court (1993) 12 CA4th 1314, 1318, 16 CR2d 534 (under former CCP §2024(a), court could not set discovery cutoff date before setting trial date).

Exceptions

Discovery can take place after these deadlines, when:

- a. The court so orders, *e.g.*, after a trial date is continued (CCP §2024.050(a)) or after arbitration (CCP §1141.24);
- b. Expert witness depositions/expert motions are necessary (CCP §2024.030); or
- c. The parties so stipulate (CCP §2024.060).

NOTE

Do not file discovery documents with the court. See, *e.g.*, CCP §§2030.280(a), 2031.290(a), 2033.270(a).

DEADLINE FOR DISCOVERY MOTIONS

Have discovery motions, except for those concerning expert witnesses (CCP §2024.030), heard no later than **15 days** before *initial* trial date. CCP §2024.020(a).

MOVE TO EXTEND TIME LIMITS

Any party may move the court to grant leave to (CCP §2024.050(a)):

- a. Complete discovery or have a motion concerning discovery heard closer to the initial trial date; or
- b. Reopen discovery after a new trial date has been set.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 14. DEPOSITION DEADLINES

STEP 14. DEPOSITION DEADLINES

DEADLINES FOR REQUESTING PARTY

Schedule to Begin Before Discovery Cutoff

Schedule the deposition so that it begins no later than **30 days** before trial, *i.e.*, before the discovery cutoff, which is 30 days before the initial trial date (CCP §2024.010 (deposition is considered completed on day it begins); see step 13, above).

NOTE

You should schedule depositions sufficiently early to allow time to bring any motions before the discovery motion cutoff. See CCP §2024.020(a).

Further Research: California Civil Discovery Practice §§5.16-5.23, 5.44-5.49 (4th ed Cal CEB 2006).

Serve Deposition Notice

Serve deposition notice (CCP §§2025.270(a), 1013):

- a. *Serve personally*, at least **10 days** before the deposition.
- b. *Serve by mail*:
 - (1) **15 days** before the deposition, if mailed to an address within California;
 - (2) **20 days** before the deposition, if mailed to an address outside California, but within the United States;
 - (3) **30 days** before the deposition, if mailed to an address outside the United States.
- c. *Serve by fax, Express Mail, or other overnight delivery*: **10 days plus 2 court days** before the deposition.
- d. *Electronic service*: **10 days plus 2 court days** before the deposition. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

Caution: You may serve by fax only if the parties agree and confirm their agreement in writing. CCP §1013(e). Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

Subpoena Nonparty Deponent

Serve a subpoena (plus witness fees and costs) on a nonparty deponent *in sufficient time* to allow (CCP §2020.220(a)):

- a. Reasonable time for deponent to travel to the deposition; and
- b. Deponent to locate any documents or things sought.

Consumer's Personal Records or Employee's Employment Records

To get personal records of a consumer or an employee's employment records, schedule a deposition for a date no less than **20 days** after you or the court issues a *deposition subpoena* for the witness to produce *personal records of a consumer or the employment records of an employee*. CCP §2025.270(c).

Production of Business Records Only

Schedule the production of business records *only* by the *later* of (CCP §2020.410(c)):

- a. **20 days** after you or the court issues the subpoena; or

- b. **15 days** after the deposition subpoena is served.

Production of Electronically Stored Information from Nonparty

Schedule the production of electronically stored information (ESI) from a nonparty according to the deadlines applicable to the type of records sought. CCP §1985.8(a)(2). For example, if a party seeks ESI that is a consumer's personal records or an employee's employment records, follow the deadlines generally applicable to seeking such records (see above and CCP §2025.270(c)).

Motion to Compel Answers to Questions

Move to compel answers within **60 days** after completion of the deposition record. CCP §2025.480(b).

NOTE

Remember that a motion to compel answers to questions must be accompanied by a meet-and-confer declaration under CCP §2016.040 that shows a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

DEADLINES FOR OBJECTING TO DEPOSITION NOTICE

Object "promptly" to any irregularity in the deposition notice by personally serving a written objection at least **3 calendar days** before the date for which the deposition is scheduled on the party seeking to take the deposition and on any other attorney or party on whom the notice was served. CCP §2025.410(a).

MOTION FOR PROTECTIVE ORDER

A party, deponent, or other interested person may move for a protective order before, during, or after a deposition. CCP §2025.420(a).

CORRECTIONS TO RECORD BY DEPONENT

Deponent can review and make corrections to the deposition record (CCP §2025.520):

- a. Within **30 days** after deposition officer sends notice of completion of each session of the deposition; unless
- b. Deponent and attending parties agree on the record that the reading, correcting, and signing of the transcript:
 - (1) Will be waived; or
 - (2) Will take place after the entire deposition has been concluded, or at some other specific time.

UNLAWFUL DETAINER ACTIONS

Schedule deposition (CCP §2025.270(b)):

- a. For a date at least **5 days** after service of the deposition notice; but
- b. Not later than **5 days** before trial.

Further Research: For discovery in unlawful detainer actions, see California Landlord-Tenant Practice §§11.3-11.30 (2d ed Cal CEB 1997).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 15. INTERROGATORY DEADLINES

STEP 15. INTERROGATORY DEADLINES

DEADLINES FOR REQUESTING PARTY

Serve the interrogatories so that responses are due *before* the discovery cutoff, *i.e.*, 30 days before trial. CCP §2024.020(a).

NOTE

Discovery is considered complete on the day a response is due or a deposition begins. CCP §2024.010.

Interrogatories

Serve interrogatories:

- a. At least **60 days** before trial, *e.g.*, *personally* serve 60 days before trial (on deadlines for responding party, see this step, below, and step 13, above) so that you receive responses at least **30 days** before trial, *i.e.*, on or before the discovery cutoff date (CCP §2024.020(a));
- b. In enough time to file a motion to compel further answers, if necessary. Hearing must be **15 days** before trial (CCP §2024.020(a); see discussion of Motion to Compel, below).

Unlawful Detainer Actions

Serve interrogatories in unlawful detainer action:

- a. As plaintiff, no earlier than **5 days** after *either* of the following, whichever occurs first (CCP §2030.020(c)):
 - (1) Service of the summons; or
 - (2) Appearance by the party to whom the demand is directed; and
- b. Within **10 days** before trial date (response will then be due 5 days before trial date, which is when discovery closes in unlawful detainer action) (CCP §§2024.010, 2024.040(b)(1)).

Motion to Compel

Serve and file notice of motion to compel:

- a. **At any time** (as long as the hearing is scheduled for no later than **15 days** before trial) if other party has not responded at all (CCP §§2024.020(a), 2030.290(b));
- b. **45 days** after responding party serves response, if response is inadequate (CCP §2030.300(c)) (plus additional time if responding party serves response by mail, fax, or overnight delivery under CCP §1013);
- c. To allow the motion to be heard before the discovery cutoff, *i.e.*, **15 days before** trial (CCP §2024.020(a)); and
- d. *After* you have met and conferred with responding party's attorney (CCP §§2016.040, 2023.020, 2030.300(b)).

NOTE

Check local rules for additional meet-and-confer requirements when you file your motion. See, *e.g.*, Sonoma Ct R 5.4, which requires that the meet-and-confer conference occur not less than 5 days before the noticed or continued date of hearing, except for motions for summary judgment and summary adjudication of issues.

Retain Originals

For **6 months** after final disposition of the case, retain original (CCP §2030.280(b)):

- a. Interrogatories;
- b. Proof of service; and
- c. Response.

DEADLINES FOR RESPONDING PARTY

Serve *verified* response on all parties (CCP §§2030.210(a), 2030.250(a)-(b)):

If Personally Served

30 days after requesting party personally serves interrogatories. CCP §2030.260(a).

If Served by Mail

If requesting party serves by mail (CCP §1013(a)):

- a. **35 days** after requesting party serves interrogatories by mail to an address in California;
- b. **40 days** after requesting party serves interrogatories by mail to an address outside California, but in the United States;
- c. **50 days** after requesting party serves interrogatories by mail to an address outside the United States.

If Served by Fax or Overnight Delivery

If requesting party serves by fax, Express Mail, or other form of overnight delivery, respond in **30 calendar days plus 2 court days** after service. CCP §1013(c)-(f). You may serve by fax only if the parties agree and confirm their agreement in writing. CCP §1013(e).

If Served Electronically

If requesting party serves electronically, respond in **30 calendar days plus 2 court days** after service. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

Amended Response

Any time after your initial responses, serve amended responses. CCP §2030.310(a).

Unlawful Detainer

Serve response **5 days** after the date of service of interrogatories in unlawful detainer action (CCP §2030.260(b)) unless the court shortens the time for the response on motion of the propounding party.

Caution: Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 16. DEADLINES FOR INSPECTION OR PRODUCTION

STEP 16. DEADLINES FOR INSPECTION OR PRODUCTION

DEADLINES FOR REQUESTING PARTY

Schedule Inspection

Schedule inspection, copying, testing, or sampling to occur *at least* (CCP §§2031.030(c)(2), 1010.6(a)(6), 1013; Cal Rules of Ct 2.260):

- a. **30 days** after you personally serve demand;
- b. **35 days** after you serve demand by mail to an address in California;
- c. **40 days** after you serve demand by mail to an address outside California, but in the United States;
- d. **50 days** after you serve demand by mail to an address outside the United States;
- e. **30 calendar days plus 2 court days** after you serve demand by fax, Express Mail, or other form of overnight delivery;
- f. **30 calendar days plus 2 court days** after you serve demand electronically. On when electronic service is permitted, see step 1, above.

Caution: You may serve by fax only if the parties agree and confirm their agreement in writing. CCP §1013(e). Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

NOTE

The written response to a demand for inspection or production is due 30 days after service. CCP §2031.260(a). (Time extended according to method of service. CCP §1013.)

Serve Demand

Serve the demand so that the inspection takes place *before* discovery cutoff, *e.g.*, schedule date of inspection to take place at least **30 days before** trial (CCP §2024.020(a)), and serve demand at least **60 days before** trial. See step 13, above.

Unlawful Detainer Actions

In unlawful detainer action:

- a. As plaintiff, make demand no sooner than **5 days** after *either* of the following, whichever occurs first (CCP §2031.020(c)):
 - (1) Service of the summons; or
 - (2) Appearance by the party to whom the demand is directed.
- b. Schedule inspection to take place *before* discovery cutoff, *e.g.*, schedule date of inspection to occur at least **5 days** before trial and serve demand at least **10 days** before trial (CCP §§2024.010, 2024.040(b)(1), 2031.030(c)(2)).
- c. Set date for inspection at least **5 days** after you personally serve the demand (plus additional time under CCP §1013 if served by mail, fax, or overnight delivery). CCP §2031.030(c)(2).

Retain Originals

For **6 months** after final disposition of the case, retain original (CCP §2031.290(b)):

- a. Demand;
- b. Proof of service; and

c. Response.

Motion to Compel

Serve and file notice of motion to compel further response:

a. Within **45 days** after responding party serves *response* (plus additional time under CCP §1013 if served by mail, fax, or overnight delivery; see caution about extensions of time, below) (CCP §2031.310(c));

b. So that motion may be heard before the discovery cutoff (CCP §2024.020(a)).

Caution: *Sexton v Superior Court* (1997) 58 CA4th 1403, 1410, 68 CR2d 708, held that a trial court must dismiss a late-filed motion to compel production of documents even though the responding party did not raise a timeliness objection until hearing of motion.

NOTE

Remember to meet and confer with responding party's attorney *before* you file the motion. CCP §§2016.040, 2023.020, 2031.310(b)(2).

DEADLINES FOR RESPONDING PARTY TO RESPOND

Serve *verified* response to demand for production or inspection of physical evidence within (CCP §§2031.250-2031.260, 1013):

If Personally Served

30 days after requesting party personally serves demand.

If Served by Mail

a. **35 days** after requesting party serves demand by mail to an address in California;

b. **40 days** after requesting party serves demand by mail to an address outside California, but in the United States; or

c. **50 days** after requesting party serves demand by mail to an address outside the United States.

If Served by Fax or Overnight Mail

30 calendar days plus 2 court days after requesting party serves demand by fax, Express Mail, or other overnight delivery. See caution about extensions of time, below.

If Served Electronically

30 calendar days plus 2 court days after requesting party serves demand electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

Unlawful Detainer

5 days after inspection demand, if personally served (plus additional time if served by mail, fax, or overnight delivery under CCP §1013). CCP §2031.260(b).

Caution: You may serve by fax only if the parties agree and confirm their agreement in writing. CCP §1013(e). Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

DEADLINES TO PRODUCE

Produce documents or things for inspection, copying, testing, or sampling on date specified in the demand (which is at least 30 days after service of the demand). CCP §2031.030(c)(2).

Unlawful Detainer

In unlawful detainer action, produce documents or things for inspection on date specified in the demand (which is at least 5 days after date of service of demand). CCP §2031.030(c)(2).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 17. DEADLINES FOR PHYSICAL OR MENTAL EXAM

STEP 17. DEADLINES FOR PHYSICAL OR MENTAL EXAM

DEADLINES FOR PARTY REQUESTING EXAMINATION

Schedule Exam

As party requesting *physical* examination, schedule exam:

- a. For a date at least **30 days** after the date you serve the demand (CCP §2032.220(d)); and
- b. *Before* discovery cutoff, *i.e.*, 30 days before trial (CCP §2024.020(a)).

Obtain Court Order if Needed

Notice a motion to obtain a court order for certain *physical* or *mental* examinations (see CCP §2032.310) early enough to allow the examination to be scheduled before the discovery cutoff, *i.e.*, 30 days before trial (CCP §2024.020(a)).

Produce Reports

If party being examined demands a copy of written report resulting from the exam, produce it by the *earlier* of (CCP §2032.610(b)):

- a. **30 days** after party being examined serves demand; or
- b. **15 days** before trial.

Retain Originals

For **6 months** after final disposition of the case, retain original (CCP §2032.260(b)):

- a. Demand;
- b. Proof of service; and
- c. Response.

DEADLINES FOR PARTY BEING EXAMINED

To Respond

Serve response to demand for physical or mental exam (CCP §§2032.230(b), 1010.6(a)(6), 1013; Cal Rules of Ct 2.260):

- a. **20 days** after requesting party personally serves demand;
- b. **25 days** after requesting party serves demand by mail to an address in California;
- c. **30 days** after requesting party serves demand by mail to an address outside California but in the United States;
- d. **40 days** after requesting party serves demand by mail to an address outside the United States;
- e. **20 days plus 2 court days** after requesting party serves demand by fax, Express Mail, or other overnight delivery;
- f. **20 days plus 2 court days** after requesting party serves demand electronically. On when electronic service is permitted, see step 1, above.

Caution: You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e). Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

To Obtain Copy of Reports

If you serve a demand for copies of requesting party's reports, you must produce in exchange all *your* written reports "at the time of compliance," *i.e.*, 30 days after you served your demand or 15 days before trial, whichever is earlier. CCP §§2032.610(b), 2032.640.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 18. DEADLINES FOR REQUESTS FOR ADMISSION

STEP 18. DEADLINES FOR REQUESTS FOR ADMISSION

DEADLINES FOR REQUESTING PARTY

If responding party does not respond in a timely fashion to requests for admission, move for an order that matters be deemed admitted in sufficient time for the court to hear the motion before the discovery motion cutoff (*i.e.*, 15 days before trial). CCP §§2024.020(a), 2033.280(b).

Serve Requests

To be sure that responses are due *before* the discovery cutoff 30 days before trial (CCP §2024.020(a)), *e.g.*, personally serve requests for admission **60 days** before trial. See step 13, above.

NOTE

To pin down the opposing party as closely as possible, when serving requests for admission, always consider including Judicial Council Form DISC-001 (Form Interrogatories-General), interrogatory number 17.1 (regarding Responses to Request for Admissions).

Move to Compel

Move for an order compelling further responses to requests for admission (plus additional time if responding party serves response by mail, fax, or overnight delivery under CCP §1013):

- a. Within **45 days** after responding party serves responses (CCP §2033.290(c));
- b. So that motion can be heard before the discovery cutoff, *i.e.*, **15 days** before trial (CCP §2024.020(a)).

NOTE

Remember to meet and confer with responding party's attorney as required by CCP §§2016.040, 2023.020, and 2033.290(b) *before* you file the motion.

Retain Originals

For **6 months** after final disposition of the case, retain original (CCP §2033.270(b)):

- a. Requests for admission;
- b. Proof of service; and
- c. Response.

Unlawful Detainer Actions

As plaintiff in unlawful detainer action, file request no earlier than **5 days** after *either* of the following, whichever occurs first (CCP §2033.020(c)):

- a. Service of the summons; or
- b. Appearance by the party to whom the demand is directed.

DEADLINES FOR RESPONDING PARTY

Serve *verified* response to requests for admission on all parties (CCP §§2033.240-2033.250, 1013):

If Personally Served

30 days after requesting party personally serves requests.

If Served by Mail

- a. **35 days** after requesting party serves by mail to an address in California;
- b. **40 days** after requesting party serves by mail to an address outside California but in the United States; or
- c. **50 days** after requesting party serves by mail to an address outside the United States.

If Served by Fax or Overnight Mail

30 days plus 2 court days after requesting party serves request by fax, Express Mail, or other overnight delivery. You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

If Served Electronically

30 days plus 2 court days after requesting party serves request electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

Unlawful Detainer

In unlawful detainer action, **5 days** after date of service of request. CCP §§2033.210(a), 2033.240-2033.250(b).

Caution: Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 19. DEADLINES FOR EXPERT WITNESS

STEP 19. DEADLINES FOR EXPERT WITNESS

DEADLINES FOR REQUESTING PARTY

Demand Exchange

Serve demand for exchange of information concerning expert witnesses by the *later* of (CCP §2034.220):

- a. **10 days** after court sets *initial* trial date; or
- b. **70 days** before the *initial* trial date.

Schedule Exchange

Set date for exchange for the *later* of (CCP §2034.230(b)):

- a. **50 days** before the *initial* trial date; or
- b. **20 days** after you serve the demand.

Complete Depositions

15 days before initial trial date, complete expert depositions. CCP §2024.030.

NOTE

Parties have only a 25-day window period to complete expert depositions after exchange (*e.g.*, 50 days before trial for exchange, minus 15 days for discovery cutoff, minus 10 days for deposition notice).

Expert Motions

10 days before initial trial date, bring any motions concerning expert witnesses. CCP §2024.030.

Retain Originals

For **6 months** after final disposition of the case, retain original (CCP §2034.290(b)):

- a. Demand;
- b. Proof of service;
- c. Lists; and
- d. Declarations.

DEADLINES FOR ALL PARTIES

Produce Information

On or before the date set for exchange, produce your information about your expert witnesses at the same time as the opposing party does. CCP §2034.260(a).

Supplement List

Within **20 days** after exchange, submit supplemental list. CCP §2034.280(a).

Augment, Amend, or Submit Late List

In enough time before expert discovery cutoff to permit the deposition of the expert you wish to add:

a. Move to amend or augment your expert witness list (CCP §§2034.610-2034.620);

b. Move to submit a late expert witness list (CCP §§2034.710-2034.720).

Further Research: See Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2008).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Discovery/STEP 20. BILL OF PARTICULARS

STEP 20. BILL OF PARTICULARS

SERVE DEMAND FOR PARTICULARS

If the complaint does not state the items of the account, defendant may, *at any time*, demand a copy of the account on which plaintiff based the action. CCP §454.

DEADLINE TO RESPOND WITH ACCOUNT

10 days after defendant's demand, plaintiff must respond with a copy of the account. CCP §454.

Further Research: See California Civil Procedure Before Trial, chap 30 (4th ed Cal CEB 2004).

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Deadlines for Any Party During Litigation

STEP 21. FILE, SERVE, AND RESPOND TO MOTIONS (GENERALLY)

REVIEW REQUIREMENTS FOR YOUR MOTION

Review statute or other legal basis for your motion to determine when to file and serve the moving papers, *e.g.*, summary judgment motions; see [step 25](#), below.

PAGE LIMITATIONS

Opening or Responding Memorandum

Observe 15-page limit for opening or responding memorandum (except for summary judgment or summary adjudication motions). [Cal Rules of Ct 3.1113\(d\)](#).

NOTE

The page limit does not include a table of contents, table of authorities, proof of service, exhibits, declarations, or other attachments. [Cal Rules of Ct 3.1113\(d\)](#).

Reply or Closing Memorandum

Observe 10-page limit for reply or closing memorandum, exclusive of table of contents, table of authorities, proof of service, exhibits, declarations, or other attachments. [Cal Rules of Ct 3.1113\(d\)](#).

Summary Judgment and Summary Adjudication Motions

When moving for summary judgment or summary adjudication, observe ([Cal Rules of Ct 3.1113\(d\)](#)):

- a. 20-page limit for opening or responding papers; and
- b. 10-page limit for reply papers.

If Longer Memorandum Needed

A party may apply to the court for permission to file a longer memorandum ([Cal Rules of Ct 3.1113\(e\)](#)):

- a. Ex parte, but with written notice of the application to the other parties; and
- b. At least 24 hours before the memorandum is due.

PAY APPLICABLE FEE

For Motions Requiring Hearing

Pay \$40 fee (as of the date of this publication) ([Govt C §70617\(a\)](#)), unless the motion is your first appearance, in which case you must pay a first appearance fee ([Govt C §70617\(b\)\(1\)](#)). For discussion of first appearance fee, see [step 4](#), above.

For Motions Not Requiring Hearing

Pay \$20 fee (as of the date of this publication). [Govt C §70617\(c\)](#).

For Summary Judgment Motions

Pay \$200 fee (as of the date of this publication) for a motion for summary judgment or summary adjudication. [Govt C §70617\(d\)](#).

EFFECT OF LOCAL RULES

No Effect on Form and Format of Court Papers

The California Rules of Court exclusively govern the form and format of all papers, motions, demurrers, discovery, pleadings, preliminary injunctions, bonds, and ex parte applications and orders. [Cal Rules of Ct 3.20](#). See [Cal Rules of Ct 2.100-2.119](#).

NOTE

In certain circumstances, a local rule may direct a party to use a form that the county itself has created. However, a county can do this only when there is no mandatory Judicial Council form available covering the particular situation at issue.

May Govern Other Law and Motion Matters

Check local court rules to ascertain whether law and motion rules apply to matters other than those governed by Cal Rules of Ct 981.1 (Cal Rules of Ct 3.20):

Example 1: Some counties (*e.g.*, San Francisco) have a tentative ruling system. See San Francisco Ct R 8.3.

Example 2: In San Mateo County, you must notify opposing counsel and court in accordance with Cal Rules of Ct 3.1308(a)(1), if you intend to appear at the hearing to contest the tentative ruling. San Mateo Ct R 3.10(c).

Example 3: In Orange County, the tentative ruling is published either by posting a calendar note on the date of the hearing, announcing the tentative ruling at the time of oral argument, or, in place of these methods, in compliance with Cal Rules of Ct 3.1308. Orange Ct R 382.

NOTE

Be aware that you may use the CCP §170.6 challenge to the judge in law and motion. See step 3Z, below. See also Boucharð v Inwona (1980) 105 CA3d 768, 771, 164 CR 505 (challenge to law-and-motion judge); Autoland v Superior Court (1988) 205 CA3d 857, 860, 252 CR 662 (challenge to discovery referee). This will, however, use up the peremptory challenge under §170.6 for the life of the matter.

MOTIONS REQUIRING WRITTEN NOTICE

CCP §1005 requires written notice for the following motions:

- a. Writ of Attachment (CCP §484.040);
- b. Claim and Delivery (CCP §512.030);
- c. Claim of Exemption (CCP §706.105);
- d. Motion to Quash Summons (CCP §418.10(b));
- e. Motion for Determination of Good Faith Settlement (CCP §877.6);
- f. Hearing for Discovery of Peace Officer Personnel Records (Evid C §1043);
- g. Notice of Hearing of Third-Party Claim (to property) (CCP §720.320);
- h. Motion for Order to Attend Deposition More Than 150 Miles From Deponent's Residence (CCP §2025.260);
- i. Notice of Hearing Application for Relief Under Govt C §946.6;
- j. Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions (CCP §473.5);
- k. Motion to Expunge Notice of Pendency of Action (CCP §405.30);
- l. Motion to Set Aside Default and for Leave to Amend (CCP §585.5);
- m. Any other proceeding in which notice is required and no other time or method is prescribed by law, court, or judge.

DEADLINE TO FILE AND SERVE MOVING PAPERS

If Personally Served

At least **16 court days** before the hearing, personally serve moving papers (CCP §1005(b); Cal Rules of Ct 3.1300(a)); or

If Served by Mail

Serve by mail (CCP §1005(b)):

- a. **16 court days plus 5 calendar days** before hearing if mailed to and from an address in California;
- b. **16 court days plus 10 calendar days** before hearing if mailed to or from an address outside California but in the United States;

c. **16 court days plus 20 calendar days** before hearing if mailed to or from an address outside the United States.

If Served by Fax or Overnight Mail

Serve **16 court days plus 2 calendar days** before the hearing, if you serve by fax, Express Mail, or other overnight delivery. CCP §1005(b).

If Served Electronically

Serve **16 court days plus 2 court days** before hearing, if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

DEADLINE TO NOTIFY COURT OF APPEARANCE BY TELEPHONE

At least **5 court days** before hearing, notify the court and all other parties of intent to appear by telephone (Cal Rules of Ct 3.670(g)):

- a. If notice is oral, it must be given either in person or by telephone.
- b. If notice is in writing, it must be given by filing a Notice of Intent to Appear by Telephone with the court at least **5 court days** before the hearing, and by serving the notice on all other parties by personal delivery, fax, Express Mail, or some other means calculated to ensure delivery before the close of the next business day.

NOTE

Check local court rules for additional procedures relating to telephonic appearances. Cal Rules of Ct 3.670(m) (courts, by local rule, may designate a particular conference call provider). For example, San Francisco Ct R 3.4(F) and 8.2(A)(3) direct parties to make arrangements for telephonic appearances with CourtCall.

DEADLINE TO FILE AND SERVE OPPOSING PAPERS

File and serve opposing papers at least **9 court days** before hearing, unless local court rules allow shorter period. CCP §1005(b).

DEADLINE TO FILE AND SERVE REPLY PAPERS

File and serve reply papers at least **5 court days** before hearing, unless local court rules differ. CCP §1005(b).

NOTE

All opposing papers and reply papers must be served by personal delivery, fax, Express Mail, or other means reasonably calculated to ensure delivery to the other party no later than the close of the next business day after the opposing or reply papers were filed. CCP §1005(b). See also CCP §1010.6 on electronic service, discussed in step 1, above.

DEADLINE TO FILE PROOF OF SERVICE OF MOVING PAPERS

File proof of service of moving papers at least **5 court days** before hearing, unless local court rules differ. Cal Rules of Ct 3.1300(c).

Further Research: See California Civil Procedure Before Trial, chaps 12-13 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Any Party During Litigation/STEP 22. FILE APPLICATION FOR RECONSIDERATION OF AN ORDER

STEP 22. FILE APPLICATION FOR RECONSIDERATION OF AN ORDER

WHEN APPLICABLE

Ask the court to reconsider its order when the court has *either* (see [CCP §1008\(a\)](#)):

- a. Refused in whole or in part the order you requested; or
- b. Granted the opposing party's order:
 - (1) Wholly;
 - (2) Conditionally; or
 - (3) On certain terms.

BASIS FOR RECONSIDERATION

The request for reconsideration must allege new or different facts, circumstances, or law. [CCP §1008\(a\)](#).

DEADLINE

Apply for reconsideration within **10 days** after you are served with written notice of entry of the order. See [CCP §1008\(a\)](#).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Any Party During Litigation/STEP 23. FILE MOTION TO EXPUNGE LIS PENDENS

STEP 23. FILE MOTION TO EXPUNGE LIS PENDENS

WHEN TO FILE

At any time during the action, file motion to remove a lis pendens that affects your client's real property. CCP §405.30.

NOTE

In filing, serving, and responding to motions generally, see step 21, above. See also CCP §§1005, 1013.

DEADLINE TO SERVE

If Personally Served

Serve moving papers **16 court days** before hearing, if you serve personally. CCP §§405.30, 1005(a)(11), (b).

If Served by Mail

Serve moving papers (CCP §§405.30, 1005(b)):

- a. **16 court days plus 5 calendar days** before hearing date if you serve by mail to and from an address in California;
- b. **16 court days plus 10 calendar days** before hearing date if you serve by mail to or from an address outside California but in the United States;
- c. **16 court days plus 20 calendar days** before hearing date if you serve by mail to or from an address outside the United States.

If Served by Fax or Overnight Mail

Serve moving papers **16 court days plus 2 calendar days** before hearing date if you serve by fax, Express Mail, or other overnight delivery. CCP §§405.30, 1005(b). You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

If Served Electronically

Serve moving papers **16 court days plus 2 court days** before hearing date if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Any Party During Litigation/STEP 24. FILE MOTION TO DISMISS FOR LACK OF PROSECUTION

STEP 24. FILE MOTION TO DISMISS FOR LACK OF PROSECUTION

DISCRETIONARY DISMISSAL

The court may dismiss the case for lack of prosecution if (CCP §583.420(a)):

Failure to Serve

Plaintiff or cross-complainant has not served your client within **2 years** after beginning the action against your client (CCP §583.420(a)(1));

Failure to Bring to Trial

Plaintiff or cross-complainant has not brought case to trial or "conditionally settled" it (see below) within **2 years** after beginning the action against your client (CCP §583.420(a)(2); Cal Rules of Ct 3.1340(a));

Failure to Bring to New Trial

After grant of new trial, plaintiff or cross-complainant failed to bring case to retrial within (CCP §583.420(a)(3)):

- a. **2 years** after court declares a mistrial, if trial had begun but court did not enter judgment;
- b. **2 years** after court grants new trial after judgment and no party takes an appeal;
- c. **2 years** after court of appeal issues remittitur, if court of appeal:
 - (1) Affirms trial court's order granting a new trial; or
 - (2) Reverses judgment and remands action for new trial.

When Case Is "Conditionally Settled"

Case is conditionally settled when (Cal Rules of Ct 3.1340(c)(1)-(2)):

- a. Settlement is conditioned on acts that parties will not *fully* perform within **2 years** after case was filed; and
- b. Parties file notice of settlement with the court.

DEADLINE TO FILE AND SERVE MOTION

File and serve notice of motion for discretionary dismissal (Cal Rules of Ct 3.1342(a); CCP §1013):

If Personally Served

45 days before hearing if you personally serve.

If Served by Mail

- a. **50 days** before hearing date if you serve by mail to and from an address in California;
- b. **55 days** before hearing date if you serve by mail to or from an address outside California but in the United States; or
- c. **65 days** before hearing date if you serve by mail to or from an address outside the United States.

If Served by Fax or Overnight Mail

45 days before hearing **plus 2 court days** if you serve by fax, Express Mail, or other overnight delivery. You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

Caution: Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

If Served Electronically

45 days before hearing **plus 2 court days** if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

DEADLINE FOR OPPOSITION

Within **15 days** after moving party serves motion, opposing party may file and serve a written opposition. Cal Rules of Ct 3.1342(b).

DEADLINE FOR RESPONSE TO OPPOSITION

Within **15 days** after opposing party serves opposition, file and serve a response. Cal Rules of Ct 3.1342(c).

DEADLINE FOR REPLY

5 days after moving party serves response, opposing party may file and serve a reply. Cal Rules of Ct 3.1342(d).

MANDATORY DISMISSAL

Court *shall* dismiss the case for:

Failure to Serve

Plaintiff's or cross-complainant's failure to (CCP §583.210):

- a. Serve summons and complaint on your client within **3 years** after beginning the cause of action;
- b. File proof of service within **3 years and 60 days** after beginning the cause of action (see step 3, above);

Failure to Bring Case to Trial

Plaintiff's or cross-complainant's failure to bring case to trial within mandatory **5-year** deadline (CCP §583.310 (for mandatory deadlines, see step 31, below));

Failure to Bring Case to New Trial

After grant of new trial, plaintiff's or cross-complainant's failure to bring case to retrial within **3 years** (CCP §583.320).

DEADLINE TO FILE AND SERVE

To bring motions for mandatory dismissal, follow rules for motions in general. See step 21, above.

Further Research: See California Civil Procedure Before Trial, chap 39 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Any Party During Litigation/STEP 25. FILE MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

STEP 25. FILE MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

EARLIEST TIME FOR MOTION

Wait to bring motion for summary judgment or summary adjudication until (CCP §437c(a)):

- a. **60 days** after the *general* appearance of the party against whom the motion is directed; or
- b. Earlier as allowed by the court, if you show good cause.

DEADLINE TO FILE AND SERVE MOTION

Serve Motion

Serve motion (CCP §437c(a)):

- a. **75 days** before the hearing if you personally serve the notice;
- b. **80 days** if you mailed to an address in California;
- c. **85 days** if you mailed to an address outside California but in the United States;
- d. **95 days** if you mailed to an address outside the United States; or
- e. **75 days plus 2 court days** before the hearing if you served the motion by fax, Express Mail, or other overnight delivery.

NOTE

Absent the consent of the parties, the court does not have authority to shorten the minimum notice period for the hearing of summary judgment motions. *McMabon v Superior Court* (2003) 106 CA4th 112, 115, 130 CR2d 407.

Service and Hearing Before Trial

Serve motion at least **105 days** before *trial* (if personally served) because the hearing must be (CCP §437c(a)):

- a. **30 days** before the date set for trial; or
- b. Later as the court allows for good cause.

DEADLINE TO PETITION FOR WRIT IF DENIED

If the court denies the motion, petition appropriate reviewing court for writ (CCP §437c(m)(1)):

- a. Within **20 days** after personal service of written notice of entry of the order;
- b. Within **25 days** after service of notice by mail to an address in California;
- c. Within **30 days** after service of notice by mail outside California but in the United States;
- d. Within **40 days** after service of notice by mail outside the United States;
- e. Within **20 days plus 2 court days** after service of written notice of entry of order by fax, Express Mail, or other overnight delivery.

NOTE

Before initial period expires, court for good cause may extend time for one additional 10-day period. CCP §437c(m)(1).

Further Research: See Making and Opposing a Summary Judgment Motion (Cal CEB Action Guide March 2009); California Civil Procedure Before Trial, chap 36 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Any Party During Litigation/STEP 26. MAKE OR ACCEPT AN OFFER TO COMPROMISE

STEP 26. MAKE OR ACCEPT AN OFFER TO COMPROMISE

MAKE OFFER TO COMPROMISE

Serve offer to compromise under CCP §998 on any party to the action at any time from its commencement until 10 days before the start of trial or arbitration. CCP §998(b).

ACCEPT OFFER

The offer is deemed withdrawn if you do not serve an acceptance on the offering party by the *earlier* of (CCP §998(b)(2)):

- a. Trial (or arbitration); or
- b. **30 days** after opposing party serves it.

Example: An offer was withdrawn by operation of law when party *filed* the acceptance but did not *serve* it on the offering party within 30 days. *Drouin v Fleetwood Enters.* (1985) 163 CA3d 486, 492, 209 CR 623.

NOTE

CCP §1013 extends the 30-day acceptance period by **5 days** if offer was mailed to a California address, by **10 days** if mailed to another state, by **20 days** if mailed to another country, and, presumably, by **2 court days** if served by fax, Express Mail, or other overnight delivery. See *Poster v Southern Cal. Rapid Transit Dist.* (1990) 52 C3d 266, 274, 276 CR 321.

Caution: You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e). Extensions provided for in CCP §1013 apply in the absence of any exceptions based on statutes or rules of court.

FILE OFFER AND ACCEPTANCE

File the offer with proof of acceptance as soon as possible. CCP §998(b)(1).

NOTE

The plaintiff or other party seeking affirmative relief has a duty to notify the court immediately after *any* settlement or other action that disposes of the case. Cal Rules of Ct 3.1385(a)(1). In addition, if a hearing, conference, or trial is scheduled to take place within 10 days, the plaintiff or other party seeking affirmative relief must give the court *oral* notice of the settlement.

Further Research: See California Civil Procedure Before Trial, chap 47 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Any Party During Litigation/STEP 27. FILE MOTION FOR GOOD FAITH SETTLEMENT OR GIVE NOTICE OF SETTLEMENT

STEP 27. FILE MOTION FOR GOOD FAITH SETTLEMENT OR GIVE NOTICE OF SETTLEMENT

WHEN MOTION APPROPRIATE

Consider moving for good faith settlement under CCP §877.6 when plaintiff has settled with fewer than all alleged tortfeasors or co-obligors.

Effect of Grant of Motion

Grant of motion will bar all nonsettling defendants' claims against the settling tortfeasor based on comparative negligence or comparative fault, *e.g.*, claims for (CCP §877.6(c)):

- a. Equitable contribution; and
- b. Partial or comparative indemnity.

When to File

File motion any time before verdict or judgment. *Lamberton v Rhodes-Jamieson* (1988) 199 CA3d 748, 751, 245 CR 162 (settlement after judgment did not bar contribution/indemnity under CCP §877.6).

ALTERNATIVE PROCEDURE

As an alternative to the motion, unless there is a confidentiality agreement regarding case or settlement terms, consider giving notice to the court and parties of settlement under CCP §877.6(a)(2).

Effect of Alternative Procedure

Alternative procedure shifts burden to nonsettling party to bring motion to challenge settlement. See CCP §877.6(a)(2).

HOW TO FOLLOW ALTERNATIVE PROCEDURE

Give Notice

Serve all parties and the court by certified mail, return receipt requested, with (CCP §877.6(a)(2)):

- a. Notice of settlement;
- b. Application for determination of good faith settlement; and
- c. Proposed order.

File Proof of Service

File proof of service with court. CCP §877.6(a)(2).

Nonsettlor's Deadline to Contest

Within **25 days** after mailing notice, application, and proposed order, or within **20 days** of personal service, nonsettling party may file a notice of motion to contest the good faith of the settlement and serve notice of the motion in accordance with CCP §1005(b) (see step 21, above, for CCP §1005(b) requirements). CCP §877.6(a)(2).

If No Contest

If no contest is filed, the court may approve the settlement. CCP §877.6(a)(2).

Further Research: See California Civil Procedure Before Trial, chap 50 (4th ed Cal CEB 2004).

Deadlines for Trial or Arbitration

STEP 28. FILE CASE MANAGEMENT STATEMENT

PURPOSE OF CASE MANAGEMENT STATEMENT

Case management statements (and case management conferences) help trial courts monitor the progress of cases and ensure that attorneys take all steps necessary to prepare a case for settlement or trial as early as possible. See Govt C §68607; Cal Rules of Ct 3.725. See generally Cal Rules of Ct 3.700-3.735 (civil case management rules).

Check Local Rules

Each court has authority to adopt local rules regarding case management. Cal Rules of Ct 3.711.

NOTE

Many courts automatically set a case management conference when the case is filed, usually 90 days after the initial filing. These courts, instead of issuing an Order to Show Cause if the plaintiff has not filed a proof of service of the summons and complaint within 60 days of filing (see Cal Rules of Ct 3.110(b), (f)), will wait until the case management conference to determine whether the plaintiff has timely completed service. See step 3, above.

FILE CASE MANAGEMENT STATEMENT

No later than **15 calendar days** before the date set for the case management conference, file the case management statement and serve it on all other parties. Cal Rules of Ct 3.725(a).

NOTE

The parties must use the mandatory Judicial Council Form CM-110 (Case Management Statement).

REQUEST JURY TRIAL

Indicate in the case management statement whether a jury is demanded.

NOTE

If you check "No" on the case management statement to the question of whether you request a jury, the court may consider this a waiver. See March v Pettis (1977) 66 CA3d 473, 477, 136 CR 3; but see Byram v Superior Court (1977) 74 CA3d 648, 654, 141 CR 604 (noting that right to trial by jury is fundamental and that doubts should be resolved in favor of preserving litigant's right to jury trial).

REQUEST STATUTORY PREFERENCE

Remember to state in the case management statement whether your case is entitled to trial-setting preference, *e.g.*:

Condemnation

Condemnation/ eminent domain actions (CCP §1260.010);

Defamation

Defamation actions (CCP §460.5(c));

Unlawful Detainer

Forcible entry and unlawful detainer actions (CCP §1179a);

Preliminary Injunctions

Actions involving preliminary injunctions (CCP §527(e));

Declaratory Relief

Declaratory relief actions (CCP §1062.3(a)), *except*, if action also requests other relief (CCP §1062.3(b)):

- a. Bring motion for preference at any time, up to trial date; and
- b. Show that action requires preference;

Elections

Actions involving (CCP §35):

- a. Registration or denial of registration of voters;
- b. Certification or denial of certification of candidates;
- c. Certification or denial of certification of ballot measures; and
- d. Election contests;

Age

Actions in which party is (CCP §36):

- a. Over age 70 and:
 - (1) Has substantial interest in the action as a whole; and
 - (2) Whose health is such that preference is necessary to prevent prejudicing party's interest in the litigation (see also CCP §36.5);
- b. Under age 14 in action for wrongful death or personal injury (CCP §36(b)):
 - (1) Unless party does not have a substantial interest in case as a whole;
 - (2) If this preference is granted in a medical malpractice case, the trial date shall be no earlier than 6 months and no later than 9 months after date motion is granted (CCP §36(g));

Health

Actions in which party is suffering from an illness or condition raising substantial medical doubt of survival beyond 6 months (CCP §36(d)).

Further Research: See California Civil Procedure Before Trial, chap 40 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 29. DEADLINES FOR JUDICIAL ARBITRATION

STEP 29. DEADLINES FOR JUDICIAL ARBITRATION

WHEN APPLICABLE

Judicial arbitration rules apply when:

- a. Parties stipulate (CCP §1141.12(a));
- b. Plaintiff:
 - (1) Files an election; and
 - (2) Agrees that the arbitration award will not exceed the amount in controversy as specified in CCP §1141.11, *i.e.*, \$50,000; or
- c. Court orders the case to be arbitrated, *i.e.*, when:
 - (1) Amount in controversy is \$50,000 or less (CCP §1141.11; Cal Rules of Ct 3.812(d)); and
 - (2) Case is not:
 - (a) An equitable action (CCP §1141.13; Cal Rules of Ct 3.811(b)(1)); or
 - (b) Otherwise exempt from arbitration (CCP §1141.15; Cal Rules of Ct 3.811(b)(2)-(8)).

WHEN ARBITRATOR APPOINTED

By Stipulation

If parties stipulate to an arbitrator, they must file the stipulation no later than **10 days** after case has been assigned to arbitration. Cal Rules of Ct 3.815(a).

Caution: The arbitrator must complete a written consent to serve and the oath required of panel arbitrators, both of which must be submitted with the stipulation. Cal Rules of Ct 3.815(a).

Court Mails List

If parties cannot agree on an arbitrator, court will provide parties by mail a list of potential arbitrators generally within 15 days after the case is assigned to arbitration. Cal Rules of Ct 3.815(b).

NOTE

If the court has established an arbitration program, local rules may establish a method of selecting an arbitrator as long as that method affords each side an opportunity to challenge at least one potential arbitrator and ensures that the arbitrator is appointed within 30 days of submission of the case to arbitration. Cal Rules of Ct 3.815(c).

Counsel May Reject Arbitrator

Within **10 days** after clerk mails the court's list of potential arbitrators (Cal Rules of Ct 3.815(b)(3)):

- a. A party may file a rejection of no more than one name on the list;
- b. If there are two or more parties on a side, they must join in the rejection of a single name.

Administrator Appoints

On the 10th day after mailing, court administrator will appoint, at random, one of the persons on the list whose name was not rejected by the parties. Cal Rules of Ct 3.815(b)(4).

DEADLINE TO NOTIFY OF HEARING

Arbitrator must notify each party of the date, time, and place of the arbitration (Cal Rules of Ct 3.817(a)-(b)):

- a. Within **15 days** after appointment; and
- b. At least **30 days** before the hearing.

WHEN TO HOLD ARBITRATION HEARING

Hold arbitration hearing:

- a. *No sooner* than **30 days** after court appoints arbitrator (Cal Rules of Ct 3.817(b)(1)); and
- b. *No later* than **90 days** after court appoints arbitrator, including any continuances granted under Cal Rules of Ct 3.818 (Cal Rules of Ct 3.817(c)).

NOTE

The court may grant a continuance to a date later than the 90 days after the case was assigned to the arbitrator on motion of a party for good cause. Cal Rules of Ct 3.818(b)-(c). If the court grants the motion, the party requesting the continuance must notify the arbitrator, who must reschedule the hearing and give notice to all parties. Cal Rules of Ct 3.818(b).

DISCOVERY CUTOFF BEFORE ARBITRATION

15 days before the arbitration hearing, discovery ends. Cal Rules of Ct 3.822(b).

DEADLINE TO DELIVER COPIES OF EVIDENCE

At least **20 days** before the hearing (**25 days** if sent by mail), deliver copies of documentary evidence to *all* parties, to have these documents admitted into evidence without otherwise complying with the rules of evidence. Cal Rules of Ct 3.823(b)(1)(A) (see rule for list of documents).

DEADLINE FOR SUBPOENAS

For subpoena deadlines, see step 34, below. Cal Rules of Ct 3.823(c).

DEADLINE FOR FILING AWARD

- a. *Arbitrator* has **10 days** after the conclusion of the hearing to file the award. Cal Rules of Ct 3.825(b)(1); Koll Hancock Torrey Pines v Biophysical Found., Inc. (1989) 215 CA3d 883, 887, 264 CR 36 (deadline is not jurisdictional). See also Lopes v Millap (1992) 6 CA4th 1679, 1686, 8 CR2d 814 (discussing factors to consider in determining validity of late-filed award).
- b. However, in unusually lengthy or complex cases, arbitrator may file an application to the court to extend this deadline for up to an additional 20 days. Cal Rules of Ct 3.825(b)(1).

DEADLINE TO REQUEST NEW TRIAL

Within **30 days** after arbitrator files award, request trial de novo. CCP §1141.20(a); Cal Rules of Ct 3.826(a).

EFFECT OF FAILURE TO REQUEST TRIAL

Clerk will enter judgment on the award, unless within **30 days** clerk receives a request for trial de novo. CCP §1141.20(a); Cal Rules of Ct 3.827(a).

EFFECT OF REQUEST FOR TRIAL

If party requests trial, the court restores the case to the *same* position on civil active list that it occupied before being diverted to arbitration. CCP §1141.20(b); Cal Rules of Ct 3.826(b).

NOTE

Cal Rules of Ct 3.826(b) states that if a timely request for a trial is made, "the case must proceed as provided under an applicable case management order. If no pending order provides for the prosecution of the case after a request for a trial after arbitration,

the court must promptly schedule a case management conference."

See step 31, below, for time to bring the case to trial following arbitration.

DISCOVERY AFTER ARBITRATION

No discovery is allowed after an arbitration award, except (CCP §1141.24):

- a. Exchange of expert witness lists under CCP §§2034.010-2034.730;
- b. By stipulation of the parties; and
- c. As allowed by the court if requesting party shows good cause.

DEADLINE TO VACATE JUDGMENT

Within **6 months** after clerk enters judgment based on arbitration award, any party against whom judgment is entered may move to vacate *either* (Cal Rules of Ct 3.828(a)):

- a. On ground that arbitrator was subject to disqualification not disclosed before hearing and of which arbitrator was then aware; or
- b. On grounds set forth in CCP §473 or §1286.2(a)(1)-(3).

Further Research: See California Civil Procedure Before Trial, chap 37 (4th ed Cal CEB 2004).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 30. FILE MOTION TO SEVER OR BIFURCATE TRIAL

STEP 30. FILE MOTION TO SEVER OR BIFURCATE TRIAL

WHEN APPROPRIATE

Move to sever or bifurcate when the case involves issues or causes of action that should be tried separately in order to (CCP §1048(b)):

- a. Further convenience, expedition, and economy; or
- b. Avoid prejudice.

Further Research: see CCP §§592, 597, 597.5, 598, and CC §3295(d).

DEADLINE TO SERVE MOTION

File and serve a motion to sever or bifurcate trial according to the following deadlines:

When Pretrial Conference Is Held

- a. In cases in which a pretrial conference is to be held, the court must make its order "no later than the close of the pretrial conference" (CCP §598); and
- b. You should thus file and serve the motion so that hearing on the motion occurs *before* the pretrial conference (allowing adequate time for notice of the motion under CCP §1005(b)).

When No Pretrial Conference Is Held

- a. In other cases, the court must make its order "no later than 30 days before the trial date" (CCP §598); and
- b. You should thus serve and file the motion so that the hearing on the motion occurs *at least 30 days* before the trial (allowing adequate time for notice of the motion under CCP §1005(b)).

NOTE

Make the motion early enough so that if the court takes the motion under submission, it can still rule on the motion by the close of the pretrial conference or 30 days before trial, as required by CCP §598.

Further Research: See California Civil Procedure Before Trial, chap 43 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 31. BRING CASE TO TRIAL

STEP 31. BRING CASE TO TRIAL

DEADLINES TO BRING CASE TO TRIAL

Discretionary Dismissal Deadline

The court on its own motion or on motion of the defendant *may* dismiss an action if it is not brought to trial or "conditionally settled" within **2 years** after it was begun (for when action begins, see below). CCP §583.420(a)(1); Cal Rules of Ct 3.1340(a); see also step 24, above.

Mandatory Dismissal Deadline

- a. The court *must* dismiss the case if it is not brought to trial within **5 years** after it was begun. CCP §§583.310, 583.360.
- b. The court *must* dismiss the case if it is not brought to trial within **3 years** after (CCP §583.320(a)):
 - (1) A mistrial or jury disagreement;
 - (2) A decision on appeal; or
 - (3) The granting of a new trial.

WHEN ACTION BEGINS

Action begins when plaintiff or cross-complainant files complaint or cross-complaint. Gray v Firth (1987) 194 CA3d 202, 209, 239 CR 389.

Further Research: See also Bishop v Silva (1991) 234 CA3d 1317, 1327, 285 CR 910 (plaintiff who misses mandatory service deadline cannot intervene back into litigation and take advantage of extra service period available to initial intervenor).

WHEN "BROUGHT TO TRIAL"

Case is "brought to trial" when:

- a. *Jury trial*: Jury is sworn (Hilliard v A. H. Robins Co. (1983) 148 CA3d 374, 389, 196 CR 117);
- b. *Nonjury trial*: First witness is sworn (Hartman v Santamarina (1982) 30 C3d 762, 765, 180 CR 337).

TOLLING

By Parties' Agreement

The parties may extend the time to bring the case to trial by:

- a. Written stipulation (CCP §583.330(a); Wheeler v Payless Super Drug Stores, Inc. (1987) 193 CA3d 1292, 1301, 238 CR 885); or
- b. Oral agreement (CCP §583.330(b)):
 - (1) Made in open court; and
 - (2) Entered in the minutes of the court or in the transcript.

By Judicial Arbitration or Mediation

If an action is or remains submitted to arbitration or mediation more than 4 years and 6 months after the plaintiff has filed the action, when calculating the 5-year period, *exclude* the time between (CCP §§1141.17(b), 1775.7(b)):

- a. The time beginning on the date 4 years and 6 months after the plaintiff filed the action; and

b. The date on which:

- (1) A request for a trial de novo is filed under CCP §1141.20 (arbitration); or
- (2) A statement of nonagreement is filed under CCP §1775.9 (mediation).

Example 1: Action was filed on April 12, 1983. Parties orally agreed to arbitration on January 8, 1988; stipulation was signed on April 4, 1988; court ordered arbitration on May 3, 1988. Court held that oral agreement on January 8, 1988, tolled the 5-year period. See Porreco v Red Top RV Ctr. (1989) 216 CA3d 113, 122, 264 CR 609.

Example 2: Action was filed on November 27, 1978. On November 22, 1983, plaintiff elected to arbitrate; arbitration was heard on February 14, 1984, and award filed April 5, 1984. Court held that 5-year period was tolled as of May 27, 1983 (4 years and 6 months), until trial de novo was requested. See Jackson v Garmon (1990) 217 CA3d 860, 865, 266 CR 201 (tolled by voluntary election to arbitrate); Lazelle v Lovelady (1985) 171 CA3d 34, 43, 217 CR 145. But see Nanfito v Superior Court (1991) 2 CA4th 315, 319, 2 CR2d 876 (court should refuse to authorize arbitration if plaintiff has waited unreasonable time to seek it).

NOTE

CCP §1141.17(b) is the exclusive means to suspend the running of the 5-year period in an action submitted to judicial arbitration. See Drummond v Murata (1991) 227 CA3d 44, 49, 277 CR 727.

Caution: Although a plaintiff is entitled to presume that a preferential trial date will be set following a request for trial de novo, counsel *must* monitor the case calendar and alert the court to the impending expiration of the statutory period. See Messib v Levine (1991) 228 CA3d 454, 458, 278 CR 825.

By Other Statutory Excuse

You have **6 months** after the end of tolling to bring the case to trial *if* any statutory period of tolling or extension ends less than 6 months before the 5-year period would expire (CCP §§583.340-583.350), *e.g.*:

a. Court's jurisdiction was suspended, *e.g.*:

- (1) During appeal (Bergin v Portman (1983) 141 CA3d 23, 26, 190 CR 81);
- (2) Between plaintiff's death and appointment of personal representative (Pbam v Wagner Litho Mach. Co. (1985) 172 CA3d 966, 973, 218 CR 476);

b. Prosecution or trial was *stayed* or enjoined, *e.g.*, during arbitration under CCP §1281.4, if stay requested;

c. Bringing action to trial was:

- (1) Impossible (*i.e.*, parties were prepared to go to trial but no courtroom was available);
- (2) Impracticable; or
- (3) Futile.

Further Research: See Brown v Bryant, Inc. v Hartford Acc. v Indem. Co. (1994) 24 CA4th 247, 252, 29 CR2d 144 (existence of settlement agreement executed during pendency of suit made it impossible, impracticable, or futile to proceed to trial during statutory period); Hoffman v State (1985) 171 CA3d 1100, 1108, 217 CR 867 (plaintiff has burden to prove tolling by clear and convincing evidence). See also Wilshire Bundy Corp. v Auerbach (1991) 228 CA3d 1280, 1289, 279 CR 488 (plaintiff must demonstrate a causal connection between failure to bring case to trial and impossibility, impracticability, or futility).

NOTE

The 5-year period is *not* tolled because of plaintiff's incompetence (CCP §352) unless you also show that the incompetence made it impossible or impracticable to bring the case to trial. Tzolov v International Jet Leasing, Inc. (1989) 214 CA3d 325, 327, 262 CR 606.

By Waiver or Estoppel

a. Waiver may toll deadline, *e.g.*:

- (1) Defendant waived right to dismissal by participating in court trial and moving to dismiss when case was submitted (Butler v

Hathcoat (1983) 146 CA3d 834, 840, 194 CR 352);

(2) When 5-year deadline had already expired, defendant did not waive right to dismissal by impaneling the jury (see Estate of Anastasio v Smokehouse Broiler, Inc. (1989) 215 CA3d 486, 488, 263 CR 622; but see Hilliard v A. H. Robins Co. (1983) 148 CA3d 374, 389, 196 CR 117 (swearing jury *is* bringing case to trial if *before* deadline expired)).

b. Estoppel may toll deadline when defendant's conduct leads plaintiff or court to believe that defendant will not seek a dismissal based on the 5-year statute. See, *e.g.*, Griffis v S. S. Kresge Co. (1984) 150 CA3d 491, 500, 197 CR 771.

Further Research: See CCP §§583.310, 583.360, 583.410-583.420; Cal Rules of Ct 3.1340, 3.1342.

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STEP 32. FILE MOTION FOR TRIAL PREFERENCE

WHEN APPLICABLE

File motion for an earlier trial date when you can show that:

Mandatory

a. Your client is under age 14 and has a substantial interest in an action for damages for (CCP §36(b)):

(1) Wrongful death; or

(2) Personal injury.

b. Your client is over age 70 (CCP §36(a)) and:

(1) Has a substantial interest in the action as a whole; and

(2) His or her health is such that a preference is necessary to prevent prejudicing his or her interest in the litigation.

c. Plaintiff seeks damages for injuries incurred during the commission of a felony for which defendant was criminally convicted. CCP §37(a). See also step 28, above.

Discretionary

a. Any party suffers from an illness or condition raising substantial medical doubt of survival beyond 6 months (CCP §36(d)); or

b. Preference will serve the interests of justice (CCP §36(e)); see, *e.g.*, Salas v Sears, Roebuck & Co. (1986) 42 C3d 342, 346, 228 CR 504. For other sources of preference, see step 28, above.)

DEADLINE TO FILE

File motion for preference (CCP §36(c)):

a. With the memorandum to set or the At-Issue Memorandum *by the party serving the memorandum*; or

b. Within **10 days** after such service *by any other party*; or

c. During the pendency of the action *by any party who reaches age 70*.

IF COURT GRANTS MOTION

If motion is granted, clerk will set trial date:

a. No more than **120 days** after court grants the motion (CCP §36(f)); or

b. If party is under 14 and the action is one for personal injury or wrongful death (CCP §36(b), (g)):

(1) No sooner than **6 months** after court grants motion; and

(2) No later than **9 months** after court grants motion.

Further Research: See California Civil Procedure Before Trial, chap 42 (4th ed Cal CEB 2004).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 33. SERVE NOTICE ON PARTIES TO ATTEND TRIAL

STEP 33. SERVE NOTICE ON PARTIES TO ATTEND TRIAL

DEADLINE TO SERVE NOTICE FOR ATTENDANCE ONLY

Serve notice for a party's attendance at trial (CCP §§1013, 1987(b)) (see below for notice to attend *and* produce documents):

If Personally Served

10 days before trial if you personally serve;

If Served by Mail

- a. **15 days** before trial if mailed to an address in California;
- b. **20 days** before trial if mailed to an address in another state; or
- c. **30 days** before trial if mailed to an address outside the United States.

If Served by Fax or Overnight Mail

10 days plus 2 court days before trial if you serve by fax, Express Mail, or other overnight delivery. You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

If Served Electronically

10 days plus 2 court days before trial if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

NOTE

Unlike the procedure for compelling the attendance of nonparty witnesses at trial (see step 34, below), it is not necessary to serve a subpoena when the witness is a party, a person for whose immediate benefit the action is prosecuted or defended, or an officer, director, or managing agent of a party.

Further Research: California Trial Practice: Civil Procedure During Trial §§4.36-4.39 (3d ed Cal CEB 1995).

DEADLINE TO SERVE NOTICE FOR ATTENDANCE AND DOCUMENTS

Serve notice for a party's attendance at trial and production of documents (CCP §§1013, 1987(c)):

If Personally Served

20 days before trial if you personally serve;

If Served by Mail

- a. **25 days** before trial if mailed to an address in California;
- b. **30 days** before trial if mailed to an address in another state; or
- c. **40 days** before trial if mailed to an address outside the United States.

If Served by Fax or Overnight Mail

20 days plus 2 court days before trial if you serve by fax, Express Mail, or other overnight delivery. You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

If Served Electronically

20 days plus 2 court days before trial if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 34. SERVE SUBPOENA ON WITNESSES FOR TRIAL

STEP 34. SERVE SUBPOENA ON WITNESSES FOR TRIAL

WHEN TO SERVE SUBPOENA

Serve subpoena on witnesses for trial in sufficient time to allow them reasonable time for preparation and travel. CCP §1987(a).

DEADLINE TO SERVE SUBPOENA FOR CONSUMER RECORDS

If you seek the production of consumer records at trial:

- a. Serve the consumer *and* the custodian of records (*i.e.*, the witness) (CCP §1985.3(b)); and
- b. Meet all relevant deadlines. See below.

Consumer

Serve the consumer with notice and a copy of the subpoena before *both* of the following dates:

a. Not less than (CCP §§1010.6(a)(6), 1013, 1985.3(b)(2); Cal Rules of Ct 2.260):

(1) **10 days** before production date specified in subpoena if you personally serve; or

(2) If you mail:

(a) **15 days** before production date, if the subpoena is mailed to a California address;

(b) **20 days** before production date, if the subpoena is mailed to a state outside California; and

(c) **30 days** before production date, if the subpoena is mailed to an address outside the United States;

(3) If you serve by fax, Express Mail, or other overnight delivery, or if you serve electronically, **10 days plus 2 court days** before production date in subpoena (CCP §1985.3(b) provision for additional time for mail service under CCP §1013 appears to include additional time for service by fax, Express Mail, or other overnight delivery, or electronic service). You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

b. At least (CCP §§1010.6(a)(6), 1013, 1985.3(b)(3); Cal Rules of Ct 2.260):

(1) **5 days** *before* you serve the witness, if you personally serve the notice on the consumer; or

(2) If you mail:

(a) **10 days** *before* you serve the witness, if you mail notice to the consumer at a California address;

(b) **15 days** *before* you serve the witness, if you mail notice to the consumer in a state outside California; and

(c) **25 days** *before* you serve the witness, if you mail notice to consumer outside the United States;

(3) **5 days plus 2 court days** *before* you serve the witness if you serve by fax, Express Mail, or other overnight delivery, or if you serve electronically. (You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e)).

Example: If you intend to subpoena consumer records for the first day of trial, you must serve the consumer by mail in California at least 15 days before trial, and you then serve the witness 1-5 days before trial (see discussion of witness, below). See CCP §1985.3(b)(3).

Witness

Serve the witness (CCP §1985.3(d)):

a. In reasonable time to locate and produce the records or copies;

b. *After* you have served the consumer (see above).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 35. POST JURY FEES

STEP 35. POST JURY FEES

DEADLINE

Each party demanding a jury trial must deposit advance jury fees with the clerk or judge (CCP §631(b)):

- a. **5 days** before trial date in unlawful detainer action; or
- b. **25 calendar days** before trial date for all other actions.

NOTE

Your right to a jury trial will be waived if you do not timely deposit the required fees with the court. CCP §631(d)(5).

JURY FEES IN EMINENT DOMAIN ACTION

In eminent domain action, party seeking condemnation shall deposit fees regardless of who requested the jury. CCP §631.5.

AMOUNT TO DEPOSIT

Check local rules for the amount to deposit, *e.g.*, Sonoma Ct R 4.8(B); Stanislaus Ct R 3.16. See CCP §631(b) (total amount of advance jury fees for each party must not exceed \$150).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 36. SERVE NOTICE OF TRIAL DATE

STEP 36. SERVE NOTICE OF TRIAL DATE

WHEN TO SERVE

If the clerk of the court *has not* mailed notice of the trial date on all parties, serve notice not less than (CCP §§594(b), 1013):

If Personally Served

15 days before the date set for trial, if you personally serve; or

If Served by Mail

a. **20 days** before trial, if mailed to an address in California;

b. **25 days** before trial, if mailed to another state; or

c. **35 days** before trial, if mailed to an address outside the United States.

If Served by Fax or Overnight Mail

15 days plus 2 court days before trial if you serve by fax, Express Mail, or other overnight delivery. You may serve by fax only if the parties agree and confirm that agreement in writing. CCP §1013(e).

If Served Electronically

15 days plus 2 court days before trial if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

DEADLINE IN UNLAWFUL DETAINER ACTION

In an unlawful detainer action, serve notice of trial date by mailing it at least **10 days** before trial. CCP §594(b).

NOTE

Be aware that the time provisions of CCP §1013 do not extend the notice of trial requirements under CCP §594 for unlawful detainer actions. CCP §594(b). Some attorneys conclude that this extension does not apply in *any* action, but the safer course is to add the extra time.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 37. CHALLENGE JUDICIAL ASSIGNMENT UNDER CCP §170.6

STEP 37. CHALLENGE JUDICIAL ASSIGNMENT UNDER CCP §170.6

WHEN APPLICABLE

Challenge the judicial assignment when you determine that the judge, court commissioner, or referee of the court who is assigned to try the case is prejudiced against any party or attorney or the interest of any party or attorney. CCP §170.6(1).

DEADLINE

Make oral or written motion (CCP §170.6(2)):

- a. When court first assigns for trial, if assigned by a master calendar system;
- b. At the beginning of the hearing, if not a trial;
- c. If you know of the assignment at least 10 days before trial, at least **5 days** before trial;
- d. If there is only one judge in the county, **30 days** from the date your client first appears in the action;
- e. If assigned to one judge for "all purposes," **10 days** after:
 - (1) You learn of the assignment; or
 - (2) Your client's appearance (see step 2, above);
- f. **60 days** after you receive notification of assignment after reversal on appeal.

Further Research: See CCP §170.6(5) for form.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Trial or Arbitration/STEP 38. REQUEST STATEMENT OF DECISION

STEP 38. REQUEST STATEMENT OF DECISION

DEADLINE

Request a statement of decision (CCP §632):

a. Before you submit the matter to the court for decision if you conclude the trial within:

(1) 1 calendar day; or

(2) Less than 8 hours spread over more than 1 calendar day;

b. Within **10 days** after the court announces tentative decision for all other matters (*Hutchins v Galanda* (1990) 216 CA3d 1529, 1531, 265 CR 596 (deadline begins when clerk *mails* the decision)).

NOTE

The request for a statement of decision is deemed made when the court receives it, not when it is mailed. *Staten v Heale* (1997) 57 CA4th 1084, 1090, 68 CR2d 35.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Judgment/STEP 39. FILE MOTION FOR RELIEF FROM JUDGMENT, ORDER, OR OTHER PROCEEDING (CCP §473)

Deadlines After Judgment

STEP 39. FILE MOTION FOR RELIEF FROM JUDGMENT, ORDER, OR OTHER PROCEEDING (CCP §473)

WHEN APPLICABLE

File motion to set aside judgment, dismissal, order, or other proceeding based on your client's, or your client's attorney's (either you or a previous attorney) (see CCP §473(b)):

- a. Mistake;
- b. Inadvertence;
- c. Surprise; or
- d. Excusable neglect.

DEADLINE TO FILE—GENERALLY

You must file *both*:

- a. Within a **reasonable time** after clerk *enters* judgment, dismissal, or order (*Ludka v Memory Magnetics Int'l* (1972) 25 CA3d 316, 321, 101 CR 615 (unexplained 3-month delay was unreasonable)); and
- b. Within **6 months** after clerk *enters* the judgment, dismissal, or order (CCP §473(b); *Davis v Thayer* (1980) 113 CA3d 892, 901, 170 CR 328).

NOTE

Remember that at the time you file the motion, you must also *serve* it on all other parties in the action. See CCP §1005.5; *Arambula v Union Carbide Corp.* (2005) 128 CA4th 333, 340, 26 CR3d 854 (motion under CCP §473 denied because moving party failed to timely serve motion on opposing party).

When Deadline Begins to Set Aside Default

When you are moving to set aside a default, remember:

- a. The deadline begins with the entry of the *default*, not the entry of the default *judgment* (*Rutan v Summit Sports, Inc.* (1985) 173 CA3d 965, 970, 219 CR 381); but
- b. When you seek relief based on an attorney affidavit of fault, you must apply no more than **6 months after entry of judgment** (CCP §473(b)).

JUDGMENT CONCERNING OWNERSHIP

The deadline to file is different from the general deadline (see above) if *both* (CCP §473(b)):

- a. The judgment, order, or other proceeding involves the determination of:
 - (1) Ownership of real or personal property; or
 - (2) Right to possession of real or personal property; and
- b. The notice of entry of judgment stated that:
 - (1) The judgment, order, or other proceeding was taken against your client; and

(2) Your client's right to apply for relief under CCP §473 expires 90 days after the *latest* date the prevailing party personally serves the notice on:

- (a) Your client; or
- (b) Your client's attorney of record.

Deadline

You must file *both*:

- a. Within a reasonable time after judgment, order, or proceeding; and
- b. Within the *earlier* of (CCP §473(b)):
 - (1) **6 months** after the judgment or order; or
 - (2) **90 days** after prevailing party *personally serves* notice of entry of judgment, order, or other proceeding.

NOTE

Be aware that if the 90-day notice period expires more than 6 months after the judgment, order, or proceeding, you do *not* receive an extension of time to file. CCP §473(b).

CONSIDER OTHER GROUNDS

The court may also grant relief based on purely equitable grounds. *Olivera v Grace* (1942) 19 C2d 570, 575, 122 P2d 564 (incompetence of party); *Marriage of Brockman* (1987) 194 CA3d 1035, 1047, 240 CR 96 (coercion).

Deadline

There is no statutory deadline to file for relief on purely equitable grounds, but laches will apply if any delay was unreasonable. *McCreadie v Arques* (1967) 248 CA2d 39, 46, 56 CR 188.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Judgment/STEP 40. FILE MOTION FOR RELIEF UNDER CCP §473.5

STEP 40. FILE MOTION FOR RELIEF UNDER CCP §473.5

WHEN APPLICABLE

File motion for relief from default when defendant/client did not receive *actual* notice of the action in time to defend, even if plaintiff properly completed service of summons and if a default or default judgment was entered. CCP §473.5.

DEADLINE TO FILE

File motion (CCP §473.5(a)):

- a. Within a **reasonable time**; and
- b. Before the *earlier* of:
 - (1) **2 years** after clerk enters default *judgment*; or
 - (2) **180 days** after plaintiff serves written notice that default or default judgment has been entered.

WHEN TO SET HEARING

Set hearing as prescribed by CCP §§473.5(b) and 1005(b) (see also Cal Rules of Ct 3.1300(a)), *i.e.*, serve notice of hearing:

If Personally Served

At least **16 court days** before the hearing if you personally serve; or

If Served by Mail

At least:

- a. **16 court days plus 5 calendar days** if served by mail to and from an address in California;
- b. **16 court days plus 10 calendar days** if served by mail to or from an address outside California but in the United States; or
- c. **16 court days plus 20 calendar days** if served by mail to or from an address outside the United States; or

If Served by Fax or Overnight Mail

At least **16 court days plus 2 calendar days** before the hearing if you serve by fax, Express Mail, or other overnight delivery; or

If Served Electronically

At least **16 court days plus 2 court days** before the hearing if you serve electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

CONSIDER OTHER GROUNDS

The court may also grant relief based on purely equitable grounds. See, *e.g.*, Allstate Ins. Co. v Fisher (1973) 31 CA3d 391, 396, 107 CR 251.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Judgment/STEP 41. FILE AND SERVE MEMORANDUM OF COSTS

STEP 41. FILE AND SERVE MEMORANDUM OF COSTS

DEADLINE TO SERVE AND FILE COST MEMORANDUM

If you represent the prevailing party, serve and file a cost memorandum within the *earliest* of:

- a. If applicable, the **time you file a Request to Enter Default** (Cal Rules of Ct 3.1700(a)(2));
- b. **15 days** after (Cal Rules of Ct 3.1700(a)(1)):
 - (1) Date clerk mails notice of entry of judgment or dismissal under CCP §664.5; or
 - (2) Date you serve written notice of entry of judgment or dismissal (see CCP §664.5(a)); or
- c. **180 days** after clerk enters judgment.

ATTORNEY FEES AS COSTS

If you seek attorney fees as an element of costs under contract or statute:

- a. *If court must determine entitlement to fees and/or amount of fees:* File and serve notice of motion to claim fees within time for filing notice of appeal (Cal Rules of Ct 3.1702(b)(1)), unless:
 - (1) Before the time to file notice of appeal expires, parties stipulate to extend time for filing attorney fees motion until 60 days after expiration of time to file notice of appeal (Cal Rules of Ct 3.1702(b)(2)(A));
 - (2) If notice of appeal is filed, parties stipulate to extend time to file attorney fees motion until time within which cost memorandum must be served and filed under Cal Rules of Ct 8.278(c) (Cal Rules of Ct 3.1702(b)(2)(B)); or
 - (3) Trial court extends time for filing motion for good cause (Cal Rules of Ct 3.1702(b)(2)(B)).
- b. *If amount of fees are fixed without need for court determination:* Claim fees in cost memorandum. Cal Rules of Ct 3.1702(e).

NOTE

If court must determine attorney fees on *appeal*, serve and file motion for fees within the time for serving and filing cost memorandum under Cal Rules of Ct 8.278(c); *i.e.*, within **40 days** after clerk of reviewing court mails notice of issuance of the remittitur. Cal Rules of Ct 3.1702(c)(1). See step 56, below.

EFFECT OF FAILURE TO FILE

If you fail to file cost memorandum, court may consider failure a *waiver* of awardable costs. See Oak Grove Sch. Dist. v City Title Ins. Co. (1963) 217 CA2d 678, 697, 32 CR 288; but see Pollard v Saxe e³ Yolles Dev. Co. (1974) 12 C3d 374, 381, 115 CR 648 (trial court has broad discretion to allow late cost memorandum).

DEADLINE TO FILE MOTION TO TAX COSTS

File and serve motion to tax costs, *i.e.*, to contest or strike costs (Cal Rules of Ct 3.1700(b)(1)-(2); CCP §1013) within:

If Personally Served

15 days after prevailing party personally serves cost memorandum;

If Served by Mail

- a. **20 days** after prevailing party serves cost memorandum by mail to an address in California;
- b. **25 days** after prevailing party serves the memorandum by mail to an address outside California but in the United States; or

c. **35 days** after prevailing party serves the memorandum by mail to an address outside the United States; or

If Served by Fax or Overnight Mail

15 days plus 2 court days if prevailing party serves memorandum by fax, Express Mail, or other overnight delivery.

If Served Electronically

15 days plus 2 court days if prevailing party serves memorandum electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

EXCEPTION TO DEADLINES

a. The parties may agree to extend the time for serving and filing the memorandum and motion to tax costs if they agree in writing *and* file the agreement with the clerk. Cal Rules of Ct 3.1700(b)(3).

b. The court may extend the time for a period not to exceed 30 days. Cal Rules of Ct 3.1700(b)(3).

CLERK ENTERS COSTS

After the time for filing a motion to tax costs has expired, the clerk enters the costs on the judgment. Cal Rules of Ct 3.1700(b)(4).

Further Research: See California Trial Practice: Civil Procedure During Trial, chaps 26-27 (3d ed Cal CEB 1995).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Judgment/STEP 42. FILE NOTICE OF INTENTION TO MOVE FOR NEW TRIAL

STEP 42. FILE NOTICE OF INTENTION TO MOVE FOR NEW TRIAL

DEADLINE TO FILE NOTICE

File notice of intention to move for new trial (CCP §659):

- a. **Before entry of judgment;** or
- b. Within the *earliest* of:
 - (1) **15 days** after date clerk mails notice of entry of judgment (CCP §664.5);
 - (2) **15 days** after any party serves written notice of entry of judgment; or
 - (3) **180 days** after clerk enters judgment.

DEADLINE TO FILE NOTICE IN RESPONSE

Within **15 days** after any party serves notice of intention to move for a new trial, you may also file a notice of intention to move. CCP §659.

NOTE

Be aware that CCP §1013 does *not* extend these deadlines. CCP §659.

DEADLINE TO FILE AND SERVE MEMORANDUM

Within **10 days** after you file notice of intention to move for new trial, serve and file (CCP §659a; Cal Rules of Ct 3.1600(a)) *both*:

- a. Memorandum in support of your motion; and
- b. Affidavits or declarations that support your motion.

DEADLINE TO FILE AND SERVE REPLY

Within **10 days** after moving party serves the moving memorandum and affidavits, serve and file (CCP §659a; Cal Rules of Ct 3.1600(a)):

- a. Memorandum in reply; and
- b. Counteraffidavits.

EXTENSION OF DEADLINES

The court may extend the time for filing moving or reply affidavits by no more than 20 days. CCP §659a.

HEARING ON MOTION

The judge decides whether there is to be a hearing and (CCP §661):

- a. If so, the clerk gives 5 days' notice;
- b. Parties submit the motion to the court for decision within **10 days** before the court's deadline to rule expires. See below.

DEADLINE FOR COURT TO RULE

Court rules within **60 days** after the *earlier* of (CCP §660):

- a. Date clerk mails the notice of entry of judgment (CCP §664.5);

- b. Date any party serves *written* notice of the entry of judgment; or
- c. If no notice was given, date any party files the first notice of intention to move for a new trial.

EFFECT OF COURT'S DEADLINE

If the court does not rule on the motion within the 60-day deadline:

- a. The motion shall be deemed denied (CCP §660); and
- b. The court's late order is ineffective (see *Sanchez-Corea v Bank of America* (1985) 38 C3d 892, 903, 215 CR 679).

Further Research: California Trial Practice: Civil Procedure During Trial §§25.22-25.71 (3d ed Cal CEB 1995).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Judgment/STEP 43. FILE MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV)

STEP 43. FILE MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV)

DEADLINE

File motion for judgment notwithstanding the verdict (JNOV) within same deadlines as a motion for new trial. See [step 42](#), above. [CCP §§629, 659](#).

JNOV WITHOUT A MOTION

If the court gives parties 5 days' notice, the court may grant JNOV on its own motion at any time, within the deadlines of [CCP §659](#). [CCP §629](#).

NOTE

Be aware that moving for JNOV does *not* extend the time to move for a new trial! [CCP §629](#).

WHEN COURT CAN RULE

- a. The court cannot rule on the JNOV until the time for filing a motion for new trial has expired ([CCP §629](#));
- b. The court must rule within the deadline for ruling on a motion for new trial ([CCP §§629, 660](#)); and
- c. If you moved for *both* new trial and JNOV, the court must rule on both motions *at the same time* ([CCP §629](#)).

Further Research: [California Trial Practice: Civil Procedure During Trial §§25.2-25.21 \(3d ed Cal CEB 1995\)](#).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines After Judgment/STEP 44. FILE MOTION TO VACATE JUDGMENT

STEP 44. FILE MOTION TO VACATE JUDGMENT

DEADLINE

File motion to vacate the judgment *either* (CCP §663a):

- a. **Before the clerk enters the judgment;** or
- b. By the *earlier* of:
 - (1) **15 days** after date:
 - (a) Clerk mails notice of entry of judgment under CCP §664.5; or
 - (b) Any party serves on moving party *written* notice of entry of judgment; or
 - (2) **180 days** after clerk enters judgment.

Caution: You do *not* have an extension of time under CCP §1013 to file the motion if notice was served by mail. CCP §663a.

Further Research: See CCP §§663-663a; California Trial Practice: Civil Procedure During Trial §§25.72-25.77 (3d ed Cal CEB 1995).

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Deadlines for Appellate Writs

STEP 45. FILE PETITION FOR APPELLATE WRIT

SPECIFIC DEADLINES

Review the deadline in the statute governing the procedure you wish to challenge, *e.g.*, file petition within:

Judicial Disqualification

10 calendar days after you learn (either orally or by written notice) of the order granting or denying disqualification of a judge for cause. CCP §170.3(d); see *People v Hull* (1991) 1 C4th 266, 270, 2 CR2d 526.

Change Venue

20 calendar days after prevailing party or clerk serves written notice of order granting or denying motion to change venue. CCP §400.

Coordination

20 calendar days after prevailing party or clerk serves written notice of entry of order granting or denying coordination of cases. CCP §404.6.

Expunging Lis Pendens

20 calendar days after prevailing party or clerk serves written notice of order granting or denying a motion to expunge lis pendens. CCP §405.39.

Quash Service, Dismiss, or Stay

10 days after prevailing party or clerk serves notice of entry of order *and* before you file a pleading (CCP §418.10(c)) when order *either*:

- a. Denies your motion to quash service of summons; or
- b. Denies your motion to stay or dismiss the action on the ground of inconvenient forum.

Summary Judgment

20 days (plus additional days if notice is mailed or served by fax or overnight delivery) after prevailing party or clerk serves written notice of entry of any order under CCP §437c, *except* an order granting summary judgment. CCP §437c(m)(1). (Summary judgment is appealable.)

Good Faith Settlement

20 days after prevailing party or clerk serves written notice of the order determining that settlement by joint tortfeasor was or was not in good faith. CCP §877.6(e).

NOTE

Remember that CCP §1013 generally extends the time following service by mail in the absence of an exception expressly created by statute or rule (see *People v \$20,000 U.S. Currency* (1991) 235 CA3d 682, 687, 286 CR 746), and apparently following service by fax, Express Mail, or other overnight delivery, as well.

GENERAL DEADLINE

- a. If no deadline is set by statute, appellate courts generally impose the 60-day filing period applicable to appeals. *Cal W.*

Nurseries, Inc. v Superior Court (2005) 129 CA4th 1170, 1173, 29 CR3d 170; see Cal Rules of Ct 8.104(a).

b. *Always* file petition as soon as possible to avoid having the opposing party argue laches, *i.e.*, that you have inexcusably delayed. See below.

Pay Fee

Pay \$485 fee when you file writ petition in court of appeal. Govt C §68926.

WHEN LACHES MAY APPLY

If the petition is filed more than 60 days after issuance of the challenged ruling (and there is no statutory deadline), the respondent or real party in interest may assert the doctrine of laches, under which the petition will be denied if (Peterson v Superior Court (1982) 31 C3d 147, 163, 181 CR 784):

- a. The petitioner unreasonably delays in filing the petition; and
- b. There is prejudice to the real party in interest.

HOW DEADLINE MAY BE EXTENDED

The court may extend the deadline:

- a. If the applicable statute allows additional time to file petition and you make *timely* application to the trial court (see, *e.g.*, CCP §§400, 404.6, 405.39, 418.10(c), 437c(m)(1), 877.6(e)); or
- b. Under extraordinary circumstances and absent prejudice to the real party in interest (see, *e.g.*, Planned Parenthood Golden Gate v Superior Court (2000) 83 CA4th 347, 356, 99 CR2d 627 (hearing writ petition filed beyond 60-day period because issue presented implicated important privacy rights of third parties)).

Further Research: See California Civil Writ Practice §§18.61-18.76 (4th ed Cal CEB 2008); Handling Civil Writs in the Courts of Appeal (Cal CEB Action Guide February 2009).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appellate Writs/STEP 46. OTHER DEADLINES CONCERNING APPELLATE WRITS

STEP 46. OTHER DEADLINES CONCERNING APPELLATE WRITS

FILE PRELIMINARY OPPOSITION TO PETITION

Serve and file preliminary opposition to petition within **10 calendar days** after petitioner serves and files petition. Cal Rules of Ct 8.487(a)(1).

DEADLINE TO RESPOND

File response to alternative writ or order to show (Cal Rules of Ct 8.487(b)(2)):

- a. Within **30 calendar days** after the court either issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ; or
- b. Within deadline set by the court.

NOTE

The appellate court has discretion to issue an alternative writ *without* waiting for opposition. Cal Rules of Ct 8.487(a)(4). Call and let the court know that you intend to file preliminary opposition.

FILE OPPOSITION TO PEREMPTORY WRIT

File and serve opposition to peremptory writ within **5 calendar days** after petitioner serves the petition. CCP §1107; see Palma v U.S. Indus. Fasteners (1984) 36 C3d 171, 179, 203 CR 626, on form of notice.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appellate Writs/STEP 47. WRIT DEADLINES IN SPECIAL SITUATIONS

STEP 47. WRIT DEADLINES IN SPECIAL SITUATIONS

SPECIAL DEADLINES TO FILE BRIEFS OR RESPONSES

Workers' Compensation Cases

Petition to review order or award of the Workers' Compensation Appeals Board (WCAB):

a. Within **25 days** after petitioner files the petition, the WCAB and any real party in interest may serve and file (Cal Rules of Ct 8.495(b)(1)):

- (1) An answer; and
- (2) Any relevant exhibits not included in the petition.

b. Within **15 days** after respondent files an answer, petitioner may serve and file a reply. Cal Rules of Ct 8.495(b)(2).

CPUC Cases

Review of California Public Utilities Commission (CPUC) cases:

a. Within **35 days** after petitioner files the petition, CPUC and any real party in interest may serve and file an answer (Cal Rules of Ct 8.496(b)(1));

b. Within **25 days** after respondent serves answer, petitioner may serve and file a reply (Cal Rules of Ct 8.496(b)(2)).

Certain Labor Cases

Review of certain labor cases:

a. Within **35 days** after the Agricultural Labor Relations Board (ALRB) or Public Employment Relations Board (PERB) files and serves the index to the certified record of the proceedings, petitioner must file and serve a brief in support of a petition to review the final order of (Cal Rules of Ct 8.498(c)(1)):

- (1) ALRB; or
- (2) PERB.

b. Within **35 days** after petitioner files the brief (Cal Rules of Ct 8.498(c)(2)):

- (1) Board *must* serve and file a brief in response to petitioner's brief; and
- (2) Any real party in interest *may* serve and file a brief in response to petitioner's brief.

c. Within **25 days** after serving response brief, petitioner may serve and file a reply brief. Cal Rules of Ct 8.498(c)(3).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 48. FILE NOTICE OF APPEAL FROM TRIAL COURT

Deadlines for Appeal

STEP 48. FILE NOTICE OF APPEAL FROM TRIAL COURT

GENERAL DEADLINE

File notice of appeal within the *earliest* of (Cal Rules of Ct 8.104(a)):

a. **60 days** after date any party serves:

- (1) A document entitled "Notice of Entry" of judgment or appealable order; or
- (2) A file-stamped copy of the judgment or appealable order; or

b. **60 days** after date trial court clerk mails:

- (1) A document entitled "Notice of Entry" of judgment or appealable order; or
- (2) A file-stamped copy of the judgment or appealable order; or

c. **180 days** after *entry* of the judgment or appealable order. For definition of "date of entry," see below.

Caution: Be aware that CCP §§1010.6(a)(6) and 1013 do *not* extend time for filing a notice of appeal.

Further Research: See *Estate of Crabtree* (1992) 4 CA4th 1119, 1123, 6 CR2d 224 (written notice must show date judgment or order was filed; date of entry not required if file-stamped copy served).

"ENTRY DATE" DEFINED

For purposes of appeal under Cal Rules of Ct 8.104(a), "entry date" is defined as (Cal Rules of Ct 8.104(d)):

Judgment

- a. Date judgment is filed with clerk under CCP §668.5; or
- b. If county maintains a judgment book, date clerk enters judgment into book;

Appealable Order

- a. Date clerk enters appealable order in the permanent minutes;
- b. *If minute order directs a party to prepare a written order:* Date a signed written order is filed; or
- c. *If there is no minute order:* Date that the signed appealable order is filed.

Decree of Distribution

Date clerk enters decree of distribution in a probate proceeding into judgment book or other permanent record.

SPECIAL DEADLINES IN SPECIFIC PROCEEDINGS

File notice of appeal:

NOTE

The following list is not meant to be exclusive. Check the statute in your proceeding for special appeal and review deadlines.

When Attachment Levied

When you have levied an attachment and wish the attachment to continue in force while you appeal (CCP §921):

- a. File within **5 days** after prevailing party gives written notice of entry of appealable order or judgment; and
- b. Execute and file an undertaking;

Elections

When appealing a judgment that sets aside or annuls an election (Elec C §16702), file within **10 days** after *either*:

- a. *Entry of judgment* (see *Sheets v Cleveland* (1942) 51 CA2d 148, 149, 124 P2d 200); or
- b. Court pronounces judgment, because Elec C §16603 requires:
 - (1) Judge to pronounce judgment orally; and
 - (2) Clerk to enter judgment *immediately thereafter*.

NOTE

Be aware that, because Elec C §16603 requires clerk to enter judgment immediately, you should use the court's pronouncement as your starting point when calculating time to file an appeal.

Assessment

File 30 days after *entry* of judgment (not *notice* of entry), when appealing a judgment concerning the validity of an assessment. Str & H C §10400; CCP §329.5.

Special Tax

File 30 days after *entry* of judgment (not *notice* of entry) that levies a special tax or increases a special tax under the Mello-Roos Community Facilities Act of 1982. Govt C §53341.

Validating Proceeding

- a. When appealing from a judgment in a proceeding under CCP §860 or §863 (*e.g.*, an action to determine the validity of a government "matter" or contract), file within **30 days** after (CCP §870(b)):
 - (1) Prevailing party serves notice of entry of judgment; or
 - (2) Clerk enters judgment if no answering party.
- b. When appealing from a judgment in a proceeding under Govt C §53359 (*e.g.*, an action to determine the validity of a bond or special tax), file **30 days** after *entry* of judgment (not *notice* of entry of judgment). Govt C §53359.

Conservatorship

When appealing from a judgment or appealable order in a conservatorship for a gravely disabled person (Welf & I C §5350 (Lanterman-Petris-Short Act)), file within **60 days** after (Cal Rules of Ct 8.308(a), 8.480(a)):

- a. Court pronounces judgment (see *In re Markaw V.* (1989) 211 CA3d 1331, 1336, 260 CR 126 (oral pronouncement in open court probably starts time to appeal)); or
- b. Court makes the order.

Juvenile Proceedings

When appealing from a judgment or order in juvenile court proceedings or proceedings to terminate parental custody and control of minor (Fam C §§7800-7895), file notice of appeal **60 days** after (Cal Rules of Ct 8.400(d)(1)):

- a. Court renders judgment (see *In re Markaw V.*, 211 CA3d at 1336 (oral pronouncement in open court probably starts time to appeal)); or

b. Court makes order.

NOTE

Be aware that a writ petition for extraordinary relief may be preferable to an appeal in proceedings terminating parental rights. Check recent case law carefully; many interim rulings in dependency proceedings arguably must be challenged by writ petition, rather than by appeal. See, e.g., *In re Tammy H.* (1992) 11 CA4th 48, 52, 14 CR2d 16. But see *In re Brittany S.* (1993) 17 CA4th 1399, 22 CR2d 50 (parent's failure to seek writ relief from order setting hearing under Welf & I C §366.26 did not preclude appellate review of termination order).

Periodic Payments

If a public entity files a timely election to satisfy a judgment by periodic payments, file by *earliest* of (Govt C §984(g); Cal Rules of Ct 8.104(c)):

a. **90 days** after date any party serves:

- (1) Notice of entry of judgment or appealable order; or
- (2) File-stamped photocopy of the judgment or appealable order; or

b. **90 days** after date trial court clerk mails:

- (1) Notice of entry of judgment or appealable order; or
- (2) File-stamped photocopy of the judgment or appealable order; or

c. **180 days** after *entry* of the judgment or appealable order.

Sterilization

In sterilization cases, you do not need to file notice of appeal, because the entry of judgment or order authorizing consent to sterilization has the effect of a notice of appeal. Cal Rules of Ct 8.482(b).

DEADLINE EXTENSIONS

Your time for filing a notice of appeal is extended if you:

Move for New Trial

File a *valid* and *timely* motion of intention to move for new trial that the court denies; doing so extends the time to file a notice of appeal to the *earliest* of (Cal Rules of Ct 8.108(b)(1)):

a. **30 days** after *either*:

- (1) Clerk mails, or a party serves, the order denying motion, or a notice of entry of that order; or
- (2) Motion is denied by operation of law; or

b. In no event later than **180 days** after the date of entry of judgment (see definition of "date of entry," above), even if court has not ruled on your motion.

Further Research: See, e.g., *Cuenllas v VRL Int'l, Ltd.* (2001) 92 CA4th 1050, 1054, 112 CR2d 383 (service of minute order not entitled "notice of entry" triggers 180-day limit rather than 60-day limit); *Ramirez v Moran* (1988) 201 CA3d 431, 435, 247 CR 117 (to be valid, motion for new trial must be timely). See also *Wenzoski v Central Banking Sys., Inc.* (1987) 43 C3d 539, 542, 237 CR 167 (time is not extended by bringing second motion for new trial after first motion was denied).

Caution: CCP §§1010.6(a)(6) and 1013(a) do *not* extend time for filing notice of intention to move for new trial.

NOTE

An order granting a new trial is appealable (CCP §904.1(a)(4)), but it does *not* extend the time to appeal from the underlying judgment. See Cal Rules of Ct 8.108(c). See also step 42, above.

Motion for Relief From, or to Vacate, Judgment

File a *valid* and *timely* motion to vacate judgment (CCP §663); doing so extends the time to file a notice of appeal to the *earliest* of (Cal Rules of Ct 8.108(b)):

- a. **30 days** after clerk mails, or a party serves, an order denying motion or a notice of entry of that order;
- b. **90 days** after date any party first filed a notice of intention to move to vacate; or
- c. **180 days** after the date of entry of judgment (for definition of "date of entry," see above.) See steps 39-40, 44, above, for deadlines in motions for relief. See also CCP §§473, 473.5.

Caution: CCP §§1010.6(a)(6) and 1013 do *not* extend time for filing notice of intention to move to set aside the judgment. CCP §§663a, 1013(a).

Motion for Reconsideration

a. File a *valid* and *timely* motion for reconsideration of an *appealable order* under CCP §1008, *i.e.*:

(1) An order or judgment that is itself appealable, *e.g.*, a motion for reconsideration of an *order* granting summary judgment will not extend time for appeal. See CCP §1008(a); *Stratton v First Nat'l Life Ins. Co.* (1989) 210 CA3d 1071, 1081, 258 CR 721.

(2) Not of a *judgment* that has been entered and will not result in an extension of time for filing a notice of appeal. See *Ramon v Aerospace Corp.* (1996) 50 CA4th 1233, 1236, 58 CR2d 217 (following entry of judgment, plaintiff should abandon invalid motion for reconsideration and attack judgment by motion for new trial, motion to vacate, or notice of appeal); *Passavanti v Williams* (1990) 225 CA3d 1602, 1607, 275 CR 887, disagreeing with dicta in *Stratton v First Nat'l Life Ins. Co.*, *supra*.

b. Filing such a valid and timely motion extends the time to file a notice of appeal to the *earliest* of (Cal Rules of Ct 8.108(e)):

- (1) **30 days** after the clerk mails, or a party serves, an order denying motion for reconsideration or a notice of entry of that order;
- (2) **90 days** after the first motion to reconsider is filed; or
- (3) **180 days** after entry of the appealable order.

Caution: CCP §1013(a) does *not* extend your time to file a notice of motion for reconsideration. See generally *County of Los Angeles v Surety Ins. Co.* (1984) 162 CA3d 58, 63, 208 CR 263.

DEADLINE FOR CROSS-APPEAL

If a *timely* notice of appeal has already been filed, file notice of cross-appeal within **20 days** after clerk mails notification of the first appeal. Cal Rules of Ct 8.108(f)(1).

Protective Cross-Appeal

a. A protective cross-appeal protects a party's right to appeal from the original judgment when the judgment is attacked by a posttrial motion.

b. If a *timely* notice of appeal has been filed from an order granting a motion for a new trial, an order granting (within 150 days after entry of judgment) a motion to vacate the judgment, or a judgment notwithstanding the verdict, then file notice of appeal from original judgment (or from an order *denying* a motion for judgment notwithstanding the verdict) within **20 days** after clerk mails notice of the first appeal. Cal Rules of Ct 8.108(f)(2).

Caution: CCP §1013(a) does *not* extend the time for filing notice of cross-appeal. CCP §1013(a).

Further Research: See *Life v County of Los Angeles* (1990) 218 CA3d 1287, 1298, 267 CR 557 (timely notice of appeal extended cross-appeal deadline, even though notice not valid due to appellant's lack of standing). On protective cross-appeals, see California Civil Appellate Practice §§8.7-8.11 (3d ed Cal CEB 1996).

FILING FEE DEADLINE

a. At the time of filing the notice of appeal:

- (1) Pay the appellate filing fee of \$655 (Govt C §§68926, 68926.1(b)); and
 - (2) Deposit \$100 with the superior court clerk (Govt C §68926.1(a)), unless otherwise provided by law or the superior court waives the deposit under Cal Rules of Ct 3.50-3.63; or
- b. **15 days** after appellate clerk mails notice that fee was not received *either* (Cal Rules of Ct 8.100(c)(2)(A)-(B)):
- (1) Pay the fee; or
 - (2) File an application for a waiver under Cal Rules of Ct 8.26.

DEADLINE TO FILE DOCKETING STATEMENT

- a. Deadline to file docketing statement may vary from court to court. Check local rules, *e.g.*, 10 days after filing notice of appeal. See 1st App Dist Local R 1(a).
- b. File statement with clerk of court of appeal (district usually prints form that you may obtain from court) and serve copy on all parties.

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 49. OBTAIN APPELLATE RECORD

STEP 49. OBTAIN APPELLATE RECORD

DEADLINE TO CHOOSE FORM OF RECORD

Within **10 days** after you file a notice of appeal, serve and file with the clerk of the trial court a notice designating the record on appeal. Cal Rules of Ct 8.121(a).

Specify Form of Record in Notice

Specify in the notice designating the record the *form* of the record that the appellant elects to use (Cal Rules of Ct 8.120, 8.121(b)(1)(B)), *i.e.*:

- a. A clerk's and/or reporter's transcript (Cal Rules of Ct 8.122, 8.130);
- b. An appendix (Cal Rules of Ct 8.124);
- c. The original superior court file, when allowed by an appellate court local rule (Cal Rules of Ct 8.128);
- d. An agreed statement, alone or with another form of record (Cal Rule of Ct 8.134(a)(1)); or
- e. A settled statement (Cal Rule of Ct 8.137).

OBTAIN EXTENSION OF DEADLINES FOR RECORD

If you are unable to do any act concerning the record within the applicable deadline, request an extension from (see Cal Rules of Ct 8.60(b)):

- a. The Chief Justice of the California Supreme Court; or
- b. The presiding justice of the appellate court.

NOTE

Prepare your request for an extension to comply with Cal Rules of Ct 8.63 (standards for time extensions).

clerk's & reporter's transcript Deadlines

DEADLINE TO FILE COUNTERNOTICE RE TRANSCRIPT

Within **10 days** after appellant serves notice designating the transcript, respondent may designate *additional*:

- a. Proceedings to be included in the reporter's transcript (Cal Rules of Ct 8.130(a)(2)); or
- b. Papers or records to be included in the clerk's transcript (Cal Rules of Ct 8.122(a)(2)).

REQUIREMENT TO PAY COST FOR REPORTER'S TRANSCRIPT

Appellant *must* file with the clerk the notice to prepare a reporter's transcript *and* a deposit of the approximate cost of the transcript *either* (Cal Rules of Ct 8.130(b)(1)(A)-(B)):

- a. Following a written estimate secured from the reporter in advance; or
- b. Computed at \$325 per fraction of a day's proceeding that appellant or counsel states did not exceed 3 hours, or \$650 per day or fraction of a day's proceedings greater than 3 hours.

NOTE

Depending on the length of trial and the number of reporters involved, it may be significantly cheaper to obtain an estimate from the reporter(s) in advance rather than to use the estimated costs prescribed by the rule.

APPENDIX DEADLINES

DEADLINE FOR RESPONDENT TO ELECT APPENDIX PROCEDURE

Within **10 days** after the notice of appeal is filed, the *respondent* may serve and file in the superior court a notice of election to use an appendix. Cal Rules of Ct 8.124(a)(1).

DEADLINE TO OBJECT TO APPENDIX PROCEDURE

Within **10 days** after service of the notice of election of the appendix procedure, a party may object to that procedure by filing a motion in the superior court. Cal Rules of Ct 8.124(a)(1).

DEADLINES TO FILE APPENDIX

Joint Appendix or Appellant's Appendix

Joint appendix or appellant's appendix must be served and filed with appellant's opening brief. Cal Rules of Ct 8.124(e)(2).

Further Research: Pulver v Avco Fin. Servs. (1986) 182 CA3d 622, 631, 227 CR 491 (court will not dismiss appeal if appellant files appendix before respondent moves to dismiss).

Respondent's Appendix

Respondent's appendix:

- a. Must be served and filed with respondent's brief (Cal Rules of Ct 8.124(e)(3)); and
- b. May contain any document that could have been included in appellant's appendix or joint appendix (Cal Rules of Ct 8.124(b)(6)).

Appellant's Reply Appendix

A reply appendix must be served and filed with appellant's reply brief. Cal Rules of Ct 8.124(e)(4).

Superior COURT FILE DEADLINES

DEADLINE TO STIPULATE TO USE SUPERIOR COURT FILE

If local appellate court rules permit the use of the original superior court file as the written record on appeal (*i.e.*, the clerk's transcript), and you and the respondent agree to do so, file a stipulation to use the superior court file with the superior court clerk with the notice designating the record. Cal Rules of Ct 8.128(a)(2). See, *e.g.*, 3d App Dist Local R 2.

DEADLINE TO PAY COSTS

Within **10 days** after trial court clerk gives notice of estimate of costs incurred in preparing the file, deposit costs with clerk or file an application for, or an order granting, a waiver of the costs. Cal Rules of Ct 8.128(b)(1).

AGREED STATEMENT DEADLINES

DEADLINE TO FILE AGREED STATEMENT OR STIPULATION

Along with the notice designating the record, file with superior court either an agreed statement or a signed stipulation that the parties are attempting to agree on a statement, including a written summary of (Cal Rules of Ct 8.134(a), (b)(1)):

- a. The nature of the controversy;
- b. The basis of appellate jurisdiction;
- c. How the trial decided the issues on appeal; and
- d. Evidence relevant to the questions on appeal.

DEADLINE TO FILE AGREED STATEMENT

If appellant files the stipulation and the parties agree on the statement, within **40 days** after appellant files the notice of appeal, file with trial court clerk a copy of the agreed statement, signed by the parties. Cal Rules of Ct 8.134(b)(2).

IF PARTIES CANNOT AGREE ON STATEMENT

If parties cannot agree on statement, within **50 days** after notice of appeal, designate some other form of record, *e.g.*, clerk's and reporter's transcripts. Cal Rules of Ct 8.134(b)(3).

| |
|-----------------------------|
| SETTLED STATEMENT DEADLINES |
|-----------------------------|

WHEN AVAILABLE

Settled statement is available if (Cal Rules of Ct 8.137(a)(2)):

- a. A substantial cost savings will result and statement can be agreed on without significant burden to opposing parties or the court;
- b. A reporter's transcript is unavailable; or
- c. Appellant lacks adequate funds for a reporter's transcript and funds are unavailable through the Transcript Reimbursement Fund (Cal Rules of Ct 8.130(c)).

DEADLINE TO FILE MOTION TO USE SETTLED STATEMENT

With notice designating record on appeal, serve and file motion to use a settled statement instead of (Cal Rules of Ct 8.137(a)(1)):

- a. Reporter's transcript; or
- b. Both reporter's and clerk's transcripts.

DEADLINE TO FILE AND SERVE CONDENSED NARRATIVE

Within **30 days** after superior court clerk mails, or a party serves, an order granting a motion to use settled statement, appellant must serve and file in trial court a condensed narrative of the oral proceedings that appellant believes necessary for the appeal. Cal Rules of Ct 8.137(b)(1).

DEADLINE TO OBJECT TO STATEMENT

Within **20 days** after appellant serves condensed narrative, respondent may serve and file any proposed amendments. Cal Rules of Ct 8.137(b)(4).

HEARING ON SETTLED STATEMENT

The judge who tried the case will settle the statement at the settlement hearing, which will take place within 10 days after the *earlier* of (Cal Rules of Ct 8.137(c)(1)):

- a. Filing by respondent of proposed amendments; or
- b. Expiration of time for respondent to file amendments.

DEADLINE TO FILE PREPARED STATEMENT

File prepared statement by date that trial court designates. Cal Rules of Ct 8.137(c)(2).

DEADLINE TO FILE OBJECTIONS TO PREPARED STATEMENT

File objections to prepared statement within **5 days** after appellant files and serves prepared statement. Cal Rules of Ct 8.137(c)(3).

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 50. FILE NOTICE OF CROSS-APPEAL

STEP 50. FILE NOTICE OF CROSS-APPEAL

DEADLINE TO FILE NOTICE OF CROSS-APPEAL

File notice of cross-appeal (Cal Rules of Ct 8.108(f)(1)-(2)):

- a. Within **20 days** after trial court clerk mails notice of the first appeal of a judgment or appealable order; or
- b. Within **20 days** after clerk mails notice of the first appeal of:
 - (1) An order granting a motion for a new trial;
 - (2) An order granting (within 150 days after entry of judgment) a motion to vacate the judgment; or
 - (3) A judgment notwithstanding the verdict (see step 48, above).

DEADLINE TO FILE DOCKETING STATEMENT, IF REQUIRED

Deadline to file docketing statement is the same as for the initial appeal, but is calculated from the date your notice of cross-appeal was filed. Be sure to check your district's local rules.

DEADLINES TO DESIGNATE RECORD

Deadlines to designate and/or prepare the record are the same as for the initial appeal, *but*:

- a. They are calculated from the date of filing *your* notice of cross-appeal. Cal Rules of Ct 8.147(a); see step 48, above.
- b. Because there will be only one record in the case, you need not designate the record if appellant has done so; instead, within **10 days** after appellant has served notice designating the record, you may choose to designate additional items for inclusion. See Cal Rules of Ct 8.130(a)(3), 8.122(a)(2).

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 51. PREPARE AND FILE BRIEFS IN COURT OF APPEAL

STEP 51. PREPARE AND FILE BRIEFS IN COURT OF APPEAL

"DATE OF FILING BRIEFS" DEFINED

A brief is considered "filed" on the date the clerk receives it. Cal Rules of Ct 8.25(b)(1).

"Timely" Filing

A brief will be considered timely filed if you (Cal Rules of Ct 8.25(b)(3)):

- a. Mail it by priority mail or by Express Mail, and the time for its filing had not expired by the date of its mailing, as shown on a postal receipt or postmark; or
- b. Deliver it to a common carrier promising overnight delivery, and the time for its filing had not expired by the date of its delivery to the carrier, as shown on the carrier's receipt.

DEADLINE TO FILE APPELLANT'S OPENING BRIEF

File opening brief within:

- a. **30 days** after trial court clerk files record in the appellate court (Cal Rules of Ct 8.212(a)(1)(A));
- b. **30 days** after reporter's transcript is filed in the reviewing court *if* appellant has elected an appendix instead of a clerk's transcript (Cal Rules of Ct 8.212(a)(1)(A)); or
- c. **70 days** after appellant files notice of election to prepare an appendix instead of reporter's *and* clerk's transcripts (Cal Rules of Ct 8.212(a)(1)(B)).

EXTENSIONS OF TIME

By Stipulation

The basic time limitations may be extended for up to 60 days by one or more stipulations filed in the appellate court. Cal Rules of Ct 8.212(b)(1).

By Leave of Court

Application must be made to the presiding justice on a showing of good cause if (Cal Rules of Ct 8.212(b)(2)):

- a. A proposed stipulation is refused; or
- b. An extension is sought beyond the 60-day maximum permitted by stipulation.

When Seeking Extension by Stipulation or Leave of Court

When an extension is sought by stipulation or leave of court, you must:

- a. Deliver to your client a copy of the stipulation or application; and
- b. Attach evidence of such delivery to the stipulation or application (*e.g.*, a proof of service) or certify in the stipulation or application that such delivery was accomplished (Cal Rules of Ct 8.60(f)(1)), except that:
 - (1) Your client's *address* need not be included on the evidence or certification of delivery (Cal Rules of Ct 8.60(f)(3)); and
 - (2) In some cases, you should not make addresses part of the public record, *e.g.*, when the client has been the victim of harassment or fears being subject to harassment.

By Prehearing Conference

If the court orders a prehearing conference before the date appellant's opening brief is to be filed, the period for filing the brief is tolled from the date the court of appeal mails notice of the conference until the date it mails notice that the conference is concluded. Cal Rules of Ct 8.248(d).

EFFECT OF FAILURE TO FILE OPENING BRIEF

If appellant fails to file opening brief (Cal Rules of Ct 8.220(a), (d)), the clerk of the appellate court will send written notice to appellant to file brief within **15 days** after notice was mailed:

- a. If appellant does not file brief within that 15-day period, the court may dismiss on its own motion.
- b. If sufficient showing of excuse is made within the 15-day period, the court may grant additional time to file the brief.

DEADLINE TO FILE RESPONDENT'S BRIEF

Within **30 days** after appellant files opening brief, respondent must file brief. Cal Rules of Ct 8.212(a)(2). See above.

EFFECT OF FAILURE TO FILE RESPONDENT'S BRIEF

If respondent fails to file brief:

- a. The clerk of the appellate court will send written notice to respondent that the case may be submitted for decision on the record, appellant's opening brief, and any oral argument by appellant unless the respondent's brief is filed within **15 days** after the date of mailing the notification or good cause is shown for relief. Cal Rules of Ct 8.220(a)(2).
- b. If the time is extended and brief is still not filed within that time, the court may impose the sanction specified in the written notice. Cal Rules of Ct 8.220(c)-(d).

DEADLINE TO FILE APPELLANT'S REPLY BRIEF

Within **20 days** after respondent files brief, or **30 days** if respondent's brief is also a cross-appellant's brief, appellant must file reply brief, if any. Cal Rules of Ct 8.212(a)(3).

DEADLINE IN WHICH PARTY IS BOTH APPELLANT AND RESPONDENT

- a. When one party is both an appellant and a respondent, then within **20 days** after the second notice of appeal is filed, that party and the other party must jointly submit a proposed briefing sequence to the appellate court. Cal Rules of Ct 8.216(a)(1).
- b. If the parties cannot agree on a joint submittal, each must file a proposed briefing sequence.

Briefing Sequence

The appellate court, after receiving the proposal, must order a briefing sequence and provide briefing periods consistent with Cal Rules of Ct 8.212(a). Cal Rules of Ct 8.216(a)(2).

Extensions of Time

Cal Rules of Ct 8.212(b) governs extensions of time. Cal Rules of Ct 8.216(a)(3).

CONTENTS OF BRIEF

A party that is both appellant and respondent must (Cal Rules of Ct 8.216(b)):

- a. Combine its respondent's brief and appellant's opening brief or reply brief (if any) as the appellate court orders;
- b. Confine reply brief to points raised on own appeal; and
- c. Address each appeal separately, although it may include a single summary of the significant facts.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 52. REQUEST ORAL ARGUMENT; MOVE FOR CALENDAR PREFERENCE

STEP 52. REQUEST ORAL ARGUMENT; MOVE FOR CALENDAR PREFERENCE

DEADLINE TO REQUEST ORAL ARGUMENT

The deadline to request oral argument varies by court.

Review Your Local Rules

Check local rules and policy memorandums; if possible, also check internal operating practice and procedures guidelines.

Clerk Will Send Notice

Generally, clerk will send out a notice as to whether the court believes that oral argument is necessary. The notice usually:

- a. Specifies the time within which argument must be requested so as to avoid waiver; and
- b. Specifies the date and time of oral argument, if one of the parties requests oral argument.

DEADLINE TO MOVE FOR CALENDAR PREFERENCE

A party desiring calendar preference must "promptly" file and serve a motion for preference in the court of appeal. Cal Rules of Ct 8.240.

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 53. PETITION FOR REHEARING IN COURT OF APPEAL OR SUPREME COURT

STEP 53. PETITION FOR REHEARING IN COURT OF APPEAL OR SUPREME COURT

DEADLINE TO FILE AND SERVE PETITION FOR REHEARING

File and serve a petition for rehearing within **15 days** after (Cal Rules of Ct 8.268(b)(1)(A)):

- a. Court files its decision;
- b. Court files an order for publication that restarts the finality period under Cal Rules of Ct 8.264(b)(3);
- c. Court files a modification order changing the appellate judgment under Cal Rules of Ct 8.264(c)(2); or
- d. Filing of a consent under Cal Rules of Ct 8.264(d).

DEADLINE TO ANSWER PETITION FOR REHEARING

- a. You may file an answer to a rehearing petition only if the court requests one. Cal Rules of Ct 8.268(b)(2).
- b. If the court requests an answer, file and serve it within **8 days** after the order requesting an answer is filed, unless the court orders otherwise. Cal Rules of Ct 8.268(b)(2).

COURT ACTS

Rehearing Granted

Up to the time the court's decision becomes final (see below), the court may grant the petition for rehearing. Cal Rules of Ct 8.268(a).

Rehearing Denied

If the court does not rule on the rehearing petition before the decision is final, the petition is deemed denied. Cal Rules of Ct 8.268(c).

COURT OF APPEAL DECISION BECOMES FINAL

General Rule: 30 Days After Court Files Decision

Appellate decision generally becomes final 30 days after the court *first* files its decision (Cal Rules of Ct 8.264(b)(1)), including an opinion the court of appeal later modifies without changing the judgment (Cal Rules of Ct 8.264(c)(2)).

If Court Grants Rehearing Petition

If the appellate court grants a petition for rehearing, the original opinion is superseded (see Cal Rules of Court 8.268(d)), and the decision after rehearing becomes final 30 days after the court of appeal files it (Cal Rules of Ct 8.264(b)(1)).

If Court Modifies Opinion and Judgment

If the court modifies its opinion *and* modifies the judgment, the decision becomes final 30 days after the date of the modification order. Cal Rules of Ct 8.264(c)(2).

If Court Files Denial

Decision becomes final immediately after court of appeal files a denial of:

- a. A petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause, or a writ of supersedeas (Cal Rules of Ct 8.264(b)(2)(A), 8.490(b)(1));
- b. An application for bail or to reduce bail pending appeal (Cal Rules of Ct 8.366(b)(2)(A)); or

- c. A transfer to court of appeal of a case within the appellate jurisdiction of the superior court (Cal Rules of Ct 8.1018(a)).

If Court Dismisses Under Written Request

Decision becomes final immediately after court of appeal orders dismissal of appeal under written request or stipulation of the parties. Cal Rules of Ct 8.264(b)(2)(B).

SUPREME COURT DECISION BECOMES FINAL

Supreme court decision becomes final (Cal Rules of Ct 8.532(b)):

- a. **30 days** after court files decision;
- b. Within a shorter time than 30 days, if the court so orders; or
- c. Within additional time allowed by the court up to a total of 60 additional days.

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 54. FILE PETITION FOR REVIEW IN SUPREME COURT

STEP 54. FILE PETITION FOR REVIEW IN SUPREME COURT

"DATE OF FILING" DEFINED

A petition for review is considered "filed" on the date the clerk receives it. Cal Rules of Ct 8.25(b)(1).

"Timely" Filing

A petition for review will be considered timely filed if you (Cal Rules of Ct 8.25(b)(3)):

- a. Mail it by priority mail or Express Mail, and the time for its filing has not expired by the date of its mailing, as shown on a postal receipt or postmark; or
- b. Deliver it to a common carrier promising overnight delivery, and the time for its filing has not expired by the date of its delivery to the carrier, as shown on carrier's receipt.

DEADLINE TO FILE PETITION

File petition within **10 days** after the court of appeal decision becomes *final* (see step 53, above). Cal Rules of Ct 8.500(e)(1). (Pay \$420 fee when you file petition in supreme court after decision by court of appeal. Govt C §68927.) For definition of "date of filing," see above.

DEADLINE TO FILE ANSWER TO PETITION

Within **20 days** after petitioner files the petition, file answer to petition. Cal Rules of Ct 8.500(e)(4). For definition of "date of filing," see above.

DEADLINE TO FILE REPLY TO ANSWER

Within **10 days** after respondent files answer, file reply to answer. Cal Rules of Ct 8.500(e)(5). For definition of "date of filing," see above.

DEADLINE FOR SUPREME COURT TO ACT

The supreme court may:

- a. If no party files a petition, order review on its own motion within **30 days** after court of appeal decision becomes final (Cal Rules of Ct 8.512(c)(1));
- b. Extend time within which it may order review on its own motion, for up to an additional 90 days after the court of appeal decision becomes final (Cal Rules of Ct 8.512(c)(1)); or
- c. If any party files a petition, order review within **60 days** after the party files the last timely petition for review (Cal Rules of Ct 8.512(b)(1)).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 55. FILE BRIEFS IN SUPREME COURT

STEP 55. FILE BRIEFS IN SUPREME COURT

"DATE OF FILING BRIEFS" DEFINED

A brief is considered "filed" on the date the clerk receives it. Cal Rules of Ct 8.25(b)(1).

"Timely" Filing

A brief will be considered timely filed if you (Cal Rules of Ct 8.512(b)(3)):

- a. Mail it by priority mail or by Express Mail, and the time for its filing has not expired by the date of its mailing, as shown on a postal receipt or postmark; or
- b. Deliver it to a common carrier promising overnight delivery, and the time for its filing has not expired by the date of its delivery to the carrier, as shown on carrier's receipt.

DEADLINE TO FILE BRIEF ON THE MERITS

Within **30 days** after the filing of the order granting review, serve and file *either* (Cal Rules of Ct 8.520(a)(1), (4)):

- a. The brief filed in the court of appeal (in which case the party must attach to the cover a notice of its intent to rely on the court of appeal brief); or
- b. A new brief on the merits. (For definition of date brief is considered filed, see above.)

NOTE

Remember to file the correct number of briefs in the supreme court. See Cal Rules of Ct 8.512(b)(3).

DEADLINE TO FILE OPPOSING BRIEF

a. File opposing brief within **30 days** after petitioner either (Cal Rules of Ct 8.520(a)(2), (4)):

- (1) Files a new brief on the merits;
- (2) Files the brief it filed in the court of appeal; or
- (3) Allows the time for filing a brief to expire;

b. Opposing party serves and files *either*:

- (1) The brief it filed in court of appeal (in which case the party must attach to the cover a notice of its intent to rely on the court of appeal brief); or
- (2) A new brief on the merits. (For definition of date brief is considered filed, see above.)

DEADLINE TO FILE REPLY BRIEF

Within **20 days** after opposing party files its brief, serve and file *either* (Cal Rules of Ct 8.520(a)(3)-(4)):

- a. The reply brief filed in the court of appeal (in which case the party must attach to the cover a notice of its intent to rely on the court of appeal brief); or
- b. A new reply brief. (For definition of date brief is considered filed, see above.)

DEADLINE TO FILE SUPPLEMENTAL BRIEF

Within **10 days** before oral argument, serve and file a supplemental brief that includes (Cal Rules of Ct 8.520(d)):

- a. New authority;
- b. New legislation; or
- c. Other intervening matters, not available in time to have been included in the party's brief on the merits.

NEW BRIEFS AFTER TRANSFER

If a cause is transferred from the supreme court to the court of appeal for further proceedings, party may serve and file a supplemental brief in the court of appeal (Cal Rules of Ct 8.200(b), 8.528(f)):

- a. Within **15 days** after finality of the supreme court decision remanding or order transferring the cause to the court of appeal;
- b. That is limited to matters arising after previous court of appeal decision.

NOTE

See step 53, above, for procedures to follow *after* supreme court decision.

Further Research: See Handling Civil Appeals (Cal CEB Action Guide June 2008).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 56. FILE MEMORANDUM FOR COSTS ON APPEAL

STEP 56. FILE MEMORANDUM FOR COSTS ON APPEAL

DEADLINE TO FILE MOTION TO RECALL REMITTITUR

Within **30 days** after appellate court issues remittitur, *if* the court clerk failed to include costs, file a motion in the *appellate* court to recall and correct the remittitur. Cal Rules of Ct 8.278(b)(2).

DEADLINE TO FILE MEMORANDUM OF COSTS

Within **40 days** after clerk mails notice that remittitur has issued, serve and file verified cost memorandum in the *trial* court. Cal Rules of Ct 8.278(c)(1).

DEADLINE TO FILE MOTION FOR ATTORNEY FEES

When Court Must Determine Fees

Within **40 days** after clerk mails notice that remittitur has issued, serve and file notice of motion to claim attorney fees on appeal under statute or contract requiring the court to rule on whether claimant is entitled to fees and, if so, the amount. Cal Rules of Ct 8.278(c)(1), 3.1702(c)(1). On claiming trial attorney fees as costs, see step 41, above.

NOTE

Before expiration of the time allowed to file a motion for attorney fees, the parties may stipulate to an extension of time to file the motion of up to an additional 60 days. Cal Rules of Ct 3.1702(c)(2).

If Fees Fixed

If statutory or contractual attorney fees on appeal are fixed, without need for court determination, claim attorney fees in cost memorandum. Cal Rules of Ct 3.1702(e). See Cal Rules of Ct 8.278(d)(2).

NOTE

Before expiration of the time allowed to file a motion for attorney fees, the parties may stipulate to an extension of time to file such a motion of up to an additional 60 days.

DEADLINE TO FILE MOTION TO TAX COSTS

Within **15 days** after prevailing party serves cost memorandum, plus extension of time if memorandum was served by mail (CCP §1013), opponent should file motion to tax costs. Cal Rules of Ct 8.278(c)(1), 3.1700(b)(1).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Appeal/STEP 57. APPEALS FROM TRIAL COURT IN LIMITED CIVIL CASE

STEP 57. APPEALS FROM TRIAL COURT IN LIMITED CIVIL CASE

NOTICE OF APPEAL DEADLINES

DEFINITION OF "JUDGMENT"

The term "judgment" includes any judgment or order that may be appealed. Cal Rules of Ct 8.804(23).

GENERAL DEADLINE

File notice of appeal from trial court within the *earliest* of (Cal Rules of Ct 8.822(a)):

a. **30 days** after date the court clerk mails *either*:

- (1) A document entitled "Notice of Entry" of judgment or appealable order; or
- (2) A file-stamped copy of the judgment or appealable order;

b. **30 days** after date any party serves:

- (1) A document entitled "Notice of Entry" of judgment or appealable order; or
- (2) A file-stamped copy of the judgment or appealable order; or

c. **90 days** after entry of the judgment.

"DATE OF ENTRY" DEFINED

Date of entry of judgment is (Cal Rules of Ct 8.822(b)):

- a. Date the clerk files the judgment under CCP §668.5 or enters it into the judgment book; or
- b. For an appealable order, which is to be entered into the minutes, the date it is entered into the permanent minutes; or
- c. If a minute order directs a party to prepare a written order, the date the signed order is filed; or
- d. Date clerk files signed appealable order if not entered in minutes.

DEADLINE EXTENSIONS

The time for you to file a notice of appeal is extended:

Motion for New Trial

If you file a *valid* and *timely* motion of intention to move for new trial that the court denies; in that event, file notice of appeal by *earliest* of (Cal Rules of Ct 8.823(b)):

a. **15 days** after *either*:

- (1) Clerk enters order denying motion; or
- (2) Denial by operation of law; or

b. **90 days** after the date of entry of judgment. (For definition of "date of entry," see above.)

NOTE

Be aware that an order granting a new trial is an appealable order (CCP §904.2(e)), but it does not extend the time to appeal from the underlying judgment. See Cal Rules of Ct 8.823(b).

Caution: CCP §§1010.6(a)(6) and 1013(a) do *not* extend time to file notice of intention to move for new trial.

Motion to Vacate Judgment

If you file a *valid* and *timely* motion to vacate a judgment (CCP §663), the time to appeal from the judgment is extended until the *earliest* of (Cal Rules of Ct 8.823(c)):

- a. **15 days** after clerk mails or a party serves:
 - (1) An order denying the motion; or
 - (2) A notice of entry of that order; or
- b. **45 days** after the first notice of intention to move or motion to vacate is filed; or
- c. **90 days** after entry of judgment.

Caution: CCP §§1010.6(a)(6), 1013(a) do *not* extend the time to file notice of intention to move to set aside the judgment. CCP §§663a, 1013(a).

Cross-Appeal

When a timely notice of appeal has been filed, any other party may file a cross-appeal within **10 days** after the clerk mails notice of the first appeal. Cal Rules of Ct 8.823(f)(1).

Caution: CCP §1013(a) does *not* extend time to file notice of cross-appeal. See CCP §1013(a).

| |
|----------------------|
| TRANSCRIPT DEADLINES |
|----------------------|

DEADLINE TO CHOOSE FORM OF RECORD

Within **10 days** after you file notice of appeal, serve and file a notice designating the record on appeal (Cal Rules Ct 8.831(a)), which specifies the form of the record you have elected from those listed in Cal Rules of Ct 8.830(a)(1).

Form of Written Record

Choose the form of the *written* record from the following (Cal Rules of Ct 8.830(a)(1)):

- a. Clerk's transcript under Cal Rules of Ct 8.832;
- b. Original file of trial court, if local rule of appellate division allows under Cal Rule of Ct 8.833; or
- c. Agreed statement under Cal Rules of Ct 8.836.

Form of Oral Record

Choose the form of the *oral* record from the following (Cal Rules of Ct 8.830(a)(2)):

- a. Reporter's transcript under Cal Rules of Ct 8.834 or transcript prepared from official electronic recording under Cal Rules of Ct 8.835;
- b. Official electronic recording under Cal Rules of Ct 8.835, if allowed by appellate division local rule;
- c. Agreed statement under Cal Rules of Ct 8.836; or
- d. Statement on appeal under Cal Rules of Ct 8.837.

DEADLINE TO FILE COUNTER-NOTICE FOR ADDITIONAL TRANSCRIPT

Within **10 days** after appellant serves notice designating the transcript, respondent may designate *additional*:

- a. Proceedings to be included in reporter's transcript (Cal Rules of Ct 8.834(a)(3)); or
- b. Papers or records to be included in clerk's transcript (Cal Rules of Ct 8.832(b)(1)).

NOTE

Presiding judge of either trial court or appellate department may extend the time for doing any act involved in preparing the record on appeal in a civil case. Cal Rules of Ct 8.810(b)-(c).

AGREED STATEMENT DEADLINES

DEADLINE TO FILE AGREED STATEMENT

Along with the notice designating the agreed statement as the record on appeal, file *either* (Cal Rules of Ct 8.836(1)):

- a. The agreed statement; or
- b. A stipulation that the parties are attempting to agree on a statement.

Deadline if Stipulation Filed

If you filed a stipulation that you are attempting to agree on a statement, within **30 days** after appellant files notice of designation, file the agreed statement. Cal Rules of Ct 8.836(c)(2)(A).

If Parties Cannot Agree on Statement

Within **30 days** after appellant files notice of designation, you must designate some other form of record. Cal Rules of Ct 8.836(c)(2)(B).

statement on appeal DEADLINES

DEADLINE TO FILE AND SERVE PROPOSED STATEMENT

Within **20 days** after you file notice of designating the statement on appeal as the record on appeal, file and serve the proposed statement. Cal Rules of Ct 8.837(b)(1).

DEADLINE TO OBJECT TO STATEMENT

Within **10 days** after appellant serves the proposed statement, respondent may serve and file any proposed amendments. Cal Rules of Ct 8.837(d)(1).

DEADLINE TO REQUEST HEARING

Within **10 days** after respondent files proposed amendments or the time to do so expires, a party may request a hearing to review and correct the proposed statement. Cal Rules of Ct 8.837(d)(2).

HEARING ON SETTLED STATEMENT

If the request for a hearing is granted, the court shall provide 5 days' notice. Cal Rules of Ct 8.837(d)(3). Within 10 days after the hearing, the trial judge must make any corrections or modifications to the statement. Cal Rules of Ct 8.837(d)(4).

IF NO HEARING ORDERED

Within 10 days after the time to request a hearing expires, if the request for a hearing is denied, the trial judge must make any corrections or modifications to the statement necessary. Cal Rules of Ct 8.837(d)(4).

DEADLINE FOR PROPOSED MODIFICATIONS OR AMENDMENTS TO CORRECTED STATEMENT

If the trial judge modifies or corrects the proposed statement, then within 10 days after the clerk sends the corrected statement to the parties, a party may file and serve proposed modifications or amendments to the statement. Cal Rules of Ct 8.837(e)(2).

CERTIFICATION OF STATEMENT

a. If the trial judge does not make any corrections or modifications to the proposed statement and does not order the use of an official electronic recording or the preparation of a transcript in lieu of correcting the statement, he or she must promptly certify the statement. Cal Rules of Ct 8.837(f)(1).

b. If the trial judge corrects or modifies the proposed statement, within 5 days after the time for filing any proposed modifications or objections has expired, the judge must modify or correct the statement as necessary and certify the statement. Cal Rules of Ct 8.837(f)(2).

APPELLATE DEPARTMENT OF trial COURT DEADLINES

"DATE OF FILING BRIEFS" DEFINED

A brief is considered "filed" on the date the clerk receives it. Cal Rules of Ct 8.25(b)(1).

"Timely" Filing

A brief will be considered timely filed if you (Cal Rules of Ct 8.25(b)(3)):

- a. Mail it by priority mail or Express Mail, and the time for filing has not expired by the date of mailing, as shown on a postal receipt or postmark; or
- b. Deliver it to a common carrier promising overnight delivery, and the time for filing has not expired by the date of delivery to the carrier, as shown on carrier's receipt.

Caution: Before filing a brief, you must serve it on each adverse party who has appeared separately, and then include a proof of service evidencing that service when filing the brief with the court. Cal Rules of Ct 8.882(d)(1).

DEADLINE TO FILE APPELLANT'S OPENING BRIEF

File appellant's opening brief within **30 days** of the filing of the record in the trial court appellate department. Cal Rules of Ct 8.882(a)(1).

NOTE

This deadline applies regardless of the form of record chosen. Cal Rules of Ct 8.882(a)(1).

APPLY TO EXTEND TIME

A party can apply for an extension for filing brief by (Cal Rules of Ct 8.810(c)-(e)):

- a. Filing application with presiding judge of appellate department; and
- b. Giving notice of application as required by presiding judge.

DEADLINE TO FILE RESPONDENT'S BRIEF

Within **30 days** after appellant files opening brief, file respondent's brief. Cal Rules of Ct 8.882(a)(2).

DEADLINE TO FILE APPELLANT'S REPLY BRIEF

Within **20 days** after respondent files brief, but no later than the time of the hearing on appeal, file appellant's reply brief. Cal Rules of Ct 8.882(a)(3).

Further Research: See California Civil Appellate Practice §§10.63-10.68 (3d ed Cal CEB 1996).

PETITION FOR REHEARING IN APPELLATE DEPARTMENT OF trial COURT

DEADLINE TO FILE AND SERVE PETITION FOR REHEARING

Within **15 days** after the court pronounces its judgment, file and serve petition for rehearing. Cal Rules of Ct 8.889(b)(1).

DEADLINE TO ANSWER PETITION FOR REHEARING

Within **8 days** after filing of the petition, respondent must file and serve an answer. Cal Rules of Ct 8.889(b)(2).

COURT ACTS

Rehearing Granted

Court may grant petition for rehearing up to the time the court's decision becomes final (see below). Cal Rules of Ct 8.889(a).

Rehearing Denied

The court denies rehearing by *either* (Cal Rules of Ct 8.889(c)):

- a. Making an order before the decision becomes final; or
- b. Taking no action before the decision becomes final.

APPELLATE DEPARTMENT DECISION BECOMES FINAL

When Court Files Decision

Generally, an appellate department decision becomes final 30 days after the appellate department pronounces judgment. Cal Rules of Ct 8.888(a)(1).

When Timely Rehearing Petition Is Filed

If a timely petition for rehearing is filed, the judgment becomes final on the *earlier* of (Cal Rules of Ct 8.889(c)(2), 8.888(a)(1)):

- a. **30 days** after judgment is pronounced; or
- b. Denial of all petitions for rehearing.

If Court Modifies Judgment

If the court modifies the judgment, it becomes final 30 days after the date of modification order. Cal Rules of Ct 8.888(b)(2).

If Court Modifies Opinion But Not Judgment

If the court modifies the opinion without changing the judgment, the judgment becomes final 30 days after the court pronounced it. Cal Rules of Ct 8.888(a)(1), (b)(2).

TRANSFER TO COURT OF APPEAL

DEADLINE TO FILE APPLICATION FOR CERTIFICATION

File application for certification for transfer to court of appeal (Cal Rules of Ct 8.1005(b)(1)):

- a. At any time after the record on appeal is filed in the appellate division; and
- b. Within **15 days** after *either*:
 - (1) Judgment is pronounced; or
 - (2) A modification order changing the appellate judgment is filed.

DEADLINE TO FILE OPPOSITION TO APPLICATION FOR CERTIFICATION

Within **5 days** after the application is filed, any other party may serve and file an opposition. Cal Rules of Ct 8.1005(b)(3).

DEADLINE FOR SUPERIOR COURT TO FILE CERTIFICATION

Trial court may certify case at any time after the record on appeal is filed in the appellate division and before the appellate division judgment is final in that court. Cal Rules of Ct 8.1005(d), 8.888(a)(1).

DEADLINE FOR COURT OF APPEAL TO TRANSFER CASE FOR HEARING

If trial court orders certification, court of appeal transfers case for hearing within **20 days** after the record on transfer is filed in the court of appeal, which should occur "promptly" after certification is ordered. Cal Rules of Ct 8.1008(c)(1)(A).

FILE BRIEFS IN COURT OF APPEAL ONLY WITH PERMISSION

a. Parties may file briefs after transfer to the court of appeal only if ordered to do so by the court on a party's application or the court's own motion. Cal Rules of Ct 8.1012(a)(1).

b. The court will establish a briefing sequence in a briefing order. Cal Rules of Ct 8.1012(a)(1).

DEADLINE TO FILE OPENING BRIEF

In case transferred to the court of appeal, the opening brief must be served and filed (Cal Rules of Ct 8.1012(b)(1), (d)):

a. Within **20 days** after entry of the briefing order;

b. In form prescribed by Cal Rules of Ct 8.204.

DEADLINE TO FILE RESPONDING BRIEF

The responding brief must be served and filed (Cal Rules of Ct 8.1012(b)(2), (d)):

a. Within **20 days** after filing of opening brief;

b. In form prescribed by Cal Rules of Ct 8.204.

DEADLINE TO FILE REPLY BRIEF

File reply brief within **10 days** after responding brief is filed. Cal Rules of Ct 8.1012(b)(3).

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Deadlines for Enforcing Judgments

STEP 58. ENFORCE JUDGMENTS GENERALLY

DEADLINE TO ENFORCE JUDGMENT

Enforce judgment:

- a. Within **10 years** after date clerk enters judgment to enforce a (CCP §683.020):
 - (1) Money judgment; or
 - (2) Judgment for possession or sale of property.
- b. Within **10 years** after date each installment became due to enforce a judgment payable in installments. CCP §683.030.

NOTE

Be aware that the time to file an independent action on the judgment may be longer than the time to enforce it. See discussion of CCP §337.5, below.

ACTIONS NOT SUBJECT TO DEADLINE

Actions not subject to the deadline are:

- a. Judgments under the Family Code (CCP §683.310);
- b. Money judgment against a public entity (CCP §683.320).

APPLY FOR RENEWAL OF JUDGMENT

To renew judgment:

- a. For lump-sum judgments, apply before expiration of **10 years** after entry of judgment (CCP §§683.120(b), 683.130(a)); see CCP §683.130(b) for installment judgments); and
- b. Wait at least 5 years to renew a judgment that was previously renewed (CCP §683.110(b)).

Effect

Judgment is renewed for 10 years after date you apply. CCP §683.120(b).

Form

You may use Judicial Council Form EJ-190 (Application for and Renewal of Judgment).

SERVE NOTICE OF RENEWAL

There is no deadline to serve the notice of renewal, but you cannot obtain a writ of execution until you have filed proof of either personal service or service by first-class mail. CCP §683.160(b).

Form

Use Judicial Council Form EJ-195 (Notice of Renewal of Judgment).

DEBTOR FILES MOTION TO VACATE

Within **30 days** after you serve notice of renewal, judgment debtor may file motion to vacate the renewal. CCP §683.170(b).

FILE INDEPENDENT ACTION ON JUDGMENT

Bring independent action on judgment within **10 years**. CCP §337.5(3).

When Accrues

Independent cause of action on judgment accrues when judgment becomes final, *i.e.*, after:

- a. The appeal period expires; or
- b. The appeal is finally decided (see Turner v Donovan (1942) 52 CA2d 236, 238, 126 P2d 187).

Tolling

10-year statute of limitations to pursue independent action is tolled:

- a. During time judgment debtor is absent from California. CCP §351; but see Abramson v Brownstein (9th Cir 1990) 897 F2d 389, 391 (CCP §351 is unconstitutional if defendant was involved in interstate commerce); Koban v Coban (1988) 204 CA3d 915, 924, 251 CR 570 (if interstate commerce is *not* involved, CCP §351 does not violate Commerce Clause).
- b. For a cause of action against a defendant who was a *nonresident* of California when the cause of action accrued, for periods of time when the defendant is *out of the state*; the statute begins to run only when defendant *enters* the state. Koban v Coban (1988) 204 CA3d 915, 920, 251 CR 570. See also Pratali v Gates (1992) 4 CA4th 632, 638, 5 CR2d 733.

Further Research: See Debt Collection Practice in California, chaps 2-3, 7 (2d ed Cal CEB 1999). See also Enforcing Civil Money Judgments (Cal CEB Action Guide November 2008).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 59. ENFORCE JUDGMENT BY WRIT OF EXECUTION

STEP 59. ENFORCE JUDGMENT BY WRIT OF EXECUTION

WHEN APPLICABLE

Enforce judgment by writ of execution when client/judgment creditor wants to collect judgment by:

- a. Obtaining a writ of execution (CCP §699.510(a)); and
- b. Delivering the writ to appropriate officer to "levy," *i.e.*, obtain property from judgment debtor or a third party (CCP §§687.010, 699.530(a)).

DEADLINE TO LEVY

180 days after date clerk issues writ of execution, levying officer's authority to levy ends. CCP §699.530(b).

LEVY CREATES LIEN

Unless debtor satisfies the judgment sooner, levy on property creates an execution lien from (CCP §697.710):

- a. The time of levy; until
- b. 2 years after date clerk issued writ.

DEADLINE TO RETURN WRIT

The levying officer must file the writ of execution with the court by the *earliest* of (CCP §699.560(a)):

- a. **2 years** after date clerk issued writ;
- b. Judgment creditor's written request;
- c. Promptly after levying officer completes all levies and sales as instructed;
- d. Promptly after **180 days**, if no levy made; or
- e. On expiration of time for enforcement of judgment, *i.e.*, 10 years after entry of judgment, unless renewed (CCP §683.020).

EXCEPTIONS TO DEADLINE TO RETURN WRIT

The levying officer may return the writ later than 2 years after issuance *if* levying on:

Decedent's Estate

Property in a decedent's estate; then deadline is extended to **1 year** after Decree of Distribution becomes final. CCP §§699.560(b), 700.200(e).

Employee Benefit Plan

Payments from an employee pension benefit plan; then deadline is extended to **1 year** after plan withholds and pays full amount to satisfy judgment. CCP §699.560(c); Fam C §5103(c).

WAGE GARNISHMENT

If levy is under the Wage Garnishment Law (CCP §§706.010-706.154) and earnings withholding order remains in effect, levying officer shall return writ under CCP §699.560(a), discussed above, and make supplemental return under CCP §706.033. CCP §§699.560(d), 706.026.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 60. WHEN EXECUTING ON REAL PROPERTY DWELLING

STEP 60. WHEN EXECUTING ON REAL PROPERTY DWELLING

WHEN APPLICABLE

Levying officer levies on a real property dwelling by:

- a. Serving a copy on the judgment debtor of (CCP §700.010(a)):
 - (1) Writ of execution;
 - (2) Notice of levy;
 - (3) Copy of form listing exemptions; and
 - (4) Any affidavit of identity for names of the debtor listed on the writ.
- b. Recording a copy of the writ and notice of levy with the county recorder where the real property is located (CCP §700.015(a)); and
- c. Promptly notifying you that levy is complete (CCP §704.750(a)).

APPLY TO COURT TO SELL DWELLING

Within **20 days** after levying officer serves notice that levy on a real property dwelling has been completed, you must (CCP §704.750(a)):

- a. Apply to court for an order to sell the dwelling; and
- b. File a copy of the application with the levying officer.

SET HEARING

Within **45 days** after the application for an order for sale is filed, the court will (CCP §704.770(a)):

- a. Set a hearing on the application; and
- b. Order the judgment debtor to show cause why an order for sale should not issue.

DEADLINE TO SERVE NOTICE OF HEARING

No later than **30 days** before the hearing, serve copies of the order to show cause, the application, and the notice of hearing on *both* (CCP §704.770(b)):

- a. The debtor, personally or by mail; and
- b. *Either*:
 - (1) An occupant of the dwelling *personally*; or
 - (2) If no occupant, *post* a copy of each document in a conspicuous place at the dwelling.

SERVE ORDER OF SALE

If debtor or his or her representative did not appear at the hearing, within **10 days** after you obtain court order for the sale, serve copies of the order and the notice of the order on *both* (CCP §704.790(a)-(b)):

- a. The debtor, personally or by mail; and

b. *Either:*

- (1) An occupant of the dwelling *personally*; or
- (2) If no occupant, *post* copy of order and notice in conspicuous place at the dwelling.

DETERMINE LIENHOLDERS

No earlier than **30 days** after levying officer levies (CCP §701.540(h)):

- a. Ascertain the names of all persons having liens on the real property as of the date of levy; and
- b. Instruct levying officer to mail notice of sale to each such person at the address used by the county recorder to return the instrument creating that person's lien.

WHEN TO NOTICE SALE

- a. Notice sale *no earlier* than **121 days** after levying officer serves the notice of levy on debtor. CCP §701.545.
- b. At least **20 days** before the sale, levying officer must (CCP §701.540(b)):
 - (1) Serve notice of sale on debtor (CCP §701.540(c));
 - (2) Post notice of sale (CCP §701.540(d));
 - (3) Serve occupant with notice of sale (CCP §701.540(e));
 - (4) Publish notice of sale (CCP §701.540(g));
 - (5) Mail notice of sale to lienholders (on lienholders, see above; CCP §701.540(h)).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 61. SEEK WAGE GARNISHMENT

STEP 61. SEEK WAGE GARNISHMENT

WHEN APPLICABLE

Seek wage garnishment to compel employer to withhold debtor/employee's earnings to satisfy money judgment that is not spousal or child support. CCP §§706.020-706.021.

DEADLINE TO SERVE EMPLOYER

Serve employer within **180 days** after clerk issues writ of execution (see step 59, above). CCP §§699.530(b), 706.103(c), 706.108(c).

LIEN CREATED BY SERVING ORDER

For 1 year after levying officer serves withholding order on employer, lien continues against (CCP §706.029):

- a. The debtor's earnings; and
- b. The property of the *employer* subject to enforcement of a money judgment.

WITHHOLDING PERIOD

The withholding period begins on the 10th day after serving an earnings withholding order on employer and continues until the *earliest* of (CCP §706.022(a)):

- a. The date employer has withheld the full amount required to satisfy the order;
- b. The termination date specified in a court order served on employer;
- c. The termination date specified in a notice of termination served on employer by levying officer; or
- d. The termination date of a dormant or suspended earnings withholding order as determined under CCP §706.032.

EMPLOYER PAYS LEVYING OFFICER

No later than the 15th day of each month, the employer pays to levying officer any sums withheld. CCP §706.025(a).

LEVYING OFFICER PAYS

Levying officer (CCP §706.026):

- a. Pays creditor at least once every **30 days**; and
- b. At least once every **2 years**, files an account with the court of all amounts collected under the order.

Further Research: See CCP §§706.010-706.154; Debt Collection Practice in California, chap 10 (2d ed Cal CEB 1999).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 62. OBTAIN ORDER OF EXAMINATION OF JUDGMENT DEBTOR

STEP 62. OBTAIN ORDER OF EXAMINATION OF JUDGMENT DEBTOR

OBTAIN COURT ORDER

Ask the court *ex parte* to order the judgment debtor, or a third party, to appear for examination. CCP §§708.110, 708.120.

DEADLINE TO SERVE EXAMINEE

Not less than **10 days** before the examination, serve the order (CCP §§708.110(d), 708.120(b)):

- a. *If debtor is examinee:* Personally on the *debtor*, as specified in CCP §415.10;
- b. *If third party is examinee:* Personally on third party *and* personally or by mail on *debtor*.

SUBSEQUENT EXAMINATIONS

Wait at least 120 days from the initial examination before requesting another, unless you can show good cause (see Debt Collection Practice in California §§8.26, 8.29 (2d ed Cal CEB 1999)). CCP §708.110(c).

LIEN CREATED BY SERVING ORDER

For 1 year after the court issues order of examination, service of the order creates a lien on (CCP §§708.110(d), 708.120(c)):

- a. All nonexempt personal property of judgment debtor; and
- b. Debtor's interest in property held by a third party.

DEBTOR'S DEADLINE TO FILE MOTION FOR EXEMPTION

At least **3 days** before the examination of a third party, debtor may file a noticed motion claiming exemption for all or part of property in that third party's possession or control. CCP §708.120(d).

Further Research: See CCP §§708.110-708.205; Debt Collection, chap 8.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 63. SERVE WRITTEN INTERROGATORIES ON JUDGMENT DEBTOR

STEP 63. SERVE WRITTEN INTERROGATORIES ON JUDGMENT DEBTOR

WHEN TO SERVE

Serve written interrogatories on judgment debtor at any time after judgment, and before the first examination of debtor, and at least 120 days after (CCP §§708.010, 708.020(b)):

- a. You conduct an examination of judgment debtor; or
- b. Judgment debtor responds to a previous set of interrogatories.

NOTE

Interrogatories to judgment debtor may be propounded as provided in CCP §§2030.010-2030.090.

DEADLINE FOR JUDGMENT DEBTOR TO RESPOND

Judgment debtor must respond within (CCP §§708.020(a), 2030.260(a), 1013):

If Personally Served

30 days after judgment creditor personally serves the interrogatories;

If Served by Mail

- a. **35 days** after judgment creditor serves by mail to an address in California;
- b. **40 days** after judgment creditor serves by mail to an address outside California, but in the United States; or
- c. **50 days** after judgment creditor serves by mail to an address outside the United States.

If Served by Fax or Overnight Mail

30 days plus 2 court days after creditor serves by fax, Express Mail, or other overnight delivery. See step 15, above, on general deadlines for interrogatories and caution regarding extensions of time for method of service.

If Served Electronically

30 days plus 2 court days after creditor serves electronically. CCP §1010.6(a)(6); Cal Rules of Ct 2.260. On when electronic service is permitted, see step 1, above.

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 64. FILE CREDITOR'S SUIT AGAINST THIRD PARTY

STEP 64. FILE CREDITOR'S SUIT AGAINST THIRD PARTY

WHEN LIKELY TO ARISE

You may decide to file a creditor's suit against a third party if your client wants to collect a money judgment from a third party who (CCP §708.210):

- a. Possesses or controls property in which the judgment debtor has an interest; or
- b. Is indebted to the judgment debtor.

DETERMINE APPLICABLE STATUTE OF LIMITATIONS

To determine applicable statute of limitations, ascertain which statute of limitations would apply if the judgment debtor were suing the third party.

DEADLINE

- a. File creditor's suit against third party before the *later* of:

(1) **Date the statute of limitations expires** (CCP §708.230(a)(1)); or

(2) **1 year** after you create a lien on the property or debt, if lien was created before statute of limitations expired (CCP §708.230(a)(2)); see steps 59 and 62, above, for ways to create a lien); or

- b. You may not bring an action after the time for enforcement of judgment expires, *i.e.*, 10 years after entry of judgment, unless renewed (CCP §708.230(b)).

Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 65. ENFORCE JUDGMENT AGAINST PREVIOUSLY UNSERVED DEFENDANTS

STEP 65. ENFORCE JUDGMENT AGAINST PREVIOUSLY UNSERVED DEFENDANTS

WHEN APPLICABLE

To enforce a judgment against a previously unserved defendant who is jointly liable on the contractual obligation stated in the complaint, you may obtain a special summons (see below). CCP §§989, 410.70; *Hillco, Inc. v Stein* (1978) 82 CA3d 322, 326, 147 CR 108 (limited to contractual obligations).

OBTAIN SPECIAL SUMMONS

To obtain a special summons:

- a. File an application with the court, stating that the judgment remains unsatisfied (CCP §§990-991);
- b. Have clerk issue summons and order to show cause to unserved defendant (CCP §990).

NOTE

Use Judicial Council Form SUM-120 (Summons (Joint Debtor)).

RETURN SUMMONS

90 days after deadline to return the original summons (total of **3 years and 150 days**), file proof of service of the joint debtor summons. CCP §§990, 583.210. See step 3, above, for service deadlines.

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/Deadlines for Enforcing Judgments/STEP 66. FILE ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

STEP 66. FILE ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

WHEN APPLICABLE

If judgment debtor satisfies, or partially satisfies, the judgment, debtor may demand that judgment creditor (CCP §724.050(a)):

- a. File acknowledgment of satisfaction; and/or
- b. Deliver *executed* acknowledgment of satisfaction to debtor.

DEADLINE

15 days after judgment creditor receives the demand, file and/or deliver the acknowledgment. CCP §724.050(c).

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Source: Civil Litigation/Meeting Statutory Deadlines: During and After Litigation (Action Guide)/TABLE OF STATUTES AND RULES

TABLE OF STATUTES AND RULES

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Statutes

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