

Forms & Procedure for California Civil Litigation

Quickly find detailed and authoritative answers to difficult questions concerning pleadings, motions, discovery, and more

This landmark work from Donald G. Rez and Robert F. Kane probes every step of civil procedure before trial.

The book's issue-oriented outline format is supported by 3,600 recent cases, 175 forms, case-based illustrations, practice-proven strategies, step-by-step procedures, pattern language, and a full-text CD. Coverage runs from taking the case up to trial, and includes numerous tips on how to:

- ⊙ Avoid and fix mistakes
- ⊙ Resolve peripheral disputes
- ⊙ Craft better documents
- ⊙ Answer ethical questions
- ⊙ Process cases efficiently
- ⊙ Sharpen your responses

Focused on Issues

California Pretrial Practice & Forms concentrates on the topics where questions and disputes arise. It devotes pages where you spend time: drafting pleadings, preparing and presenting motions, conducting discovery, resolving discovery disputes, and negotiating settlements. For example, you will find coverage of troublesome matters like:

Depositions

Common traps for the examiner. [§22:362](#)

How to block coaching. [§22:366](#)

A trick for obtaining deposition notes. [§22:367](#)

What are the procedures for subpoenaing a non-party witness for deposition? [§22:190](#)

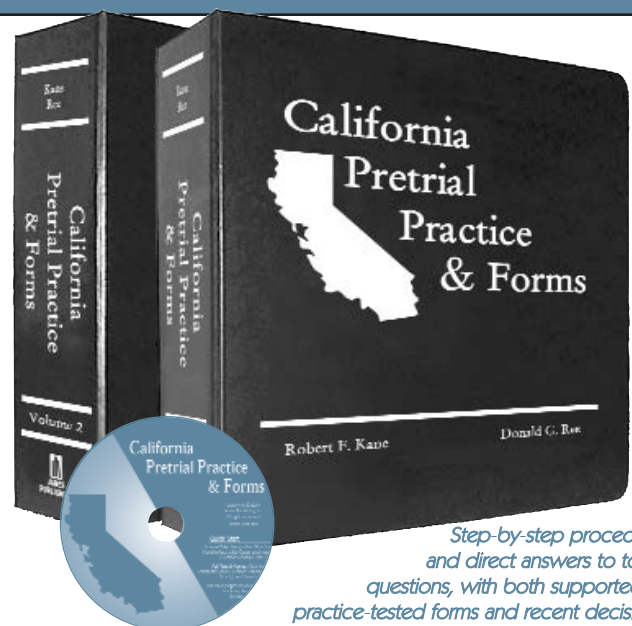
When is it appropriate and not appropriate to suspend a deposition? [§22:380](#)

What should examining counsel do when a witness refuses to answer questions at deposition? [§22:368](#)

When representing a deposition witness, when should I instruct the deponent not to answer a question or produce a document? [§22:510](#)

What objections are proper during a deposition? [§22:550](#)

Objecting vs. filing a motion to quash. [§22:465](#)



Step-by-step procedures and direct answers to tough questions, with both supported by practice-tested forms and recent decisions.

Document Discovery

Dealing with document discovery disputes. [§21:350](#)

Discovery of personal and employment records. [§21:540](#)

Moving for a protective order, and when it is likely to be granted. [§22:471](#)

Strategic considerations when confidential information is sought. [§20:34](#)

Extending time to answer with objections. [§21:145](#)

Which objections to a notice to produce are likely to stand up? [§21:260](#)

What are the best grounds and tactics for withholding documents from production? [§21:260](#)

Motions

Strategic considerations. [§14:10](#)

Practical advice on pagination, titling, parties' names, etc. [§14:20](#)

Brief-drafting tips. [§14:150](#)

Tips from the bench for effective oral argument. [§14:430](#)

Grounds for ex parte motions. [§14:490](#)

Tactical considerations for opposing motions. [§14:310](#)

**Sample pages and table of contents
and forms inside...**

Abbreviated Contents

1. Taking the Case

Initial client contact, case assessment and valuation, evaluate client, consider ethical factors, evaluate fee sources, prepare for case conference, consider fee and cost arrangements, formalize attorney-client relationship, case conference, taking over from prior counsel

2. Presuit Activities

Investigating the case, methods and sources, protecting your results, negotiation, insurance coverage issues, plaintiff's and defendant's considerations, presuit demands, claims or notices to public entities, exhaustion of other remedies, other statutory presuit requirements, fee issues, presuit disclosure, subrogation rights

3. Statutes of Limitation

Contractual modifications, presuit requirements, laches, contract claims, tort claims, actions involving real property, negotiable instruments, family law, wills and probate, discovery rule, relation-back doctrine, waiver and estoppel, tolling and suspension rules

4. Subject Matter Jurisdiction

Jurisdiction of superior courts, exceptions, challenging subject matter jurisdiction, limited and unlimited civil cases, reclassification

5. Personal Jurisdiction

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6. Venue & Forum Non Conveniens

Significance of venue, venue statutes, venue selection, challenging improper venue, forum non conveniens

7. Summons & Service of Process

Methods of service of process, summons requirements, who can serve process, whom to serve, return of service, amending summons and return, general appearance, challenging service

8. Parties

Capacity to sue or be sued or defend, standing to sue, joinder of parties (necessary and permissive), interpleader actions, intervention in an action, third party practice, class actions

9. Pleadings

Basic pleading rules, format requirements, drafting complaints and answers and cross-complaints, amending and supplementing pleadings

10. Motion Practice

General principles applicable to motions, formal requirements, requirements for motion papers including notice and motion and memorandum of authorities, evidence supporting motions, service and filing, opposition and replies, hearings and orders, reconsideration, and ex parte motions

11. Attacking the Pleadings

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12. Temporary Restraining Orders & Preliminary Injunctions

Grounds for obtaining and opposing preliminary injunctive relief, proper and improper subjects for preliminary injunctive relief, how to obtain and oppose a TRO or PI, dissolution and modification and enforcement of TROs and PIs, appellate review, remedies for wrongful injunction

13. All Discovery

Advantages and disadvantages of discovery, governing law, right to discovery, discovery limits, scope, strategies, discovery plan, discovery sequence, deadlines, discovery stipulations, supplementing responses

14. Production of Documents & Other Things

Noticing the production of documents, responding and objecting to a notice, producing documents, compelling production and related motion practice, stipulations and protective orders for confidential materials, subpoenas to third parties, public records

15. Depositions

Uses and types of depositions, scheduling, notices and subpoenas, preparation, conduct of examination, defending and objections, motions

16. Physical & Mental Examinations

Logistics of exams, obtaining physical and mental examinations by stipulation and request and court order, conduct of the examination, exchange of reports of examining physicians, waiver of privilege

17. Interrogatories

General principles and techniques about interrogatories, how to propound interrogatories, how to respond, including both answering and objecting, supplemental and amended answers, motion practice related to interrogatories, evidence issues

18. Requests for Admission

Application of RFAs, use of and strategies for RFAs, RFA drafting and service, response deadlines, response drafting and service, substance of responses, objections, requesting parties' motions, responding parties' motions, use at trial.

19. Summary Judgment

General rules, advantages and disadvantages, strategies, motions for summary adjudication, summary judgment evidence, burdens of proof, motions for and opposition to summary judgment, hearing and order, rehearing, appellate review

20. Default Judgments & Voluntary Dismissal

Limitations on and effects of default judgments, clerk's entry of default, clerk's entry of default judgment, court's entry of default judgment, motions for new trial and appeal, mandatory and discretionary relief from default for mistake, inadvertence, surprise and neglect, equitable relief, and relief from void default judgments

21. Settlement & Alternative Dispute Resolution

Settlement: How to evaluate a case for settlement, how to negotiate towards settlement, statutory offer to compromise, the role of courts in settlements, the mechanics of settlements, motions to enforce settlement.

Alternative Dispute Resolution: Court ordered mediation, judicial arbitration, both voluntary and court ordered.

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Emotional Distress, and Negligence], Memorandum of Points and Authorities in Opposition to Demurrer [Causes of Action for Fraud, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Negligence], Reply to Opposition to Demurrer [Causes of Action for Fraud, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Negligence]

Notice of Hearing on Demurrer and Demurrer [Negligence Against Insurance Agent], Memorandum of Points and Authorities in Support of Demurrer [Negligence Against Insurance Agent], Notice of Hearing and Demurrer [Liability of Government Entity and Intentional Infliction of Emotional Distress], Memorandum of Points and Authorities in Support of Demurrer [Liability of Government Entity and for Intentional Infliction of Emotional Distress], Demurrer to Cross-Complaint [Breach of Contract, Fraud, Negligent Misrepresentation], Memorandum of Points and Authorities in Support of Demurrer to Cross-Complaint [Breach of Contract, Fraud, Negligent Misrepresentation]

Notice of Motion and Motion to Strike [Punitive Damages and Attorney Fees], Memorandum of Points and Authorities in Support of Motion to Strike [Punitive Damages and Attorney Fees], Request for Judicial Notice in Support of Motion to Strike [Punitive Damages and Attorney Fees], Memorandum of Points and Authorities in Opposition to Motion to Strike [Punitive Damages and Attorney Fees], Plaintiff's Notice of Motion and Motion for Dismissal and Judgment [Demurrer Sustained Without Leave to Amend], Points and Authorities in Support of Motion for Dismissal and Judgment, Declaration in Support of Motion for Dismissal and Judgment

All Discovery

Demand for Exchange of Expert Witness Information [CCP § 2034], Plaintiff's Expert Designation, Exchange of Required Expert Witness Information and Expert Witness Declaration [CCP § 2034(f)] [co-parties' joint declarations; multiple experts], Plaintiff's Proposed Discovery Plan, Defendant's Proposed Discovery Plan & Schedule [with multiple defendants]

Production of Documents & Other Things

Request for Production of Documents to Plaintiff, Request for Production of Documents to Defendant, Response to Request for Production of Documents, Supplemental Response to Request for Production of Documents [with verification and proof of service], Privilege Log, Confidentiality Agreement, Stipulated Protective Order, Meet and Confer Letter With Regard to Responses to Requests for Document Production, Notice of Motion to Compel Document Production, Points and Authorities in Support of Motion to Compel Document Production

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Production #2, Statement of Items in Dispute in Support of Motion to Compel Further Response

Depositions

Notice of Deposition, Notice of Motion to Quash Subpoena, Notice of Motion and Motion for a Protective Order Limiting or Terminating Deposition, Letter Brief re Motion to Compel Deposition, Letter re Motion to Compel Further Answers to Deposition Questions, Letter Reply Brief in Support of Motion to Compel Further Answers to Deposition Questions, Letter Reply in Support of Motions for Protective Order Continuing Deposition, and to Compel Attendance of Deponent, and for Extension of Discovery

Physical & Mental Examinations

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Interrogatories

Special Interrogatories, Declaration in Support of Additional Interrogatories, Declaration in Support of Additional Discovery with Special Interrogatories [with details re relevance of interrogatories], Responses to Special Interrogatories, Notice of Motion and Motion to Compel Responses to Special Interrogatories, Requests for Production, and Form Interrogatories

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Chapter 21

Production of Documents and Other Things

QUICK VIEW

Definition: A notice to produce and permit discovery is a written demand by a party to inspect, copy, test or photograph documents or other tangible things in another party's possession, custody, or control. A party can also obtain access to documents and other things from a nonparty pursuant to a subpoena.

Scope, Rules, and Exclusions: applicable to the production of documents, responses, and objections to a notice, producing documents, and compelling production and related motion practice. Stipulations and production orders by confidential materials. Subpoenas to third parties. Public records.

Strategic and Tactical Considerations:

Best practice: To avoid the delay and expense of numerous arguments about procedure, strictly comply with the availability of providing notice and producing documents. Consider stipulating to procedures for exchanging documents.

Discovery party: Save written demands for production of documents early. Draft notices that identify the documents sought with reasonable particularity. Use dictations and instructions to make the demand documents more concise, effective, clear, and less objectionable.

Respondent: Work with the client to complete the responsive items. Separate the items you will withhold (e.g., communications, privileged, confidential, and outside of our control) from materials you will produce and prepare a privilege log for service on the demanding party. To avoid waiving objections to the demand, identify on a written response whether all the objections you want to preserve. If the demand seeks confidential information, propose the parties enter into a confidentiality agreement or stipulation and consent to a production order.

Statutes and Rules: CCP §§ 2019, 2031, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 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Motion to Compel Further Responses

Notice of Motion and Motion for a Protective Order #1, Points and Authorities in Support of Motion for Protective Order #1, Declaration in Support of Motion for a Protective Order #1, Notice of Motion and Motion for Protective Order #2, Points and Authorities in Support of Motion for Protective Order #2, Declaration in Support of Motion for a Protective Order Regarding Excessive Interrogatories #2, [Proposed] Order Granting Motion for Protective Order.

Requests for Admission

Request for Admissions, Response to Request for Admissions, Notice of Motion for Order Establishing Admissions [CCP §2033(k)], Memorandum of Points and Authorities in Support of Motion for Order Establishing Admissions, Declaration in Support of Motion for Order Establishing Admissions, Order Establishing Admissions

Notice of Motion and Motion to Pay Expenses of Proof, Memorandum of Points and Authorities in Support of Motion to Pay Expenses of Proof, Declaration in Support of Motion to Pay Expenses of Proof, Memorandum of Points and Authorities in Support of Motion for Relief from Waiver [CCP §2033(k)], Declaration in Support of Motion for Relief from Waiver [CCP §2030(k)], Memorandum of Points and Authorities in Support of Motion to Withdraw Admissions [CCP 2033(m)], Declaration in Support of Motion to Withdraw Admissions [CCP 2033(m)], Memorandum of Points and Authorities in Opposition to Motion to Withdraw Deemed Admissions [CCP 2033(m)], Declaration in Support

of Opposition to Motion to Withdraw Deemed Admissions [CCP 2033(m)]

Summary Judgment

Notice of Motion for Summary Judgment or Summary Adjudication, Memorandum of Points and Authorities in Support of Motion for Summary Judgment or Summary Adjudication

Default Judgments & Voluntary Dismissal

San Diego Superior Court Rules, Appendix A, Guidelines for Default Judgments, Memorandum of Points & Authorities in Support of Request for Entry of Default Judgment, Judgment by Default by Court [CCP § 585], Notice of Motion and Motion To Set Aside Default and Default Judgment [CCP 473(b)], Memorandum of Points And Authorities in Support of Motion To Set Aside Default and Default Judgment [CCP 473(b)], Memorandum of Points and Authorities in Opposition to Defendant's Motion To Set Aside Default and Default Judgment [CCP 473(b)]

Notice of Motion and Motion To Set Aside Default [CCP 473.5], Memorandum of Points And Authorities in Support of Motion To Set Aside Default [CCP 473.5], Declaration In Support of Motion To Set Aside Default [CCP 473.5], Memorandum of Points and Authorities in Opposition to Motion To Set Aside Default [CCP 473.5], Memorandum of Points and Authorities in Reply to Opposition to Defendant's Motion To Set Aside Default [CCP 473.5], Notice of Ruling on Motion To Set Aside Default [CCP 473.5]

essential facts of his case with reasonable particularity and with reasonable diligence to acquire a discovery with the relevant cases and conduct a discovery of action." [Ludwig, Inc. Co. v. Eastwood Admin. Corp., 83 Cal. App. 4th 408, 86 Cal. Rptr. 2d 778 (1980); Frown v. Stewart, 207 Cal. App. 2d, 13 Cal. Rptr. 2d 236 (1964). In similar, compelling circumstances, see §13-130 (re regarding affirmative defenses, see §13-130)]

§13-41 No Argument
[When] a default is entered, the court may accept the motion papers and the trial brief, although you may want to make sure that the motion is properly stated in the manner of the "Notice of the Case." Argument should not constitute "a statement of the facts" nor a "demand for judgment." [CCP §425.10] and may subject the pleading to responsive motions, practice each as a motion to set aside. [CCP §475, 476.]

§13-42 Plead and Conclude Statements
[When] a default is entered, the court may accept the motion papers. [CCP §425.10(a)]

§13-43 Multiple Claims or Defenses
A party may plead multiple causes of action, claims, or defenses, or may separately plead them. [CCP 301(a)]

§13-44 Separating by Reference
It is standard and appropriate practice to incorporate by reference certain allegations into the later stated causes of action. [See California v. Browning-Ferris Industries, 68 Cal. Rptr. 111, 80 Cal. Rptr. 2d, 62 (1998) ("We assume that plaintiff's claim for declaratory relief is part of defendant's counterclaim with the San Jose police, since the preliminary allegations of the complaint were incorporated by reference into the fourth cause of action.") On the other hand, it may not be appropriate to incorporate all your paragraphs (including those stating a cause of action) into another cause of action. [International Allowing Services, Inc. v. Knight, 84 Cal. Rptr. 117, 1179, 181 Cal. Rptr. 513, 514 (1968)] (The relevant complaint employs the disjunctive allegation ("either/or") style of pleading, allowing each claim for relief incorporated by reference all procedural paragraphs, which otherwise would be causes of action.") See also California, Inc. v. Superior Court, 185 Cal. Rptr. 46, 181, 578 Cal. Rptr. 434 (1986) ("It is axiomatic that a civil plaintiff may file for the sake of convenience incorporate by reference portions

of his pleading for informational purposes only.")

EXAMPLIFY:
"The Plaintiff prays and desires the allegations set forth in paragraphs 1 through 27 of the Complaint to be fully set forth herein."

THE PRACTICE: Benefits and Drawbacks
Incorporation by reference involves that an allegation, once correctly stated, is consistently and uniformly stated later in the pleading. This is particularly useful in pleading those all-encompassing allegations that are found in every state that supports several legal causes of action. For incorporation can be an alternative for the remedy. [P.S., 7th (1998)] But if the plaintiff makes a mistake in the incorporated paragraph, the mistake—perhaps serious—is automatically duplicated in the incorporating paragraph. [See, for example, [California v. Superior Court, 185 Cal. Rptr. 46, 181, 578 Cal. Rptr. 434 (1986)] ("Second, the fourth cause of action was stated from the amended cause complaint in the trial court. Thus, it was possible to discover, well from the cause of action into which it had been incorporated. The review of the amended cause complaint is without reference to the allegations of the 18th cause of action, and they cannot limit other causes of action."); Roman v. County of Los Angeles, 85 Cal. Rptr. 216, 245, 132 Cal. Rptr. 10 (1966)] (Allegation of termination only in 18th cause of action and not incorporated into other claims allegation in paragraph 7 of continuing employment, not incorporated into all claims and made defendant based on statute of limitations-appeals.)

§13-45 Alternative Pleading
Pleadings may state claims and defenses in the alternative, regardless of their consistency. "We acknowledge a party is permitted alternative pleadings—to plead alternative and inconsistent theories in a single proceeding." [International Allowing Services, Inc. v. Knight, 84 Cal. Rptr. 117, 118, 181 Cal. Rptr. 513, 514 (1968)]

CAUTION:
It is probable a later claim or multiple jurisdiction, a plaintiff must have probable cause for

Proven practice tips. Advantages and disadvantages, cautions, caveats, examples, tactics, tips, and more keep you clear of pitfalls and help you plot strategy.

About the Authors

Robert F. Kane practices civil and criminal trial and appellate litigation in San Francisco with his firm, Rockwell & Kane. He is also an Adjunct Professor of Law at the University of California, Hastings College of Law, where he was named a Teacher of the Year in 2003.

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Mr. Kane received his JD from UC Davis, where he was an editor of the law review and elected to Order of the Coif.



Donald G. Rez is a principal and founder of the San Diego law firm Sullivan, Hill, Lewin, Rez and Engel. He has practiced in San Diego since graduating Cum Laude from Harvard Law School in 1978.

He has handled all types of commercial lawsuits including trade regulation and antitrust matters, breach of contract; franchisor/franchisee matters, lender liability cases, malpractice, intellectual property and RICO cases. He has been involved in complex and sophisticated multi-district litigation and his antitrust experience has involved claims of virtually every kind.

He has served as an adjunct professor of law at California Western School of Law, and has been on the faculty at NITA.



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CAPP1A

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