

# **How to Write an Effective Brief**

**JUNE 17, 2021**

**SLO County Bar MCLE**

## **Statutes, Rules, Cases and Helpful Resources**

### **Notice of Motion & Memorandum of Points and Authorities**

- Code of Civil Procedure section 1010  
The Notice of Motion must state when, and the grounds upon which, the motion will be made.
- California Rules of Court, rule 3.1110(a)  
Notice of Motion must state in the opening paragraph, the nature of the order being sought and the grounds for issuance of the order.
- California Rules of Court, rule 3.1113(b)  
Memorandum of Points and Authorities must contain a statement of facts, a concise statement of law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.
- California Rules of Court, rule 8.1115(e)  
Citation of cases currently under review by California Supreme Court.
- California Rules of Court, rule 2.110  
Put the title of the document as the footer on each page.

### **Specific Motions**

#### **Demurrers**

- California Rules of Court, rule 3.1320  
Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses.
- Code of Civil Procedure section 430.10
- Code of Civil Procedure section 430.30(a)  
Demurrers are determined on the face of the pleading at issue and matters which are subject to judicial notice. Other evidence should not be submitted and will not be reviewed.

- Useful sources: Witkin's California Procedure treatise (Chapter 5 - Pleading, Subchapter 9 - The Complaint); CACI jury instructions

### **Motions for Summary Judgment**

- *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117-1118 (when treated like a motion for judgment on the pleadings)
- *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 289-290 (regarding overburdensome filings and the court's inherent power when handling deficiencies in summary judgment papers)
- California Rules of Court, rule 3.1350  
Separate Statements
- California Rules of Court, rules 3.1352, 3.1354  
Evidentiary Objections

### **Motions to Compel Further Responses**

- Code of Civil Procedure sections 2030.300(c), 2031.310(c), 2033.290(c)  
Failure to file within 45 days "waives any right to compel a further response."
- *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1409-1410  
45-day deadline "mandatory and jurisdictional"
- Code of Civil Procedure section 473(b)  
Potential relief from jurisdictional deadline.  
See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶¶ 5:365, 5:368.5, 8:1150, 8:1384; *Save Our Forest & Ranchlands v. County of San Diego* (1996) 50 Cal.App.4th 1757, 1770.
- Code of Civil Procedure section 2030.300(b)(2)  
Effective January 1, 2020, in lieu of a separate statement, the court may in its discretion allow the moving party to submit a concise outline of the discovery request and each response in dispute.
- California Rules of Court, rule 3.1345(b)  
Outline in lieu of separate statement with the Court's allowance

### **Evidentiary Support**

- Evidence Code sections 1400, 1410 et. seq.  
Authentication

- *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 855  
“[E]xhibits attached hereto are true and correct copies of the originals or excerpts of the originals or copies of documents produced by Defendants in this action ...,” deemed insufficient.
- California Rules of Court, rule 3.1110(f)(4)  
“[L]inks to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit” (exception for self-represented parties).
- Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶ 9:46.1  
Discusses laying a proper foundation for statements made in a declaration.
- Evidence Code sections 452 and 453  
Identify a specific subdivision and case supporting the request.
- *Ross v. Creel Printing and Publishing Co.* (2002) 100 Cal.App.4th 736, 744  
The burden is on the party seeking judicial notice to provide sufficient information to allow the court to take judicial notice.
- Useful Source: Cal. Judges Benchbook: Civ. Proc. Before Trial (CJER 2021), Chapter 12, §§ 12.31, 12.42-12.48, covering Demurrers (good discussion re judicial notice *and its limits*)
- California Rules of Court, rule 3.1116  
“Other than the title page, ... only the relevant pages of the transcript” – that may include pages before and after for context.  
Remember to call attention to the portion of the transcript “in a manner that calls attention to the testimony.”

## Noteworthy New or Amended Civil Law Statutes and Rules

### Electronic Service

#### Code of Civil Procedure section 1010.6

#### California Rules of Court, rule 2.251

- Represented parties *required* to accept electronic service (except documents that must be served by certified/registered mail) *if* serving party has confirmed by telephone or email the appropriate electronic service address. (Code Civ. Proc., § 1010.6(e)(1).)

- Represented parties must also accept electronic service under Code of Civil Procedure section 1010.6(d), California Rules of Court, rule 2.251(c)(3) [requiring parties to accept electronic service where electronic filing required by local rule] and Local Rule 31.06 [requiring electronic filing].
- Unrepresented parties must expressly consent to electronic service. (See CRC 2.251(b) for ways to manifest express consent)
- Note: Emergency Rule 12 regarding electronic service was repealed in November 2020; please do not cite it.

### **Stipulations for Settlement**

#### **Code of Civil Procedure section 664.6**

- Statute amended such that “signed by a party” is now defined to include the party, attorney representing the party, or, if party is insurer, agent authorized in writing to sign on insurer's behalf.

### **Remote Depositions**

#### **Code of Civil Procedure section 2025.310**

- Provides that the deponent or deposing party may elect to have deposition officer attend deposition remotely and parties/attorneys allowed, but not required, to be physically present with the deposition officer.

### **COVID-19 Related Extension of Deadlines**

#### **Code of Civil Procedure section 599**

- Trial continuance or postponement extends all deadlines that have not already passed as of March 19, 2020, for same length of time as the continuance or postponement.
- Shall remain in effect during the state of emergency proclaimed by the Governor on March 4, 2020 and 180 days after the end of that state of emergency.

## **Court Attorney Contact Information**

Email Address: [SLO-CTATTYS@slo.courts.ca.gov](mailto:SLO-CTATTYS@slo.courts.ca.gov)

- Please let us know of continuances, stipulations to take matters off calendar, settlements, etc., along with the department clerk.
- Make sure to include opposing counsel so there are no ex parte communications.