

# *The* **LEGAL PROFESSIONAL**

FEBRUARY 2024



**"60 DAYS BEFORE TRIAL: READY, SET, GO!"**

By Elise Dresser, CCLS and Jessica Te, Page 28.

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It shall be the duty of each member of Legal Professionals, Incorporated, to observe all laws, rules, and regulations now or hereafter in effect relating to confidentiality and privileged communication, acting with loyalty, integrity, competence and diplomacy, in accordance with the highest standards of professional conduct.

*Dedicated to LSI Past President,  
Joan M. Moore, PLS, CCLS*

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# PRESIDENT'S MESSAGE

BY ROD CARDINALE, JR.



## ROD CARDINALE, JR.

is LPI's President and a member of the Santa Clara County Legal Professionals Association ("SCCoLPA"). He is a Sr. Paralegal and Officer Manager at The Law Office of Janet L. Brewer. Rod served as President of SCCoLPA from 2010-2014. In Rod's spare time he likes to cook, travel, watch sports and spend time with his family.

**Stronger  
Together**

The November Conference, which was co-hosted by Legal Professionals, Inc. and Santa Clara County LPA, was a resounding success. This achievement can be attributed to the exceptional efforts of Heather Nowak, Vivian Shreve, CCLS, and the dedicated members of Santa Clara County LPA who contributed to its success. The conference, themed "Under the Boardwalk," featured a memorable Saturday night banquet where attendees dressed in beachwear attire and danced to the delightful tunes of The Breaux Show. The live music was a tremendous hit, and we extend our gratitude to The Breaux Show for their amazing collaboration and entertaining performance.

On Friday night, we organized a fun activity where participants created mason jar lanterns using supplies provided by Jen Farnham of Esquire. In addition to the enjoyable social events, the conference offered six educational opportunities, both in-person and via Zoom. The Education committee outdid themselves by presenting an impressive lineup of guest speakers. We were also pleased to welcome many first-time attendees who expressed their enthusiasm and eagerness to return for the February conference.

The LPI Marketing Team has been diligently promoting LPI and our many educational offerings. Through recent additions of the LPI University, LPI Continuing Legal Education, and LPI Legal Technology Training, we have made significant efforts to inform and educate the legal community about LPI's role in educating California's legal support professionals. Below is a summary of our marketing efforts during the last six months:

September 12, 2023: Leanne Ruesink (California Career Promotion Chair) and Renee Evans, CCLS (Educational Director) presented to the San Diego Association of Legal Administrator's ("ALA") Board. Brandon Randolph is the San Diego ALA President, and Pillsbury Winthrop Shaw Pittman's Director of Administration, and has been our contact via Renee Evans, CCLS. After the meeting, Brandon said that we could attend the San Diego's ALA Legal Resource Fair as well as do a one-sheet for the Newsletter, which is in the works. San Diego's ALA Resource Fair is on February 13, 2024 at the DoubleTree in Mission Valley (Hazard Center) where Renee Evans, CCLS is coordinating a LPI Marketing Table. This is very exciting as we have been putting efforts into building this contact and promoting LPI as a potential "Partner" to ALA.

September 22-24, 2023: We attended the California Association of Legal Support Professionals (CALSPRO) Annual Conference at the San Diego Hilton Bayfront Hotel. LPI Vice-President Donna Day, LPI Executive Secretary Bettina Jacobson, LPI Advertising Chair Heather Nowak, and I manned the LPI Marketing Table. Additionally, Bettina Jacobson served as a speaker on a panel of court representatives, providing updates on various courts.

September 21-23, 2023: We participated in the California Lawyers Association (CLA) Annual Meeting, also held at the San Diego Hilton Bayfront Hotel. Although we couldn't secure a marketing table with other vendors, we distributed over 400 LPI Continuing Education Class coupons, each accompanied by a small bag of M&Ms, to every attendee's Conference Bag. This initiative garnered positive

Continued on page 3 →

← Continued from page 2

attention, and we engaged with vendors and discussed opportunities for increased LPI presence at CLA events in 2024 to foster a stronger partnership. We have already seen some of the coupon codes redeemed for an LPI offering.

December 1, 2023: We attended the Santa Maria LPA's Annual Holiday Luncheon at the Santa Maria Elks Lodge. LPI Vice-President Donna Day, LPI Executive Secretary Bettina Jacobson, LPI Treasurer Erika Garduno, LPI Executive Advisor Lynne Prescott, CCLS, and I were guests at a prominent table in the front of the room. We had a marketing table at the back of the room where we distributed informational flyers about our publications and Course Catalog. Additionally, we provided free LPI Continuing Education Class coupons and engaged with attendees. Donna Day took the opportunity to address the audience and share a few words about LPI. With over 200 people in attendance, this event provided excellent exposure for LPI and Santa Maria LPA, and we plan to continue marketing at this event in 2024.

In the recent quarter, significant strides were made towards our collective objective of becoming the foremost provider of legal education in California. We have expanded our educational offerings through a combination of in-person classes and webinars. In contrast to previous years, where we held two or three webinars monthly, we now conduct seven to ten webinars each month. Noteworthy highlights from our recent activities include:

In January, we hosted two free webinars open to all legal professionals, each drawing over 150 attendees. The topics covered were Regulatory Changes at the State Bar: Civility and Client Trust Account Reporting and Legal Research Overview.

On February 21, 2024, we are scheduled to hold another free webinar for legal professionals, focusing on Internet Cyber Security.

The Continuing Education Council is set to present Your Home is Spying on You on March 7, followed by a webinar on Summary Judgment Motions on April 4. Members of local associations or Members at Large of LPI can attend live Continuing Legal Education webinars and seminars for free.

Our Legal Technology team is actively providing diverse educational opportunities. In response to requests, we conducted a four-hour Writing and Analysis webinar on January 20, with plans for future repetitions. In the coming months, we will offer Legal Research webinars covering Federal and State Courts, the National Reporter System, Internet Research, Secondary Authorities, Citations, and the Bluebook vs. CA Style Manual. Additional webinars will cover topics such as Filing Under Seal in State and Federal Court, Filing a Complaint in State Court, Notice of Appeal: What Should be on Your Checklist, and Removing Cases to Federal Court. Technology classes will cover Word, Adobe, Excel, E-Discovery 101, Advanced E-Discovery, and Table of Contents and Authorities.

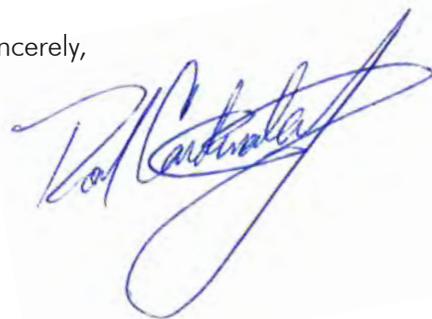
Finally, our new LPI University classes will commence in April 2024, featuring Intermediate Legal Professional Training, Beginning Legal Secretary Training, Overview of California Discovery, Advanced Discovery, Trial Preparation, and Appellate Procedures in California and the Ninth Circuit Court of Appeals.

As we reflect on our achievements, I'm thrilled to report that our membership has seen remarkable growth. When I assumed the presidency in May 2022, we had approximately 630 members. Setting an ambitious goal to double our membership within two years, I am

proud to share that as of January 2024, our total membership stands at around 1,050. This accomplishment signifies a significant step towards achieving our ambitious goal to double our membership in two years.

Looking forward, we are excited to announce the Annual 2024 Conference themed "Aloha," scheduled from May 16-19, 2024, at The DoubleTree by Hilton in Fremont. With an enhanced structure implemented last year, attendees can engage in four hours of educational classes. Details for registration, including room rates and ticket options, are available in this issue of "The Legal Professional" publication. We encourage attendees to embrace the Aloha spirit, suggesting a relaxed and inclusive dress code, reflecting tropical themes such as resort wear, Hawaiian shirts, flowy dresses, or attire inspired by the vibrant colors and patterns of Hawaiian culture. Our aim is to create an atmosphere where everyone feels comfortable and connected while celebrating the spirit of aloha.

Sincerely,





**LPI** LEGAL PROFESSIONALS INCORPORATED  
 Educating California's Legal Support Professionals

# Third Quarterly Conference Seminars

## Saturday, February 17, 2024



CONTINUING LEGAL EDUCATION

11:00 a.m. — 12:00 p.m.

### MAKING APPEALS APPEALABLE

Speaker:  
**James M. Wagstaffe, Esq.**  
 Wagstaffe, von Loewenfeldt, Busch & Radwick LLP

11:00 a.m. — 12:00 p.m.

### EFFECTIVE REPRESENTATIONS REQUIRES EFFECTIVE COMMUNICATION\*

Speaker:  
**Vivian Shreve, CCLS**  
 LPI California Certified Legal Secretary Chair  
 (\*This seminar is approved for CCLS credit, only.)

1:45 p.m. — 2:45 p.m.

### AN INTRODUCTION TO THE WONDERFUL WORLD OF TRUST ADMINISTRATION

Speaker:  
**Nathan Borris, Esq.**  
 Johnston, Kinney & Zulaica LLP

3:15 p.m. — 4:15 p.m.

### FAMILY LAW: DECLARATION OF DISCLOSURES

Speaker:  
**Stan Sarkisov, Esq.**  
 Johnston, Kinney & Zulaica LLP

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**Walk-Ins**  
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**VIA ZOOM**

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 Each Additional: FREE!

Non-LPI Member:  
 First Seminar: \$30  
 Each Additional: \$15



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LEGAL TECHNOLOGY TRAINING

1:45 p.m. — 4:00 p.m.  
 (15 minute break)

### BRIEFING CASES 101

Speaker:  
 Bethany S. Ensz, M.S.

This two-part, interactive workshop will focus on case briefing. Part I we will discuss how to read a case, summarize a case, and properly format a brief. Part II is a hands on practice writing a brief. By the end, you will have the tools, tips and tricks you need to brief a case.

**IN-PERSON or VIA ZOOM**

LPI Member: \$40  
 Non-LPI Member: \$80

Continuing Legal Education seminars are **FREE** for LPI members registered for conference.

All Zoom participants attending a Continuing Legal Education seminar pay a one-time registration fee of \$15



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LEGAL PROFESSIONALS INCORPORATED, AN APPROVED PROVIDER, CERTIFIES THAT THESE SEMINARS HAVE BEEN APPROVED FOR ONE (1) HOUR OF PARTICIPATORY MCLE CREDIT BY THE STATE BAR OF CALIFORNIA (SOME EXCEPTIONS APPLY).

# “HAIL TO THE CHIEFS”

SUBMITTED BY LPI THIRD QUARTERLY CONFERENCE COMMITTEE

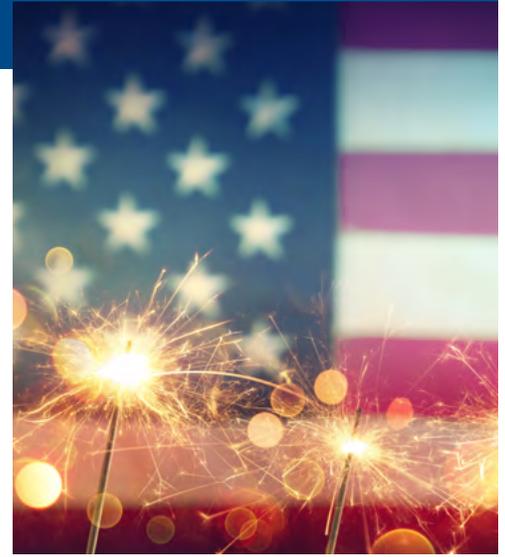
The theme for LPI’s Third Quarterly Conference, co-hosted by LPI and Mt. Diablo LPA, is “Hail to the Chief” and we have presidential treatment for all attending! On Friday evening, we will have Presidential Trivia. Please come prepared to help your team win!

We are so appreciative of our vendors. It is important that we give them our support and thank them for their support. Please stop by and say hello!

All educational events will be held on Saturday, February 17, 2024. Our Continuing Educational Committee has scheduled excellent seminars with top-notch speakers. WHAT? Are you not planning to attend any of the fascinating seminars? Maybe you’d like to take in some of the sights of the beautiful San Francisco Bay Area. We have Mount

Diablo, which is a short drive away for amazing views and great hikes. There is Ruth Bancroft Gardens housing a collection of unique succulents, cacti, and drought-tolerant plants from around the world. Maybe you’d like to spend the afternoon perusing some of Walnut Creek’s shops at Broadway Plaza, an open-air shopping center with more than 35 specialty shops, services, and restaurants. They include stores such as Neiman Marcus, Nordstrom, and Macy’s. If you would like to venture a little further, San Francisco and the Piers are a short BART ride away.

Then for the Saturday evening Banquet, we have a great evening in store enjoying good food with good friends and finishing off the evening with good music while we dance the night away to DJ music. We will start off with a special



LSI/LPI past president presentation to kick off our evening. We’d love to see you all in your best “presidential banquet” outfits (come in your evening finest or secret service attire) and come ready to have a great time! We’re looking forward to seeing you all “Hail to the Chiefs” in February!



## In Memory of JENNIFER L. PAGE, CCLS LSI PAST PRESIDENT 2016-2018

*Passed away on December 29, 2023*

Jennifer's presence will be greatly missed by all who knew and loved her, but her legacy will long be remembered, and she will continue to be an inspiration.



# CONGRATULATIONS

TO OUR 100% CLUB MEMBERS!



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# A VICTORY FOR DEAF SERVICE USERS IN THE FEDERAL COURT

BY BETH SHARPE – SUBMITTED BY SAN FRANCISCO LPA

## Class action settlement upholds ADA rights of deaf service users of California Department of Developmental Services

Following a Fairness Hearing on September 15, 2023, a settlement agreement was granted final approval by Judge Susan Illston. The settlement agreement requires that the California Department of Developmental Services (DDS) must improve the services it provides to consumers of its regional centers who are both deaf and have intellectual and developmental disabilities (“I/DD”). *McCullough v. California Department of Developmental Services* was filed on April 30, 2020, in USDC Northern District of California (Civ. No. 3:20-cv-02958-SI). In a class action suit, three deaf service users and their representatives, the Disability Rights Advocates and Disability Rights California (the federally mandated protection and advocacy agency of California) sought injunctive relief through institutional change. It was claimed, and ultimately found, that DDS had violated Title II of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and also California Government Code section 11135 by failing to make certain that deaf and I/DD consumers at its twenty-one centers were provided the appropriate accommodations for receiving effective communication.

The settlement is a bittersweet reminder of the history of rights for deaf (a physical, medical term) individuals, and also the stability of Deaf culture in America, which is briefly outlined as follows. For those who are unfamiliar, Deaf with a capital “D” is a term often used for Deaf culture. It is a term which does not refer to any kind of impairment, condition, disability, loss, lack of, or less than-ness – physical or otherwise. It is a term for a culture

that Deaf individuals have rather than don’t have, if they so choose to identify with it (some do not). To delineate, the aforementioned case was brought by deaf service users who also have developmental and intellectual disabilities, and who may also engage with Deaf culture.

Deaf culture is part of the American history. A few hundred years ago in the New World, many different sign languages developed independently of one another in disparate Old World settler communities. On 1600s Martha’s Vineyard island, in some villages, up to 1 in 25 inhabitants were Deaf (compared with 1 in 6000 elsewhere) due to its genetic pool. Everyone in these villages, whether Deaf or hearing, used sign language. At this point in the article, I also recognize the numerous preexisting Native American sign languages across the continent before European colonization too, and these are in use today.

In 1817, European settler students brought sign languages from their own communities to Hartford, Connecticut, the first school for the Deaf. The founders of the school were a Deaf teacher from France, Laurent Clerc, and a hearing American minister Thomas Gallaudet. Thus, American Sign Language (ASL) is predominantly a blend of French Sign Language and other localized sign languages. ASL is a distinct language. It is not a visual code for any spoken language and the syntax is entirely different too. It is also important to remember too that signers across the world have different sign languages and do not just automatically understand one another.

The communication reality for a Deaf child is as follows: Only 8-10% of Deaf children have Deaf parents. Around 70% of Deaf children have families who do not sign. This leaves only around 20% of Deaf children who do actually have hearing families who sign. Here lies the importance of residential schools in which Deaf children can be immersed in ASL and written English (bilingualism), and experience Deaf culture instead of only hearing culture.

In the early part of the 19th century, such residential schools flourished. Then, in 1864, Gallaudet University was founded and President Abraham Lincoln signed it into law. Some say President Lincoln is making the ASL signs for A and L with his hands in the Lincoln Memorial! After all, the sculptor’s daughter was deaf. Gallaudet University was and still is the authority for standard ASL in America. In early America, graduates from Gallaudet would return to their communities and teach the next Deaf generations. Resultingly, an extensive Deaf community network flourished across the United States based on sports, politics, arts and social events and conferences.

Both lipreading and forced speech (oralism) are incredibly ineffective methods of communication. Just because the Deaf actors we tend to see on TV and in film might lipread and speak, it must not be assumed that the oral method is efficient, or in any way fair. However, society’s unfounded belief that spoken language must somehow be superior suddenly ran roughshod through Deaf culture and the education of Deaf children. In 1880, in a devastating turnabout face, supporters

Continued on page 9 →

of oralism blocked supporters of sign language education at the International Congress on the Education of the Deaf in Milan, Italy. The congress voted for the oral education of all Deaf children. The next 40 years saw what started as a tiny percentage of Deaf children being taught via oralism grow to a gigantic 80% in America and Europe. In parallel, the 45% of teachers who were Deaf dropped to 11%, simply unable to use or teach the oral method.

Even though ASL persisted in the school yard and in dormitories, in the classroom it was banned. This had a corrosive effect, not only on standards of education and on society's perception of Deaf culture, but also on Deaf pride, and personal and community confidence. It wasn't until the 1960s that Gallaudet University linguists proved ASL's status as a language entirely distinct from English (as if it needed proving!), that wider society began to accept its value again. It has been a long-fought battle to get ASL back into classrooms, and to ensure equal treatment for deaf individuals: challenges which are by no means won.

Progress has slowly been made. On July 26, 1990, the accommodation and inclusion of d/D/Hard of Hearing people was made official when President George Bush passed the Americans with Disabilities Act (ADA). On March 13, 2006, National Deaf History Month was first celebrated in the

United States, and on December 13, 2006, the Convention on the Rights of Persons with Disabilities was adopted by the United Nations. However, as the case described above demonstrates, there is a way to go yet for.

To revisit McCullough, the following provisions required by the ADA will now be provided by the California DDS: The development of a housemate system for deaf consumers, service provider and staff training, communication assessments, and the foundation of an outreach system with local bodies that are practiced in providing deaf consumers services. DDS will also hire a deaf specialist and fund a deaf services specialist at each regional center, and consult with experts in their decision-making. The department will also prioritize grant funding specifically for deaf consumers, develop a deaf services webpage, and remind Regional Centers of the ADA requirements around providing deaf individuals effective communication.

This is a significant move in reducing isolation for deaf service users, who as American citizens must be afforded fundamental rights and protections. Regarding the Deaf culture history just told, the housemate matching program is perhaps most notable, because it should finally ensure that deaf service users have access to a Deaf community, instead of just a hearing one.

## Sources:

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**BETH SHARPE** is a paralegal at Kecker, Van Nest & Peters LLP in San Francisco. She's also the editor for the Hearsay, San Francisco LPA's quarterly bulletin. New to the law field but absolutely thrilled to be immersed in it, she's currently doing a bachelor's in law too. Being a part of LPI and SFLPA has proven to be of huge value on a professional level, as well as on personal and social levels. As a hobby, when I get the chance, I like to participate in ultra-distance triathlons.

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# HOW GEN XERS CAN GET THEIR RETIREMENT SAVINGS BACK ON TRACK

BY KARI MIDDLETON – SUBMITTED BY DESERT PALM LPA

**Were you born between the years 1965-1980?** That makes you a member of Generation X, and it means you are between the ages 35-50. Gen Xers now constitute “the sandwich generation” – how time flies.<sup>1</sup>

Broadly speaking, GenX is the first generation that has had to save for retirement without traditional pension plans. In addition, most Gen Xers will probably retire after 2033 – the year in which Social Security predicts its trust funds will run dry, barring federal government intervention.<sup>1</sup>

With eldercare responsibilities, kids, and student loans, this demographic is challenged to save for retirement. In fact, 34% of Gen Xers participating in a recent Northwestern Mutual survey stated they had no idea how much retirement income would be sufficient for them. In April, Bankrate found that just 12% of Gen Xers direct more than 15% of their incomes into savings; about 40% were saving 5% or less of their incomes. More disturbingly, 46% of Gen Xers who responded to a May Allianz Life retirement preparedness survey indicated that they would “just figure it out when I get there.”<sup>1,2</sup>

## **What steps can Gen Xers take to keep up or catch up for retirement?**

First of all, meet with a financial professional to talk about your savings effort so far. That kind of conversation should help to illuminate just how far you have to go in terms of attaining a comfortable retirement. Maybe the distance toward that goal is shorter than you think; maybe it is longer. It must not be casually guessed.

Here are some other steps to consider when working towards greater retirement savings.

**Max out your retirement plan contributions.** If you are already doing this, great. Many Gen Xers are not doing this. Perhaps the contribution is thought of as a lump sum that is hard to part with every year, rather than a series of incremental salary deferrals. Arrange monthly or per-paycheck contributions, and things look more manageable within the household budget. Some employer-sponsored retirement plans offer employees the option of automatically increasing their contributions with time, which helps.<sup>3</sup>

If you own a business or work as a solopreneur, consider SIMPLE plans, SEP-IRAs, or Solo(k)s. As these plans allow employee and employer contributions, business owners have used them to dramatically increase their retirement savings. In 2016, the maximum employee deferral for a SIMPLE plan is \$12,500 with a \$3,000 catch-up contribution allowed. As much as \$53,000 can be contributed to a Solo(k) annually.<sup>4,5</sup>

**Vow to make those additional \$1,000 catch-up contributions when you turn 50.** They should not be scoffed at. Every dollar counts, and the extra \$1,000 you pour into your workplace retirement plan or IRA means greater yearly contributions that can potentially foster greater yearly compounding.

**Attack debts.** The money you save has to come from somewhere else in your life, and if you cannot immediately find some additional dollars to save, debt is likely the reason. There are many debts you cannot eliminate within a year, but there are other debts you can. Attacking the smallest first still frees up some money per month and means fewer per-debt interest charges in your financial life. You may want to consider putting

an extra \$30 a week into a retirement account, and you put \$1,560 more into your retirement savings per year.

A debt-free retirement ought to be one of your financial objectives. Perhaps you will become debt-free by age 65, perhaps you not – but that goal is certainly worth striving to realize.

**Revise your monthly budget.** Take a second look and see how many needs there are, and then how many wants you are accommodating. Recognize the little things: if you spend \$6 a day on coffee, that money (\$180/month) has effectively become one of your “fixed” monthly expenses.

**Tell your kids they will have to pay for their college education.** Consider refraining from providing “college aid” out of the Bank of Mom & Dad. Helping your kids with their college costs (or tacitly agreeing to help them with their college loans) is a potential path toward retirement insecurity. There is no “retiree financial aid” and you may still have outstanding education debt of your own to tackle.

As a Gen Xer, you have a real challenge to save adequately for retirement, but you also have some time on your side. Make the most of it. You do not want the task of figuring it out “when you get there.”

Continued on page 13 →

← Continued from page 12

## Citations

- 1 - [usatoday.com/story/money/2015/06/06/generation-x-retirement/28571965/](https://www.usatoday.com/story/money/2015/06/06/generation-x-retirement/28571965/) [6/6/15]
- 2 - [nextavenue.org/gen-x-sleeping-through-their-retirement-wakeup-call/](https://www.nextavenue.org/gen-x-sleeping-through-their-retirement-wakeup-call/) [8/27/15]
- 3 - [usatoday.com/story/money/personalfinance/2015/10/10/gen-x-retirement-saving-investing-generationx-401k/73227036/](https://www.usatoday.com/story/money/personalfinance/2015/10/10/gen-x-retirement-saving-investing-generationx-401k/73227036/) [10/10/15]
- 4 - [shrm.org/hrdisciplines/benefits/articles/pages/2016-irs-401k-contribution-limits.aspx](https://www.shrm.org/hrdisciplines/benefits/articles/pages/2016-irs-401k-contribution-limits.aspx) [10/22/15]
- 5 - [irs.gov/Retirement-Plans/One-Participant-401k-Plans](https://www.irs.gov/Retirement-Plans/One-Participant-401k-Plans) [10/26/15]



**KARI MIDDLETON** is a registered representative with LPL Financial. She works with small businesses, business owners, professionals, nonprofit organizations and high-net-worth individuals on all aspects of financial planning, which include estate and retirement plans, investment advice and business succession strategies.

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## Dates to Remember | 2024

**FEBRUARY 6, 2024 | 12:00 P.M. – 1:00 P.M.**

**Legal Technology Training – Microsoft Word Styles**

By June Hunter (Details on LPI's website)

**FEBRUARY 7, 2024 | 12:00 P.M. – 1:00 P.M.**

**LPI University – Ex Parte Applications in the California Superior Court**

By NextGen Legal (Details on LPI's website)

**FEBRUARY 13, 2024 | 12:00 P.M. – 1:00 P.M.**

**LPI University – Federal and State Courts**

By Bethany Ensz, M.S. (Details on LPI's website)

**FEBRUARY 16-18, 2024**

**LPI's Third Quarterly Conference Board of Governors Meeting – "Hail to the Chiefs"**

Embassy Suites by Hilton, Walnut Creek, CA  
Co-hosted by LPI and Mt. Diablo LPA

**FEBRUARY 17, 2024**

**Continuing Legal Education and Legal Technology Training Seminars at February Conference**

(In Person or Via Zoom) (Details on LPI's website)

**FEBRUARY 20, 2024 | 12:00 P.M. – 1:00 P.M.**

**Legal Technology Training – Word and Adobe 911 Formatting Fixes**

By June Hunter (Details on LPI's website)

**FEBRUARY 21, 2024 | 12:00 P.M. – 1:00 P.M.**

**- FREE Legal Technology Training – Internet Cyber Security**

By June Hunter (Details on LPI's website)

**FEBRUARY 28, 2024 | 12:00 P.M. – 1:00 P.M.**

**LPI University – Filing Under Seal in State and Federal Courts**

By NextGen Legal (Details on LPI's website)



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# COURT REPORTING'S ALPHABET SOUP: WHAT DO THOSE LETTERS MEAN?

BY CHRISTINE J WILLETTE, RDR, CRR, CRC

As an attorney, paralegal, or legal assistant seeking the services of a court reporting professional, have you ever wondered what all those letters following a court reporter's name mean? They're professional certifications, the "alphabet soup of court reporting," and they hold the key to finding the right court reporter for your next deposition, hearing, or meeting.

Millions of corporate dollars and often the very lives of litigants turn on the outcome of legal disputes. With so much at stake, the importance of selecting a court reporter with the skill to accurately capture and preserve the record of legal proceedings cannot be overstated.

Will you require a traditional stenographer or will a voice writer meet your requirements? Does your litigation strategy demand a real-time stream of proceedings as they occur? Will expedited delivery of the final transcript from an all-day deposition be needed? If you know what you need, the lexicon of court reporter certifications can make you an informed buyer of court reporting services.

The need to have a working knowledge of certifications is even more important for lawyers working in states that do not license court reporters or mandate certifications. There, the lawyer's knowledge and good judgment alone will dictate whether a court reporter is up to the task.

## Methods of Preserving the Record

There are three methods of capturing the spoken word: stenography, voice writing, and digital recording. Stenographic court reporters are most prevalent, followed by voice writers and digital reporters.

The **stenographic reporter** uses the steno machine with which attorneys are most familiar. The steno machine has evolved into a high-powered computer that, when paired with a skilled steno reporter, has the capability to deliver text instantaneously with a high degree of accuracy. The steno reporter uses highly customized CAT (computer-aided transcription) software to format, edit, and deliver the final transcript.

**Voice writers** use their voice to create a text file by respeaking a live event into a microphone or an enclosed speech-silencing mask that then uses a commercial speech recognition engine to process their analog speech to create formatted text output either as the event occurs or at a later time. Some voice writers also engage CAT software to increase efficiency.

Stenographic reporters and voice writers are each capable of providing "real-time reporting," though this level of service requires additional training and experience. Whereas the standard delivery time for a transcript is eight to ten business days, a skilled real-time reporter can produce an instantaneous voice-to-text transcript to participants in the same room or by a secure Internet connection.

A **digital reporter** uses a customized computer to capture an audio recording that is later transcribed. The advancements in digital audio, speech recognition, and artificial intelligence technology along with speech diarization have improved this method of capture. However, stenographic and voice reporters are best prepared to yield the highest level of accuracy in speech-to-text delivery.

Stenographic, voice, and digital reporters all have national certifying

bodies. Some states also maintain licensure and certification boards. As mentioned above, not all states regulate the court reporting industry. If you are scheduling proceedings in locations outside of your ordinary area of practice, be sure to inquire about the local certifications needed and methods used — and engage accordingly.

No matter the method, the level of certification and professionalism is critically important. All court reporters should be skilled and confident in management of the proceedings when marking exhibits, controlling the tempo of speech, clarifying unique terms, and utilizing technology.

## Certifying Bodies

There are three primary certifying bodies within the court reporting profession:

- National Court Reporters Association (NCRA) <https://www.ncra.org/certification> offers nationally recognized professional certifications for stenographic reporters and legal videographers. There are multiple levels of certification based on speed and skills, accuracy, length of time in the profession, and a written knowledge exam.
- National Verbatim Reporters Association (NVRA) <https://nvra.org/page/Certifications> primarily certifies voice writers but also offers stenographic certification. NVRA has multiple certification levels with both practical and written knowledge testing required for each level.
- American Association of Electronic Recorders and Transcribers (AAERT) <https://www.aaert.org/page/CertificationProgram> certifies digital court reporters. A written exam is required to gain certification. There is no skills component to AAERT's certification process.

Continued on page 17 →

← Continued from page 16

Of great importance with all certifications is the requirement for Continuing Education Units (CEUs). Staying up-to-date on applicable technology advancements, changes to legal policies and procedures, and current events keeps everyone on the cutting edge. Continually seeking self-improvement lends to the quality of the deliverable. The rapid shift from in-person to remote depositions during the pandemic is a perfect example of why continuing education is critical.

New to the certifying body landscape is the Speech to Text Institute (STTI) <https://speecheortextinstitute.org>, whose mission is to set standards of competence, professionalism, and service. However, they do not currently provide certification of any method of capture.

## What Do Those Letters Mean?

NCRA's stenographic certifications include (entry-level to highest order):

- Registered Skilled Reporter (RSR)
- Registered Professional Reporter (RPR)
- Registered Merit Reporter (RMR)
- Registered Diplomate Reporter (RDR)

The entry-level RSR requires the slowest Q&A dictation speed at 200 words per minute. The dictation speed and written knowledge content increase in difficulty through the certification progression. The RDR is the highest level of certification available to stenographic court reporters and requires passing a Q&A dictation speed of 260 words per minute at the RMR level as well as a difficult written exam covering a broad scope of legal topics. The RDR designation also has a years-of-experience component. The RDR distinguishes high-level, seasoned reporters as members of the profession's elite.

NVRA's voice writer certifications include:

- Certified Verbatim Reporter (CVR)

- Certificate of Merit (CM)
- Military Verbatim Reporter (MVR)

The complexity of the written knowledge test and the speed at which skills tests are dictated increases with each successive level of certification. Skills tests for both NCRA and NVRA certifications are administered at speeds ranging from 200 to 260 words per minute for five minutes of dictation at 95% to 96% accuracy, including all speaker designations, punctuation, and procedural events that take place during the proceeding.

A Certified Shorthand Reporter (CSR) is a designation granted by multiple states across the country. The testing speeds and written exam requirements vary.

AAERT offers certification as a CER (Certified Electronic Reporter) or a CET (Certified Electronic Transcriber) based on a written exam only.

## Interactive Local and Remote Realtime Delivery

If you're seeking a stenographic reporter who is highly skilled at providing an instantaneous delivery of the spoken word to text, you will want to seek a Certified Realtime Reporter (CRR).

A voice writer with similar skills has achieved one of the following certifications: Realtime Verbatim Reporter (RVR) or Realtime Verbatim Reporter – Master (RVR-M).

## Accessibility – CART (Communication Access Realtime Translation)

Accessibility to justice requires accommodations for people with hearing loss. A Certified Realtime Captioner (CRC) should be engaged for this service if you're using a stenographic reporter. Registered CART Provider – Master (RCP-M) is the designation for a voice reporter.

## Videography

A Certified Legal Video Specialist (CLVS), administered by the National Court Reporters Association, holds a high level of skill and understanding of all aspects of video deposition recording, court proceedings, Federal Rules of Civil Procedure, and deposition best practices.

## Certification vs. State Licensure

Certification is different from licensure. Just what you need, more confusion! The allowed methods and required certifications for making the record are included in each state's statutes. Information regarding state requirements can be found on the NCRA.org website.

A Certified Shorthand Reporter (CSR) is a certification required to work in some locales. While some states only require certification via one of the national organizations, other states have their own certification/licensure program. A separate examination board administers both the skills and written knowledge exams required to allow reporters to work within their respective states. Some states implement a blended system where reciprocity is granted and the reporter is issued a license to work upon proof of holding a national certification and completion of a state-specific written exam.

To further confuse matters, some states require certification to work as an official in court while not regulating or requiring certification for the freelance market. The single requirement in such states is the need to be a notary public to administer the oath to the deponent. In states where certification is an option, questions relating to certifications held by the provider are critical to ensuring a quality record.

Esquire requires all reporters, whether stenographic, voice, or digital, to adhere to state and federal requirements.

Continued on page 18 →

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## Addressing the Court Reporter Shortage

There is a shortage of stenographic court reporters in the United States. There have been concerted efforts to attract and train new stenographic reporters. However, with the high level of skill and education required, combined with the rate at which stenographic reporters are retiring, this is an uphill battle. Some court reporting agencies who are striving to ensure their client's record is given the requisite diligence have started to hire and train individuals to become certified as digital reporters.

Regardless of the method, professional certification reflects a deep commitment to acquiring and maintaining a unique

skill, which ultimately leads to the highest quality of service and product to clients. Professionalism in a legal setting and attention to the detailed requirements in a legal proceeding work together to protect the integrity of the record in order to provide an unimpeachable transcript to clients. Commitment to obtaining, maintaining, and continually improving knowledge and skill levels are essential to quality. All of Esquire's court reporters, whether stenographer, voice reporter, or digital reporter perform exactly the same duties and certify the accuracy of the testimony capture. The sanctity of the record is paramount, and it is Esquire's desire to ensure equal access to justice for all.



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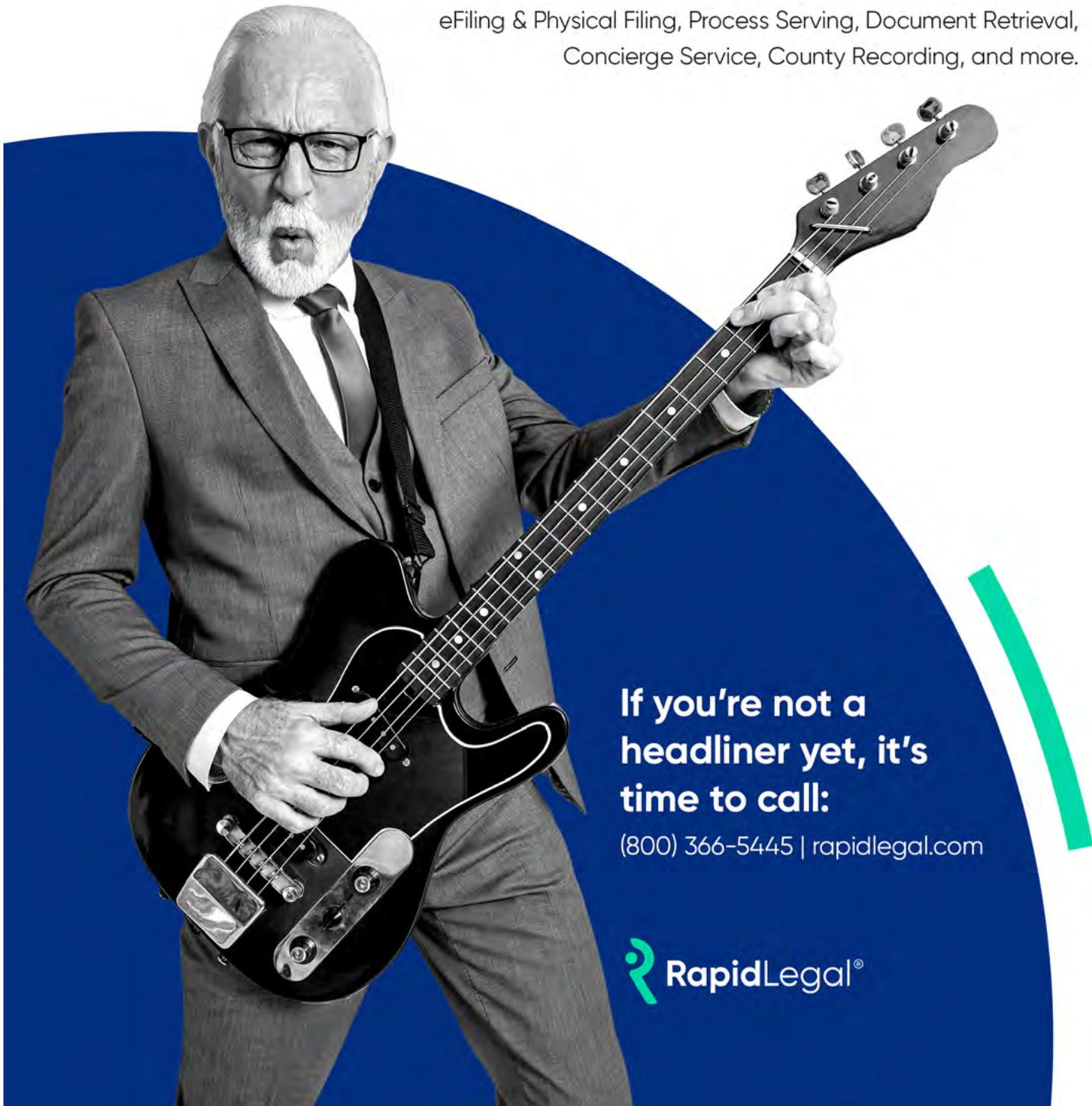
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HOME TELEPHONE: \_\_\_\_\_ WORK TELEPHONE: \_\_\_\_\_

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POSTMARKED ON OR AFTER APRIL 17, 2024 \_\_\_\_\_ @ \$225.00 \$ \_\_\_\_\_

### INDIVIDUAL TICKETS:

Registration On Or Before April 16, 2024 \_\_\_\_\_ @ \$30.00 \$ \_\_\_\_\_

Registration On Or After April 17, 2024 \_\_\_\_\_ @ \$35.00 \$ \_\_\_\_\_

\*Welcome Reception (Friday) \_\_\_\_\_ @ \$35.00 \$ \_\_\_\_\_

Roundtable Luncheon (Friday) \_\_\_\_\_ @ \$40.00 \$ \_\_\_\_\_

Roast Beef on a Steak Sandwich Roll  Chicken on a Brioche Bun  Grilled Vegetarian Wrap

Breakfast (Saturday) \_\_\_\_\_ @ \$38.00 \$ \_\_\_\_\_

\*Kalman S. Zemplyny II CCLS Luncheon (Saturday) \_\_\_\_\_ @ \$55.00 \$ \_\_\_\_\_

Beef  Chicken  Vegetarian

Banquet (Saturday): \_\_\_\_\_ @ \$81.00 \$ \_\_\_\_\_

Brunch (Sunday) \_\_\_\_\_ @ \$37.00 \$ \_\_\_\_\_

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QUESTIONS: Cyndee Saucedo, Conference Chair, csauceda@meyersnave.com or 510-910-7167

*mahalo*

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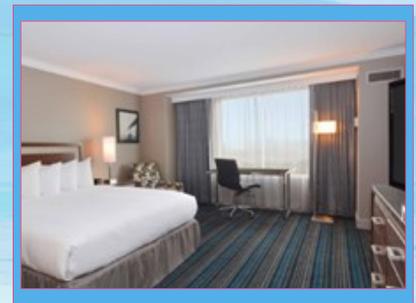
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# LPI'S SECOND QUARTERLY BOARD OF GOVERNORS MEETING



## THOUGHTS FROM FIRST-TIME CONFERENCE ATTENDEES

---

I really enjoyed my first LPI conference. I like that everyone there has the same goals, to introduce our organization to those who would benefit as much as we do.

It should not be a kept secret, but a way to let those entering the legal arena to have the best opportunity to stay updated and focused on continuing education so that they can thrive in their chosen profession. The classes were very informative and I learned things I could let my chapter know about so they could be informed as well.

Ideas really start popping when you talk about a common goal and how to get there.

I met some great colleagues and look forward to seeing them again.

– Jeff Rogers, Contra Costa County LPA Governor

\*\*\*\*\*

I had a great time at my first LPI conference in Santa Cruz. It had been a very long time since I went to a conference due to my busy desk at work. I have been looking into LPI's programs and conference offerings, and had always told myself that I would sign up for a training or two. I was impressed with the topics offered and how much it relates to the work I do. With my manager's support and encouragement to become a member, I finally signed up. And after this conference, I wondered what took me so long to even join.

The conference itself was very informative. The speakers were great and knowledgeable in the topics they delivered. I enjoyed the easiness of the group during the trainings, but also enjoyed the wild side during the breaks and evening banquet. It was great to meet so many people who are in

the same career path as me, and understood what it meant to be a Legal Secretary. The vendors were a plus. It was good to meet and learn about other options. And who can forget the good stuff they were giving away. Overall, my experience was awesome, and I look forward to attend more!

– Aileen Martija, LPI Member at Large

\*\*\*\*\*

I was so thoroughly grateful for the acceptance and the efforts that went into making my first time so welcoming. I was immediately put at ease from the moment I walked up to the entrance table and was literally embraced by the greeter!! (sorry, forgot the young lady's name). But she was so welcoming and easy to talk to. She presented me with all the items that I would need to get through the weekend. There was a wealth of information in the bag and she explained the day/night's events.

Secondly, I was most impressed with the attendees in general, everyone was open, talkative and friendly. I would like to think that I've made myself a new circle of friends and am still excited about attending my next conference, in February. The only two things that I have a comment on is the food options, which is already known. I would like to suggest that a call or contact of some method be made to the new attendees informing them to bring cash to be able to participate in all the wonderful raffles, of which I was a winner of at least 3!!

Needless to say, I had a memorable, enjoyable weekend, and excited to see y'all again, in February!!

– Alfreda Bell, Los Angeles LSA Member

# CCLS QUIZ

## Word Usage

CHOOSE THE CORRECT WORD IN EACH SENTENCE

1. Not only a table of contents but also a table of authorities [A] need / [B] needs to be created.
2. The peck of pickled peppers Peter Piper picked [A] have / [B] has been sold.
3. Was that message really intended for [A] us / [B] we secretaries?
4. She is the kind of person [A] which / [B] that can always be trusted.
5. I wish I [A] was / [B] were going to Hawaii with you.
6. The toy drive was [A] in [B] on behalf of the childrens' hospital.
7. As naïve as she is, her actions can only been seen as being [A] ingenuous / [B] ingenious.
8. I was [A] sure [B] surely glad to hear you are coming to the party.
9. Neither the attorney nor his paralegals [A] have / [B] has seen the transcript yet.
10. Every man, woman, and child [A] are [B] is entitled to a ticket for the ride.
11. What [A] percent / [B] percentage of the settlement is our client paying?
12. All the gifts are [A] lying [B] laying on the table.
13. It was [A] real / [B] really nice to see you.
14. The [A] principal / [B] principle reason I went to the party was to see old friends.
15. The room comes with [A] complementary / [B] complimentary breakfast.

CCLS QUIZ ANSWERS ON PAGE 27



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## ANSWERS FROM QUIZ ON PAGE 24

# CCLS QUIZ

## ANSWER KEY

- |      |       |
|------|-------|
| 1. B | 9. A  |
| 2. B | 10. B |
| 3. A | 11. B |
| 4. B | 12. A |
| 5. B | 13. B |
| 6. A | 14. A |
| 7. A | 15. B |
| 8. B |       |

# 60 DAYS BEFORE TRIAL: READY, SET, GO!

BY ELISE DRESSER & JESSICA TE – SUBMITTED BY SANTA CLARA COUNTY LPA

After months of hard work, countless hours poring over exhibits and documents, and late nights at the office, your case is headed to court. You are confident that you will be ready when the time comes, but as the date of trial approaches, how can you ensure that you are really and truly prepared? The answer is simple: tackle trial preparation with the help of your support staff.

Trial preparation is a complex, on-going process that requires extensive planning, organization, and attention to detail. Your legal assistants, paralegals, and file clerks are an essential part of the trial team, and their input will help ensure that things run smoothly, both in the office and in the courthouse. Many hands and minds working together to manage the large volume of documents, deadlines, and information will allow you to be fully prepared to present your case with confidence.

Leading up to the day trial begins, what is the best way to prepare for trial and how can your support staff help you?

## 60 days until trial

Two months before trial, your team should be in the preparation phase. In fact, true preparation begins as soon as you are engaged by your client; however, here are a few ways you may prepare to increase your chances of success.

- Know the rules. Study and understand the rules of the court, instructions about the judge, and any other necessary requirements for pretrial procedures. Your legal assistant can assist by looking into the local rules and the specific judge's standing rules and trial procedures.
- Review your pre-trial scheduling orders and your trial deadline calendar. Your legal assistant and paralegal should maintain up-to-date Actions Required (AR) lists and trial calendars which include all pretrial deadlines. Use these to stay

up to date on the details and documents you will be handling. You should have a plan in place for the completion of all discovery and filing of discovery or dispositive motions.

- Schedule regular meetings and mock trials to go over the details of everyone's involvement, develop a game plan, and discuss how everyone on the team may provide the best support. Determine what tasks are involved and who will be responsible for each task. Make sure a clear timeline of when things are due is conveyed to the team, and if deadlines change, make sure the entire team is aware of the changes. Remember, communication is key! Always ensure open communication among your legal team.
- If necessary, arrange a trial room or remote office set-up. Having a secure location reserved will give you the space to prepare your arguments and documents with your trial team in a private setting where you will not be heard by uninvited listeners. Consider a room size that will comfortably accommodate your equipment and team members.
- Take the initiative when looking into trial presentation necessities. Consider what items you will need to have and start preparations in advance. Preparation begins with fact investigations, file organization, and an initial discovery plan.
- Hire a court room technician, graphic designer, or jury consultant, if needed. If you plan to show exhibits, be aware of the rules to make sure your evidence and exhibits are admissible beforehand.
- Familiarize yourself with the trial documents. Be aware of the contents of the trial binders, exhibit binders, and witness binders. Make sure you keep working copies of the binders at the office. Make sure you are aware of the most recent versions of all trial documents, especially the exhibit and witness lists, which should all be clearly marked and labeled. Impeccable organization is a skill which will benefit the team in the long run.

Serve remaining discovery to allow time for motions to compel. The last day in California state court to hand-serve discovery is 30 days before the discovery cut off, which is 30 days before trial. CCP §2024.020. On that note, the last day to disclose expert witnesses is 50 days before trial. CCP § 2034.230.

- Draft witness subpoenas and notices to appear at trial. As usual, keep an eye out for impending deadlines for these items.
- Determine your preference for organization of trial exhibits. Would you like them organized by witness? By subject? By date? Find out how best to identify key documents and draft your exhibit list. You can also organize in chronological order, but this may be disjointed depending on how you add in new documents. Consider consistency with data entry, which is helpful when eliminating duplicates, and consider loading exhibits into searchable databases or somewhere you can search across the entire exhibit set.
- Determine your preference for trial witness organization. In achieving this, you must sort your witness subpoenas and create a witness chart.

Trial is looming in the distance, and there's still plenty of work to be done...

Stay tuned for the next installation in this blog series that discusses the nitty, gritty details of trial preparation thirty days before trial: "30 Days Before Trial: It's All About Teamwork!"

Continued on page 29 →



**ELISE DRESSER, CCLS** is a legal assistant for the McManis Faulkner civil litigation and employment law teams. With over 30 years of experience as a civil litigation assistant, Elise is proficient in civil procedure, calendaring and docketing, and is familiar with state, federal, and local rules. She is also a long-time active member of Santa Clara County Legal Professionals Association (SCCoLPA) and Legal Professionals Incorporated (LPI), Elise currently serves as LPI's Parliamentarian and Vice President for SCCoLPA. In addition, she is a California Certified Legal Secretary (CCLS) and served as the past Chair of the CCLS Certifying Board and past assistant editor of the Publication Revisions Committee.



**JESSICA TE** is a member of McManis Faulkner's marketing team and assists the firm in its outreach efforts as Marketing Coordinator. She is responsible for crafting, tracking, and implementing marketing strategies regarding client development, social media, and public relations. She also works in a supportive role, promoting the individual business development objectives of McManis Faulkner attorneys.

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This webinar will go over the process of ex parte applications in the California Superior Court. This presentation will provide you with a guide to prepare the application and supporting documents, filing, serving, and preparing your attorney to attend the hearing.

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a. *August Issue (to be submitted no later than June 1st):*

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c. *February Issue (to be submitted no later than Dec. 1st):*

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# CLARIFY REQUESTS FOR NATIVE ESI

BY CRAIG BALL – SUBMITTED BY SAN DIEGO LSA

Poring over Requests for Production this morning, I was gratified to see the client sought native forms of electronically-stored information; but the request said only, “All documents shall be Bates stamped and provided in native format.” *Is that sufficient?* To me, specifying forms of production is best done via an agreed ESI production protocol, but failing that, requesting parties should supply more detail than simply asking for “native format.” I believe requests need to lay out the forms sought for particularized types of ESI and specify the essential ancillary metadata to be produced in load files.

Requesting native forms in discovery demands a few adaptations versus the way hard copy documents were sought in years past. Take that request, “All documents shall be Bates stamped and provided in native format.” If a document is supplied natively and not printed out or “flattened” to a static TIFF, where do you “stamp” the Bates number? The solution is simple (in the file name and load file), but not obvious to lawyers unschooled in e-discovery.

Specifying more than “native format” in the request is sensible because much ESI doesn’t lend itself to production in its “true” native forms. The “true” native form of email is typically a database of multiple user accounts holding messages, calendars, contacts, to-do lists, etc. An opponent need not (and won’t) produce such a massive, undifferentiated blob of data. So the better practice is to specify preferred *near-native* forms be produced; that is, forms that preserve the integrity and utility of the evidence *and* support the granularity needed for discovery of only relevant, non-privileged material. As well, providing a load file specification ensures you obtain metadata values that only the producing party can supply (like Bates numbers, originating hash values, source paths and custodians).



Too, you want that metadata in a structure suited to your needs and tools.

Native productions are more utile and cost-effective, but only to requesting parties prepared to reap their superior utility and savings. One reason why producing parties have gotten away with producing inefficient and unsearchable static image formats (TIFFs) for so long is because TIFF images can be viewed in a browser; hence, recipients of TIFF productions can read documents page-by-page without review software. Yet, that easy access comes at a perilous cost. TIFF productions are many times larger in byte volume than native production of the same material, making it significantly more costly for requesting parties to ingest and host the evidence. Moreover, TIFF images tend not to work well for common formats like spreadsheets and PowerPoint presentations, and don’t work at all for, e.g., video and sound files. Finally, evidence produced as TIFF images gets shorn of metadata and searchable electronic content, requiring that the stripped metadata and searchable content be produced separately and reconstructed using software to comprise, at best, a degraded “TIFF Plus” facsimile of the evidence.

For these reasons and more, requests for production must either succeed the entry of an agreed- or court-ordered

production protocol or requesting parties must include useful and practical instructions about the forms of production *right in the body of the Request*.

To simplify my client’s task, I drafted an Appendix to be grafted onto the Requests for Production and suggested my client take out “All documents shall be Bates stamped and provided in native format” and substitute the phrase: “All production should be produced in accordance with the instructions contained in Appendix A to this Request.” It’s not perfect, but it should get the job done.

The Appendix I supplied reads as follows, and I don’t offer it as a paragon of legal draftsmanship. Each time I create something like this, it’s a struggle deciding what details to omit versus supplying all features of a full-fledged production protocol. I’ve kept it to about 1,000 words, and a tad verbose at that. It’s for you to decide if it adds substantial value over simply asking for “native format.” Tell me what do you think in the comments. If you’d like a Microsoft Word version of Appendix A to play with, you can download it from this link: [http://craigball.com/Request\\_for\\_Native\\_Production-Appendix\\_A.docx](http://craigball.com/Request_for_Native_Production-Appendix_A.docx)

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## Appendix A: Forms of Production

### I. Definitions

**“Electronically Stored Information” or “ESI”** includes communications, presentations, writings, drawings, graphs, charts, photographs, posts, video and sound recordings, images, and other data or data compilations existing in electronic form on any medium including, but not limited to: (i) e-mail, texting, social media or other means of electronic communications; (ii) word processing files (e.g., Microsoft Word); (iii) computer presentations (e.g., Microsoft PowerPoint); (iv) spreadsheets (e.g., Microsoft Excel); (v) database content and (vi) media files (e.g., jpg, wav).

**“Metadata”** means and refers to (i) structured (fielded) information embedded in a native file which describes the characteristics, origins, usage, and/or validity of the electronic file; (ii) information generated automatically by operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system; (iii) information, such as Bates numbers, created during the course of processing documents or ESI for production; and (iv) information collected during the course of collecting documents or ESI, such as the name of the media device, or the custodian or non-custodial data source from which it was collected.

**“Native Format”** means and refers to the format of ESI in which it was generated and/or as used by the producing party in the usual course of its business and in its regularly conducted activities. For example, the native format of an Excel workbook is a .xls or .xlsx file and the native format of a Microsoft Word document is a .doc or .docx file.

**“Near-Native Format”** means and refers to a form of ESI production that preserves the functionality, searchability and integrity of a Native Format item when it is infeasible or unduly burdensome to produce the item in Native Format. For example, an MBOX is a suitable near-native format for production of Gmail, an Excel spreadsheet is a suitable near-native format for production of Google Sheets, and EML and MSG files are suitable near-native formats for production of e-mail messages. Static images are not near-native formats for production of any form except Hard Copy Documents.

### II. Production

1. Responsive electronically stored information (ESI) shall be produced in its Native Format with Metadata.
2. If it is infeasible to produce an item of responsive ESI in its Native Format, it may be produced in a Near-Native Format with options for same set out in the table below:

**Source ESI** - Native or Near-Native Form or Forms Sought

**Microsoft Word documents** - .DOC, .DOCX

**Microsoft Excel Spreadsheets** - .XLS, .XLSX

**Microsoft PowerPoint Presentations** - .PPT, .PPTX

**Microsoft Access Databases** - .MDB, .ACCDB

**WordPerfect documents** - .WPD

**Adobe Acrobat Documents** - .PDF

**Photographs** - .JPG, .PDF

**E-mail** - Messages should be produced in a form or forms that readily support import into standard e-mail client programs; that is, the form of production should adhere to the conventions set out in RFC 5322 (the internet e-mail standard). For Microsoft Exchange or Outlook messaging, .PST format will suffice. Single message

production formats like .MSG or .EML may be furnished, if source foldering data is preserved and produced. If your workflow requires that attachments be extracted and produced separately from transmitting messages, attachments should be produced in their native forms with parent/child relationships to the message and container(s) preserved and produced in a delimited text file.

**Social Media** - Social media content should be collected using industry standard practices incorporating reasonable methods of authentication, including but not limited to MD5 hash values. Social media and webpages should be produced as HTML faithful to the content and appearance of the native source, or as JPG images with a searchable, document-level files containing textual content and delimited metadata (including “likes” and comments)

3. Paper (Hard-Copy) documents or items requiring redaction shall be produced in static image formats scanned at 300 dpi e.g., single-page Group IV.TIFF or multipage PDF images. If an item uses color to convey information and not merely for aesthetic reasons, the producing party shall not produce the item in a form that does not display color. The full content of each document will be extracted directly from the native source where feasible or, where infeasible, by optical character recognition (OCR) or other suitable method to a searchable text file produced with the corresponding page image(s) or embedded within the image file. Redactions shall be logged along with other information items withheld on claims of privilege.

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4. Each item produced shall be identified by naming the item to correspond to a Bates number according to the following protocol:

- i. The first three (3) characters of the filename will reflect a unique alphanumeric designation identifying the party making production.
- ii. The next eight (8) characters will be a unique, consecutive numeric value assigned to the item by the producing party. This value shall be padded with leading zeroes as needed to preserve its length.
- iii. The final six (6) characters are reserved to a sequence consistently beginning with a dash (-) or underscore (\_) followed by a five-digit number reflecting pagination of the item when printed to paper or converted to an image format for use in proceedings or when attached as exhibits to pleadings.
- iv. This format of the Bates identifier must remain consistent across all productions. The number of digits in the numeric portion and characters in the alphanumeric portion of the identifier should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted except as set out above.

5. If a response to discovery requires production of discoverable electronic information contained in a database, you may produce standard reports; that is, reports that can be generated in the ordinary course of business and without specialized programming. All such reports shall be produced in a delimited electronic format preserving field and record structures and names. If the request cannot be fully answered by production of standard reports, Producing Party should advise the Requesting Party of same so the parties may meet and confer regarding further programmatic database productions.

### III. Load Files

Producing party shall furnish a delimited load file in industry-standard Opticon and Concordance formats supplying the metadata field values listed below for each item produced (to the extent the values exist and as applicable):

**CUSTODIAN** - Name of person or source from which data was collected. *\*\*Where redundant names occur, individuals should be distinguished by an initial which is kept constant throughout productions (e.g., Smith, John A. and Smith, John B.)*

**ALL\_CUSTODIANS** - If deduplication employed, name(s) of any person(s) from whom the identical item was collected and deduplicated.

**BEGBATES** - Beginning Bates Number (production number)

**ENDBATES** - End Bates Number (production number)

**BEGATTACH** - First Bates number of first attachment in family range

**ENDATTACH** - Last Bates number of last attachment in family range (i.e. Bates number of the last page of the last attachment).

**ATTACHCOUNT** - Number of attachments to an e-mail.

**ATTACHNAMES** - Name of each individual attachment, separated by semi-colons.

**PARENTBATES** - BEGBATES number for the parent email of a family (will not be populated for documents that are not part of a family)

**ATTACHBATES** - Bates number from the first page of each attachment

**PGCOUNT** - Number of pages in the document

**FILENAME** - Original filename at the point of collection, without extension of native file

**FILEEXTENSION** - File extension of native file

**FILESIZE** - File Size

**FILEPATH** - File source path for all electronically collected documents and emails, which includes location, folder name, file name, and file source extension.

**NATIVEFILELINK** - For documents provided in native format only

**TEXTPATH** - File path for OCR or Extracted Text files

**FROM** - Sender

**TO** - Recipient

**CC** - Additional Recipients

**BCC** - Blind Additional Recipients

**SUBJECT** - Subject line of e-mail.

**DATESENT** (mm/dd/yyyy hh:mm:ss AM) Date Sent

**EMAILDATSORT** (mm/dd/yyyy hh:mm:ss AM) - Sent Date of the parent email (physically top email in a chain, i.e. immediate/direct parent email)

**MSGID** - Email system identifier assigned by the host email system.

**IRTID** - E-mail In-Reply-To ID assigned by the host e-mail system.

**CONVERSATIONID** - E-mail thread identifier.

**HASHVALUE** - MD5 Hash Value of production item

**TITLE** - Title provided by user within the document

**AUTHOR** - Creator of a document

**DATECRTD** (mm/dd/yyyy hh:mm:ss AM) - Creation date

**LASTMODD** (mm/dd/yyyy hh:mm:ss AM) - Last Modified Date

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The list on the previous page describes the metadata fields to be produced in generic, commonly used terms. You should adapt these to the specific types of electronic files you are producing to the extent such metadata fields exist in the original ESI and can be extracted as part of the electronic data discovery process. Any ambiguity about a metadata field should be discussed with the Requesting Party prior to processing and production.



**CRAIG BALL** of New Orleans and Austin is a Texas trial lawyer, computer forensic examiner, law professor and noted authority on electronic evidence. He limits his practice to serving as a court-appointed special master and consultant in computer forensics and electronic discovery and has served as the Special Master or testifying expert in computer forensics and electronic discovery in some of the most challenging and celebrated cases in the U.S. A founder of the Georgetown University Law Center E-Discovery Training Academy, Craig serves on the Academy's faculty and teaches Electronic Discovery and Digital Evidence at the University of Texas School of Law and at Tulane University School of Law.



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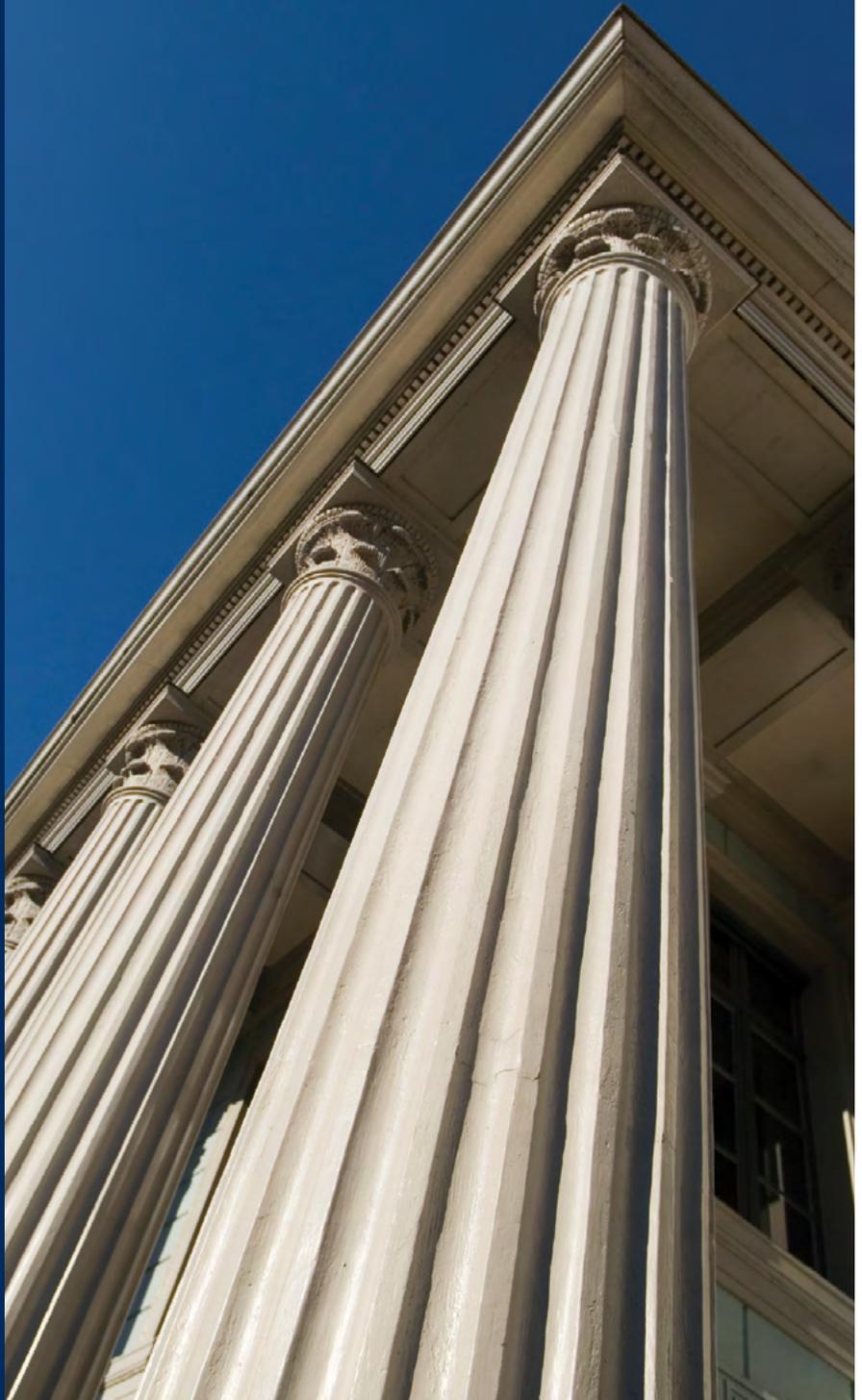
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# BACK TO BASICS: DISCOVERY AND DEPOSITIONS

BY LYNNE PRESCOTT, CCLS, LPI EXECUTIVE ADVISOR

## Part 4 of LPI's "Back to Basics" Legal Procedures Series

Who can forget that iconic scene from the movie "My Cousin Vinny" where Marissa Tomei explains to Joe Pesci that the District Attorney has to disclose all the evidence and information in his possession because the law says there can be no surprises? While that scene is referencing a criminal case, the same is true of most cases brought before the courts. This process is called discovery.

### Discovery

During this phase of the case, parties obtain information and evidence from each other that can be used to support or disprove claims in the lawsuit. It is one of the most important tools in the civil process, affecting legal strategy, settlement negotiations, and preparation for trial. Each side is given the opportunity to "discover" facts and evidence from the other side. It is the procedure through which the attorneys are able to assess the facts, evaluate the witnesses, and discover additional information that may or may not have been available when the lawsuit was initially filed.

While this article discusses discovery from a civil case perspective, discovery is also a very important component of unlawful detainer, family law, and arbitration cases. Discovery is conducted at both the state and federal court levels, although they have differing timelines and rules that govern the process.

Generally, the types of discovery you will work with include:

- Form Interrogatories – Judicial Council form with pre-written questions directed to a party and answered under oath (verified) in writing.
- Special Interrogatories – Specific questions directed to the answering party. Must be its own question, cannot contain subparts, or be compound or complex. Special Interrogatories are limited to 35 questions. Any questions beyond the 35 must be accompanied by a "Declaration for Additional Discovery" commonly called the "Rule of 35."
- Supplemental Interrogatories - Requests that ask for previously served interrogatories to be updated with any additional or new information since service of the original interrogatories.
- Request/Demand for Production or Inspection of Documents and Things - Requests for production may be used to inspect and copy documents or tangible items held by the other party. There is no limit on the number of demands that can be served on a party.
- Request for Admissions - Used to request that the party admit or deny statements of fact, not questions. This can serve to narrow the disputed areas of a case. It is important to pay attention to RFAs, because if the deadline to respond is overlooked and the propounding party makes a motion to deem the admissions made, the responding party stands to lose its case. Just as with special interrogatories, the number of requests for admission cannot exceed 35.

Discovery is used to find out things like: what the parties plan to say about the case; what facts or witnesses support each side; what information or documents could be used as evidence.

In state court cases, the plaintiff may commence the discovery process on a defendant either ten days after service of the summons and complaint, or after the defendant has "appeared" (filed their answer). The defendant may commence the discovery process immediately upon receipt of the summons and complaint.

There are strict deadlines that apply to the discovery phase of a case.

- Discovery Cut-Off – the last day to complete discovery is 30 days before the initial trial date. (Exceptions apply in arbitration). The continuance or postponement of a trial date does not mean that discovery can be reopened.
- Discovery Motions – must be heard on or before the 15th day prior to the initial trial date. Motions concerning expert discovery must be heard no later than the 10th day before the initial trial date.
- Last Day to Respond to Discovery – generally 30 days from the date on the proof of service (plus time for service).

Discovery cut-off and timelines for federal court are generally set by the assigned judge and/or local rules.

The propounding party (party serving the discovery) must serve a copy of the discovery requests on all parties who have appeared in the action. The responding party must do the same when serving its responses. The PROPOUNDING party always KEEPS THE ORIGINAL discovery and SENDS A COPY. The responding party will send an original response and keep a copy. This way, the propounding party always has a complete set of originals - - the original discovery document that was served on the responding party, and the original answer or response that was provided by the responding party.

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All responses to Interrogatories, Special Interrogatories, Requests for Production of Documents, and Requests for Admission must be accompanied by a Verification signed by the client.

Remember that your proof of service on discovery is **UNSIGNED** until after you actually serve the document.

**Note re Federal Court:** There are no form interrogatories or special interrogatories in federal court. They are simply called interrogatories. Unlike state court practice, you cannot sign a declaration to propound more than 25 interrogatories; instead, you either have to stipulate with opposing counsel to exceed that limit or seek leave of court. (Rule 33(a)(1).)

## Depositions

A deposition is a legal procedure where oral testimony, under oath, is obtained through direct examination and cross-examination of a party or witness in advance of a trial or hearing. The testimony is preserved in writing and audio/video technology. Taken before a certified shorthand/court reporter, and then printed in book format, called the deposition "transcript," the transcript can then be offered as evidence at trial. Depositions are an extremely effective and instrumental tool in the discovery process.

The "deponent" is the person whose deposition is being taken. A plaintiff may serve a notice of deposition on defendant(s) any date that is 20 days after service of the summons and complaint, or once an appearance has been made by the defendant. On the other hand, a defendant may serve a deposition notice immediately after they have been served or have made their first appearance, whichever is first.

The deposition of a witness by all counsel cannot exceed seven hours of total testimony (except by witness' own counsel). However, the parties may stipulate to a longer period of time if desired. No second deposition of a deponent can be scheduled or noticed unless by stipulation or by order of the court.

At least 10 days' notice must be given when noticing a deposition and must state the following in the notice:

- Name of Deponent
- Location of Deposition
- Date and Time
- Use of Audio/Video Technology
- Notice of Intent to Use Video Deposition at Trial
- Required Documents

Objections to a Notice of Taking Deposition must be served at least three calendar days before the date of the deposition. If served three calendar days before, service must be personal. In federal court, the objection must be raised within a "reasonable time."

The location of the deposition must be within 75 miles of the deponent's address, or within the county where the action is pending and within 150 miles of the deponent's residence. Witness fees are only paid to non-party witnesses at the rate of \$35/day, plus \$0.20/mile/round trip.

The noticing party is responsible for obtaining the court reporter and should confirm the deposition with the court reporter the day before the deposition. A courtesy copy of the deposition notice should be provided to the court reporter for purposes of setting up the caption page of the transcript and identifying the parties, venue, case number, etc.

A transcript of the deposition will be prepared by the court reporter and provided for review and correction of errors. Any corrections must be returned to the court reporter within 30 days of receipt of the initial transcript.

**NOTE: NEVER, EVER OPEN A SEALED ORIGINAL DEPOSITION TRANSCRIPT!** It is to remain sealed until the first day of trial, when it is opened by the court.



**LYNNE PRESCOTT, CCLS,** is LPI's

Executive Advisor, and a member of Sacramento Legal Secretaries Association. She first became a member of LPI in 1990 while working as a legal secretary in Fairfield, CA. She is currently employed by the law office of Messing Adam & Jasmine. Lynne is a two-time past president of both Solano County LSA and Sacramento LSA, and obtained her CCLS certification in 2013. She resides in Yuba City with her husband, Randy, and four fur-babies, and is a proud mother and grandmother.



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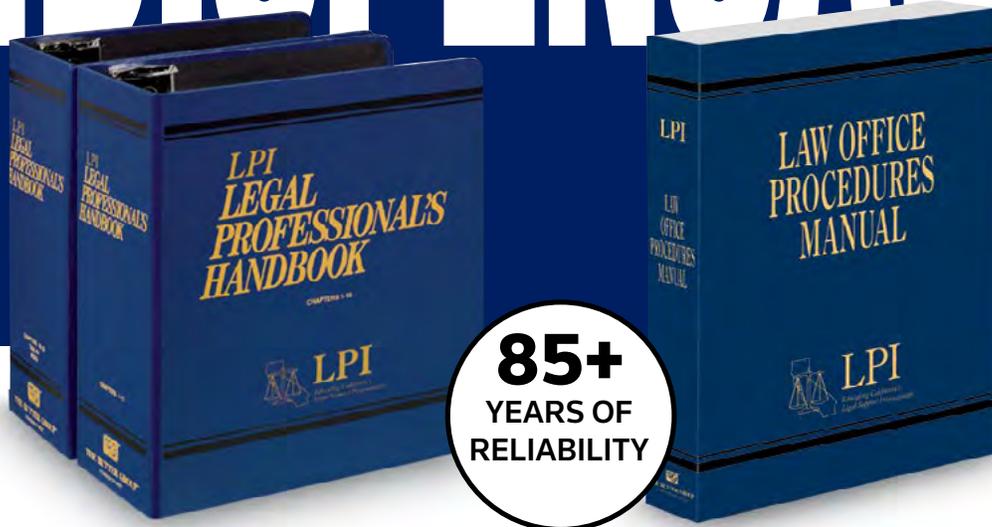
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