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MAY 2023



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by the Annual Conference Committee, Page 5

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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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### 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

## PRESIDENT'S MESSAGE

BY ROD CARDINALE, JR.

### President's End-of-Year Report

LPI's Third Quarterly Conference was held February 24-26, 2023, in San Mateo, hosted by San Mateo County LPA. Conference Co-Chairs Melissa Bettencourt and Tanya Tate and all the members of San Mateo County LPA who helped organize the conference did an amazing job. The theme for the conference was "Grooving to the '60s." At the Saturday night banquet, attendees dressed in their favorite hippie attire. All the costumes were great to see, and the energy in the room was amazing. In addition to all the fun we had at the banquet, we had time to put on six educational opportunities, both in-person and on Zoom. We had the highest turnout at our conference educational classes in years, with almost 300 people signing up for the six classes.

The 2022-2023 fiscal year has come and gone, and what a transformative year it has been for LPI. In my last report, I outlined the many changes we implemented over the fiscal year, and now it's time to see how well the changes are received by our members and the legal community.

There is no way we could have pulled off all the changes we made, outlined in my last report, without the help of all the LPI Officers and Chairs. I want to thank the officers and chairs of LPI for all the time and energy they put into everything we accomplished as a team this past year. Words can't express the appreciation and gratitude I have for each one of you for your tireless efforts to make our plan to ensure LPI is the go-to place for legal education in California a reality.

There are several professional partners behind the scenes that work together with us and share the same commitment to excellence as LPI. I want to acknowledge their contributions and thank them for their unwavering support and partnership:

- Kim Oreno, CAE, LPI's Administrator, and the staff at CAMS
- Scott Herman, WebEditor Services (LPI's Webmaster)
- Vanessa Buffington of NextGen Legal (LPI's skills-based training)
- June Hunter (LPI's legal technology trainer)
- Lori McElroy of RedRoman Creative (LPI's magazine layout designer)
- Deechen Horton (LPI's bookkeeper)
- Barkley Court Reporting (webinar audio editing services)
- Integrity Legal Corp. (copy/print services to the PRC)
- Procopio Hargeaves Savitch, et al. (pro bono legal services to LPI)
- The Rutter Group (LOPM & LPH publishers)

I especially want to thank the members of this organization for your loyalty and unwavering support of LPI. As we enter a new and exciting time for LPI, I ask that each member make a renewed commitment to LPI and to your local association. It's my hope that you are happy with the changes to our educational program structure, and the way it's offered and that you will take full advantage of them. LPI is marketing our organization and what we offer to the legal community like never before, but the best form of marketing is and will always be word of

Continued on page 3 ➔

← Continued from page 2

mouth. I encourage all members to do their part in assisting LPI in its marketing efforts and share what we offer with your co-workers and peers in the legal community. I encourage all members to work towards having the members of your firm join the LPI 100% Club. Remember, we're Stronger Together!

I look forward to seeing you at our 89th Annual Conference of Delegates and Board of Governors Meeting, whether you attend in person or via Zoom. The Annual Conference Committee has worked hard to ensure everyone has a great time at The D Hotel in Las Vegas, Nevada.

**We are Stronger Together!**



# Congratulations!

## TO LPI'S NEWEST CALIFORNIA CERTIFIED LEGAL SECRETARIES!

The CCLS Certifying Board, CCLS Chair and LPI Executive Committee are so proud of the following ladies who passed the March 2023 California Certified Legal Secretaries exam:

---

YIBET AGUILAR, CCLS (Stanislaus County LPA)

KATHLEEN CARLSON, CCLS (Member-at-Large)

MARISELA NAVARRO, CCLS (Sacramento LSA)

ERIN SUMMERS, CCLS (Riverside LSA)



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# “STRONGER TOGETHER, LAS VEGAS STYLE!”

BY ANNUAL CONFERENCE COMMITTEE

That’s the theme for LPI’s 89th Annual Conference of Delegates and Board of Governors meeting in Las Vegas, Nevada, May 11-14, 2023, at The D Hotel & Casino. “Las Vegas Style” means that everything is designed to catch your eye, keep you engaged, and give you serious FOMO (fear of missing out)!

The Speed Mentoring event is back, having been such a huge success last year. You definitely don’t want to miss it. This takes place right before the all-inclusive Round Table Luncheon on Friday. Following the luncheon are two excellent educational workshops on Friday afternoon.

Friday evening, you are invited to an exclusive “Backstage Pass Party,” sponsored in part by Direct Legal Support on the Traverse City Patio, overlooking the bright lights of the Las Vegas skyline. Come dressed as your favorite rock star - - no holds barred - - the more outrageous, the better! Celebrity-themed cocktails and mocktails will be available to purchase, and munchies will be provided. Bring your cameras for photo ops, as you never know who will show up! Of course, you will need to have your backstage pass in order to be admitted. Click on the optional Friday night social event when registering for conference (there is a \$10 fee for this event).

If you miss the April 28 registration cut-off and still want to attend the Backstage Pass Party, you can contact the “Will Call” Ticket Agent at [slprescott7@gmail.com](mailto:slprescott7@gmail.com) to reserve your tickets. Will Call tickets can be picked up at the Conference Registration Desk on Friday.

The exhibitors room will be open on Friday and Saturday, so be sure to come by and visit them and thank them for their support. Along with the prize drawing opportunities, the History Book/Scrapbook and Bulletin Contest entries will be on display.



The Pre-Board of Governors meeting will kick things off on Saturday morning, followed by the opening ceremonies of the Annual Conference General Session. Things get rocking with a shout-out to all the local associations and their delegate representatives. Make sure your peeps are ready to stand and be recognized! The business of the corporation will be discussed, along with the election of officers for the 2023-2024 term. Dress code for the business meeting is professional or business casual. After the first session is recessed, the new CCLSs will be celebrated at the Kalman S. Zemplyny II Luncheon. You do not need to be a CCLS to register for this luncheon.

You will have the opportunity to attend *more* educational classes on Saturday afternoon, so be sure you sign up ahead of time to secure your spot. The classes will also be offered via Zoom.

Banquet on Saturday night is one of the highlights of the Conference. Since we’re in Las Vegas, the theme is “Casino Royale,” and the dress code is fancy-glam. Be noticed and be stylish! Esquire Deposition Solutions is a sponsor for the pre-banquet reception. The annual awards ceremonies will take place at the Banquet, with the Chapter Achievement

Awards, President’s Award, Rising Star Award, and Legacy Award to be presented. The new CCLSs will also be formally presented and congratulated on their outstanding achievements. Kick off your shoes and stay for dancing and more fun after the Banquet!

Brunch on Sunday morning ushers in the second session of the General Session, as well as the installation of officers for the new term. President Rod’s theme of Stronger Together best describes this event. Dress code is professional/business casual. Following tradition, the 89th Annual Conference of Delegates and Board of Governors Meeting will conclude with the singing of our closing song, “Til We Meet Again.” The Governors will then proceed to the Post-Board of Governors meeting to vote on the adoption of the 2023-2024 proposed budget and address any other business.

The D Hotel is on Fremont Street, the historic part of town, with lots to do and see, and the Las Vegas Strip is just a couple of blocks from the hotel. As you can see, there’s a fantastic weekend planned, and it’s all happening in fabulous Las Vegas! Let’s do it Stronger Together - - Las Vegas Style!



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# "Speed Mentoring" LPI's Officer-Chair Workshops

LPI's 89th Annual Conference ~ The "D" Hotel, Las Vegas, Nevada  
Friday, May 12, 2023, 8:30 a.m. - 11:45 a.m.

**All conference attendees are invited to attend!**



Parliamentarian Roundtable



Membership Roundtable



Governor's Roundtable



Treasurer's Roundtable



Legal Secretary Training



Marketing Roundtable



Social Media Roundtable



Programs Roundtable

To register, visit our webpage at:  
[LegalProfessionalsInc.org/events](https://LegalProfessionalsInc.org/events) or scan the QR Code.





## May 12, 2023 - May 13, 2023 CLE SEMINARS IN PERSON OR VIA ZOOM

**PRE-REGISTER BY MAY 1ST:** LPI Members - FREE      Non-LPI Members - \$15  
**WALK-INS AT CONFERENCE:** LPI Members - \$5      Non-LPI Members - \$20

**Friday, May 12, 2023    1:45 p.m. to 2:45 p.m.**

### **YOUR HOME IS SPYING ON YOU: HOW TO USE SMART DEVICE DATA IN LITIGATION**

**Speaker: Brian Chase (Archer Hall)**

**Friday, May 12, 2023    3:15 p.m. to 4:15 p.m.**

### **PROTECTING THE PROTECTORS**

**Speaker: Jason Jasmine, Esq. (Messing Adam & Jasmine)**

**Saturday, May 13, 2023    1:45 p.m. to 2:45 p.m. - 2 choices**

#### **1. MARSY'S LAW: HOW IT CAME TO BE, VICTIMS RIGHTS, AND THE ROLE OF A VICTIM ADVOCATE**

**Speaker: Brooke A. Mansfield**  
**(Modoc County Victim Witness Coordinator)**

#### **2. COPYRIGHT LAW IN ENTERTAINMENT AND THE ARTS**

**Speaker: Bethany Rabe, Esq. (Greenburg Traurig, LLP)**

**Saturday, May 13, 2023    3:15 p.m. to 4:15 p.m. - 2 choices**

#### **1. CORPORATE 101 INCLUDING LLCs**

**Speaker: Vivian Shreve, CCLS**  
**(LPI California Certified Legal Secretary Chair)**

#### **2. THE HISTORY OF GAMING IN NEVADA**

**Speaker: Gregory R. Gemignani, Esq. (Dickinson Wright)**

**REGISTER TODAY! Visit our Events page at**  
**[LegalProfessionalsInc.org/events/](https://LegalProfessionalsInc.org/events/)**



**The deadline to register is May 1, 2023**

LPI Continuing Legal Education is a program of Legal Professionals Incorporated, an approved provider, and certifies that each of these 1.0 hour seminar segments have been approved for minimum continuing education credit in the amount of 1.0 hour of Participatory MCLE credit by the State Bar of California.

# SHOULD PARALEGALS PARTICIPATE IN DEPOSITIONS?

BY ESQUIRE DEPOSITION SOLUTIONS

The Ohio Board of Professional Conduct recently considered an interesting issue related to deposition practice: whether or not nonlawyers such as paralegals can ethically participate in pretrial depositions. The board decided in *Taking of a Deposition by a Paralegal or Out-of-State Lawyer* (Ohio Board of Professional Conduct, No. 2022-13) that they may not ... under any circumstances.

During a deposition, litigators are called upon to:

- identify legally relevant facts that will be used to shape trial strategy
- elicit testimony from witnesses that supports (or refutes) a legal cause of action
- advise witnesses on legal issues relating to their testimony
- ask follow-up questions that rely on legal analysis of a witness's prior testimony
- make assessments of witness credibility with the judge or jury
- predict settlement value or potential legal exposure based on witness testimony

These are all legal skills that cannot ethically be delegated to a paralegal, the board concluded.

## Depositions: The Most Important Discovery Tool

Depositions are widely considered the most important pretrial discovery tool available to litigators, and, according to one court, the "factual battleground where the vast majority of litigation actually takes place." *Hall v. Clifton Precision*, 150 F.R.D. 525, 531 (E.D. Pa. 1993).

In a deposition, litigators learn in advance of trial what testimony will be given by the deposition witness. Having

an opportunity to observe the witness also gives litigators insight into whether the witness will be believable to the factfinder if the case is tried.

In a deposition, litigators are often called upon to ask appropriate follow-up questions that rely on a legal analysis of a witness's answer. When defending a deposition, litigators listen to determine whether opposing counsel is attempting to elicit inappropriate information and, if so, make legal objections.

Litigators also use depositions to assess the performance of opposing counsel. In *Soliz v. State*, 97 S.W.3d 137 (Texas Ct. Crim. App. 2003), the court remarked:

When evaluating the strength of their client's case, litigators often accord great weight to witnesses' and attorneys' performances during depositions. Thus, if an attorney's client performs well while the opponent performs poorly, the attorney may attach a higher settlement value to the case. ... Depositions are a dress rehearsal — and due to high settlement rates are often a substitute — for trial. Therefore, attorneys tend to attach more importance to depositions than to most paper discovery.

A Florida appellate court, in *State v. Foster*, 674 So.2d 747 (Fla.App. 1996), commented that "without a doubt, the process of directly examining or cross-examining a witness can affect important rights under the law."

Litigators rely on their legal training and skills to question witnesses effectively. Also, depositions often present ethical questions or raise strategic considerations of the utmost importance in contested litigation. According to *Foster*, a nonlawyer "cannot be expected to have the requisite training and experience to devise a coherent theory of the case, to object to potentially



damaging testimony on the record, or to cross-examine effectively."

The Foster court concluded that the active participation of a nonlawyer in a deposition constituted the unauthorized practice of law.

The Ohio ethics board found these cases persuasive on the critical role that lawyers play in pretrial depositions. In Ohio, it said, lawyers cannot ethically delegate the responsibility of taking or defending a deposition to a paralegal. "A lawyer who instructs a paralegal to take a deposition, prepares deposition questions for a paralegal to use, supervises a paralegal in taking a deposition, or instructs a paralegal to represent a deponent at a deposition is assisting in the unauthorized practice of law," the board ruled.

Ohio courts have twice previously considered the lawful deposition roles of individuals not admitted to law practice. In *Mahoning Cty. Bar Assn v. Rector*, 608 N.E.2d 866 (1992), the court ruled that a corporate officer engaged in the unauthorized practice of law when he objected to questions asked of deponents by opposing counsel and instructed a deponent not to answer a question. And in *Disciplinary Counsel v. Brown*, 99 Ohio St.3d 114 (2003), a court ruled that a disbarred attorney engaged in the unauthorized practice of law when he participated in pretrial conferences and depositions.

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## Paralegals Can Attend Depositions for Limited Purposes

The board's ethical opinion doesn't mean that paralegals cannot attend depositions. In fact, paralegals frequently attend depositions in situations in which an attorney decides that the witness is not likely to offer important testimony. Typically, these are cases with numerous parties — and attorneys — on both sides.

The paralegal's ethics code advises that, in cases where a paralegal is attending the deposition as an observer, the paralegal should inform everyone at the deposition that she or he is an observer only and will not be asking questions or representing any party to the litigation. While serving in the role of an observer, the paralegal will also not make objections or enter into agreements or stipulations on behalf of his or her firm or anyone represented by the firm.

Because conducting and defending depositions calls for a level of legal knowledge and legal judgment few paralegals possess, it's clear that depositions would rarely promote justice unless all participants complied with norms of professional ethics. The lawyer's ethical obligations to refrain from intentionally eliciting false testimony, to correct false testimony when given, to refrain from giving verbal cues to the deponent and to refrain from harassing the deponent — all of these ethical obligations are vital to ensuring that depositions efficiently and fairly advance the cause of justice.

In fact, so important is the lawyer's role at a deposition that one court recently ruled that civil litigants have a constitutional right to the presence of their lawyer during a deposition.

Lawyers invite discipline if, through lack of adequate supervision, their paralegals engage in the unauthorized

practice of law. ABA Model Rule 5.3 requires lawyers to make reasonable efforts to ensure that nonlawyers in their firm do not violate ethical standards. Specifically, the ABA has cautioned attorneys that paralegals may not participate in depositions or engage in any conduct that might leave the impression with the client or court that the paralegal is licensed to practice law.



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## Dates to Remember | 2023

**MAY 11-14, 2023**

**LPI's 89th Annual Conference of Delegates and Board of Governors Meeting**

*"Stronger Together – Las Vegas Style"*

The D Hotel, Las Vegas, Nevada | Hosted by LPI

**MAY 12-13, 2023**

**Continuing Legal Education Seminars at May Conference**

(In Person or Via Zoom) - See flyer on Page 7 for details

**MAY 16, 2023**

**LPI/NextGen Legal**

Beginning Legal Secretarial Training Online Course commencing May 16 – July 11

**MAY 16, 2023**

**LPI/NextGen Legal**

Overview of California Discovery Online Class commencing May 16 – June 27

**MAY 18, 2023 | 12PM - 1PM**

**LPI Webinar**

Canva 101 for Beginners

**MAY 23, 2023**

**LPI/NextGen Legal**

Trial Preparation Course commencing May 23 – July 18

**MAY 23, 2023**

**LPI/NextGen Legal**

Advanced Discovery Online Course commencing May 23 – July 4

**JUNE 13, 2023 | TUESDAYS FROM 6PM – 8PM**

**LPI Intermediate Legal Professional Training**

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commencing June 13 – September 26

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# LPI'S THIRD QUARTERLY BOARD OF GOVERNORS MEETING



LPI's Third Quarterly Conference was hosted by San Mateo County LPA at the San Mateo Marriott. We had a very groovy time "Grooving to the 60's." From the beginning of the weekend to the end, there were tie dye shirts, peace signs, colored sunglasses and floral headbands worn by several attendees.

After the Friday night reception, they hosted a rock painting night where lots of fun and creativity ensued. On Saturday morning at the first session of the Board of Governors meeting, there was a tribute to a very dear LPI member from Stanislaus County LPA, Diane Mecca, CP, CBA, who passed away suddenly. I don't think there was a dry eye in the house. She will be dearly missed by everyone. After Officer and Chair reports were given,

several educational and technology workshops were offered that morning and later in the afternoon after the Roundtable Luncheon where the EC Resume was discussed. At the Saturday evening banquet, the groovy 60's were in full swing with "Marly" (Rod Cardinale, Jr.), "Love Child" (Donna Day), "Rainbow" (Bettina Jacobson), "Autumn" (Rita Burnett, CCLS), "Songbird" (Lynne Prescott, CCLS) and "Serenity Starflower" (Elise Dresser, CCLS) leading the charge.

On Sunday morning the second session of the Board of Governors Meeting was held where several LPI Bylaw and Standing Rule amendments were voted on.

San Mateo County LPA did a great job making it a fun conference weekend!



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## CCLS ON-LINE STUDY GROUP

June 22, 2023 – August 31, 2023



If you are interested in studying for the California Certified Legal Secretary (“CCLS”) Exam,\*\* join LPI’s CCLS On-Line Study Group. During the Study Group, all topics covered in the CCLS exam will be reviewed (*Please see the CCLS Information Kit on LPI’s website for a description of the sections covered on the exam*).

Lectures and materials will be posted by no later than 7 p.m. on Sundays. Students may complete the material at their convenience. Access information will be provided upon enrollment in the class.

**Individual modules are available for purchase for each section covered.**

If you only need to study for certain sections, you may purchase individual modules at any time during the then-current Study Group class. You may also purchase all sections if you prefer to study on your own.

**Reminder – all material is intended for individual use only, and not for local association study groups**

Students will be provided with homework and handouts. Students now have the option to include the ***Law Office Procedures Manual (LOPM) in their registration (see below for pricing)***. The other reading materials, such as ***The California Style Manual (4th Ed.)***, ***The Redbook by Bryan A. Garner***, and ***Pocket Guide to Legal Ethics***, (available on Amazon.com) are required NO LATER THAN the start of class: Students are also encouraged to have the CCLS Study Guide.

For full information, please go to LPI’s website here:

[Events Calendar - Legal Professionals, Inc. - LPI : Legal Professionals, Inc. – LPI \(legalprofessionalsinc.org\)](https://www.legalprofessionalsinc.org/events-calendar)

**\*\*All examinees must meet eligibility guidelines outlined in the CCLS Information Kit on LPI’s website.**

### REGISTRATION FEES:

#### **10-Week Study Group (without the Law Office Procedures Manual):**

First time participation:	\$100 Members	\$150 Non-Member
Subsequent participation:	\$ 50 Members	\$ 75 Non-Members

#### **10-Week Study Group (including the Law Office Procedures Manual):**

First time participation:	\$219 Members	\$269 Non-Member
---------------------------	---------------	------------------

**\*\*REGISTRATION MUST BE RECEIVED BY JUNE 8, IN ORDER TO RECEIVE THE LAW OFFICE PROCEDURES MANUAL PRIOR TO THE START OF THE CLASS**

#### **Individual Modules: (\$15 each Members; \$25 each Non-Members)**

California Legal Procedure	Legal Terminology	Legal Computations
Skills	Reasoning & Ethics	
Law Office Administration	Ability to Communicate Effectively	

**DEADLINE TO REGISTER (no LOPM) IS JUNE 15, 2023. NO REFUNDS AFTER JULY 6, 2023.**

If you have any questions, please contact Vivian Shreve, CCLS, [cclschair@legalprofessionalsinc.org](mailto:cclschair@legalprofessionalsinc.org).

# LOCAL RULES – QUIRKS AND IRKS AND WHAT WORKS

BY SUSAN C. HUSHER – SUBMITTED BY SANTA CLARA COUNTY LPA

My one wish has always been to know the lyrics to every song ever written, so that I could sing along as loud as I wanted and not be fearful of singing wrong or made-up words. I always thought how marvelous it would be to instinctively know the lines to every verse and chorus. Now, after a 34-year-career in Civil Litigation, I have a new wish: To know by heart every Local Rule in every California state court! I know – that sounds crazy – but oh, how much easier my life would be if I knew all those local rules off hand, without pause.

The following is a very small snippet of local rules particular to a few Northern California counties, which I have found especially helpful to attempt to memorize. Every time I'm asked to "reserve hearing date?" or "what days are discovery motions heard and in what department?" I can turn to my list of Quirks and Irks for the answer without having to go through the tenuous task of reading through the local rules for that particular county. I hope you find this helpful as well.

## SAN FRANCISCO COUNTY SUPERIOR COURT

The Civil division of the San Francisco Superior Court ("SFSC") is a self-calendaring court. Reservations are not required prior to selecting a hearing date. For Law and Motion: All limited and unlimited jurisdiction matters are heard in Department 302 at 9:30 a.m. Monday through Friday. Discovery Motions are heard in Department 301 at 9:00 a.m. Monday through Friday. You select your own hearing date and submit it on the moving papers, however, the date may be changed by the filing clerk if the date selected is unavailable, so set your hearing far

enough out to ensure an available date with the court. Of note, the word "DISCOVERY" must be typed in capital letters on the title page of all papers relating to motions heard in the Discovery Department. Such papers should not be combined with papers relating to motions to be heard in other departments.

SFSC mandates in-person appearances for all Order to Show Cause ("OSC") hearings. Telephonic appearance is no longer an option for an OSC as of August 30, 2022, and failure to appear may result in sanctions. However, if you file a responsive declaration to the OSC 20 days before the hearing, the court will issue a case management order prior to the hearing and obviate an appearance.

To contest a tentative ruling, you must send an email to the court at [contestdept302tr@sftc.org](mailto:contestdept302tr@sftc.org) with a copy to all other parties stating, without argument, the portion(s) of the tentative ruling that the party contests. (SF Local Rule 8.3 (D)). Of note, if you are the prevailing party, and not contesting the tentative ruling, you are required to prepare a proposed order repeating verbatim the substantive portion of the tentative ruling - and if you are appearing at the hearing remotely, the proposed order must be sent to the court by an email to [contestdept302tr@sftc.org](mailto:contestdept302tr@sftc.org), prior to the hearing. If you wait to submit the proposed order until after the hearing, it can take weeks to get the order signed.

This court wants hard copy courtesy copies! Pursuant to Local Rule 2.7(B), you are required to send a courtesy copy in paper to the judge of any document that requires court review,



action or signature, with the exception of ex-parte papers. These courtesy copies should be sent directly to the judge's department and are due no later than 1:30 p.m. the next business day after the documents are e-filed. Courtesy copies should be delivered via messenger to ensure timely delivery.

All efilings must be filed through any court-approved Vendor. However, only File & ServeXpress can be used for the following Designated Cases: Asbestos, Complex Litigation, Probate, Family Law Dissolution, and Appellate Division Misdemeanor proceedings.

San Francisco is one of the few courts where I have found a direct email for efilings support. That email is [Sfefiling@sftc.org](mailto:Sfefiling@sftc.org) Keep this handy – you'll thank me later!

## ALAMEDA COUNTY SUPERIOR COURT

Alameda requires a reservation, and all moving papers must have the reservation number in the caption. The use of the Court Reservation System (CRS) is now mandated for civil courtrooms within the Alameda County Superior Court. Parties with a case assigned to a department, are directed to utilize CRS to make and manage their reservations, within the

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parameters set by the courtrooms. If an appropriate reservation is not available on the public portal, a party may contact the clerk of the department in which the motion is to be set with regard to reserving a hearing date.

You must first register for a user account with the eCourt Public Portal on the Alameda County Superior Court website, which provides the public with online access to civil case records through a secure web server. Currently, the portal provides information about General Civil and Small Claims cases. To use any function on this site you must register for a user account. Once you have an account, the eCourt Public Portal provides:

Reservation System (CRS) – Use to make and manage court date reservations.

Searches – Use to find case and party information. You can also access images of documents that can be downloaded and printed for a fee and half page preview of the document is available.

Direct Calendaring – Use to view Direct Calendaring Case Information

Civil Complex – Use to view Civil Complex Case Information

Alternative Dispute Resolution – Using a mediator to reach a mutually acceptable confidential resolution to a case.

Once you make a reservation for a hearing, **confirmation of the reservation must be attached to the Notice of the moving papers.** It is also mandatory that represented parties must participate in electronic filing (e-filing) using a court-approved electronic service provider (EFSP).

Unless other service is required by law or court order, anyone who consents to participate in e-filing must serve and accept service electronically. (Rule 3.27)

Additional requirements include

that documents must be e-filed in a searchable PDF format, and mandatory courtesy-copy requirements under local rule 3.30(c) apply to all e-filings. For regular motions, such delivery must be made by noon the court day after the paper is filed, lodged or otherwise submitted. For in limine motions or matters on which the hearing will be two court days or fewer from filing, the courtesy copies shall be delivered the same day as filing. Any courtesy copy that would otherwise be due on a non-court day is instead due on the next court day.

Law and Motion matters are heard in Department 511 in any case that is not assigned to a judge for all purposes or all pretrial purposes under these rules.

Discovery Motions: Unless otherwise authorized by the court, discovery meet and confer obligations require an in-person, telephonic, or video conference between parties. If a resolution is not reached, an Informal Discovery Conference (“IDC”) with the court must be requested and either held or denied before a party may obtain a reservation number for the filing of any discovery-related motion, protective order or for an order to quash. To schedule an IDC, parties must contact the clerk of the assigned department by email, with a copy to all parties. Unless otherwise authorized by the court, the requesting party must file and serve an IDC declaration limited to three pages that must summarize the meet and confer efforts and the disputed discovery. A courtesy copy of the IDC declaration must be emailed or delivered to the assigned department at least three court days before the IDC. The responding party must file and serve an IDC response limited to three pages briefly summarizing the party’s position. A courtesy copy of the IDC response must be emailed or delivered to the assigned department at least one court day before the IDC.

## SANTA CLARA COUNTY SUPERIOR COURT

Santa Clara County sets their own hearing dates; you don’t get to choose – so be prepared to be flexible and wait a long time! Pre-trial motions, including discovery motions, are heard in the department of the case management judge, on Tuesdays and Thursdays at 9:00 a.m. To schedule a hearing, you must file and serve your moving papers, and leave the hearing date blank. The clerk will review and either reject or accept them for filing. If accepted, the papers will be returned filed but without a hearing date assigned. The calendar clerk will eventually schedule the motion for hearing – **it can take 6 to 8 weeks to get your hearing date – so plan ahead!** The clerk will NOT notify you of the hearing date; you must continually check the court’s website for the date; **then file and serve an Amended Notice with the hearing date on it.** There is no leave for not serving an amended notice; failure to do so will lead to a continuance of the motion or the motion being ordered off calendar by the Court. It is not necessary to refile all the moving papers, just the Notice. You are also not permitted to contact the clerk regarding the status of your hearing date; you simply have to wait. (Local Rule 8).

Santa Clara does not accept proposed orders with moving papers before a hearing on a regularly-noticed motion unless ordered by the Court (or if otherwise required by applicable statute or Rule of Court, such as motions to be relieved as counsel, orders on objections to evidence in summary judgment motions, etc.), and may reject your entire filing if a proposed order is submitted when you file your moving papers. Proposed Orders should only be submitted AFTER a hearing, and must be attached to a Proposed Order Cover Sheet (EFS-020); electronically

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lodged, and at the same time a version of the proposed order in a fully editable word-processing format (preferably MS Word and definitely not PDF) to the department judge. When submitting proposed orders after hearing to a department email box, the subject line of the email must include the case number, case name, and hearing date (Local Rule 16)

All Law & Motion hearings are remote – through MS Teams – and the link to each department is changed on the first of each month (with the exception of Department 20, who uses Zoom).

### SACRAMENTO AND YOLO COUNTIES SUPERIOR COURTS

Both Sacramento and Yolo Counties have particular Local Rules that can cause a motion to be continued due to defective notice. According to these Local Rules, all noticed motions and demurrers in the designated civil departments shall include the following information in the notice:

#### **Sacramento County Local Rule 1.06**

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded

off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

#### **Yolo County Local Rule 11.2**

Pursuant to Local Rule 11.2, the court will issue a tentative ruling on the merits of the matter by 3:00 p.m. on the court day before the hearing. The tentative rulings are available by phone at (530)406-6806 and on the Court's web site after 3:00 p.m. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the courtroom clerk of the designated department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the courtroom clerk that such party has notified the other party(s) of its intention to appear.

Yolo County also specifies a dress policy in Local Rule 4.3: "All persons who appear in any courtroom shall dress appropriately. The following shall not be worn in court: sunglasses, hats, shorts, tank tops, or any other attire inconsistent

with the traditional dignity of the court."

Sacramento County **does not** offer an Electronic Filing option for Civil matters. All documents must be counter-filed, so be aware of your deadline for getting documents to your Vendor. Hearing dates must be reserved in advance by contacting the department clerk.

I hope that the above-information is helpful and useful to at least some of you. If you personally know of any Quirks or Irks from the Superior Court of the county where you are working, please send them along!



**SUSAN HUSHER** is

a Legal Assistant in the Business Litigation group, and trainer at Hoge, Fenton, Jones & Appel, Inc., in San Jose. She has a Bachelor of Arts from UCSD in Political Science, and has over 34 years experience in the legal field. Susan joined Santa Clara County Legal Professionals, Inc. (SCCoLPA) in 2016 and has served as Historian and Executive Secretary, and is presently the Governor of SCCoLPA. She is on the new Professional Development Committee for Legal Professionals, Inc.

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Optional Friday Night Social Event (Taco Bar)	\$30



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# CCLS QUIZ

## COMPUTATIONS – CALENDARING

1. How many days do you have to respond to written discovery requests if served by personal delivery?
  - a. 30 court days
  - b. 20 calendar days
  - c. 30 calendar days
  - d. 45 calendar days
2. You have a hearing for a Motion for Summary Judgment scheduled for November 1, 2023. How many days before this hearing must you serve the notice of motion if serving by personal delivery?
  - a. 75 calendar days
  - b. 75 calendar days + 5 calendar days
  - c. 30 calendar days
  - d. 30 calendar days + 2 court days
3. A reply to a motion to compel is to be filed how many days before the hearing?
  - a. 9 court days
  - b. 10 calendar days
  - c. 5 calendar days
  - d. 5 court days
4. The opposition to a Motion for Summary Judgment is to be filed how many days before the hearing?
  - a. 10 court days
  - b. 14 calendar days
  - c. 9 court days
  - d. 5 calendar days
5. How many days before a deposition do you have to serve objections?
  - a. 10 calendar days
  - b. 3 calendar days
  - c. 15 calendar days
  - d. 5 calendar days
6. Your client was personally served with a summons and complaint on October 10. How many days does your client have to file a response?
  - a. 30 calendar days
  - b. 30 calendar days + 2 court days
  - c. 35 calendar days
  - d. 45 calendar days
7. When is the last day for jury fees to be deposited?
  - a. On or before the first day of trial
  - b. On or before the date of initial Case Management Conference
  - c. On or before the date of Mandatory Settlement Conference
  - d. 25 calendar days before trial
8. You have served Requests for Admission by overnight mail. How many days does the responding party have to serve responses?
  - a. 30 calendar days + 2 court days
  - b. 30 calendar days + 5 court days
  - c. 30 calendar days + 2 calendar days
  - d. 30 calendar days
9. You served Form Interrogatories by mail on a responding party in the state of Arizona. How many days does the responding party have to respond?
  - a. 30 calendar days + 10 calendar days
  - b. 30 calendar days + 10 court days
  - c. 30 calendar days + 5 calendar days
  - d. 45 calendar days
10. You may serve any document by fax as long as you can find a fax number for that party.
  - a. True
  - b. False

CCLS QUIZ ANSWERS ON PAGE 28

# FOR UNIMPEACHABLE DISCOVERY RESPONSES, KNOW THE CODE

BY MANDA MCEL RATH, ESQ. – SUBMITTED BY SANTA CLARA COUNTY LPA

Discovery is an integral part of the litigation process: it allows a party to see what evidence and arguments the opponent has and helps a party identify the strengths and weaknesses of its own case.

The California Code of Civil Procedure's numerous sections addressing discovery are hyper-specific regarding the necessary components a discovery response must include for the responses to be deemed Code-compliant. Any missteps can lead to lengthy meet and confer efforts and potentially a motion to compel, all of which results in delays and shifts focus from developing relevant evidence. Taking the time to prepare complete, thorough, and Code-compliant responses from the beginnings more efficient and will lessen the likelihood of motions to compel or sanctions.

When preparing responses to discovery requests, keep in mind the following requirements:

## 1. Make Sure You Know Your Deadlines

Once you receive a set of written discovery, whether it be form interrogatories, requests for production, special interrogatories, and/or requests for admission, the countdown begins. A responding party has approximately 30 days, depending on the method of service, to provide responses and failure to respond within that time can have potentially dire consequences.

For example, failure to provide a timely response to discovery requests can result in the waiver of any and all objections. If a party does not timely respond to requests for admission, the propounding party may move for an order from the court that the requests be deemed admitted. If the propounding party moves for sanctions, the court may award sanctions.

If you find that you need an extension to respond to any written discovery, the best practice is to contact opposing counsel and request the time needed. As required under the Code, make sure that any extension is confirmed in writing and that the writing specifically identifies the new deadline to serve responses. (See Cal. Code Civ. Proc., §§2033.260; 2031.270; 2030.270.)

## 2. I Object! (But Is Your Objection Specific?)

Sometimes discovery requests are objectionable on their face. Maybe the request is vague or so overbroad in scope that finding responsive information would require significant expense and time. Any objection to a request must be asserted in your responses; otherwise, the objection is waived. But what objections are appropriate?

Generally, objections must be specific to each response and the response must clearly set forth the specific grounds for the objection. If a motion to compel is on the horizon, the court will view any objections with scrutiny. As such, it is important to make sure that all objections are specific and applicable.

If you raise a privilege or work product objection, your response should specifically identify the applicable privilege and/or expressly state that you are asserting a claim for work product. Requests for Production also require a further step when asserting objections for privilege or work product: the response must provide sufficient factual information so that the requesting party can evaluate whether the privilege applies. (See Cal. Code Civ. Proc., §2031.240.)

## 3. Everything But the Kitchen Sink: Are Your Responses Code-Compliant?

Once you analyze the responses and assert all relevant objections, it is time to substantively respond to the requests. To assure your responses are bulletproof, make sure to comply with the Code of Civil Procedure.

Generally, for all requests and interrogatories, the responses need to be numbered correctly, such that the number of your response is the same as the request to which it is responsive. Any mistake on the numbering of a response will inevitably cause confusion. In addition to numbering requirements, each type of written discovery response has its own specific requirements, as discussed in detail below.

### A. Requests for Admission

A response to a request for admission requires the responding party either "answer the substance of the requested admission" or object to the particular request. (Cal. Civ. Proc. §2033.210). Each answer must be complete, straightforward, and based on information in the responding party's possession. Additionally, each response must admit or deny the request. If the responding party can only admit or deny a part of the request, the responding party must specify what part of the request they are admitting or denying.

It is good practice to not include rambling explanations or circuitous factual recitations that leave the responding party unsure whether the request is admitted or denied, as this will surely lead to meet and confer efforts. For example, if the request is: "Admit that you drove your car on March 1, 2023," a straightforward response would be either "Admit" or "Deny". If you respond with: "I went to the grocery store in my truck that day and then to the gas station and my friend was also there," the response is not Code-compliant. The response is not straightforward and does not either

Continued on page 27 ➔

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admit nor deny the request.

If a responding party lacks sufficient information or knowledge to admit all or any part of a request, then the response must state that the responding party made “a reasonable inquiry concerning the matter” and that “the information known or readily obtainable is insufficient to enable that party to admit the matter.” (Cal. Code Civ. Proc. §2033.220).

In sum, a response to a request for admission should be: object, admit the request, deny the request, or specify the part of the request that is admitted and deny the remainder.

### B. Interrogatories

There are two types of interrogatories: form interrogatories and special interrogatories. Each response to an interrogatory must include all requested information, or an objection-only response. All responses must be straightforward and as complete as possible based on the information available to the responding party.

If the responding party lacks the personal knowledge needed to respond fully to an interrogatory, the response must say that the responding party made a “reasonable and good faith effort to obtain the information.” (Cal. Code Civ. Proc. §2030.220)

### C. Requests for Production of Documents

Responses to Requests for Production of Documents can be daunting: massive document productions can be time consuming and the Civil Discovery Act includes multiple requirements for a Code-compliant response.

Each response must include a statement that the responding party will comply with the demand for inspection, that the party lacks the ability to comply with the demand, or an objection to the demand. (Cal. Code Civ. Proc. §2033.210).

For each request to which the responding party is serving a substantive response, the responding party must respond that the production will be allowed “either in whole or in part” and that the responding party will produce all requested documents (excluding those to which objections were made) in the responding party’s “possession, custody, or control.” (Cal. Civ. Proc. §2031.220).

Additionally, in 2019, California Code of Civil Procedure section 2031.280 was amended to require that each response specifically identify all documents that the responding party is producing in response to that request. The identification may be, for example, a description of the item or document or a Bates label.

If the responding party is unable to comply with any particular demand, the response must provide that the responding party performed a “diligent search and reasonable inquiry.” (Cal. Code Civ. Proc. §2031.230). The responding party must also identify the reason the responding party cannot comply with the request, which includes either an assertion that the item requested never existed, was destroyed, was lost or stolen, or an assertion that the item was never or is no longer in the responding party’s “possession, custody, or control.” (Cal. Code Civ. Proc. §2031.230). If the responding party asserts that the item is not in the responding party’s possession, custody, or control, the responding party must also include the name and contact information of the person or organization the responding party believes may possess the item. (Cal. Code Civ. Proc. §2031.230).

## 4. Finishing Touches

The responding party must verify all responses. Written discovery responses are not Code-compliant until the propounding party received a verification. Not providing a verification is tantamount to not providing any

response at all. (See *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632 at 636). This could also result in the other side declaring your responses “untimely” and thus, all your objections waived. Additionally, the deadline to move to compel further responses does not begin to run until the asking party receives verified responses. Therefore, serving verified responses by the compliance deadline is imperative.

## Conclusion

Written discovery is time consuming and often daunting in its scope. With a limited amount of time to respond and potential sanctions if responses are not Code-compliant, it is important that responses are accurate and complete. By taking the time to ensure that all responses are complete and Code-compliant, you can eliminate a variety of procedural defects that lead to motions to compel.



**MANDA  
MCEL RATH, ESQ.**

is a member of Hoge Fenton’s Business Litigation Practice Group. She is an adaptable litigator who focuses on a vast range of practice areas, including professional liability, employment, and business disputes.



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#### ANSWERS FROM QUIZ ON PAGE 25

## CCLS QUIZ

### ANSWER KEY

- |      |      |       |
|------|------|-------|
| 1. C | 5. B | 9. A  |
| 2. A | 6. A | 10. B |
| 3. A | 7. B |       |
| 4. B | 8. C |       |



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# BACK TO BASICS: CALENDARING 101

(Part 1 of LPI's "Back to Basics" Legal Procedure Series)

BY LYNNE PRESCOTT, CCLS, LPI EXECUTIVE ADVISOR

Calendaring/docketing is one of the most important tasks we perform as legal professionals, yet it is also one of the most common causes of errors in a law office. Every area of law has its own set of deadlines or dates that must be adhered to, and if your attorney or office deals in more than one practice area, it can be especially challenging. The deadlines in corporate law are significantly different than what we see in civil practice, as are deadlines in bankruptcy, probate, family law, intellectual property, workers compensation, etc.

Most deadlines are very unforgiving. We are either on time or we are not, and the consequences for being late can be severe. Therefore, calendaring deadlines accurately deserves our undivided attention and an extra careful review.

## MASTER CALENDAR

A Master Calendar is critical to law offices and attorneys in order to ensure that all statutory and court deadlines are preserved for the protection of clients' legal rights, as well as hearing dates, trial dates, depositions, meetings, and appointments. One of the most common reasons for malpractice lawsuits against attorneys is missed deadlines. In this digital age, it is hoped that law offices are using docketing software or case management software that includes calendaring/docketing capabilities.

Most law offices either have a docketing clerk or a docketing department that handles most of the office's calendaring responsibilities, including creating/entering events, generating reports and firmwide electronic calendar reminders. It is your job to work with the docketing clerk/department to make sure items

get entered into the system promptly, as well as reviewing the docketing entries/notifications/reports to make sure they are correct.

Your docketing clerk/department should be generating electronic reports to you and your attorneys each week for the coming week or two listing all of the upcoming deadlines and reminders covering that period. If docketing does not do this, perform your due diligence by taking the initiative to create/generate such a report yourself. Even if you simply create a PDF of all the days that have deadlines/reminders on your calendar and email it to your attorneys, you are prompting them (and yourself) to look ahead at what's due so that things are not missed.

## YOUR CALENDAR AND YOUR ATTORNEYS' CALENDARS

The deadlines, reminders, trial dates, hearing dates, etc., on your attorneys' calendars should match what's on your calendar. Part of your job is to know (or at least have a record of) where your attorney is supposed to be and when, as well as what deadlines need to be addressed.

Some attorneys don't like their calendars "cluttered" with all of the child events generated by a triggering or parent event. They only want the main/critical dates. Check with your attorney to see what their preference is. It is sometimes hard to determine what the critical events are when they're buried in a long list of not-so-critical events.

When your calendar and your attorneys' calendars are not in sync, it can be difficult to determine whose calendar is correct, if a date got missed, etc.



## PARENT/CHILD OR "TRIGGERING" EVENTS

"Triggering" events are initial actions that "trigger" a subsequent event, with a deadline that must be calendared. Examples of a triggering event: service of a summons and complaint; a motion; a trial date. These are considered parent or triggering events because they produce "child" or subsequent events that must be taken care of and calendared.

It can safely be assumed that anything filed with the court or served on/by opposing counsel involves a triggering event of some kind.

Once we know our triggering date and what it triggers, where do we look to find our deadline? There are usually three possible sources.

1. The first is the civil procedure statutes. This would be the Federal Rules of Civil Procedure in federal court, or the Code of Civil Procedure in state court. For example, the statutes of limitations for various civil actions are found in Code of Civil Procedure sections 312-366.
2. The next is Rules of Court. In federal court, the local rules of the district court in which your action is filed are important sources of deadlines. California's Rules of Court apply to

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all state superior courts and courts of appeal. In addition, each court will have local rules that should be consulted.

3. The final source of deadlines is the rulings or orders of your assigned judge. Some judges issue standing orders that apply to all cases in front of them. In addition, judges will issue scheduling orders throughout the course of the action which must be carefully applied.

## TIME COMPUTATION

The time within which any act provided by law is to be done (not including acts which involve a hearing date) is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday or other legal holiday, in which case the time period is extended to the next day which is not a holiday. (Cal. Rules Court, rule 1.10; Code Civ. Proc., § 12.)

The time for any act provided by law which is required to be performed no later than a specified number of days before a hearing date is calculated by counting backward from the hearing date, excluding the day of the hearing. Continuing counting backwards, any additional days are added depending on the method of service. (Code Civ. Proc., §12c.)

"Holiday" is defined as every Saturday and Sunday, and every day the courts are closed. (Code Civ. Proc., §§ 10, 12a, 12b.)

## COURT DAYS VERSUS CALENDAR DAYS

The statutes and rules of court refer to the terms "court days" and "calendar days" in calendaring certain deadlines. Court days refer to those days in which the courts are actually open and doing business. Calendar days include all the days of the year, including weekdays, weekends, and holidays. If only the word "days" is used in the code or rule, it applies to calendar days.

In federal court, we always count calendar days, and never court days, pursuant to Federal Rule of Civil Procedure 6(a)(1)(B). In state courts, statutes and court rules assume calendar days are meant, unless the statute or rule specifies court days. For example, the due date for motions, motion responses and replies are calculated back from the hearing date by court days pursuant to Code of Civil Procedure section 1005(b).

Note that when we're told to count court days, this means we must take court holidays into account! Also note re discovery cutoff deadlines - these are extended forward to the next day which is closer to trial. Additionally, be aware that the continuation of a trial date does NOT extend the discovery cut-off.

## WHEN TO START COUNTING AND WHEN TO STOP COUNTING

We know the deadline for responding to a complaint is 30 days in California (21 days in federal court for most defendants). Do we count the day the summons was served? According to the Federal Rules of Civil Procedure 6(a)(1), and California Code of Civil Procedure section 12, we exclude the first day (i.e., the day of service), and include the last day (unless it falls on a weekend or holiday).

"Help! I can never remember whether I'm supposed to count forward or backwards!"

Here's the best way to remember: The only time you count backwards is when there's a hearing date.

All of your child events will be based on the date of the hearing, which HAVE to be counted backwards from the hearing date.

"What about weekends and holidays? What if my deadline falls on one of those? Do I calculate the deadline

back to the previous Friday or calculate ahead to the next Monday?"

In state courts, we calendar ahead to the next court day, according to California Code of Civil Procedure section 12a. The same is true in federal court, pursuant to Federal Rule of Civil Procedure 6(a)(1)(C).

## EFFECT OF SERVICE METHOD ON DEADLINES

Certain service methods can extend the response deadline beyond what the statute or rule calls for. Why is this so? It is to compensate for any delay in the actual receipt of the document caused by disrupted or slow mail service, or by technical difficulties. The goal is that the receiving party not be penalized with less time to respond due to something outside of its control.

The length of the extension might be affected by what is being served, as well as by how it is served. Below are some examples of extensions of time brought about by a service method.

### BY MAIL

Federal Rule of Civil Procedure 6(d) extends a receiving party's response deadline by three (3) days if service is by mail. For state court matters, service by mail generally extends the response deadline by five (5) days; however, the extension depends on whether the receiving party is inside the state, out of state, or out of the country.

### BY OVERNIGHT DELIVERY

Federal procedure rules do not specifically allow for overnight service. In state court matters, the extension is two (2) calendar days for motions (Code Civ. Proc., §1005(b)), but two (2) court days for any other kind of document (Code Civ. Proc., §1013(c)).

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## SERVICE BY ELECTRONIC MEANS

Generally, Federal Rule of Civil Procedure 6(d) extends a receiving party's response deadline by three (3) days if service is electronic, including via the court's ECF system. However, some courts' local rules will supersede this. Be sure to check! In state court matters, electronic service extends a receiving party's response deadline by two (2) court days (Code Civ. Proc., §1010.6(a)(4)).

## USING AN ATTORNEY SERVICE

Are you using a filing/attorney service to e-file, fax file, or personally deliver your document to the court?

**BE SURE TO CHECK WITH THEM REGARDING THEIR OWN INTERNAL DEADLINES!** For example, Riverside County Superior Court's website states that the filing deadline for civil filings is 4:00 PM; however, First Legal's deadline

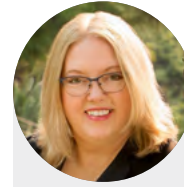
to have the documents to them is 3:00 PM! (Which means you tell your attorneys you have to have it ready for the attorney service no later than 2:00 PM!)

## PRACTICE TIPS

Are you e-filing? Check your local court's ECF rules!

Most district courts require that electronic transmission be completed before midnight of the due date, local time where the court is located, unless otherwise stipulated or ordered by the assigned judge.

Oppositions/reply papers to motions shall be served and reasonably calculated to ensure delivery to the other parties not later than the close of business on the next business day! (Code Civ. Proc., § 1005.)



**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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2022-2023

The following associations are expected to secure articles from guest writers for publication in the magazine issues specified below.

- August Issue (to be submitted no later than June 1st):*  
Alameda County, Beverly Hills/Century City, Conejo Valley, Contra Costa County, Desert Palm, Fresno County, Humboldt County
- November Issue (to be submitted no later than Sept. 1st):*  
Livermore-Amador Valley, Long Beach, Los Angeles, Marin County, Merced County, Mt. Diablo, Orange County
- February Issue (to be submitted no later than Dec. 1st):*  
Placer County, Rio Hondo District, Riverside, Sacramento, San Diego, San Fernando Valley, San Francisco
- May Issue (to be submitted no later than March 1st):*  
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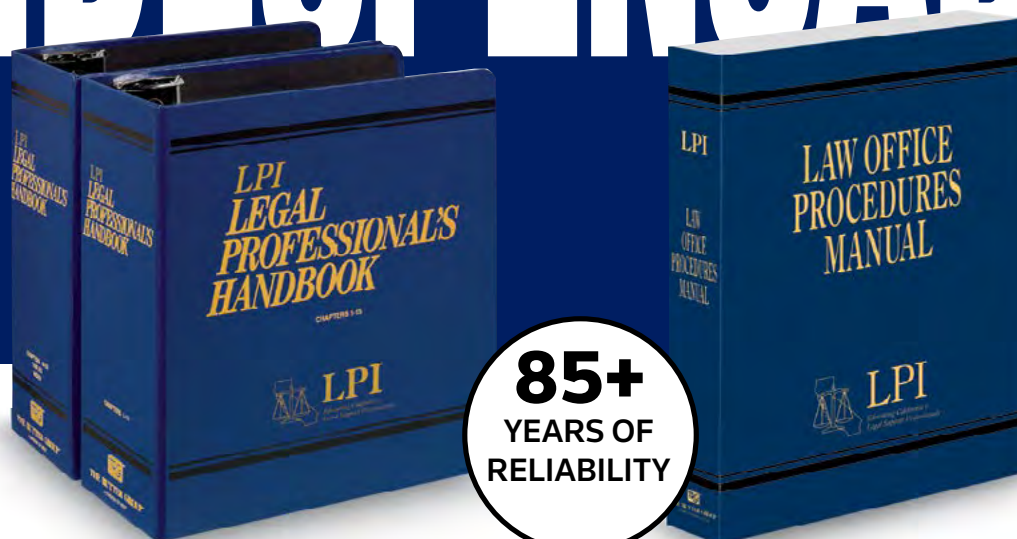
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# ARE PG&E SETTLEMENT PROCEEDS PAID BY THE FIRE VICTIM TRUST EXCLUDED FROM GROSS INCOME?

BY BENJAMIN H. WOHLFORD, ESQ. – SUBMITTED TO STANISLAUS COUNTY LPA

In September of 2022, the California State Senate approved SB 1246 excluding from gross income amounts received from the Fire Victim Trust in connection with the California Wildfires that occurred in 2017 and 2018. The Fire Victim Trust was established and funded on July 1, 2020, after being approved in PG&E's bankruptcy case. For more information about the Fire Victim Trust, please visit the following link: <https://www.firevictimtrust.com/>.

To be clear, for taxable years beginning before January 1, 2028, California law now allows a qualified taxpayer an exclusion from gross income for any amount received from the Fire Victim Trust, established pursuant to the order of the United States Bankruptcy Court for the Northern District of California dated June 20, 2020, case number 19-30088, docket number 8053.

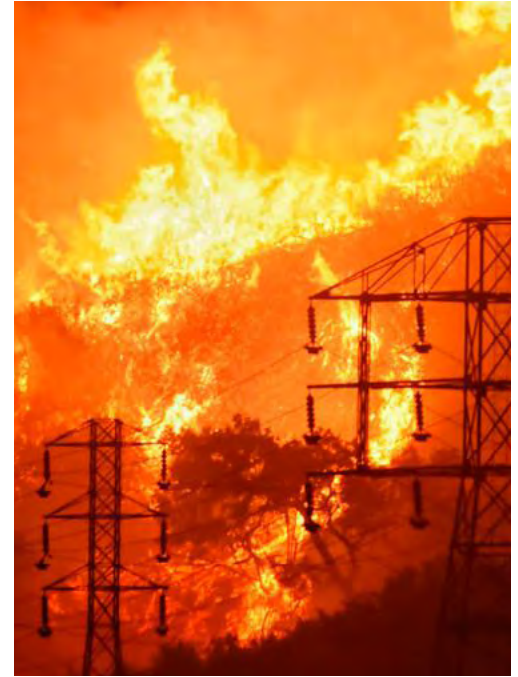
Additionally, if a qualified taxpayer included in gross income is an amount received from the Fire Victim Trust in a prior taxable year, the taxpayer can file an amended tax return for that year. If the normal statute of limitations has expired, the taxpayer must file a claim by September 29, 2023.

While this is a welcome result for taxpayers from a California state law standpoint, proceeds from the Fire Victim Trust may still be taxable for federal purposes. That said, there are several provisions of the Internal Revenue Code ("IRC") that a taxpayer may avail themselves of to potentially exclude a portion of the proceeds

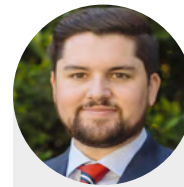
received from the Fire Victim Trust from gross income or defer taxes due. Taxpayers may be able to defer tax from the Fire Victim Trust payments under IRC § 1033 for the portion of the proceeds attributable to real property or personal property claims. Additionally, taxpayers may be able to exclude from gross income amounts received from the Fire Victim Trust that qualify as "disaster relief payments" under IRC § 139. Under IRC § 139, payments from the Fire Victim Trust meant to reimburse taxpayers for family living expenses (including funeral expenses) or rebuild a personal residence may be excludable.

On January 9, 2023, California Congressmen Doug LaMalfa (R) and Mike Thompson (D) reintroduced their bill from the last session of the House of Representatives, which would exclude from gross income the amounts received from the Fire Victim Trust at the federal level. Whether the bill will pass is unclear. Congressman LaMalfa's website contains useful information about the taxation of the payments from the Fire Victim Trust generally: <https://lamalfa.house.gov/pge-wildfire-settlement-payments-general-information>.

Notwithstanding the guidance from Congressman LaMalfa (and other online publications), taxpayers who have received payments from the Fire Victim Trust should contact a competent tax professional to assess whether any portion of the proceeds they received can be excluded from gross income or deferred at the federal level.



*This article is not intended to and does not constitute legal advice or a solicitation for the formation of an attorney-client relationship. For questions about tax law or other matters, reach out to our experienced tax team at 408.286.5800 or e-mail [benjamin.wohlford@berliner.com](mailto:benjamin.wohlford@berliner.com).*



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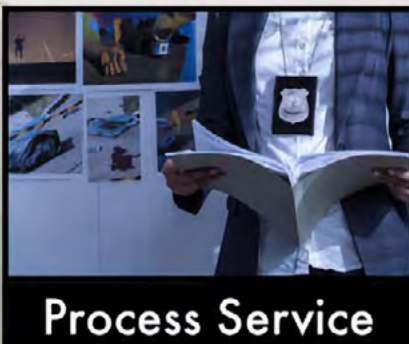
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