

Memorandum 2006-24

**Time Limits for Discovery in an Unlawful Detainer Case
(Draft of Tentative Recommendation)**

At the April meeting, the Commission tentatively approved a number of reforms relating to discovery time limits in an unlawful detainer case. Attached for the Commission's consideration is a draft of a tentative recommendation incorporating those reforms. The draft also includes the following reforms, which have not yet been approved by the Commission:

- A possible amendment of Code of Civil Procedure Section 2025.270, relating to the time of taking an oral deposition. As directed by the Commission, the staff researched this provision and means of eliminating an ambiguity in it. The results of that research and some additional issues are discussed below. The amendment shown and described in the attached draft reflects the staff's preliminary views on how to revise the provision.
- A possible new provision establishing a 5-day notice requirement for a discovery motion in an unlawful detainer case. This provision is discussed at pages 1-3 of Memorandum 2006-11 (available from the Commission, www.clrc.ca.gov).

The Commission needs to (1) determine its position on these new points and then (2) decide whether to approve the attached draft, with or without modifications, as a tentative recommendation to be circulated for comment.

TIME OF TAKING ORAL DEPOSITION
(CODE CIV. PROC. § 2025.270)

Code of Civil Procedure Section 2025.270 governs the time of taking an oral deposition. It contains a significant ambiguity that may generate confusion.

Ambiguity Requiring Clarification

Section 2025.270 provides:

2025.270. (a) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness

commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

(b) Notwithstanding subdivision (a), in an unlawful detainer action an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

(c) On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under Section 2025.420.

Here, the special 5-day notice requirement for an unlawful detainer case is separately stated, not mixed with language specifying the notice requirement for other types of cases.

It is unclear, however, whether this 5-day requirement applies when personal records of a consumer are subpoenaed in an unlawful detainer case. The statute could be interpreted such that the special 5-day unlawful detainer notice requirement applies regardless of whether personal records of a consumer are subpoenaed. Alternatively, the statute could be interpreted such that the 20-day notice requirement for consumer records under subdivision (a), not the special 5-day unlawful detainer notice requirement, applies when personal records of a consumer are subpoenaed in an unlawful detainer case.

To assess how to handle this ambiguity, the staff (1) searched for case law interpreting the provision, (2) examined some of the legislative history of the provision, (3) reviewed the existing statutory scheme for relevant material, and (4) explored possible options and considered their advantages and disadvantages. The results of that research are discussed below.

Case Law

There do not seem to be any published decisions discussing, much less resolving, the ambiguity we have identified in Section 2025.270.

In fact, there appears to be only one published decision in which personal records of a consumer were subpoenaed for purposes of an unlawful detainer case. That decision, *Sasson v. Katash*, 146 Cal. App. 3d 199, 194 Cal. Rptr. 46 (1983), was issued before the Legislature established a special 5-day notice requirement for taking a deposition in an unlawful detainer case. The decision provides general guidance on the purpose and operation of the procedure in Code of Civil Procedure Section 1985.3 for subpoenaing personal records of a

consumer. Other than that, the decision does not shed any light on whether the special 5-day notice requirement of Section 2025.270(b) applies when personal records of a consumer are subpoenaed in an unlawful detainer case.

Legislative History

The identified ambiguity in Section 2025.270 predates the 2004 nonsubstantive reorganization of the Civil Discovery Act.

The predecessor of Section 2025.270 was former Code of Civil Procedure Section 2025(f). In 1989, that provision read:

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

1988 Cal. Stat. ch. 553, § 3.

The following year, the provision was amended to add a special unlawful detainer notice requirement:

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice or, in unlawful detainer actions, not later than five days before trial, whichever is sooner. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

1989 Cal. Stat. ch. 1416, § 29.5. The relationship between the special unlawful detainer rule and the 20-day notice requirement for subpoenaing consumer records was not spelled out. It seems most likely, however, that the 20-day notice requirement was meant to override the entirety of the preceding sentence, such

that 20 days notice would be required when subpoenaing consumer records in an unlawful detainer case.

In 1991, the provision was again amended. The special unlawful detainer rule was modified and placed in a separate sentence:

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. *However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.*

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(Emphasis added.) Again, the relationship between the special unlawful detainer rule and the 20-day notice requirement for subpoenaing consumer records was not spelled out. From the language of the provision alone, it was unclear whether the special 5-day unlawful detainer notice requirement was supposed to apply when personal records of a consumer were subpoenaed in an unlawful detainer case.

It is possible that legislative materials available at State Archives (e.g., bill analyses) would provide some insight into the proper interpretation of the provision. We plan to check for such materials when time permits. We have not done so thus far because of time constraints and because the critical point is to determine the best approach for the future, not to determine the intent of a past Legislature.

No further changes were made in former Section 2025(f) before it was repealed in the 2004 reorganization. Upon repeal, the provision was continued without substantive change in Section 2025.270. See Section 2025.270 Comment.

Existing Statutory Scheme

In hopes of finding clues to the proper interpretation of Section 2025.270, we examined surrounding provisions and Code of Civil Procedure Section 1985.3,

which establishes the procedure for subpoenaing personal records of a consumer. We found nothing definitive, but a few points are noteworthy.

First, Section 1985.3 is expressly inapplicable to certain types of proceedings. Subdivision (j) states:

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code.

If the Legislature intended to make Section 1985.3 inapplicable to unlawful detainer cases, it would have been a simple matter to refer to such cases in subdivision (j). The absence of such a reference tends to indicate that unlawful detainer cases are not exempt from the requirements of Section 1985.3.

Second, the procedure for subpoenaing personal records of a consumer under Section 1985.3 is complicated. To obtain such records from a nonparty consumer, the subpoenaing party must:

- Serve the consumer with the subpoena, any supporting affidavit, a statutorily prescribed Notice of Privacy Rights, and a proof of service. This service must be made at least ten days before the date set for production of the personal records and at least five days before service on the custodian of records. Section 1985.3(b).
- Serve the custodian of records with the subpoena and either (i) proof of serving the required documents on the consumer or (ii) a properly executed written authorization to release the consumer's records. Section 1985.3(c). This service must be made "in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof." Section 1985.3(d). The date for production shall thus be "no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later." Section 2020.410(c). As a practical matter, because the consumer must be served at least five days before the custodian, and the custodian must be served at least 15 days before the date of production, the consumer must be served at least 20 days before the date of production. Weil & Brown, *California Practice Guide: Civil Procedure Before Trial Depositions* § 8:590.1, at 8E-60 (2005).

If the Legislature had intended to exempt unlawful detainer cases from the requirements of Section 1985.3, it probably would have made some attempt to clarify what alternative procedure to follow when a party wants to subpoena personal records of a consumer in an unlawful detainer case. The lack of such

clarification suggests that unlawful detainer cases are subject to the requirements of Section 1985.3.

This is particularly true because it appears that personal records of a consumer cannot constitutionally be treated the same way as ordinary records. For example, *Sehlmeyer v. Department of General Services*, 17 Cal. App. 4th 1072, 21 Cal. Rptr. 840 (1993), was decided before the requirements of Section 1985.3 were made applicable to administrative adjudications. In *Sehlmeyer*, the appellate court explained that a consumer's constitutional right of privacy (Cal. Const. art. I, § 1) is triggered when a litigant seeks production of the consumer's personal records. *Id.* at 1080. Consequently, the court concluded that "before third party personal records may be disclosed in the course of an administrative proceeding, the subpoenaing party must take reasonable steps to notify the third party of the pendency and nature of the proceedings and to afford the third-party a fair opportunity to assert her interests by objecting to disclosure, by seeking an appropriate protective order from the administrative tribunal, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered." *Id.* at 1080-81 (footnote omitted). Similarly, in a case involving an ordinance that essentially required submission of personal information, the court said that "before defendant discloses personal information collected under the Ordinance, it must take reasonable steps to notify the person to whom the information pertains of the pendency and nature of the request for the information and to afford the person a fair opportunity to object to disclosure, to join in resisting disclosure, or to resist disclosure or limit the scope or nature of the matters sought to be discovered." *Gilbert v. City of San Jose*, 114 Cal. App. 4th 606, 615-16, 7 Cal. Rptr. 3d 692 (2003).

Because special treatment of personal records is constitutionally compelled, it seems likely that the Legislature would have specified an alternate procedure for handling such records if it had determined that the normal procedures for such records under Section 1985.3 should not apply to an unlawful detainer case. The lack of an alternate procedure tends to indicate that the normal procedures for such records under Section 1985.3 do apply in the unlawful detainer context.

Third, Code of Civil Procedure Section 2020.510 pertains to a deposition subpoena that compels testimony and production of documents or other items. Subdivision (c) states that "[w]here, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a

consumer, *the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.*" (Emphasis added.) There is no mention of an exception for unlawful detainer cases. Moreover, under Section 1985.3(b)(2), the Notice of Privacy Rights prescribed by Section 1985.3(e) must be served at least ten days before the date set for production. It would thus be impossible to comply with Section 2020.510(c) while giving only five days notice of a deposition pursuant to the special 5-day unlawful detainer notice requirement of Section 2025.270. These are further indications that the 20-day notice period for consumer records, not the special 5-day unlawful detainer notice requirement, applies when personal records of a consumer are subpoenaed in an unlawful detainer case.

A counter-indication is Code of Civil Procedure Section 1170.5(a), which provides that if the defendant appears in an unlawful detainer case, "trial of the proceeding shall be held not later than the 20th day following the date that the request to set the time of the trial is made." The short time period for scheduling an unlawful detainer trial could be viewed as inconsistent with requiring 20 days notice when subpoenaing consumer records in an unlawful detainer case.

But there are a number of mitigating factors. A request for trial in an unlawful detainer case cannot be made until after the defendant appears. See Judicial Council Form UD-150. The defendant is not required to respond to the complaint until five days after it is served (more if ordered by the court for good cause shown). Code Civ. Proc. § 1167.3. The trial date can be continued upon taking certain steps to protect the landlord's interests. Code Civ. Proc. § 1170.5(b)-(c); see also Code Civ. Proc. § 1167.5. Further, the notice requirement for a deposition involving production of records can be shortened for good cause shown. Code Civ. Proc. § 2025.270(c). Likewise, the special procedural deadlines of Section 1985.3 can be shortened "[u]pon good cause shown and provided that the rights of witnesses and consumers are preserved" Section 1985.3(h). There is thus leeway to accommodate both the unlawful detainer deadlines and the requirements of Section 1985.3. The short fuse for trial in an unlawful detainer case does not necessarily require deviation from the normal requirements for subpoenaing consumer records.

In sum, some aspects of the existing statutory scheme tend to suggest that the normal 20-day notice period for subpoenaing personal records of a consumer

applies to an unlawful detainer case. So far, however, we have found nothing conclusive in our review of case law, legislative history, and the existing statutory scheme.

Options and Policy Analysis

There appear to be a number of possibilities for revising Section 2025.270 to clarify its application to an unlawful detainer case.

Require Only Five Days Notice When Subpoenaing Personal Records of a Consumer in an Unlawful Detainer Case (Option A)

One approach would be to make clear that the special 5-day notice requirement under Section 2025.270 applies to an unlawful detainer case even when personal records of a consumer are subpoenaed. This approach would be problematic because of the constitutional constraints previously discussed: A consumer must be given reasonable notice and an opportunity to object before the consumer's personal records are disclosed. If a deposition involving production of personal records could be taken on only five days notice to the litigants, how much notice would be given to the consumer? How much time would the custodian of records have to collect the records after finding out the consumer's position on disclosure? The timing would seem to be too tight to adequately protect the consumer's constitutional right to privacy.

Require Twenty Days Notice When Subpoenaing Personal Records of a Consumer in an Unlawful Detainer Case (Option B)

Another approach would be to make clear that the 20-day notice requirement for subpoenaing personal records of a consumer under Section 2025.270 applies even when a litigant subpoenas personal records of a consumer in an unlawful detainer case. That could be done by **amending Section 2025.270 along the following lines:**

Code Civ. Proc. § 2025.270 (amended). Time of taking oral deposition

SEC. _____. Section 2025.270 of the Code of Civil Procedure is amended to read:

2025.270. (a) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. ~~If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records~~

~~of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

(c) Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

(d) On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under Section 2025.420.

Comment. Section 2025.270 is amended to clarify its application when personal records of a consumer are subpoenaed in an unlawful detainer case.

Under subdivision (c), a litigant must give 20 days notice when subpoenaing personal records of a consumer, even in an unlawful detainer case. Under subdivision (d), a court may adjust that notice period for good cause shown. Likewise, on a showing of good cause, a court may shorten the time limits for serving a consumer or a custodian of records under Section 1985.3, provided that the rights of witnesses and consumers are preserved. See Section 1985.3(h). In addition, under specified circumstances, a court may continue the trial date or extend other time limits in an unlawful detainer case. See Sections 1167.3, 1167.5, 1170.5; see also *Deal v. Municipal Court*, 157 Cal. App. 3d 991, 997-98, 204 Cal. Rptr. 79 (1984).

As previously discussed, such an approach appears workable because a court can adjust the notice period under Section 2025.270, as well as the various deadlines in the unlawful detainer statutes and Section 1985.3, if needed. The proposed Comment would point this out.

Establish Special Rules for Subpoenaing Personal Records of a Consumer in an Unlawful Detainer Case (Option C)

Still another option would be to amend Sections 1985.3 and 2025.270 (and perhaps other provisions such as Section 2020.510) to establish a special set of rules for subpoenaing personal records of a consumer in an unlawful detainer case. For example, instead of requiring 20 days notice, Section 2025.270 could be amended to require only 15 days notice in this specific context. Similarly, Section

1985.3 could be amended such that in this context (1) the consumer would have to be served at least 7 days before the date of production and at least 3 days before service on the custodian, and (2) the custodian would have to be served at least 12 days before the date of production. The net effect would be to require that the consumer be served at least 15 days before the date of production when personal records are subpoenaed in an unlawful detainer case.

Due to the emphasis on quickly resolving unlawful detainer cases, these time periods might be less likely to require court adjustment than the usual time periods for production of personal records of a consumer. If so, this approach would perhaps help to reduce litigation expenses and conserve judicial resources.

But the approach might generate controversy. In particular, it might draw criticism from persons or organizations concerned about protecting the privacy rights of consumers.

Rather than pursuing this approach, **the staff is inclined to pursue Option B** (apply the 20-day notice period under Section 2025.270 and usual time limits under Section 1985.3 when subpoenaing personal records of a consumer in an unlawful detainer case). It may be advisable, however, to **include a Note in the tentative recommendation soliciting comment on whether to establish a special set of rules for subpoenaing personal records of a consumer in an unlawful detainer case.**

EMPLOYMENT RECORDS OF AN EMPLOYEE
(CODE CIV. PROC. § 1985.6)

Code of Civil Procedure Section 1985.6 establishes a special procedure for subpoenaing employment records of an employee. The statute was enacted in 1995. It is modeled on Section 1985.3, which was enacted fifteen years earlier. The procedure under Section 1985.6 is closely similar to the procedure for subpoenaing personal records of a consumer under Section 1985.3.

In researching how to revise Section 2025.270, the staff wondered why that provision mentions Section 1985.3 but does not mention Section 1985.6. We suspect this was an oversight that should be corrected.

If the Commission decides to pursue Option B and wants to incorporate such a correction, **that could be done as follows:**

Code Civ. Proc. § 2025.270 (amended). Time of taking oral deposition

SEC. _____. Section 2025.270 of the Code of Civil Procedure is amended to read:

2025.270. (a) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. ~~If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

(c) Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3 or 1985.6, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer or employment records of an employee, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

(d) On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under Section 2025.420.

Comment. Section 2025.270 is amended to clarify its application when personal records of a consumer are subpoenaed in an unlawful detainer case. The provision is also amended to clarify its application when employment records of an employee are subpoenaed.

Under subdivision (c), a litigant must give 20 days notice when subpoenaing personal records of a consumer or employment records of an employee. This rule applies even in an unlawful detainer case.

Under subdivision (d), a court may adjust the notice period for good cause shown. Likewise, on a showing of good cause, a court may shorten the time limits for serving a consumer or a custodian of records under Section 1985.3, provided that the rights of witnesses and consumers are preserved. See Section 1985.3(h). Similarly, on a showing of good cause, a court may shorten the time limits for serving an employee or a custodian of records under Section 1985.6, provided that the rights of witnesses and employees are preserved. See Section 1985.6(g). In addition, under specified circumstances, a court may continue the trial date or extend other time limits in an unlawful detainer case. See Sections 1167.3, 1167.5,

1170.5; see also Deal v. Municipal Court, 157 Cal. App. 3d 991, 997-98, 204 Cal. Rptr. 79 (1984).

The staff thinks it would be a good idea to clarify how Section 2025.270 applies when a litigant subpoenas employment records of an employee.

We also searched the codes for other provisions that mention Section 1985.3 but do not mention Section 1985.6. We found three other provisions in the Code of Civil Procedure that appear in need of correction to eliminate such an omission: Sections 1987.1, 2020.510, and 2025.240.

Those provisions **could be fixed by amending them along the following lines:**

Code Civ. Proc. § 1987.1 (amended). Motion to quash, modify, or condition subpoena

SEC. _____. Section 1987.1 of the Code of Civil Procedure is amended to read:

1987.1. When a subpoena requires the attendance of a witness or the production of books, documents or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by the party, the witness, ~~or~~ any consumer described in Section 1985.3, or any employee described in Section 1985.6, or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the parties, the witness, ~~or the consumer,~~ or the employee from unreasonable or oppressive demands including unreasonable violations of a ~~witness's or consumer's~~ the right of privacy of a witness, consumer, or employee. Nothing herein shall require any ~~witness or party~~ person to move to quash, modify, or condition any subpoena duces tecum of personal records of any consumer served under paragraph (1) of subdivision (b) of Section 1985.3 or employment records of any employee served under paragraph (1) of subdivision (b) of Section 1985.6.

Comment. Section 1987.1 is amended to clarify its application when employment records of an employee are subpoenaed under Section 1985.6.

Code Civ. Proc. § 2020.510 (amended). Subpoena commanding both production of business records and attendance and testimony of deponent

SEC. _____. Section 2020.510 of the Code of Civil Procedure is amended to read:

2020.510. (a) A deposition subpoena that commands the attendance and the testimony of the deponent, as well as the production of business records, documents, and tangible things, shall:

(1) Comply with the requirements of Section 2020.310.

(2) Designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item.

(3) Specify any testing or sampling that is being sought.

(b) A deposition subpoena under subdivision (a) need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated.

(c) Where, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(d) Where, as described in Section 1985.6, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are employment records pertaining to an employee, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the employee described in subdivision (e) of Section 1985.6, or by the employee's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.6.

Comment. Section 2020.510 is amended to clarify its application when employment records of an employee are subpoenaed under Section 1985.6.

Code Civ. Proc. § 2025.240 (amended). Service of deposition notice and related documents

SEC. _____. Section 2025.240 of the Code of Civil Procedure is amended to read:

2025.240. (a) The party who prepares a notice of deposition shall give the notice to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

(b) Where, as defined in subdivision (a) of Section 1985.3 or 1985.6, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer or

employment records of an employee, the subpoenaing party shall serve on that consumer or employee all of the following:

(1) A notice of the deposition.

(2) The notice of privacy rights specified in subdivision (e) of Section 1985.3 ~~and in Section~~ or 1985.6.

(3) A copy of the deposition subpoena.

(c) If the attendance of the deponent is to be compelled by service of a deposition subpoena under Chapter 6 (commencing with Section 2020.010), an identical copy of that subpoena shall be served with the deposition notice.

Comment. Section 2025.240 is amended to clarify its application when employment records of an employee are subpoenaed under Section 1985.6.

These amendments are not included in the attached draft, but could be added if the Commission so concludes.

SCOPE OF “UNLAWFUL DETAINER” EXCEPTIONS

In preparing the attached draft, the staff also wondered whether the various special discovery time limits for unlawful detainer cases should apply to other types of summary proceedings for possession of real property, particularly forcible entry and forcible detainer. Forcible entry is defined as:

1159. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

The “party in possession” means any person who hires real property and includes a boarder or lodger, except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

Forcible detainer is defined as:

1160. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,

2. Who, in the night-time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful

entry, was in the peaceable and undisturbed possession of such lands.

“The forcible entry and detainer statutes are part of the same chapter of the Code of Civil Procedure as the unlawful detainer statutes, and the procedure is essentially the same for both.” M. Moskovitz, N. Lenvin, et al., *California Landlord-Tenant Practice Terminating the Tenancy* § 8.145, at 753 (2d ed. 2006); see generally *Jordan v. Talbot*, 55 Cal. 2d 597, 604, 361 P.2d 20, 12 Cal. Rptr. 597 (1961); Code Civ. Proc. § 1179a.

Because the expedited trial procedures for unlawful detainer cases are also used in forcible entry and forcible detainer cases, it would seem reasonable to use short time limits for forcible entry and forcible detainer cases, as well as for unlawful detainer cases. For example, the Commission’s proposed amendment of Section 2030.020 could be revised to replace the reference to “an unlawful detainer action” with a reference to “a proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure,” as shown in boldface below:

Code Civ. Proc. § 2030.020 (amended). Time of propounding interrogatories

SEC. _____. Section 2030.020 of the Code of Civil Procedure is amended to read:

2030.020. (a) A defendant may propound interrogatories to a party to the action without leave of court at any time.

(b) A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, ~~or in unlawful detainer actions five days after service of the summons on~~ or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), **in a proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure a plaintiff may propound interrogatories to a party without leave of court at any time that is five days after service of the summons on, or appearance by, that party, whichever occurs first.**

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time.

Comment. Section 2030.020 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The deadline is also expressly made applicable to any summary proceeding for possession of real property under Chapter

4 of Title 3 of Part 3 (e.g., forcible entry or forcible detainer), not just an unlawful detainer action.

Similar revisions could be made in the other proposed amendments in the attached draft. The staff recommends **either making such revisions or inserting Notes soliciting input on the possibility of making such revisions.**

Respectfully submitted,

Barbara Gaal
Staff Counsel

#J-505

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Time Limits for Discovery in an Unlawful Detainer Case

[Date To Be Determined]

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **xxxx**.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

An unlawful detainer case is a special proceeding by a landlord to recover possession of real property from a tenant. The procedure for an unlawful detainer case is prescribed by statute. It is designed to provide an expeditious means for a landlord to recover possession when a tenant wrongfully refuses to leave.

Consistent with the goal of promoting expeditious resolution of landlord-tenant disputes, a number of provisions in the Civil Discovery Act specify a special deadline, notice period, or other time limit for an unlawful detainer case. These time limits are substantially shorter than the corresponding time limits for other types of cases. For example, the time period for responding to an inspection demand in an unlawful detainer case is five days, as contrasted with 30 days in other types of cases.

In most of these discovery provisions, the language establishing a special time limit for an unlawful detainer case is mixed with language specifying the time limit for other types of cases. See Code Civ. Proc. §§ 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, 2033.250.

This drafting technique creates ambiguities. The Law Revision Commission recommends that these ambiguities be eliminated by amending each provision to separately state the special time limit for an unlawful detainer case.

The Commission also recommends amending a provision in which the special time limit for an unlawful detainer case is separately stated, but unclear in its application (Code Civ. Proc. § 2025.270). The proposed amendment would make clear that the 20-day notice requirement for a deposition involving production of personal records of a consumer applies even in an unlawful detainer case. The existing statutory scheme provides means of adjusting this requirement, related deadlines, and the unlawful detainer procedures to accommodate the particular circumstances of each case. The proposed amendment would also clarify how the statute applies when employment records of an employee are subpoenaed.

The Commission further recommends that a new provision be added to the Code of Civil Procedure, which would establish a five day notice requirement for a discovery motion in an unlawful detainer case. This would further the goal of promoting expeditious resolution of landlord-tenant disputes.

This tentative recommendation was prepared pursuant to Resolution Chapter 1 of the Statutes of 2006.

DISCOVERY TIME LIMITS IN AN UNLAWFUL DETAINER CASE

1 The Civil Discovery Act¹ includes a number of provisions that specify a special
2 time limit for an unlawful detainer case.² In most of these provisions, the language
3 specifying the special time limit for an unlawful detainer case is mixed with
4 language specifying the time limit for other types of cases. This drafting technique
5 creates ambiguities.³

6 The Law Revision Commission recommends that these ambiguities be
7 eliminated by amending each provision to separately state the special time limit
8 for an unlawful detainer case. The Commission also recommends amending a
9 provision in which the special time limit for an unlawful detainer case is
10 separately stated but unclear in its application. The Commission further
11 recommends that a new provision be added to the codes, which would establish a
12 special notice period for a discovery motion in an unlawful detainer case.

13 The Commission solicits comment on these proposed reforms relating to
14 discovery in an unlawful detainer case. The Commission also welcomes
15 suggestions regarding other areas of civil discovery in need of reform.⁴

1. Code Civ. Proc. §§ 2016.010-2036.050. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

2. An unlawful detainer case is a proceeding by a landlord to recover possession of real property from a tenant (e.g., a lawsuit by a landlord to regain possession of an apartment after the tenant fails to pay rent). See Section 1161.

The unlawful detainer statutes establish an expeditious procedure for a landlord to recover possession wrongfully withheld by a tenant. *Deal v. Municipal Court*, 157 Cal. App. 3d 991, 995, 204 Cal. Rptr. 79 (1984); see also Section 1179a. The statutes were enacted to promote peaceful resolution of landlord-tenant disputes. *Deal*, 157 Cal. App. 3d at 995.

3. These ambiguities predate the 2004 nonsubstantive reorganization of the Civil Discovery Act, which was enacted on recommendation of the Law Revision Commission. 2004 Cal. Stat. ch. 182; *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). The Commission did not attempt to eliminate such ambiguities when reorganizing the Civil Discovery Act, because that might have prompted concerns about whether the reorganization was truly nonsubstantive. Now that the Civil Discovery Act has been reorganized into short sections, it is easier to address the ambiguities than in the past, when the ambiguities were buried in lengthy provisions and there was no room to insert new subdivisions or paragraphs clarifying the ambiguous points.

4. The Commission's study of civil discovery is ongoing. Several reforms recommended by the Commission have already been enacted. See *supra* note 2; see also 2005 Cal. Stat. ch. 294; *Report of the California Law Revision Commission on Chapter 294 of the Statutes of 2005 (Assembly Bill 333)*, 35 Cal. L. Revision Comm'n Reports 77 (2005); *Civil Discovery: Correction of Obsolete Cross-References*, 34 Cal. L. Revision Comm'n Reports 161 (2004); *Civil Discovery: Statutory Clarification and Minor Substantive Improvements*, 34 Cal. L. Revision Comm'n Reports 137 (2004).

1 **Service of a Response to Written Discovery**

2 Under the provision governing service of a response to interrogatories,⁵ the
3 response is due 30 days after service of the interrogatories. In an unlawful detainer
4 case, however, the response is due five days after service of the interrogatories.

5 A court may shorten the 30-day deadline on motion of the propounding party,
6 and may extend that deadline on motion of the responding party. A court may also
7 shorten the 5-day unlawful detainer deadline on motion of the propounding party.
8 Because of the way the statute is drafted, however, it is unclear whether a court
9 may extend the 5-day unlawful detainer deadline on motion of the responding
10 party.

11 Specifically, the first sentence of the provision suggests that a court may extend
12 the 5-day unlawful detainer deadline over a party's objection, while the second
13 sentence suggests that a court may not do so:

14 2030.260. (a) Within 30 days after service of interrogatories, *or in unlawful*
15 *detainer actions within five days after service of interrogatories* the party to
16 whom the interrogatories are propounded shall serve the original of the response
17 to them on the propounding party, unless on motion of the propounding party the
18 court has shortened the time for response, or unless on motion of the responding
19 party the court has extended the time for response. *In unlawful detainer actions,*
20 *the party to whom the interrogatories are propounded shall have five days from*
21 *the date of service to respond unless on motion of the propounding party the court*
22 *has shortened the time for response.*

23⁶

24 Similar ambiguities exist in the provisions governing service of a response to an
25 inspection demand⁷ and service of a response to a request for admissions.⁸

26 As a matter of policy, a court should be permitted to extend the deadlines for
27 responding to written discovery in an unlawful detainer case, even if a party
28 objects. Those 5-day deadlines are very short. It might not always be realistic to
29 expect a party to respond in the period provided. Often, the parties may be able to
30 resolve such problems by agreement.⁹ But if a party refuses a reasonable request
31 for an extension, it may be appropriate for a court to extend the deadline over the
32 party's objection.

5. Section 2030.260.

6. Emphasis added. The predecessor of Section 2030.260, former Section 2030(h), contained identical language. See 1991 Cal. Stat. ch. 1090, § 11; Section 2030.260 Comment.

7. Section 2031.260; see also former Section 2031(i), 2000 Cal. Stat. ch. 688, § 12 (predecessor of Section 2031.260).

8. Section 2033.250; see also former Section 2033(h), 1991 Cal. Stat. ch. 1090, § 13 (predecessor of Section 2033.250).

9. See Sections 2016.030 (unless court orders otherwise, parties may modify discovery procedures by written stipulation), 2030.270 (parties may agree to extend time for service of response to interrogatories), 2031.270 (parties may agree to extend time for service of response to inspection demand), 2033.260 (parties may agree to extend time for service of response to request for admissions).

1 The Law Revision Commission therefore recommends that the provision
2 governing service of a response to interrogatories be amended to make clear that a
3 court may extend, as well as shorten, the 5-day unlawful detainer deadline.¹⁰ The
4 Commission also recommends similar amendments of the provisions governing
5 service of a response to an inspection demand and service of a response to a
6 request for admissions.¹¹

7 **Commencement of Written Discovery By Plaintiff**

8 The Civil Discovery Act includes restrictions on how soon a plaintiff may
9 commence written discovery after filing a lawsuit. For example, the provision
10 governing when a plaintiff may propound interrogatories states:

11 A plaintiff may propound interrogatories to a party without leave of court at any
12 time that is 10 days after the service of the summons on, or in unlawful detainer
13 actions five days after service of the summons on or appearance by, that party,
14 whichever occurs first.¹²

15 The provisions governing when a plaintiff may make an inspection demand¹³ and
16 when a plaintiff may make requests for admission¹⁴ are similar.

17 Each of these provisions establishes a 10-day hold period for most cases, and a
18 special 5-day hold period for unlawful detainer cases. But there is a significant
19 ambiguity: Do both the 5-day and the 10-day hold periods run from service of the
20 summons on, or appearance by, the party subject to discovery, whichever occurs
21 first? Does one hold period run from service of the summons on the party subject
22 to discovery, while the other hold period runs from service of the summons on, or
23 appearance by, the party subject to discovery, whichever occurs first? If so, which
24 rule applies to which deadline?

25 As a matter of policy, it seems logical to apply the same rule to both the 5-day
26 and the 10-day hold periods. If a party has been served with a summons, or has
27 appeared in an action, the clock should start ticking for taking discovery from that
28 party. That should be the rule regardless of whether the case is an unlawful
29 detainer case or another type of case.

30 The Law Revision Commission recommends that amend each provision be
31 amended to clearly implement that approach. That can be done by stating the
32 special unlawful detainer hold period in a separate subdivision, instead of

10. See proposed amendment to Section 2030.260 *infra*.

11. See proposed amendments to Sections 2031.260 and 2033.250 *infra*.

12. Section 2030.020(b). The predecessor of this provision, former Section 2030(b), contained identical language. See 1991 Cal. Stat. ch. 1090, § 11; Section 2030.020 Comment.

13. Section 2031.020(b); see also former Section 2031(b), 2000 Cal. Stat. ch. 688, § 12 (predecessor of Section 2031.020).

14. Section 2033.020(b); see also former Section 2033(b), 1991 Cal. Stat. ch. 1090, § 13 (predecessor of Section 2033.020).

1 including it in the same subdivision as the general rule.¹⁵ Amending the provisions
2 in this manner would help to prevent confusion over how to calculate the hold
3 periods.

4 **Time of Inspection**

5 An inspection demand must “[s]pecify a reasonable time for the inspection that
6 is at least 30 days after service of the demand, or in unlawful detainer actions five
7 days after service of the demand, unless the court for good cause shown has
8 granted leave to specify an earlier date.”¹⁶ It is ambiguous from this language
9 whether the good cause exception exists for unlawful detainer cases, other types of
10 case, or both.

11 The Law Revision Commission recommends that the provision be amended to
12 separately state the special 5-day unlawful detainer rule, making clear that the
13 good cause exception applies both to that rule and to the 30-day rule for other
14 types of cases.¹⁷ Applying the good cause exception in both contexts is sound
15 policy, ensuring leeway to deviate from the statutorily specified time periods when
16 justified.¹⁸

17 **Time of Taking Oral Deposition**

18 An oral deposition must be scheduled at least ten days after service of the
19 deposition notice.¹⁹ If the deponent is required to produce personal records of a
20 consumer pursuant to a subpoena, the deposition must be scheduled at least twenty
21 days after issuance of the subpoena.²⁰

22 The provision stating these rules includes an exception for an unlawful detainer
23 case. An oral deposition in such a case must be scheduled at least five days after
24 service of the deposition notice, but not later than five days before trial.²¹ This
25 special notice period for an unlawful detainer case is stated in a separate
26 subdivision, not mixed with the language specifying the notice period for other
27 types of cases.

28 It is unclear, however, whether the unlawful detainer exception applies when
29 personal records of a consumer are subpoenaed in an unlawful detainer case. The
30 statute could be interpreted such that the special 5-day unlawful detainer notice

15. See proposed amendments to Sections 2030.020, 2031.020, and 2033.020 *infra*.

16. Section 2031.030(c)(2). The predecessor of this provision, former Section 2031(c)(2), contained identical language. 2000 Cal. Stat. ch. 688, § 12; Section 2031.030 Comment.

17. See proposed amendment to Section 2031.030 *infra*.

18. See generally *Deal v. Municipal Court*, 157 Cal. App. 3d 991, 997-98, 204 Cal. Rptr. 79 (1984) (referring to good cause exception in rejecting due process challenge to 5-day deadline to respond to unlawful detainer complaint).

19. Section 2025.270(a).

20. *Id.*

21. Section 2025.270(b).

1 period applies regardless of whether personal records of a consumer are
2 subpoenaed. Alternatively, the statute could be interpreted such that the 20-day
3 notice period, not the 5-day notice period, applies when personal records of a
4 consumer are subpoenaed in an unlawful detainer case.²² There does not appear to
5 be any published decision addressing this point.

6 The statute should be amended to eliminate the ambiguity. It should clearly
7 indicate which notice period applies when personal records of a consumer are
8 subpoenaed in an unlawful detainer case.

9 The 5-day notice period for a deposition in an unlawful detainer case is designed
10 to facilitate expeditious and peaceful resolution of such disputes, helping to
11 safeguard the property rights of the landlord.²³ The 20-day notice requirement for
12 a deposition in which personal records of a consumer are subpoenaed is designed
13 to protect consumer privacy by giving the consumer ample time to object to
14 production of the personal records.²⁴ A notice period like this is mandated by the
15 state constitutional right of privacy;²⁵ personal records of a consumer cannot
16 constitutionally be produced without affording the consumer reasonable notice and
17 an opportunity to object to production.²⁶

22. The predecessor of Section 2025.270, former Section 2025(f), contained the same ambiguity. It read:

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

2002 Cal. Stat. ch. 1068, § 2.

23. See generally *Lindsey v. Normet*, 405 U.S. 56, 70-73 (1972); *Deal v. Municipal Court*, 157 Cal. App. 3d 991, 995, 996, 204 Cal. Rptr. 79 (1984).

24. *Lantz v. Superior Court*, 28 Cal. App. 4th 1839, 1848, 34 Cal. Rptr. 2d 358 (1994); *Sasson v. Katash*, 146 Cal. App. 3d 119, 124, 194 Cal. Rptr. 46 (1983).

25. Cal. Const. art. I, § 1.

26. See, e.g., *Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652, 658, 542 P.2d 977, 125 Cal. Rptr. 553 (1975) (“[B]efore confidential customer information may be disclosed in the course of civil discovery proceedings, [a] bank must take reasonable steps to notify its customer of the pendency and nature of the proceedings and to afford the customer a fair opportunity to assert his interests by objecting to disclosure, by seeking an appropriate protective order, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered.”); *Gilbert v. City of San Jose*, 114 Cal. App. 4th 606, 615-16, 7 Cal. Rptr. 3d 692 (2003) (“[B]efore defendant discloses personal information collected under the Ordinance, it must take reasonable steps to notify the person to whom the information pertains of the pendency and nature of the request for the information and to afford the person a fair opportunity to object to disclosure, to join in resisting disclosure, or to resist disclosure or limit the scope or nature of the matters sought to be discovered.”); *Sehlmeyer v. Department of General Services*, 17 Cal. App. 4th 1072, 1080-81, 21 Cal. Rptr. 840 (1993) (“[B]efore third party personal records may be disclosed in the course of an administrative proceeding, the subpoenaing party must take reasonable steps to notify the third party of

1 Because of this constitutional constraint, it would be problematic to apply the 5-
2 day notice period when personal records of a consumer are subpoenaed for a
3 deposition in an unlawful detainer case. If a deposition involving production of
4 personal records could be taken on only five days notice to the litigants, how much
5 notice would be given to the consumer? How much time would the custodian of
6 records have to collect the records after finding out the consumer's position on
7 disclosure? The timing would seem to be too tight to adequately protect the
8 consumer's constitutional right of privacy.

9 On initial consideration, it would likewise seem to be problematic to apply the
10 20-day notice period when personal records of a consumer are subpoenaed for a
11 deposition in an unlawful detainer case. If a defendant appears in an unlawful
12 detainer case, trial is to be held "not later than the 20th day following the date that
13 the request to set the time of the trial is made."²⁷ The short time period for
14 scheduling an unlawful detainer trial could be viewed as inconsistent with
15 requiring twenty days notice when subpoenaing consumer records in an unlawful
16 detainer case.

17 But there are a number of mitigating factors. A request for trial in an unlawful
18 detainer case cannot be made until after the defendant appears.²⁸ The defendant is
19 not required to respond to the complaint until five days after it is served (more if
20 ordered by the court for good cause shown).²⁹ The trial date can be continued upon
21 taking certain steps to protect the landlord's interests.³⁰ Further, the notice
22 requirement for a deposition involving production of records can be shortened for
23 good cause shown.³¹ Likewise, the special statutory deadlines for notifying a
24 consumer regarding a request for production of personal records³² or notifying a
25 custodian of records regarding such a request³³ can be shortened "[u]pon good

the pendency and nature of the proceedings and to afford the third-party a fair opportunity to assert her interests by objecting to disclosure, by seeking an appropriate protective order from the administrative tribunal, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered.").

27. Section 1170.5(a).

28. See Judicial Council Form UD-150.

29. Code Civ. Proc. § 1167.3.

30. Code Civ. Proc. § 1170.5(b)-(c); see also Code Civ. Proc. § 1167.5.

31. Code Civ. Proc. § 2025.270(c).

32. A consumer must be served with the subpoena, any supporting affidavit, a statutorily prescribed Notice of Privacy Rights, and a proof of service. This service must be made at least ten days before the date set for production of the personal records and at least five days before service on the custodian of records. Section 1985.3(b).

33. A custodian of records must be served with the subpoena and either (i) proof of serving the required documents on the consumer or (ii) a properly executed written authorization to release the consumer's records. Section 1985.3(c). This service must be made "in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof." Section 1985.3(d). The date for production shall thus be "no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later." Section 2020.410(c). As a practical matter,

1 cause shown and provided that the rights of witnesses and consumers are
2 preserved”³⁴

3 There is thus leeway to accommodate both the unlawful detainer deadlines and
4 the statutory requirements for producing consumer records. The short fuse for trial
5 in an unlawful detainer case does not necessarily require deviation from the
6 normal requirements for subpoenaing consumer records. The Law Revision
7 Commission therefore recommends that the provision governing the time of taking
8 an oral deposition be amended to make clear that the 20-day notice requirement
9 for a deposition involving production of personal records of a consumer applies
10 even in an unlawful detainer case.³⁵

11 **Notice Period for a Discovery Motion in an Unlawful Detainer Case**

12 The Legislature has mandated that courts handle unlawful detainer cases on an
13 expedited basis.³⁶ To that end, it has established special short time deadlines for
14 many procedural steps in an unlawful detainer case. For example, a party in an
15 unlawful detainer case may calendar a summary judgment motion on five days
16 notice, rather than the 75 days notice required in other types of cases.³⁷

17 There is, however, no special deadline for a discovery motion in an unlawful
18 detainer case. Rather, a party bringing such a motion must give 16 court days
19 notice of the hearing on the motion, the same as in most other civil cases.³⁸

20 It seems incongruous to allow a potentially dispositive summary judgment
21 motion to be heard on five days notice, while requiring a full sixteen court days
22 notice for a motion to resolve a mere discovery dispute. To eliminate this
23 unwarranted disparity in treatment, the Law Revision Commission recommends
24 that a new provision be added to the Code of Civil Procedure, which would

because the consumer must be served at least five days before the custodian, and the custodian must be served at least 15 days before the date of production, the consumer must be served at least 20 days before the date of production. Weil & Brown, California Practice Guide: Civil Procedure Before Trial Depositions § 8:590.1, at 8E-60 (2005).

34. Section 1985.3(h).

35. See proposed amendment to Section 2025.270 *infra*.

36. Section 1179a.

37. Section 437c(a), 1170.7; see also Sections 1167.3 (five day period for responding to complaint in unlawful detainer case), 1170.5 (trial in unlawful detainer case must be set no later than 20th day following date of request to set trial), 2025.270 (five day notice requirement for deposition in unlawful detainer case), 2030.020 (five day hold on interrogatories propounded by plaintiff in unlawful detainer case), 2030.260 (five day period for responding to interrogatories in unlawful detainer case), 2031.020 (five day hold on inspection demand by plaintiff in unlawful detainer case), 2031.030 (five day notice requirement for inspection in unlawful detainer case), 2031.260 (five day period for responding to inspection demand in unlawful detainer case), 2033.020 (five day hold on requests for admission by plaintiff in unlawful detainer case), 2033.250 (five day period for responding to requests for admission in unlawful detainer case).

38. Section 1005(b).

- 1 establish a five day notice requirement for a discovery motion in an unlawful
- 2 detainer case.³⁹

39. See proposed Section 1170.8 *infra*.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 1170.8 (added). Time for discovery motion**

2 SEC. _____. Section 1170.8 is added to the Code of Civil Procedure, to read:

3 1170.8. In any action under this chapter, a discovery motion may be made at any
4 time after the answer is filed upon giving five days notice.

5 **Comment.** Section 1170.8 is new. The section provides for an expedited hearing on a
6 discovery motion in a forcible entry or forcible or unlawful detainer case, consistent with the
7 precedence for such cases expressed in Section 1179a. The section is modeled on Section 1170.7
8 (five days notice required for summary judgment motion in action under this chapter).

9 **Code Civ. Proc. § 2025.270 (amended). Time of taking oral deposition**

10 SEC. _____. Section 2025.270 of the Code of Civil Procedure is amended to
11 read:

12 2025.270. (a) An oral deposition shall be scheduled for a date at least 10 days
13 after service of the deposition notice. ~~If, as defined in subdivision (a) of Section~~
14 ~~1985.3, the party giving notice of the deposition is a subpoenaing party, and the~~
15 ~~deponent is a witness commanded by a deposition subpoena to produce personal~~
16 ~~records of a consumer, the deposition shall be scheduled for a date at least 20 days~~
17 ~~after issuance of that subpoena.~~

18 (b) Notwithstanding subdivision (a), in an unlawful detainer action an oral
19 deposition shall be scheduled for a date at least five days after service of the
20 deposition notice, but not later than five days before trial.

21 (c) Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3 or
22 1985.6, the party giving notice of the deposition is a subpoenaing party, and the
23 deponent is a witness commanded by a deposition subpoena to produce personal
24 records of a consumer or employment records of an employee, the deposition shall
25 be scheduled for a date at least 20 days after issuance of that subpoena.

26 (d) On motion or ex parte application of any party or deponent, for good cause
27 shown, the court may shorten or extend the time for scheduling a deposition, or
28 may stay its taking until the determination of a motion for a protective order under
29 Section 2025.420.

30 **Comment.** Section 2025.270 is amended to clarify its application when personal records of a
31 consumer are subpoenaed in an unlawful detainer case. The provision is also amended to clarify
32 its application when employment records of an employee are subpoenaed.

33 Under subdivision (c), a litigant must give 20 days notice when subpoenaing personal records
34 of a consumer or employment records of an employee. This rule applies even in an unlawful
35 detainer case.

36 Under subdivision (d), a court may adjust the notice period for good cause shown. Likewise, on
37 a showing of good cause, a court may shorten the time limits for serving a consumer or a
38 custodian of records under Section 1985.3, provided that the rights of witnesses and consumers
39 are preserved. See Section 1985.3(h). Similarly, on a showing of good cause, a court may shorten
40 the time limits for serving an employee or a custodian of records under Section 1985.6, provided
41 that the rights of witnesses and employees are preserved. See Section 1985.6(g). In addition,

1 under specified circumstances, a court may continue the trial date or extend other time limits in
2 an unlawful detainer case. See Sections 1167.3, 1167.5, 1170.5; see also Deal v. Municipal Court,
3 157 Cal. App. 3d 991, 997-98, 204 Cal. Rptr. 79 (1984).

4 **Note.** An alternative approach would be to amend Sections 1985.3 and 2025.270 (and perhaps
5 other provisions such as Section 2020.510) to establish a special set of rules for subpoenaing
6 personal records of a consumer in an unlawful detainer case. For example, instead of requiring 20
7 days notice, Section 2025.270 could be amended to require only 15 days notice in this specific
8 context. Similarly, Section 1985.3 could be amended such that in this context (1) the consumer
9 would have to be served at least 7 days before the date of production and at least 3 days before
10 service on the custodian, and (2) the custodian would have to be served at least 12 days before the
11 date of production. The net effect would be to require that the consumer be served at least 15 days
12 before the date of production when personal records are subpoenaed in an unlawful detainer case.
13 As discussed in Memorandum 2006-24, the Commission may want to solicit comments on this
14 approach.

15 **Code Civ. Proc. § 2030.020 (amended). Time of propounding interrogatories**

16 SEC. _____. Section 2030.020 of the Code of Civil Procedure is amended to
17 read:

18 2030.020. (a) A defendant may propound interrogatories to a party to the action
19 without leave of court at any time.

20 (b) A plaintiff may propound interrogatories to a party without leave of court at
21 any time that is 10 days after the service of the summons on, ~~or in unlawful~~
22 ~~detainer actions five days after service of the summons on~~ or appearance by, that
23 party, whichever occurs first.

24 (c) Notwithstanding subdivision (b), in an unlawful detainer action a plaintiff
25 may propound interrogatories to a party without leave of court at any time that is
26 five days after service of the summons on, or appearance by, that party, whichever
27 occurs first.

28 (d) Notwithstanding subdivisions (b) and (c), on motion with or without notice,
29 the court, for good cause shown, may grant leave to a plaintiff to propound
30 interrogatories at an earlier time.

31 **Comment.** Section 2030.020 is amended to improve clarity by separately stating the special
32 deadline for an unlawful detainer case.

33 **Code Civ. Proc. § 2030.260 (amended). Service of response to interrogatories**

34 SEC. _____. Section 2030.260 of the Code of Civil Procedure is amended to
35 read:

36 2030.260. (a) Within 30 days after service of interrogatories, ~~or in unlawful~~
37 ~~detainer actions within five days after service of interrogatories~~ the party to whom
38 the interrogatories are propounded shall serve the original of the response to them
39 on the propounding party, unless on motion of the propounding party the court has
40 shortened the time for response, or unless on motion of the responding party the
41 court has extended the time for response. ~~In unlawful detainer actions,~~

42 (b) Notwithstanding subdivision (a), in an unlawful detainer action the party to
43 whom the interrogatories are propounded shall have five days from the date of

1 service to respond, unless on motion of the propounding party the court has
2 shortened the time for response, or unless on motion of the responding party the
3 court has extended the time for response.

4 (b) (c) The party to whom the interrogatories are propounded shall also serve a
5 copy of the response on all other parties who have appeared in the action. On
6 motion, with or without notice, the court may relieve the party from this
7 requirement on its determination that service on all other parties would be unduly
8 expensive or burdensome.

9 **Comment.** Section 2030.260 is amended to improve clarity by separately stating the special
10 deadline for an unlawful detainer case. The amendment also eliminates an ambiguity by clearly
11 permitting a court to extend, as well as shorten, the time to respond to interrogatories in an
12 unlawful detainer case.

13 **Code Civ. Proc. § 2031.020 (amended). Time of making inspection demand**

14 SEC. _____. Section 2031.020 of the Code of Civil Procedure is amended to
15 read:

16 2031.020. (a) A defendant may make a demand for inspection without leave of
17 court at any time.

18 (b) A plaintiff may make a demand for inspection without leave of court at any
19 time that is 10 days after the service of the summons on, ~~or in unlawful detainer~~
20 ~~actions within five days after service of the summons on~~ or appearance by, the
21 party to whom the demand is directed, whichever occurs first.

22 (c) Notwithstanding subdivision (b), in an unlawful detainer action a plaintiff
23 may make a demand for inspection without leave of court at any time that is five
24 days after service of the summons on, or appearance by, the party to whom the
25 demand is directed, whichever occurs first.

26 (d) Notwithstanding subdivisions (b) and (c), on motion with or without notice,
27 the court, for good cause shown, may grant leave to a plaintiff to make an
28 inspection demand at an earlier time.

29 **Comment.** Section 2031.020 is amended to improve clarity by separately stating the special
30 deadline for an unlawful detainer case.

31 **Code Civ. Proc. § 2031.030 (amended). Form of inspection demand**

32 SEC. _____. Section 2031.030 of the Code of Civil Procedure is amended to
33 read:

34 2031.030. (a) A party demanding an inspection shall number each set of
35 demands consecutively.

36 (b) In the first paragraph immediately below the title of the case, there shall
37 appear the identity of the demanding party, the set number, and the identity of the
38 responding party.

39 (c) Each demand in a set shall be separately set forth, identified by number or
40 letter, and shall do all of the following:

1 (1) Designate the documents, tangible things, or land or other property to be
2 inspected either by specifically describing each individual item or by reasonably
3 particularizing each category of item.

4 (2) Specify a reasonable time for the inspection that is at least 30 days after
5 service of the demand, ~~or in unlawful detainer actions at least five days after~~
6 ~~service of the demand~~, unless the court for good cause shown has granted leave to
7 specify an earlier date. In an unlawful detainer action, the demand shall specify a
8 reasonable time for the inspection that is at least five days after service of the
9 demand, unless the court for good cause shown has granted leave to specify an
10 earlier date.

11 (3) Specify a reasonable place for making the inspection, copying, and
12 performing any related activity.

13 (4) Specify any related activity that is being demanded in addition to an
14 inspection and copying, as well as the manner in which that related activity will be
15 performed, and whether that activity will permanently alter or destroy the item
16 involved.

17 **Comment.** Subdivision (c) of Section 2031.030 is amended to improve clarity by separately
18 stating the special deadline for an unlawful detainer case.

19 **Code Civ. Proc. § 2031.260 (amended). Service of response to inspection demand**

20 SEC. _____. Section 2031.260 of the Code of Civil Procedure is amended to
21 read:

22 2031.260. (a) Within 30 days after service of an inspection demand, ~~or in~~
23 ~~unlawful detainer actions within five days of an inspection demand~~, the party to
24 whom the demand is directed shall serve the original of the response to it on the
25 party making the demand, and a copy of the response on all other parties who have
26 appeared in the action, unless on motion of the party making the demand, the court
27 has shortened the time for response, or unless on motion of the party to whom the
28 demand has been directed, the court has extended the time for response. ~~In~~
29 ~~unlawful detainer actions,~~

30 (b) Notwithstanding subdivision (a), in an unlawful detainer action the party to
31 whom an inspection demand is directed shall have at least five days from the ~~dates~~
32 date of service of the demand to respond, unless on motion of the party making the
33 demand, the court has shortened the time for the response, or unless on motion of
34 the party to whom the demand has been directed, the court has extended the time
35 for response.

36 **Comment.** Section 2031.260 is amended to improve clarity by separately stating the special
37 deadline for an unlawful detainer case. The amendment also eliminates an ambiguity by clearly
38 permitting a court to extend, as well as shorten, the time to respond to an inspection demand in an
39 unlawful detainer case.

40 Section 2031.260 is further amended to make stylistic revisions.

1 **Code Civ. Proc. § 2033.020 (amended). Time of making request for admissions**

2 SEC. _____. Section 2033.020 of the Code of Civil Procedure is amended to
3 read:

4 2033.020. (a) A defendant may make requests for admission by a party without
5 leave of court at any time.

6 (b) A plaintiff may make requests for admission by a party without leave of
7 court at any time that is 10 days after the service of the summons on, ~~or, in~~
8 ~~unlawful detainer actions, five days after the service of the summons on,~~ or
9 appearance by, that party, whichever occurs first.

10 (c) Notwithstanding subdivision (b), in an unlawful detainer action a plaintiff
11 may make requests for admission by a party without leave of court at any time that
12 is five days after the service of the summons on, or appearance by, that party,
13 whichever occurs first.

14 (c) Notwithstanding subdivisions (b) and (c), on motion with or without notice,
15 the court, for good cause shown, may grant leave to a plaintiff to make requests
16 for admission at an earlier time.

17 **Comment.** Section 2033.020 is amended to improve clarity by separately stating the special
18 deadline for an unlawful detainer case.

19 **Code Civ. Proc. § 2033.250 (amended). Service of response to requests for admission**

20 SEC. _____. Section 2033.250 of the Code of Civil Procedure is amended to
21 read:

22 2033.250. (a) Within 30 days after service of requests for admission, ~~or in~~
23 ~~unlawful detainer actions within five days after service of requests for admission,~~
24 the party to whom the requests are directed shall serve the original of the response
25 to them on the requesting party, and a copy of the response on all other parties
26 who have appeared, unless on motion of the requesting party the court has
27 shortened the time for response, or unless on motion of the responding party the
28 court has extended the time for response. ~~In unlawful detainer actions,~~

29 (b) Notwithstanding subdivision (a), in an unlawful detainer action the party to
30 whom the request is directed shall have at least five days from the date of service
31 to respond, unless on motion of the requesting party the court has shortened the
32 time for response, or unless on motion of the responding party the court has
33 extended the time for response.

34 **Comment.** Section 2033.250 is amended to improve clarity by separately stating the special
35 deadline for an unlawful detainer case. The amendment also eliminates an ambiguity by clearly
36 permitting a court to extend, as well as shorten, the time to respond to requests for admission in
37 an unlawful detainer case.

38 Section 2033.250 is further amended to make a stylistic revision.