

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Time Limits for Discovery in an Unlawful Detainer Case

October 2006

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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October 27, 2006

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

An unlawful detainer case is a special proceeding by a landlord to regain possession of real property from a tenant. The statutory procedure is designed to provide an expeditious means for a landlord to regain 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.

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. 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 is unclear in its application. The proposed amendment would eliminate this ambiguity; it would also clarify how the provision applies when employment records are subpoenaed. Similar clarifying revisions would be made in several other discovery provisions that fail to specify how to treat a request for employment records of an employee.

The Commission further recommends that each provision establishing a special time limit for discovery in an unlawful detainer case be made expressly applicable to other types of summary proceedings for possession of real property (forcible entry and forcible detainer). The same expedited discovery procedures should apply in all of these types of proceedings.

Finally, the Commission recommends that a new provision be added to the Code of Civil Procedure, which would establish a shortened five day notice requirement for a discovery motion in an unlawful detainer case or other summary proceeding for possession of real property. This would help promote fair yet expeditious resolution of landlord-tenant disputes.

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

Respectfully submitted,

David Huebner
Chairperson

TIME LIMITS FOR DISCOVERY IN AN UNLAWFUL DETAINER CASE

An unlawful detainer case is a special proceeding by a landlord to regain possession of real property from a tenant, such as when a tenant fails to pay rent for an apartment.¹ The procedure for an unlawful detainer case is prescribed by statute.² The procedure is designed to provide an expeditious means for a landlord to regain possession when a tenant wrongfully refuses to leave.³ The underlying goal is to promote peaceful resolution of landlord-tenant disputes.⁴

The Civil Discovery Act⁵ includes a number of provisions that specify a special time limit for an unlawful detainer case. In most of these provisions, the language specifying the special time limit for an unlawful detainer case is mixed with language specifying the time limit for other types of cases.

1. See Code Civ. Proc. § 1161. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

2. Sections 1161-1179a.

3. *Deal v. Municipal Court*, 157 Cal. App. 3d 991, 995, 204 Cal. Rptr. 79 (1984); see also Section 1179a.

4. *Deal*, 157 Cal. App. 3d at 995.

5. Sections 2016.010-2036.050.

The Commission is conducting a study of civil discovery; this recommendation was prepared as part of that study. Several other discovery reforms recommended by the Commission have already been enacted. See 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); *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

This drafting technique creates ambiguities.⁶ 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 several related reforms:

- Amend a provision in which the special time limit for an unlawful detainer case is separately stated, but is unclear in its application.
- Clarify how that provision and three other provisions apply when employment records of an employee are subpoenaed.
- Make explicit that the special time limits for discovery in an unlawful detainer case also apply to discovery in other types of summary proceedings for possession of real property.
- Add a new provision to the codes, which would establish a special notice period for a discovery motion in an unlawful detainer case. To help implement this new provision, the Judicial Council would be directed to establish a briefing schedule for such a motion, as well as for certain other motions that are heard on short notice in an unlawful detainer case.

The Commission's recommendations are explained below. Its work on civil discovery is continuing. In the future, the

6. 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*, *supra* note 5. 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.

Commission may address additional issues relating to discovery in an unlawful detainer case.

Ambiguity that Arises Because the Special Time Limit for an Unlawful Detainer Case Is Not Separately Stated

In some discovery provisions, language specifying a special time limit for an unlawful detainer case is mixed with language specifying the time limit for other types of cases. These include the provisions governing (1) service of a response to written discovery, (2) commencement of written discovery by the plaintiff, and (3) the time of an inspection.

Service of a Response to Written Discovery

Under the provision governing service of a response to interrogatories,⁷ the response is due thirty days after service of the interrogatories. In an unlawful detainer case, however, the response is due five days after service of the interrogatories.

A court may shorten the thirty day deadline on motion of the propounding party, and may extend that deadline on motion of the responding party. A court may also shorten the five day unlawful detainer deadline on motion of the propounding party. Because of the way the statute is drafted, however, it is unclear whether a court may extend the five day unlawful detainer deadline on motion of the responding party.

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

2030.260. (a) Within 30 days after service of interrogatories, *or in unlawful detainer actions within five*

7. Section 2030.260.

days after service of interrogatories the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. In unlawful detainer actions, the party to whom the interrogatories are propounded shall have five days from the date of service to respond unless on motion of the propounding party the court has shortened the time for response.

....⁸

Similar ambiguities exist in the provisions governing service of a response to an inspection demand⁹ and service of a response to a request for admissions.¹⁰

As a matter of policy, a court should be permitted to extend the deadlines for responding to written discovery in an unlawful detainer case, even if a party objects. Those five day deadlines are very short. It might not always be realistic to expect a party to respond in the period provided. Often, the parties may be able to resolve such problems by agreement.¹¹ But if a party refuses a reasonable request for an extension, it

8. 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.

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

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

11. 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).

may be appropriate for a court to extend the deadline over the party's objection.

The Law Revision Commission therefore recommends that the provision governing service of a response to interrogatories be amended to make clear that a court may extend, as well as shorten, the five day unlawful detainer deadline.¹² The Commission also recommends similar amendments of the provisions governing service of a response to an inspection demand and service of a response to a request for admissions.¹³

Commencement of Written Discovery By the Plaintiff

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

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.¹⁴

The provisions governing when a plaintiff may make an inspection demand¹⁵ and when a plaintiff may make requests for admission¹⁶ are similar.

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

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

14. 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.

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

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

Each of these provisions establishes a ten day hold period for most cases, and a special five day hold period for unlawful detainer cases. But it is not clear what is meant to trigger the running of each hold period: (1) service of the summons on the responding party, or (2) service of the summons on, or appearance by, the responding party, whichever occurs first.

For example, a court might conclude that the ten day hold period for propounding interrogatories runs from service of the summons on the responding party, while the five day hold period runs from service of the summons on, or appearance by, the responding party, whichever occurs first. Such an interpretation would be consistent with the current placement of the commas in the provision, because only the clause relating to unlawful detainer actions refers to an appearance.¹⁷ But that interpretation would be grammatically problematic with respect to the ten day hold period: If the clause referring to unlawful detainer actions relates only to such actions, then the remaining statutory text would not make sense as applied to other types of actions.¹⁸

It seems likely that the Legislature inadvertently omitted a comma after the reference to service of the summons in an unlawful detainer action — i.e., the provision was intended to read: “A plaintiff may propound interrogatories to a party ... 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.” With a

17. Section 2030.020(b) reads: “A plaintiff may propound interrogatories to a party ... 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.”

18. With the clause relating to unlawful detainer actions excised, Section 2030.020(b) would read: “A plaintiff may propound interrogatories to a party ... 10 days after the service of the summons on ... that party, whichever occurs first.”

comma inserted as indicated, the most natural and logical (but not the only possible) interpretation of the provision would be that *both* the five day and the ten day hold periods run from service of the summons on, or appearance by, the responding party, whichever occurs first.

That interpretation not only makes sense from a grammatical standpoint, but also from a substantive standpoint: There does not seem to be a policy basis for treating the five day and ten day hold periods differently.¹⁹ Rather, it is logical to use the same trigger for both the five day and the ten day hold periods. If a party has been served with a summons, or has appeared in an action, the clock should start ticking for taking discovery from that party. That should be the rule regardless of whether the case is an unlawful detainer case or another type of case.

The Law Revision Commission recommends that each provision be amended to clearly implement that approach. That can be done by stating the special unlawful detainer hold period in a separate subdivision, instead of including it in the same subdivision as the general rule.²⁰ Amending the provisions in this manner would help to prevent confusion over how to calculate the hold periods.

Time of Inspection

An inspection demand must “[s]pecify a reasonable time for the inspection that is at least 30 days after service of the demand, or in unlawful detainer actions five days after

19. The idea that the Legislature inadvertently omitted a comma in Section 2030.020(b) also draws support from Section 2033.020(b), a parallel provision on making requests for admission. Notably, Section 2033.020(b) includes a comma in precisely the place where one appears to have been accidentally omitted in the other provision.

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

service of the demand, unless the court for good cause shown has granted leave to specify an earlier date.”²¹ It is ambiguous from this language whether the good cause exception exists for unlawful detainer cases, other types of cases, or both.

The Law Revision Commission recommends that the provision be amended to separately state the special five day unlawful detainer rule, making clear that the good cause exception applies both to that rule and to the thirty day rule for other types of cases.²² Applying the good cause exception in both contexts is sound policy, ensuring leeway to deviate from the statutorily specified time periods when justified.²³

Special Time Limit that is Separately Stated But Unclear in Its Application: Time of Taking an Oral Deposition

In the provision that governs the time of taking an oral deposition, the special time limit for an unlawful detainer case is separately stated but unclear in its application. The Law Revision Commission recommends that this defect be fixed.

An oral deposition must be scheduled at least ten days after service of the deposition notice.²⁴ If the deponent is required to produce personal records of a consumer pursuant to a subpoena, the deposition must be scheduled at least twenty days after issuance of the subpoena.²⁵

21. 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.

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

23. 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 five day deadline to respond to unlawful detainer complaint).

24. Section 2025.270(a).

25. *Id.*

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

It is unclear, however, whether the unlawful detainer exception applies when personal records of a consumer are subpoenaed in an unlawful detainer case. The statute could be interpreted such that the special five day unlawful detainer notice period applies regardless of whether personal records of a consumer are subpoenaed. Alternatively, the statute could be interpreted such that the twenty day notice period, not the five day notice period, applies when personal records of a consumer are subpoenaed in an unlawful detainer case.²⁷ There does not appear to be any published decision addressing this point.

The statute should be amended to eliminate the ambiguity. It should clearly indicate which notice period applies when

26. Section 2025.270(b).

27. 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).

personal records of a consumer are subpoenaed in an unlawful detainer case.

The five day notice period for a deposition in an unlawful detainer case is designed to facilitate expeditious and peaceful resolution of such disputes, helping to safeguard the property rights of the landlord.²⁸ The twenty day notice requirement for a deposition in which personal records of a consumer are subpoenaed is designed to protect consumer privacy by giving the consumer ample time to object to production of the personal records.²⁹ A notice period like this is mandated by the state constitutional right of privacy;³⁰ personal records of a consumer cannot constitutionally be produced without affording the consumer reasonable notice and an opportunity to object to production.³¹

28. 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).

29. *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).

30. Cal. Const. art. I, § 1.

31. See, e.g., *Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652, 658, 542 P.2d 977, 125 Cal. Rptr. 553 (1975) (“Striking a balance between [a customer’s constitutional right of privacy and a civil litigant’s right to discover relevant facts], we conclude that before 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) (“[P]rivacy rights created by the California Constitution [require 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.”); *Sehlmeyer v. Department of General Services*, 17 Cal. App. 4th 1072, 1080-81, 21 Cal. Rptr. 2d 840 (1993)

Because of this constitutional constraint, it would be problematic to apply the five day notice period when personal records pertaining to a consumer are subpoenaed for a deposition in an unlawful detainer case. It would be pointless to permit a party to take such a deposition on five days notice to the other litigants instead of the usual twenty days, unless adjustments were also made in:

- (1) The requirement that the consumer be served with the subpoena and a notice of privacy rights not less than ten days before the date set for production.³²
- (2) The requirement that the consumer be served with the subpoena and a notice of privacy rights at least five days before service on the custodian of records.³³
- (3) The requirement that the custodian of records be given a reasonable time to locate and produce the records, no earlier than twenty days after the issuance, or fifteen days after the service, of the deposition subpoena, whichever is later.³⁴

If these three steps were condensed into a five day time period, however, the timing would be too tight to adequately protect the consumer's constitutional right of privacy.

On initial consideration, it would likewise seem to be problematic to apply the twenty day notice period when

("Striking a balance between [a nonparty's constitutional right of privacy and an administrative litigant's right to discovery relevant facts], we conclude that before confidential 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.").

32. Section 1985.3(b)(2).

33. Section 1985.3(b)(3).

34. Sections 1985.3(d), 2020.410(c).

personal records of a consumer are subpoenaed for a deposition in an unlawful detainer case. If a defendant appears in an unlawful detainer case, trial is to be held “not later than the 20th day following the date that the request to set the time of the trial is made.”³⁵ The short time period for scheduling an unlawful detainer trial could be viewed as inconsistent with requiring twenty 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.³⁶ 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).³⁷ The trial date can be continued upon taking certain steps to protect the landlord’s interests.³⁸ Further, the notice requirement for a deposition involving production of records can be shortened for good cause shown.³⁹ Likewise, the special statutory deadlines for notifying a consumer regarding a request for production of personal records⁴⁰ or notifying a custodian of records regarding such a request⁴¹ can be shortened “[u]pon

35. Section 1170.5(a).

36. See Judicial Council Form UD-150.

37. Code Civ. Proc. § 1167.3.

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

39. Code Civ. Proc. § 2025.270(c).

40. 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).

41. 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

good cause shown and provided that the rights of witnesses and consumers are preserved”⁴²

There is thus leeway to accommodate both the unlawful detainer deadlines and the statutory requirements for producing consumer records. The short fuse for trial in an unlawful detainer case does not necessarily require deviation from the normal requirements for subpoenaing consumer records. The Law Revision Commission therefore recommends that the provision governing the time of taking an oral deposition be amended to make clear that the twenty day notice requirement for a deposition involving production of personal records of a consumer applies even in an unlawful detainer case.⁴³

Employment Records of an Employee

Just as there are special rules for producing personal records pertaining to a consumer,⁴⁴ there are also special rules for producing employment records of an employee.⁴⁵ The provision governing the latter situation was enacted after and modeled on the provision governing production of personal records pertaining to a consumer. The procedure for producing employment records of an employee is closely

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).

42. Section 1985.3(h).

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

44. Section 1985.3.

45. Section 1985.6.

similar to the procedure for producing personal records pertaining to a consumer.

Although the provision governing the time of taking an oral deposition⁴⁶ expressly states how it applies when the deposing party seeks personal records pertaining to a consumer, the provision does not state how it applies when the deposing party seeks employment records of an employee. This appears to be an oversight. The Law Revision Commission recommends that the provision be amended to clarify its application to a deposition involving production of employment records of an employee.⁴⁷

Similar, apparently inadvertent gaps exist in several other discovery provisions; these provisions refer to the procedure for producing personal records pertaining to a consumer but do not refer to the procedure for producing employment records of an employee.⁴⁸ These gaps in coverage should also be remedied.⁴⁹

Application of Special Time Limits to a Proceeding for Forcible Entry or Forcible Detainer

An unlawful detainer case is not the only type of summary proceeding for possession of real property. Other such proceedings include forcible entry⁵⁰ and forcible detainer.⁵¹

46. Section 2025.270.

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

48. See Sections 1987.1, 2020.510, 2025.240.

49. See proposed amendments to Sections 1987.1, 2020.510, and 2025.240 *infra*.

50. Section 1159 defines forcible entry 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 statutory provisions governing forcible entry and forcible detainer are in the same chapter of the Code of Civil Procedure as the provisions governing unlawful detainer.⁵² The procedure for these types of proceedings is essentially the same as the procedure for an unlawful detainer case.⁵³ Like an unlawful detainer case, a proceeding for forcible entry or forcible detainer is entitled to trial setting precedence over almost all other civil actions, so that such proceedings “shall be quickly heard and determined.”⁵⁴

Nonetheless, the various special time limits for discovery in an unlawful detainer case do not expressly apply to discovery in a proceeding for forcible entry or forcible detainer.⁵⁵ The Law Revision Commission recommends that the special time limits expressly apply to a proceeding for forcible entry or

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.

51. Section 1160 defines forcible detainer 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.

52. See Sections 1159-1179a.

53. 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. 488 (1961).

54. Section 1179a.

55. See Sections 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, 2033.250.

forcible detainer, as well as an unlawful detainer case.⁵⁶ The same expedited discovery procedures should be used in all summary proceedings for possession of real property.

Notice Period for a Discovery Motion in an Unlawful Detainer Case

The Legislature has mandated that courts handle unlawful detainer cases and other summary proceedings for possession of real property on an expedited basis.⁵⁷ The special short time requirements for many procedural steps in an unlawful detainer case serve that purpose. For example, a party in an unlawful detainer case may calendar a summary judgment motion on five days notice, rather than the seventy-five days notice required in other types of cases.⁵⁸

There is, however, no special shortened time requirement for a discovery motion in an unlawful detainer case. Rather, a party bringing such a motion must give sixteen court days notice of the hearing on the motion, the same as in most other civil cases.⁵⁹

56. See proposed amendments to Sections 2025.270, 2030.020, 2030.260, 2031.020, 2031.030, 2031.260, 2033.020, and 2033.250 *infra*.

57. Section 1179a.

58. 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).

59. Section 1005(b).

It is incongruous to allow a potentially dispositive summary judgment motion to be heard on five days notice, while requiring a full sixteen court days notice for a motion to resolve a mere discovery dispute. To eliminate this unwarranted disparity in treatment, the Law Revision Commission 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 or other summary proceeding for possession of real property.⁶⁰

This new provision would not specify when an opposition or a reply brief, if any, would be due. That would be covered by another new provision, which would direct the Judicial Council to establish a briefing schedule.⁶¹ Once established, the briefing schedule would help to prevent confusion and disputes over when to file and serve responsive papers.

Such guidance is needed not only for a discovery motion, but also for two other types of motions that can be brought on unusually short notice in an unlawful detainer case: A summary judgment motion⁶² and a motion to quash.⁶³ The Judicial Council would be directed to establish a briefing schedule for each of these motions as well.⁶⁴

These reforms relating to motion practice in an unlawful detainer case, together with the other reforms recommended by the Commission, would help clarify the applicable rules and streamline the procedures for an unlawful detainer case or

60. See proposed Section 1170.8 *infra*.

61. See proposed Section 1170.9 *infra*.

62. See Section 1170.7 (five day notice requirement for summary judgment motion in unlawful detainer case).

63. See Section 1167.4 (in summary proceeding for possession of real property, motion to quash shall be made “not less than three days nor more than seven days after the filing of the notice”).

64. See proposed Section 1170.9 *infra*.

other summary proceeding for possession of real property. Both landlords and tenants would benefit, and courts would be spared from resolving unnecessary disputes over unclear statutory language.

PROPOSED LEGISLATION

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

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

1170.8. In any action under this chapter, a discovery motion may be made at any time upon giving five days notice.

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

Code Civ. Proc. § 1170.9 (added). Judicial Council rules

SEC. _____. Section 1170.9 is added to the Code of Civil Procedure, to read:

1170.9. The Judicial Council shall promulgate rules, not inconsistent with statute, prescribing the time for filing and service of opposition and reply papers, if any, relating to a motion under Section 1167.4, 1170.7, or 1170.8.

Comment. Section 1170.9 is new. To prevent confusion and disputes, it directs the Judicial Council to establish briefing schedules for a motion to quash, summary judgment motion, and discovery motion in a summary proceeding for possession of real property. For general guidance on means of service, including service by overnight delivery, see Sections 1010-1020; see also Cal. R. Ct. 2.200-2.306.

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 for production of tangible items 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.

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 or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, 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. Further, the amendment makes clear that the special notice requirement for an unlawful detainer case also applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160).

Under subdivision (c), a litigant must give twenty days notice when subpoenaing personal records of a consumer or employment records of an employee. This rule applies even in an unlawful detainer case or other summary proceeding for possession of real property.

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 or other summary proceeding for possession of real property. 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).

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 an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, 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 hold period for an unlawful detainer case. The amendment also makes clear that the special hold period applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

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

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

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

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the interrogatories are propounded shall have five days from the date of service to respond, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

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

Comment. Section 2030.260 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to interrogatories in an unlawful detainer case.

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

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

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

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

(c) Notwithstanding subdivision (b), *in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make a demand for inspection without leave of court at any time that is five days after service of the summons on, or appearance by, the party to whom the demand is directed, 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 make an inspection demand at an earlier time.

Comment. Section 2031.020 is amended to improve clarity by separately stating the special hold period for an unlawful detainer case. The amendment also makes clear that the special hold period applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

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

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

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

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

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

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

(2) Specify a reasonable time for the inspection that is at least 30 days after service of the demand, ~~or in unlawful detainer actions at least five days after service of the demand,~~ unless the court for good cause shown has granted leave to specify an earlier date. *In an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the demand shall specify a reasonable time for the inspection that is at least five days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date.*

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

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

Comment. Subdivision (c) of Section 2031.030 is amended to improve clarity by separately stating the special time requirement for an unlawful detainer case. The amendment also makes clear that the special time requirement applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

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

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

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

(b) *Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom an inspection demand is directed shall have at least five days from the ~~dates~~ date of service of the demand to respond, unless on motion of the party making the demand, the court has shortened the time for the response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.*

Comment. Section 2031.260 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to an inspection demand in an unlawful detainer case.

Section 2031.260 is further amended to make stylistic revisions.

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

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

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

(b) A plaintiff may make requests for admission by 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 the service of the summons on,~~ or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), *in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make requests for admission by a party without leave of court at any time that is five days after the service of the summons on, or appearance by, that party, whichever occurs first.*

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

Comment. Section 2033.020 is amended to improve clarity by separately stating the special hold period for an unlawful detainer case. The amendment also makes clear that the special hold period applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case.

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

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

2033.250. (a) Within 30 days after service of requests for admission, ~~or in unlawful detainer actions within five days after service of requests for admission,~~ the party to whom the

requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. ~~In unlawful detainer actions,~~

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the request is directed shall have at least five days from the date of service to respond, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

Comment. Section 2033.250 is amended to improve clarity by separately stating the special deadline for an unlawful detainer case. The amendment also makes clear that the special deadline applies to a proceeding for forcible entry (see Section 1159) or forcible detainer (see Section 1160), as well as to an unlawful detainer case. In addition, the amendment eliminates an ambiguity by clearly permitting a court to extend, as well as shorten, the time to respond to requests for admission in an unlawful detainer case.

Section 2033.250 is further amended to make a stylistic revision.
