

Family Law Discovery Issues

Research Guide

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How to Prepare and Serve Form Interrogatories (Family Law) on the Other Party (JC Form #FL-145)

Form interrogatories in Family Law are one type of written discovery. Interrogatories are written questions which call for written answers. Form interrogatories are designed by the Judicial Council to obtain basic information that is fairly common to all dissolution proceedings, the Judicial Council form that covers this area is FL-145. The answers must be sworn to under oath.

You can find Judicial Council Form FL-145 online in downloadable format at <http://www.courts.ca.gov/forms.htm> . Instructions to both parties are contained at the beginning of the form.

When you look at the Form Interrogatories, you'll see that there are different items categorized by subject matter. You can propound specific interrogatories by checking the box next to the items you wish to have the other party answer.

A really good example of completed Form Interrogatories can be found in *How to Solve Divorce Problems in California*, Chapter 17, KFC 126 .S54.

As with all Discovery, procedural rules exist about how and when you can use interrogatories. You'll want to become familiar with all of these rules. Some rules, for example, are:

- Form interrogatories may only be used between parties to the action (see CCP 2030.010 et seq.).
- Unlike other paperwork generated in your case, Discovery paperwork is not normally filed with the Court (see *California Rules of Court* 3.250).
- As with all Discovery, it needs to be served on the opposing party (see CCP 2030.080). If the opposing party has an attorney, it needs to be served on their attorney on behalf of the other party.
- You cannot serve the documents; they must be served by someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and the date served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.
- You must retain the original of the interrogatories and the proof of service; have a copy of those documents served (see CCP 2030.080 & 2030.280).

- You can have the interrogatories served any time after service of Summons with some important restrictions (see CCP 2030.020 (a), (b), (d)).
- Form interrogatories do not count toward the statutory 35 limit to interrogatories (see CCP 2030.030 (a)(2)).

For more information on how to prepare and serve Family Law Form Interrogatories, consult the resources below.

Resources:

How to Solve Divorce Problems in California, Chapter 17. KFC 126 .S54

California Practice Guide: Family Law, Chapter 11. KFC 126 .A6 H6

California Family Law Practice and Procedure. KFC 115 .A6

California Forms of Pleading and Practice, Chapter 194. KFC 1010 .A65

California Practice Guide: Civil Procedure Before Trial. KFC 995 .W4

Family Law Financial Discovery. KFC 126 .F36

San Diego County Court Rules, Division V: Family Law. KFC993.S26 A19

California Code of Civil Procedure, Sections 2033.710et seq. & 2030.010et seq. KFC30.5 W42
C59

How to Respond to Family Law Form Interrogatories (not a form)

Interrogatories are written questions which call for written answers. Form interrogatories are designed by the Judicial Council to obtain basic information that is fairly common to all dissolution proceedings. Unfortunately there is no corresponding Judicial Council form for responding to form interrogatories.

If you are properly served with interrogatories, generally you are under a duty to respond to each question separately, under oath, and within 30 days (see CCP 2030.210(a) & CCP 2030.260). You can respond by either answering the question, objecting to the question, or allowing inspection and copying of records (see CCP 2030.210(a)). There are exceptions to this, for example you can move for a protective order (see CCP 2030.090).

Because of the many options you have regarding your responses, you'll want to be sure to review the various procedural rules concerning the format of interrogatory responses. Many of these rules are in the *Code of Civil Procedure* (CCP 2030.220 et seq.) and in the *California Rules of Court* (Rule 2.100 et seq.).

Unless your response contains only objections, you should verify your responses by signing under oath (CCP 2030.250). Sample language for a Verification can be found in *How to Solve Divorce Problems in California* on page 161, KFC 126.S54.

A sample generic pleading template for use in drafting the Response to Form Interrogatories and Verification can be downloaded from our website at: <http://www.sdcpjl.org/resources/guides.htm#guidepleadings> click on "Download a Sample Pleading Template".

Typically responses are due within 30 days from the date of personal service or within 35 days if served on you by mail, absent a stipulation to extend time (see CCP 2030.260 and CCP 1013). Failure to respond timely waives most of your rights to object or refuse to produce documents. A signed original of your responses under oath will need to be served on the other party or on their attorney if they have one. A copy of the proof of service is also served on the other party, you retain the original signed proof of service of your response for your records (see CCP 2030.280). Discovery paperwork is not normally filed with the Court (see *California Rules of Court* 3.250).

You cannot serve the documents; it must be served by someone that is not a party to the action and over 18 years of age. The person serving the documents for you must sign a proof of service form stating what they have served, who it was served on, and when it was served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.

For good examples of the format of responses to interrogatories, see:

How to Solve Divorce Problems in California, Discovery Chapter, under Response to Interrogatories. KFC 126 .S54

California Practice Guide: Civil Procedure Before Trial FORMS, Form 8:18.1. KFC 995 .W4

For more information on how to Respond to Form Interrogatories, consult the resources below.

Resources:

How to Solve Divorce Problems in California, Chapter 17. KFC 126 .S54

California Practice Guide: Family Law, Chapter 11. KFC 126 .A6 H6

California Family Law Practice and Procedure. KFC 115 .A6

California Forms of Pleading and Practice, Chapter 194. KFC 1010 .A65

California Practice Guide: Civil Procedure Before Trial. KFC 995 .W4

Family Law Financial Discovery. KFC 126 .F36

San Diego County Court Rules, Division V: Family Law. KFC993.S26 A19

California Code of Civil Procedure, Section 2030.210 et seq. KFC30.5 W42 C59

How to Prepare and Serve Special Interrogatories (not a form)

Special Interrogatories are one type of written discovery. Interrogatories are written questions which call for written answers. Special Interrogatories are questions drafted by the party, tailored to the issues in the case, and written on pleading paper. These differ from Form Interrogatories which are pre-printed and drafted by the Judicial Council (see above for more information on Form Interrogatories). The answers must be sworn to under oath. As with all Discovery, procedural rules exist about how and when you can use interrogatories. You'll want to become familiar with all of these rules. Some rules, for example, are:

- Interrogatories may only be used between parties to the action (see CCP 2030.010 et seq.).
- Unlike other paperwork generated in your case, Discovery paperwork is not normally filed with the Court (see *California Rules of Court* 3.250).
- As with all Discovery, it needs to be served on the opposing party (see CCP 2030.080). If the opposing party has an attorney, it needs to be served on their attorney on behalf of the other party.
- You can serve interrogatories any time after service of summons with some important restrictions (see CCP 2030 020 (a), (b), (d)).
- You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and the date served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.
- You must retain the original of the special interrogatories and the proof of service; have a copy of those documents served (see CCP 2030.080 & CCP 2030.280).
- You are generally limited to propounding 35 Special Interrogatories, although there are circumstances under which you may propound more (see CCP 2030.030 & 2030.050).

For a good example of drafted Special Interrogatories, see:

How to Solve Divorce Problems in California, Chapter 17, KFC 126 .S54.

A sample generic pleading template for use in drafting Special Interrogatories can be downloaded from our website at: <http://www.sdcpil.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

For more information on drafting and serving Special Interrogatories, consult the resources below.

Resources:

How to Solve Divorce Problems in California, Chapter 17. KFC 126 .S54

California Practice Guide: Family Law, Chapter 11. KFC 126 .A6 H6

California Family Law Practice and Procedure. KFC 115 .A6

California Forms of Pleading and Practice, Chapter 194. KFC 1010 .A65

California Practice Guide: Civil Procedure Before Trial. KFC 995 .W4

Family Law Financial Discovery. KFC 126 .F36

San Diego County Court Rules, Division V: Family Law. KFC993.S26 A19

California Code of Civil Procedure, Section 2030.010 et seq. KFC30.5

How to Respond to Special Interrogatories (not a form)

Interrogatories are written questions which call for written answers. Special Interrogatories are questions drafted by a party, tailored to the issues in the case, and written on pleading paper.

If you are properly served with Special Interrogatories, generally you are under a duty to respond to each question separately, under oath, and within 30 days after being served (see CCP 2030.210 et seq.). You can respond by either answering the question, objecting to the question, or allowing inspection and copying of records (see CCP 2030.210(a)). There are some exceptions to this; one example is requesting a protective order (see CCP 2030.090).

Because of the many options you have regarding your responses, you'll want to be sure to review the various procedural rules concerning the format of Special Interrogatory responses. There is not a Judicial Council form for responses. You will need to prepare and format your responses on pleading paper according to the *Code of Civil Procedure* (CCP 2030.220 et seq.) and *California Rules of Court* (Rule 2.100 et seq.).

Unless your response contains only objections, you should verify your responses by signing under oath (CCP 2030.250). Sample language for a Verification can be found in *How to Solve Divorce Problems in California* on page 161, KFC 126.S54.

Typically responses are due within 30 days from the date of personal service or within 35 days if served on you by mail, absent a stipulation to extend time (see CCP 2030.260 and CCP1013). Failure to respond timely waives most of your rights to object or refuse to produce documents.

A signed original of your responses under oath will need to be served on the other party or on their attorney if they have one. A copy of the proof of service is also served on the other party; you retain the original signed proof of service of your response for your records (see CCP 2030.280). Discovery paperwork is not normally filed with the Court (see California Rules of Court 3.250).

You cannot serve the documents; it must be served by someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and when it was served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.

For good examples of the format of Responses to Special Interrogatories, see:

How to Solve Divorce Problems in California. KFC 126 .S54

Discovery Chapter 17, under Response to Interrogatories

California Practice Guide: Civil Procedure Before Trial FORMS, Form 8:18.1. KFC 995 .W4

A sample generic pleading template for use in drafting the Response to Special Interrogatories and Verification can be downloaded from our website at:

<http://www.sdcpl.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

For more information on Responding to Special Interrogatories, consult the resources below.

Resources:

How to Solve Divorce Problems in California, Chapter 17. KFC 126 .S54

California Practice Guide: Family Law, Chapter 11. KFC 126 .A6 H6

California Family Law Practice and Procedure. KFC 115 .A6

California Forms of Pleading and Practice, Chapter 194. KFC 1010 .A65

California Practice Guide: Civil Procedure Before Trial. KFC 995 .W4

Family Law Financial Discovery. KFC 126 .F36

San Diego County Court Rules, Division V: Family Law. KFC993.S26 A19

California Code of Civil Procedure, Section 2030.210 et seq. KFC30.5

How to Prepare and Serve a Request for Production of Documents (Inspection Demand) (not a form)

You can use a Request for Production of Documents to inspect and copy relevant documents in your spouse's possession. A request for Production of Documents can only be used between the parties involved in the case. It cannot be used to discover information held by a third party (There are different Discovery tools that can be used to get information from a third party).

A Request for Production of Documents needs to be written using a pleading format because there is no court-approved form. In your request, you need to state a date, time, and place where the documents are to be provided for you to inspect and copy. You should prepare a separate list of the items you want produced. Use a separate paragraph for each type of document. Number each paragraph. For instance, federal income tax returns in one paragraph, pension or retirement plans in another, and monthly bank statements in yet another. You want to ask for records back at least to the time when you think your spouse started thinking about divorce. However, be reasonable. The request must be specific so that your spouse can tell exactly what documents or items to produce.

You need to set your date for production at least 30 after service of the demand (see CCP 2031.030(c)(2)). You want to serve your demand at least 90 days before the trial to ensure there is enough time for documents to be produced, for the documents to be examined, and for any further motions to be made. The place for the production of documents should be an office, or some other location, with an available photocopy machine (see CCP 2031.030(c)(2)-(3)).

Your spouse only has to produce items or documents of which he or she has custody or control. However, if he or she can get a copy easily and you have no access, then he or she must get that copy for you. If your spouse gives the documents to his or her attorney, that does not make them subject to the attorney-client privilege.

The pleading must follow the pleading format indicated in California Rules of Court, rule 2.100 et seq. A sample generic pleading template for use in drafting the Request for Production of Documents can be downloaded from our website at: <http://www.sdcp11.org/resources/guides.htm#guidepleadings> click on "Download a Sample Pleading Template".

For a good example of a Request for Production of Documents, see:

How to Solve Divorce Problems in California, pgs 153-155, KFC 126.S54.

For more information on Preparing and Serving a Request for Production of Documents, consult the resources below.

Resources:

How to Solve Divorce Problems in California KFC126.S54
Chapter 17

Family Law Financial Discovery. KFC 126 .F36
Sections 3.15 through 3.21

California Code of Civil Procedure, Section 2031.010 et seq. KFC30.5

How to Respond to a Request for Production of Documents (inspection demand) (not a form)

Review *California Code of Civil Procedure* sections 2031.210 – 2032.260 for detailed explanations of how you must respond to a Request for Production. Read these codes carefully and follow them exactly.

Each item of the request must be responded to separately, and there are only three acceptable responses: 1) will comply; 2) lacks ability to comply, which requires a particularly detailed statement; and 3) a legal objection that, for some stated reason, there is no obligation to produce the item (see CCP 2031.210 – 2031.240). Each of these response choices have exact language that you *must* use.

For a sample Response to a Request for Production of Documents, see:

How to Solve Divorce Problems in California, pages 157-161. KFC 126 .S54

Unless your response contains only objections, you should verify your responses by signing under oath (CCP 2031.250). Sample language for a Verification can be found in *How to Solve Divorce Problems in California* on page 159, KFC 126.S54.

A sample generic pleading template for use in drafting your Response to a Request for Production and Verification can be downloaded from our website at: <http://www.sdcpll.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

Service of the Response:

Discovery paperwork is not normally filed with the Court (see California Rules of Court 3.250). The *original* response and verification must be served on the initiating party by mail or personally, and a *copy* of the Proof of Service should be sent to the recipient and the *original* Proof of Service kept in your file attached to a *copy* of the response for your records (see CCP 2031.260). You must have the documents served either: within 30 days after the date the Request was personally served on you (CCP 2031.260) or within 35 days if it was served by mail (CCP 1013).

You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served and who it was served on. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.

For more information on Responding to Special Interrogatories, consult the resources below.

Resources:

How to Solve Divorce Problems in California. KFC126.S54

California Civil Discovery Practice, Section 8.70 et seq. and 8.124 (sample). KFC 1020.C34

California Deposition and Discovery Practice,

Section 61.20 et seq. and 61.51 (sample). KFC1020.D43

California Code of Civil Procedure, Sections 2031.210 – 2031.320. KFC 30.5

How to Prepare and serve a Request for Admissions (not a form)

Requests for Admissions (RFAs) are written requests used by one party requiring the other party to admit or deny, under oath, “the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact” (see CCP 2033.010).

Form/Format of RFAs

Optional Judicial Council form *DISC-020* may be used, **but** it is actually only a skeleton cover sheet and does not get around the fact that you need to specifically and separately phrase each RFA. Care must be taken in drafting RFAs to ensure they are *precise* and *on point*. You can locate the above form at: <http://www.courts.ca.gov/forms.htm> under “Discovery” for reference.

For sample Request for Admissions language, see:

California Civil Practice: Family Law Litigation, Volume 2, Chapter 13:74. KFC995.C3

If you are not using Form DISC-020, you will need to draft your own RFAs on pleading paper. A sample generic pleading template for use in drafting RFAs can be downloaded from our website at: <http://www.sdcpll.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

Service of RFAs

- Unlike other paperwork generated in your case, Discovery paperwork is not normally filed with the Court (see *California Rules of Court* 3.250).
- As with all Discovery, it needs to be served on the opposing party (see CCP 2033.070). If the opposing party has an attorney, it needs to be served on their attorney on behalf of the other party.
- Service of the RFAs may not be made by the petitioner within 10 days of service of summons without the court’s permission; the respondent may serve them at any time (CCP 2033.020(b)).
- You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and the date served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.
- You must retain the original of the RFAs and the proof of service; have a copy of those documents served (see CCP 2033.270).

- You are generally limited to propounding 35 RFAs that do not relate to the genuineness of documents, although there are circumstances under which you may propound more (see CCP 2033.030).

For more information on preparing and serving Request for Admissions, consult the resources below.

Resources:

California Civil Practice: Family Law Litigation KFC995.C3
Volume 2, Chapter 13:33
California Practice Guide: Family Law KFC126.A6 H6
Volume 3, Chapter 11:257 – 11:264
Code of Civil Procedure KFC30.5
Sections 94-95, 1013, 2033.010-2033.420

How to Respond to a Request for Admissions (not a form)

A Response is either an “answer” admitting so much of the matter in the request as is true and in as straightforward a manner as the information available to the responding party permits, or an “objection” to so much of the matter in the request as is objectionable. The remaining parts must be answered. See CCP 2033.220 et seq. for more specific information on responding to a Request for Admission.

Permissible responses include:

- a) a legally-proper set of *admissions and/or denials*,
- b) a statement of *inability to answer* because of insufficient information or knowledge (supported by a showing of reasonable inquiry),
- c) an *objection* to the request, or
- d) a *motion for protective order*.

See *California Code of Civil Procedure*, Section 2033.210 and following.

For Information on a Response to Request for Admissions, see:

California Forms of Pleading and Practice, KFC1010.A65 C3, Volume 16, section 196.50.

Unless your response contains only objections, you should verify your responses by signing under oath (CCP 2033.240). Sample language for a Verification can be found in *How to Solve Divorce Problems in California* on page 159, KFC 126.S54.

A sample generic pleading template for use in drafting your Response to Request for Admission and Verification can be downloaded from our website at:

<http://www.sdcpil.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

Service of Response to Request for Admissions:

Responses must be served within 30 days after the date the request was personally served on you (CCP 2033.250). If the Request was served on you by mail, the Response time is extended by five (5) calendar days if mailed within California; if the place of address is outside California but within the United States, the time to respond is extended 10 calendar days (CCP 1013).

Generally, if you fail to respond within this time, you will waive your right to object to the request or assert any privileges. A failure to respond does not result in an automatic admission and only will be so if the propounding party moves for a “deemed admitted order” that the requested matters stand admitted (CCP 2033.280 & CCP 2033.290).

The original Response will need to be served on the other party or on their attorney if they have one. A copy of the proof of service is also served on the other party; you retain the original

signed proof of service of your Response for your records (see CCP 2033.270). Discovery paperwork is not normally filed with the Court (see California Rules of Court 3.250).

You cannot serve the documents; it must be served by someone who is not a party to the action and is over 18 years of age. That person must sign a proof of service form stating what they have served the documents and who the documents were served on. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.

For more information on Responding to a Request for Admissions, consult the resources below.

Resources:

California Forms of Pleading and Practice, KFC1010.A65 C3

Volume 16, Section 196.62

California Civil Practice: Family Law Litigation KFC995.C3

Volume 2, Chapter 13:35-13:36

California Practice Guide: Family Law KFC126.A6 H6

Volume 3, Chapter 11:265-11:269.1

Code of Civil Procedure KFC30.5

Sections 1013, 2016.050, 2033.080, 2033.220-2033.250

How to File an Order to Show Cause and Affidavit for Contempt (JC Form #FL-410)

The contempt proceeding is used to enforce an order or judgment that is not being followed by one of the parties. If the other party is in violation of a court order or judgment you can request that the party be brought into court and answer your allegations of contempt. A contempt proceeding is not to be taken lightly. It is a quasi-criminal proceeding with a formal hearing, the taking of evidence and examination of witnesses. The accused may also have the right to be appointed an attorney by the Court.

In family law cases, the contempt proceedings must be initiated by filing and serving Judicial Council form FL-410 Order to Show Case and Affidavit for Contempt along with an Affidavit of Facts Constituting Contempt (Judicial Council form FL-411 or FL-412). All of these forms are *mandatory* to use in family law cases when filing a contempt proceeding, and can be found online at: <http://www.courts.ca.gov/forms.htm> under Family Law: Enforcement.

Pages three and four of Judicial Council form FL-410 contain detailed instructions on how to use and fill out the form.

The form FL-410 **must** be accompanied by an Affidavit of Facts describing the order/ judgment that was violated, the date the order/judgment was issued, how the order was violated and when the violation occurred. The Affidavit must show that the order/judgment was a valid court order, that the person in violation knew about the order, and that they willfully disobeyed the order.

Affidavit of Facts:

Judicial Council form FL-411 is used to allege a violation of financial orders (child support, spousal support, attorneys fees and costs). Judicial Council form FL-412 is used to allege a violation of domestic violence restraining orders, and custody/visitation orders.

If neither of the above Affidavit of Facts forms seems appropriate in your situation, you can use items 8(c) and 8(d) of the Order to Show Cause and Affidavit for Contempt (FL-410) to state the Affidavit of Facts to support your case. If you need more room to describe the order or material facts you can follow the instructions on page four of FL-411 and use Judicial Council Form MC-025 as an attachment. It can be found online at: <http://www.courts.ca.gov/forms.htm> under Miscellaneous.

If there are violations of multiple orders, fill out all forms that are necessary to allege contempt. For example, if the other party is in violation of a support order and a visitation order, you will need to fill out both FL-411 and FL-412.

Once you have filled out the Order to Show Cause and Affidavit for Contempt and the Affidavit of Facts you need to file them with the Court. The court clerk will fill in the date, time and place for the hearing. You must serve the other party with the paperwork by personal service at least 16 court days before the hearing (CCP 1005(b)). Unlike most paperwork, service for Contempt must be made directly on the other party, not on their attorney (CCP 1015 & 1016, Family Code 215). There are certain exceptions to the requirement of personal service on the other party, see resources below for more information.

For more information on Order to Show Cause and Affidavit for Contempt, consult the resources below.

Resources:

Judicial Council Form FL-410, instructions on pages 3 and 4.

<http://www.courts.ca.gov/forms.htm>

California Practice Guide: Family Law, Volume 11, Chapter 18, Sections 18:170-18:197.

KFC126 .A6 H6

California Civil Practice: Family Law Litigation, Volume 3, Chapter 19, Sections 19:24 to 19:30. KFC995.C3

How to Solve Divorce Problems in California, Chapter 13. KFC126.S54

For information on how to Respond/defend yourself against an OSC for Contempt, see:

It is important that the accused party respond to the OSC for Contempt or move for a Discharge of the Contempt. If no defensive paperwork is received by the Court, all allegations of violations could be deemed admitted and taken to be true. Penalties for Contempt could include monetary fines, community service, and/or imprisonment in jail.

California Civil Practice: Family Law Litigation, Chapter 19, Sections 19:31 to 19:54 and 19:63 to 19:68. KFC995.C3

California Practice Guide: Family Law, Chapter 18, Section 18:200-18:229. KFC126.A6 H6 v.3

California Forms of Pleading and Practice, Chapter 258, Section 258:131[1-3]. KFC1010 .A65 C3 v.22

How to Obtain the other party's financial records from a third party prior to hearing or trial by Deposition Subpoena for Production of Business Records (JC Form #SUBP-010)

When an organization that is **not a party** has records you need, you obtain them by using a Deposition Subpoena for Business Records, Judicial Council form SUBP-010. It can be found online at <http://www.courts.ca.gov/forms.htm> under Subpoena. With this subpoena, you can get bank records, employer records regarding wages, retirement benefits, stock options, etc. Note: Despite the name, there will be no deposition; you are only demanding a production of records. See Code of Civil Procedure (CCP) 2020.410-2020.440.

Using a “Deposition Subpoena for Business Records” is usually a two-part process.

1) If the records relate to a Consumer/Employee, you must have that person served with a “Notice to Consumer or Employee” (SUBP-025) and the subpoena, and give them at least **ten** days to object (see CCP 1985.3(b)). If there are other parties in the case, they get served with copies of the Notice and Subpoena too. SUBP-025 can be found online at <http://www.courts.ca.gov/forms.htm> under Subpoena.

2) If the Consumer/Employee doesn't object, you then have the papers personally served on the Witness, and give them at least 15 days to respond. They should respond by sending you copies of the records you request. If the Consumer/Employee objects, the Witness can't respond until the objection is resolved. (see CCP 1985.3(d) and 2020.410(c)).

Forms Available Online:

“*Deposition Subpoena – Business Records*” (SUBP-010) and “*Notice to Consumer or Employee*” (SUBP-025) available at: <http://www.courts.ca.gov/forms.htm> .

For more information on obtaining the other party's financial records from a third party, consult the resources below.

Resources:

How to Solve Divorce Problems in California, pp. 177-178 & 185-186. KFC 126 .S54

Litigation by the Numbers, Chapter 5 (Discovery), Sec. 5.3.5. KFC 995 .G67

California Civil Discovery, Chapter 5. KFC 1020.C34

Handling Subpoenas: Here Is How And When To Do It. KFC1040.5 .H36

Information on consumer/employee objections can be found in:

California Points and Authorities, Vol. 8, Chap. 81, Sec. 240-254. KFC 1010 .B4

How to Obtain the other party's financial records from a third party for production at a trial or hearing by Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration (JC Form #SUBP-002)

A subpoena duces tecum is an order directing a third party witness to attend and produce specified documents at the trial or hearing. A subpoena is required to order a witness' attendance at a particular time and place to testify and to produce documents. Documents may include books, records or other items in the witness' possession.

How to prepare a subpoena duces tecum:

1. First obtain a blank and sealed Form SUBP-002 from either the clerk of the court or the judge (CCP §1985(c)); The form can also be obtained at <http://www.courts.ca.gov/forms.htm?filter=SUB>
2. Complete the Form SUBP-002: Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing; and
3. Complete the declaration on page two of SUBP-002 or complete a separate declaration and attach it to the subpoena form . When using Form SUBP-002, if you need more room for one of the sections, you can use Judicial Council Form MC-025(Attachment to Judicial Council Form) and attach it to the Subpoena. If you want to have your Declaration all in one document, follow the instructions below.

If you decide to complete a separate declaration and attach it to the Subpoena , the declaration must:

1. Show good cause for the production of the documents or things described in the subpoena by stating facts that justify the request for the specified documents;
2. Describe the exact documents or items to be produced;
3. State in full detail the materiality of the documents or items to the issues in the case, i.e. stating facts to show how the production of certain documents would relate to the issues in the case;
4. State that the documents or items are in the possession or control of the witness.
5. Include the following language at the end: "I certify (or declare) under penalty of perjury that the foregoing is true and correct." Under this sentence provide the date and place of execution and your signature (see CCP §2015.5).

For examples of subpoena duces tecum and declarations, see:

California Trial Practice: Civil Procedure During Trial, Ch. 4, Forms 4.55A & 4.56. KFC

1025.C349

Litigation By The Numbers, Chapter 7, pages 7-20 to 7-23. KFC995.G67

Serving a subpoena duces tecum:

Any person not a party to the action and over 18 years of age may serve the subpoena duces tecum. California law does not specify a time period for serving a subpoena duces tecum; instead, the subpoena duces tecum must be served within a reasonable time for witness preparation and travel (CCP §1987(a)). Service is completed by **personally delivering** the subpoena and declaration to the witness and if demanded by the witness, the fee and mileage for 1 day's appearance. Upon service, the person serving the subpoena and declaration completes the proof of service form on page 3 of Form SUBP-002.

A *copy* of the Subpoena, Declaration and Proof of Service are served on the other party. You retain the *original* Subpoena, Declaration and Proof of Service for your records (CCP 1987.5). The documents are not filed with the court unless a dispute arises or requested by the court (CCP 1987.5).

For more information on obtaining the other party's financial records from a third party for production at a trial or hearing, consult the resources below.

Resources:

Litigation by the Numbers, Chapter 5, pp. 5-26. KFC995.G67

Handling Subpoenas: Here's How and When To Do It, Step 13-15, 17-21. KFC 1040.5. H36

California Trial Practice: Civil Procedure During Trial, Chapter 4, KFC 1025.C349

California Practice Guide: Civil Trials and Evidence, Chapter 1, pp. 31-34. KFC1025.A6 W44

How to obtain financial records from the other party (to use at trial or hearing) by Notice to Appear at Trial/Hearing and Produce Documents and Things (not a form)

If the opposing party refuses to stipulate to facts or provide financial documents leading up to trial or a hearing, you can compel their cooperation by using a written Notice to Appear instead of serving a subpoena. Written notice has the same effect as a subpoena, according to California Code of Civil Procedure 1987(b) and 1987(c). This document is called a Notice to Appear and Produce or Notice to Attend and Produce. A sample generic pleading template for use in drafting the Notice to Appear and Produce can be downloaded from our website at: <http://www.sdcpll.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

The Notice must state several things:

1. The time and place for the party to attend the hearing or trial;
2. The exact materials or things desired to be produced; and
3. The fact that the documents or things are in the possession or control of the party.

The Notice does not need a supporting declaration or affidavit.

Service of Notice to Appear and Produce:

A Notice to Appear and Produce must be served on your opponent or the opponent’s attorney at least 20 calendar days before the date you want them to appear. Check with the Family Law Business Office for the exact date and time of the trial/hearing to make sure you can meet the service requirements. A person served with the Notice to Appear and Produce can be compelled to produce records and items from outside California, as well as from within the state. Unlike a subpoena, the Notice does not have to be served on the person. Instead, it can be served on their attorney (CCP 1987(b)). You must serve the Notice 20 calendar days before the hearing/trial date if served personally or 25 calendar days before the hearing/trial date if served by mail (CCP 1987(c) & CCP 1013(a)).

You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and when it was served. You can locate proof of service forms at:

<http://www.courts.ca.gov/forms.htm> under Proof of Service.

For a sample Notice to Appear to Produce, see:

California Trial Practice: Civil Procedure During Trial, Section 4.70. KFC 1025.C349

For more information on obtaining the other party’s financial records from a third party for production at a trial or hearing, consult the resources below.

Resources:

California Trial Practice: Civil Procedure During Trial, Sections 4.36 to 4.39. KFC 1025.C349

How to request production of an Income and Expense Declaration After Judgment (JC Form #FL-396)

If you have an order for child, family or spousal support that does not limit the court's power to modify the amount or duration of them, you may be able to file for a modification of the support order if there is a change in either party's income. A motion for modification or termination of support does not need to be pending in court for you to file a Request for Production of an Income and Expense Declaration After Judgment, however, this type of request can be made no more than every 12 months (Family Code 3663).

In this situation, either party has the right to serve on the other a demand for a completed *Income and Expense Declaration* together with copies of the last federal income tax return. Fill out the mandatory-use Judicial Council Form FL-396: *Request for Production of an Income and Expense Declaration After Judgment* and have it served together with a blank copy of the Income and Expense Declaration (Judicial Council Form FL-150).

You can find the mandatory use forms FL-396 and FL-150 at <http://www.courts.ca.gov/forms.htm> under the Family Law section of the drop-down menu.

Service of demand for completion of Income and Expense Declaration After Judgment:

You must have the Request for Production of an Income and Expense Declaration After Judgment along with a BLANK Income and Expense Declaration (Judicial Council Form FL-150) served on the other party either personally or by certified mail, return receipt requested, to the other party's last known address (FC 3664(e)). The documents get served on the *party*, not on the attorney who represented them (if any). You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must fill out and sign the Proof of Service section on page two of FL-396; retain the *original* Request with the signed Proof of Service for your files.

For more information on obtaining the other party's financial records from a third party for production at a trial or hearing, consult the resources below.

Resources:

How to Solve Divorce Problems in California, pages 278. KFC126.S54

How to Do Your Own Divorce, Chapter 12 for general service information. KFC126.H692

California Practice Guide: Family Law, Vol. 3, Ch. 11:370 – 11:377.12. KFC126.A6 H6

California Family Code, Sections 3660-3665. KFC30.5

How to file a motion to compel compliance with discovery requests (not a form)

If a party fails to answer a question, attend a deposition hearing or fails to bring a document or tangible thing requested in a deposition notice or subpoena, then the party seeking the discovery may request the court for an order to compel an answer or to compel the production of a document or object.

A motion to compel is a request to the court to issue an order to compel the other party to answer a question or to produce a document or object.

Before filing a motion to compel, reasonable and good faith efforts must be made to resolve the issues with the discovery request. This includes contacting the opposing party by phone, by letter, or in person to try to get a response to the discovery request. This is a mandatory requirement that must be met before a motion to compel may be filed.

If, after all reasonable attempts have been made to resolve the discovery dispute, there is still no resolution; then the moving party may file a motion to compel a response to the discovery request.

A motion to compel includes the following documents:

1. Notice of Motion
2. “Meet and Confer” Declaration – state facts showing you made a good faith and reasonable effort to resolve your discovery issue with the opposing party. This is a mandatory requirement, see CCP §2016.040.
3. Memorandum of Points and Authorities – state facts showing good cause to justify your discovery request.
4. Proof of Service.

Note: An additional separate statement is prepared for the following motions when a response to a discovery request is inadequate (See California Rules of Court 3.1345):

1. To compel further responses to requests for admissions;
2. To compel further responses to interrogatories;
3. To compel further responses to a demand for inspection of documents or tangible things;
4. To compel answers at a deposition;
5. To compel or to quash the production of documents or tangible things at a deposition;
6. For medical examination over objection; and

7. For issue or evidentiary sanctions.

For Sample Language to use in a Motion to Compel, see:

How to Solve Divorce Problems in California, Chapter 18. KFC126.S54

Handling Motions to Compel and Other Discovery Motions, Appendix A-D, pages 71-83. KFC 1020.Z9 T53

California Forms of Pleading and Practice, Chapter 195, §§195.65-195.69. KFC1010.A65 C3

For Sample Language to use in Points and Authorities in support of Motion, see:

California Law and Motion: Model Forms. KFC1012 .P37 Forms

Compel Compliance with Deposition Subpoena, Chapter 63

Compel Production of Documents, Chapter 64

Compel Response to Interrogatories, Chapter 67-68

Compel Response to Inspection Demands, Chapter 69-71

Compel Response to Request for Admissions, Chapter 73

California Points and Authorities. KFC1010.B4

Compel Response to Interrogatories, Section 84.10 et seq.

Compel Production or Inspection, Section 85.10 et seq.

Compel Response to Request for Admission, Section 86.10 et seq.

Because there are different forms of Discovery, there are different statutory requirements governing motions to compel; see the following code sections for more information:

- CCP 2025.450: requirements for filing a motion to compel attendance at a deposition.
- CCP 2025.480: requirements for filing a motion to compel if deponent fails to answer questions or produce documents under a Deposition Notice or a Deposition Subpoena.
- CCP 2030.290 & 2030.300: requirements for filing a motion to compel a further response to interrogatories.
- CCP 2031.310: requirements for filing a motion to compel further response to inspection, copying, testing or sampling.
- CCP 2031.320 for filing a motion to compel compliance to a demand for inspection/production, copying, testing or sampling an item.
- CCP 2033.290: requirements for filing a motion to compel further responses to a Request for Admissions, also CCP 2033.280 on requirements for a motion that matters be deemed admitted in the event that respondent fails to timely serve a response to Request for Admissions.

A sample generic pleading template for use in drafting the Notice of Motion, Declaration, and Memorandum of Points and Authorities can be downloaded from our website at: <http://www.sdcp11.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

Service of Motion to Compel:

1. Contact the Family Law Business Office to schedule a date and time for the Motion to Compel hearing. The hearing date must be scheduled *at least 15 court days* before the date initially set for trial. See CCP 2024.020(a) and San Diego Local Court Rule 5.5.8 for more information.
2. All paperwork must be filed with the Court and served on the other party at least 16 court days before the hearing on the Motion to Compel (CCP 1005(b)). If serving by mail within California, the time for service is increased by 5 *calendar* days (CCP 1005(b)).
3. You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and when it was served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.
4. The Proof of service must be filed no later than five court days before the time appointed for the hearing (*California Rules of Court* 3.1300(a)).
5. Keep a copy of all documents filed with the court for your own records.

For more information on filing a Motion to Compel, consult the resources below.

Resources:

California Forms of Pleading and Practice, Chapter 193-197. KFC1010.A65 C3
Handling Motions to Compel and Other Discovery Motions. KFC 1020.Z9 T53
California Civil Discovery Practice, Chapter 15. KFC 1020.C34

How to file a Motion for Sanctions (discovery issues)

Misuse of the Discovery Process:

The court has the authority to issue sanctions for “discovery misuse” against the offending party for abuse of the discovery process or for failure to comply with valid discovery requests. See CCP 2023.010 for a listing of “misuses of the discovery process”; note that misuses not listed may also be considered by the court for sanctions.

Types of Sanctions:

There are different kinds of sanctions that can be imposed on the other party and/or their attorney. The trial court has broad discretion to impose any sanction authorized by the statutes governing the particular discovery method at issue. Depending on the nature of the discovery misuse, sanctions that *may* be available include:

- 1) Monetary sanctions (reasonable expenses, including attorney fees; punitive damages not permitted)
- 2) Nonmonetary sanctions (issued only if a party fails to obey a court order compelling discovery)
 - a) Issue sanction– ordering that designated facts be “taken as established,” or deemed true, against the party guilty of discovery misuse;
 - b) Evidence sanction – prohibiting guilty party from introducing designated matters in evidence
 - c) Terminating sanction – striking pleadings, dismissing offending party’s action, staying further proceedings until court order is obeyed; or rendering default judgment against offending party
 - d) Contempt sanction – used for *willful* disobedience of discovery order

(see CCP 2023.030 and Resources listed below).

Noticed Motion Required:

Discovery sanctions may be ordered *only* after *notice to the affected party* and an *opportunity for hearing*. No “ex parte” orders seeking discovery sanctions are allowed (CCP 2023.030-2023.040).

The notice of motion to be filed with the trial court must include:

- a) identify every person, party and attorney against whom the sanction is sought,
- b) be supported by a “memorandum of points and authorities,” and
- c) be accompanied by a supporting “declaration.”

If you’re submitting a “declaration” in support of a motion for *monetary* discovery sanctions, you *must* set forth the *facts* showing exactly what fees and costs have been incurred (CCP 2023.040).

For a sample Notice of Motion and Motion for Order and other supporting documents, see:
California Forms of Pleading & Practice Volume 16, Section 192.50-192.53, KFC1010.A65.

For sample language to use in drafting the Memorandum of Points and Authorities, see:
California Points and Authorities, Chapter 82, KFC 1010.B4. Your Points and Authorities need to correspond to the type of sanction(s) being requested.

A **sample pleading template** for use in drafting the Motion for Sanctions documents can be downloaded from our website at: <http://www.sdcp11.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template.”

Service of Motion for Sanctions:

1. Contact the Family Law Business Office to schedule a date and time for the Motion for Sanctions hearing. See San Diego Local Court Rule 5.5.8 for more information.
2. All paperwork must be filed with the Court and served on the other party at least 16 *court* days before the hearing (CCP 1005(b)). If serving by mail within California, the time for service is increased by 5 *calendar* days (CCP 1005(b)).
3. You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and when it was served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.
4. The Proof of service must be filed no later than five court days before the time appointed for the hearing (*California Rules of Court* 3.1300(a)).
5. Keep a copy of all documents filed with the court for your own records.

For more information on filing a Motion for Sanctions, consult the resources below.

Resources:

California Civil Practice: Family Law Litigation, Volume 2, Chapter 13:47. KFC995.C3
California Practice Guide: Family Law, Volume 3, Chapter 11:392-11:420. KFC126.A6 H6
California Code of Civil Procedure, Sections 2023.010-2023.030, 2025. KFC30.5

How to file a Motion for Protective Order (discovery issues)

Protective orders can be granted in certain circumstances to avoid unwarranted annoyance, embarrassment, or oppression, or undue burden and expense when asked to respond to Discovery requests.

For a Motion for Protective Order in a Family Law case, the following paperwork will need to be filed with the court and served on the opposing party:

Judicial Council Form FL-300 Request for Order

Supporting Memorandum of Points and Authorities (not a form – see below)

Meet and Confer Declaration pursuant to CCP 2016.040 (not a form – see below)

The following must also be served on the opposing party along with the above documents that are filed with the Court:

BLANK – Responsive Declaration to Order to Show Cause or Notice of Motion

Judicial Council Form FL-320 (this is for the other party to fill out)

BLANK – Income and Expense Declaration (only if requesting attorney fees and costs)

Judicial Council Form FL-150 (this is for the other party to fill out)

There are many different types of Discovery requests where one may seek a Protective Order and they are governed by different codes:

Deposition and Production of Business Records

This is where one party serves and compels a non-party to produce business records regarding the other party. The propounding party must also serve a Notice to Consumer or Employee and Objection (SUBP-025).

The Responding party may move for a Protective Order by filing a motion and a supporting declaration stating facts showing that a reasonable and good faith attempt has first been made to informally resolve each issue presented by the motion (CCP 2025.420).

Interrogatories

Propounding party may ask more than 35 Specially Prepared Interrogatories if they attach the Declaration required by CCP 2030.050 and the questions meet the requirements of CCP 2030.040(a). Responding party to the Interrogatories has a right under CCP 2030.090 to seek a protective order. You may want to file for a protective order if the Discovery process has become abusive with the number of questions being asked and amount of documentation to produce is excessive.

Requests for Admissions

Propounding party may ask more than 35 Requests for Admissions if a larger number is warranted by the complexity or quantity of the issues CCP 2033.040(a). Number of requests to admit genuineness of documents is limited only as justice requires to protect responding party

from unwarranted annoyance, embarrassment, or oppression or undue burden and expense CCP 2033.030(c). The Responding party to the Requests for Admissions has the right to seek Protective Order under CCP 2033.080.

Production of Documents

Responding party to Request for Production of Documents has a right to seek a protective order under CCP 2031.060.

All motions for Protective Orders must be accompanied by a Meet and Confer Declaration under Code of Civil Procedure 2016.040. You must show that you have made a reasonable and good faith attempt at an informal resolution of each issue presented in your motion for a Protective Order.

For samples of Motions and Meet and Confer Declarations, see:

California Law and Motion Model Forms, Chapter 56. KFC 1012.P37 Forms

Contains sample Notice of Motion and Points & Authorities.

California Civil Practice: Procedure 2A, Chapter 13, Sections 13.21 to 13.22. KFC995.C3

California Civil Discovery Practice, KFC1020.C34

Request for Admissions: Chapter 9, sections 9.100 to 9.111

Interrogatories: Chapter 7, sections 7.155 to 7.158

Depositions: Chapter 6, sections 6.142 to 6.144

California Forms of Pleading and Practice, KFC1010.A65

Interrogatories: Chapter 194, Sections 194.95 to 194.96

Request for Admissions: Chapter 196, Sections 196.63 to 196.64

Depositions: Chapter 193, Sections 193.233 to 193.235

For samples of Points and Authorities in support of a Protective Order, see:

California Law and Motion Model Forms, Chapter 56. KFC 1012.P37 Forms

California Points and Authorities, KFC1010.B4

Depositions, Chapter 83, Section 83.80

Interrogatories, Chapter 84, Section 84.30

Demand for Production or Inspection, Chapter 85, Section 85.50

Requests for Admissions, Chapter 86, Section 86.30

A sample generic pleading template for use in drafting the Memorandum of Points and Authorities, and the Declaration can be downloaded from our website at:

<http://www.sdcpil.org/resources/guides.htm#guidepleadings> click on “Download a Sample Pleading Template”.

Service of Motion for Protective Order:

1. Contact the Family Law Business Office to schedule a date and time for the Motion for Protective Order hearing. See San Diego Local Court Rule 5.5.8 for more information.

2. All paperwork must be filed with the Court and served on the other party at least 16 *court* days before the hearing (CCP 1005(b)). If serving by mail within California, the time for service is increased by 5 *calendar* days (CCP 1005(b)).
3. You cannot serve the documents; it must be someone that is not a party to the action and over 18 years of age. They must sign a proof of service form stating what they have served, who it was served on, and when it was served. You can locate proof of service forms at: <http://www.courts.ca.gov/forms.htm> under Proof of Service.
4. The Proof of service must be filed no later than five court days before the time appointed for the hearing (*California Rules of Court* 3.1300(a)).
5. Keep a copy of all documents filed with the court for your own records.

For more information on Protective Orders, consult the resources below.

Resources:

Family Law Financial Discovery, Chapter 18. KFC 126.F36

Practice Under the California Family Code, KFC126.P73

Section 13.22 Deposition and Production of Business Records

Section 13.25 Interrogatories

Section 13.29 Requests for Admission.

California Civil Discovery Practice, Chapter 15, Sections 15.59 to 15.84. KFC1020.C34

How to Solve Divorce Problems in California, KFC126.S54

Chapter 18, Section on How to Resist a Deposition, pgs. 208-209.