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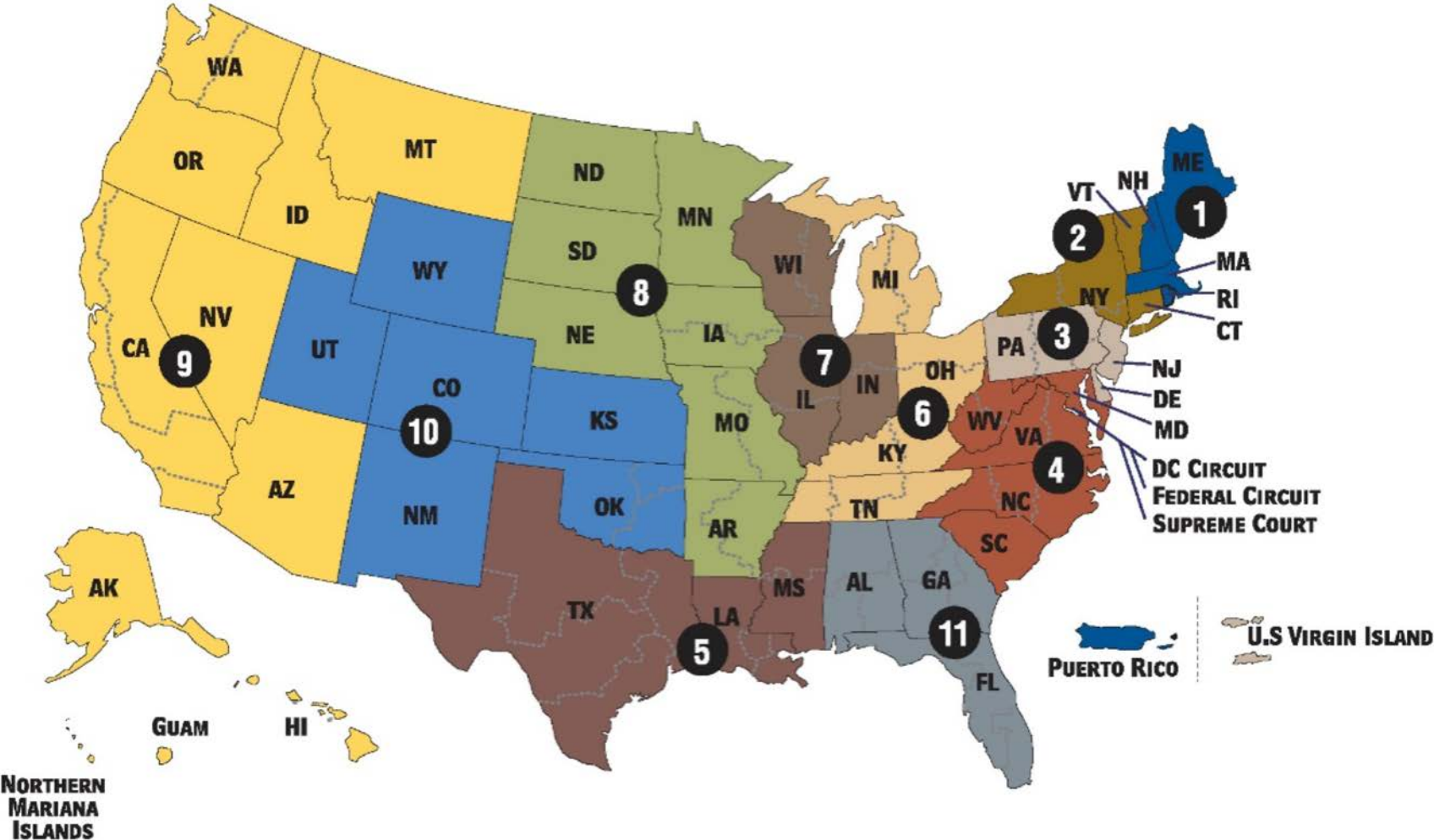
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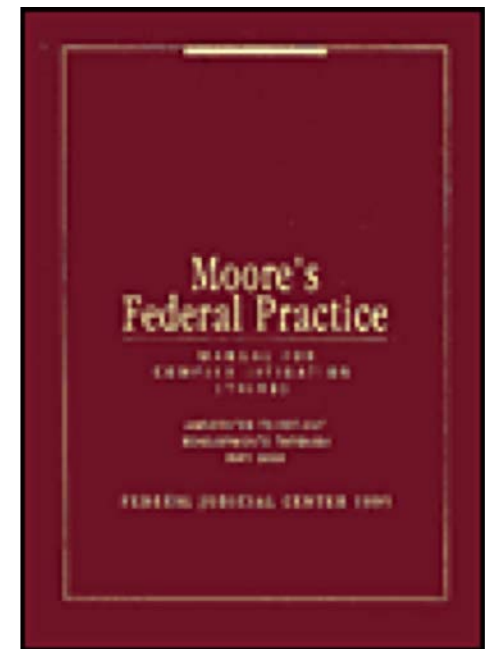
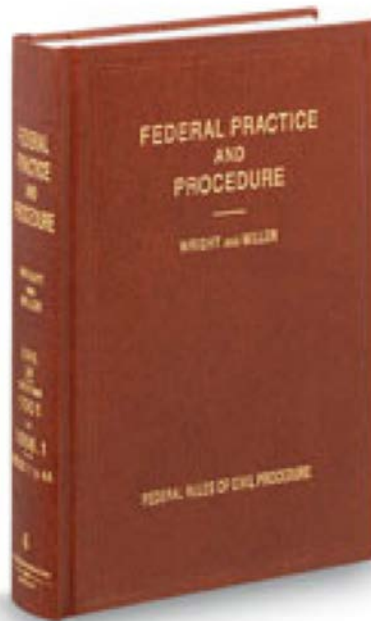


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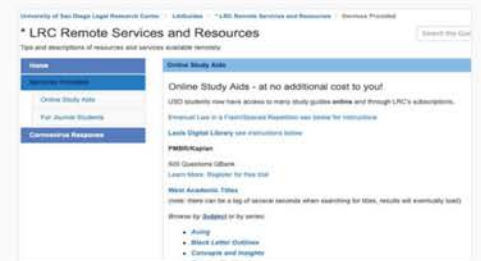
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- Rutter Group Practice Guides & Other Publications
- California Law & Motion Authorities (The Rutter Group, Civil Litigation Series)
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- Chapter 6. Other Dismissal Motions

§ 1:1. Summary judgment

FEDSUM § 1:1 · Federal Summary Judgment and Related Termination Motions · Summary Judgment or Partial Summary Judgment (Approx. 2 pages)

Chapter 1. Summary Judgment or Partial Summary Judgment

A. Suggested Motion Text

§ 1:1. Summary judgment

§ 1:2. Partial summary judgment

§ 1:3. Partial summary judgment as to liability

§ 1:4. Overview of motion

Federal Summary Judgment and Related Termination Motions § 1:1

Federal Summary Judgment and Related Termination Motions | February 2020 Update
David N. Finley and Stephanie Hoit LeeChapter 1. Summary Judgment or Partial Summary Judgment
A. Suggested Motion Text

§ 1:1. Summary judgment

Motion by Defendant:

Defendant [or cross-defendant] [name] will move this Court for an order granting summary judgment in favor of the defendant [or cross-defendant], pursuant to [Federal Rules of Civil Procedure, Rule 56\(a\)](#), on the grounds that the action has no merit, there is no triable issue as to any material fact and defendant [or cross-defendant] is entitled to judgment as a matter of law.

Motion by Plaintiff:

Plaintiff [or cross-complainant] [name] will move this Court for an order granting summary judgment in favor of the plaintiff [or cross-complainant] and as prayed for in the complaint [or cross-complaint], pursuant to [Federal Rules of Civil Procedure, Rule 56\(a\)](#), on the grounds there is no defense to the action, there is no triable issue as to any material fact and plaintiff [or cross-complainant] is entitled to judgment as a matter of law.

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Sources

- Moore's Federal Practice - Civil
- Moore's Federal Practice - Civil: Index
- Moore's Federal Practice - Criminal
- Moore's Manual: Federal Practice and Procedure
- Moore's AnswerGuide: Federal Civil Motion Practice

Documents

- moore v. east cleveland, 431 u.s. 494
- virginia v. moore, 553 u.s. 164
- moore v. illinois, 408 u.s. 786
- humphrey v. moore, 375 u.s. 335
- dames & moore v. regan, 453 u.s. 654

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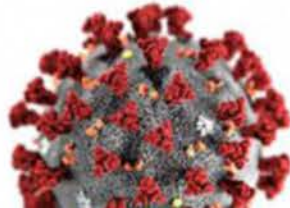
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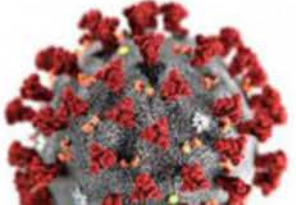
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Below are links to the national federal rules and forms in effect, as well as local rules (which are required to be consistent with the national rules) prescribed by district courts and courts of appeal.

The following new and amended rules became effective December 1, 2020:

- Appellate Rules 35 and 40;
- Bankruptcy Rules 2002, 2004, 8012, 8013, 8015, and 8021;
- Civil Rule 30; and
- Evidence Rule 404.

Please refer to House Documents 116-119, 116-143, 116-144, 116-145 (links below) for the text of the amended rules and the accompanying committee notes effective December 1, 2020. Updated PDFs for each set of rules that includes these amendments will be posted on this page when they become available from the U.S. Government Publishing Office in January 2021 once the 117th Congress is convened.

Rules of Appellate Procedure

The [Federal Rules of Appellate Procedure](#) (pdf) (eff. Dec. 1, 2019) govern procedure in the United States courts of appeals. The Supreme Court first adopted the Rules of Appellate Procedure by order dated December 4, 1967, transmitted to Congress on January 15, 1968, and effective July 1, 1968. The Appellate Rules and accompanying forms were last amended in 2020. **Please refer to [House Document 116-119](#) (pdf) for the text of the amended rules and the accompanying committee notes effective December 1, 2020.**

Related Links

- [Rules of Appellate Procedure \(pdf\)](#)
- [Rules of Bankruptcy Procedure \(pdf\)](#)
- [Interim Bankruptcy Rule 1007-1 \(pdf\)](#)
- [Rules of Civil Procedure \(pdf\)](#)
- [Rules of Criminal Procedure \(pdf\)](#)
- [Rules of Evidence \(pdf\)](#)
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FEDERAL RULES
OF
CIVIL PROCEDURE

DECEMBER 1, 2019



Rule 7

FEDERAL RULES OF CIVIL PROCEDURE

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TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) PLEADINGS. Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

(b) MOTIONS AND OTHER PAPERS.

(1) *In General.* A request for a court order must be made by motion. The motion must:

- (A) be in writing unless made during a hearing or trial;
- (B) state with particularity the grounds for seeking the order; and
- (C) state the relief sought.

(2) *Form.* The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 7.1. Disclosure Statement

(a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file 2 copies of a disclosure statement that:

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) PLEADINGS. Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

(b) MOTIONS AND OTHER PAPERS.

- (1) *In General.* A request for a court order must be made
 - (A) be in writing unless made during a hearing or trial;
 - (B) state with particularity the grounds for seeking the order;
 - (C) state the relief sought.
- (2) *Form.* The rules governing captions and other matters relating to motions and other papers.

NOTES

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

NOTES OF ADVISORY COMMITTEE ON RULES—1937

1. A provision designating pleadings and defining a motion is common in the State practice acts. See Ill.Rev.Stat. (1937), ch. 110, §156 (Designation and order of pleadings); 2 Minn.Stat. (Mason, 1927) §9246 (Definition of motion); and N.Y.C.P.A. (1937) §113 (Definition of motion). Former Equity Rules 18 (Pleadings—Technical Forms Abrogated), 29 (Defenses—How Presented), and 33 (Testing Sufficiency of Defense) abolished technical forms of pleading, demurrers, and pleas, and exceptions for insufficiency of an answer.

2. Note to *Subdivision (a)*. This preserves the substance of [former] Equity Rule 31 (Reply—When Required—When Cause at Issue). Compare the English practice, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 23, r.r. 1, 2 (Reply to counterclaim; amended, 1933, to be subject to the rules applicable to defenses, O. 21). See O. 21, r.r. 1-14; O. 27, r. 13 (When pleadings deemed denied and put in issue). Under the codes the pleadings are generally limited. A reply is sometimes required to an affirmative defense in the answer. 1 Colo.Stat. Ann. (1935) §66; Ore.Code Ann. (1930) §§1-614, 1-616. In other jurisdictions no reply is necessary to an affirmative defense in the answer, but a reply may be ordered by the court. N.C.Code Ann. (1935) §525; 1 S.D.Comp.Laws (1929) §2357. A reply to a counterclaim is usually required. Ark.Civ.Code (Crawford, 1934) §§123-125; Wis.Stat. (1935) §§263.20, 263.21. U.S.C., Title 28, [former] §45 (District courts; practice and procedure in certain cases) is modified insofar as it may dispense with a reply to a counterclaim.

For amendment of pleadings, see Rule 15 dealing with amended and supplemental pleadings.

3. All statutes which use the words "petition", "bill of complaint", "plea", "demurrer", and other such terminology are modified in form by this rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

This amendment [to subdivision (a)] eliminates any question as to whether the compulsory reply, where a counterclaim is pleaded, is a reply only to the counterclaim or is a general reply to the answer containing the counterclaim. See Commentary, *Scope of Reply Where Defendant Has Pleaded Counterclaim* (1939) 1 Fed.Rules Serv. 672; *Fort Chartres and Ivy Landing Drainage and Levee District No. Five v. Thompson* (E.D.Ill. 1945) 8 Fed.Rules Serv. 13.32, Case 1.

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

Certain redundant words are eliminated and the subdivision is modified to reflect the amendment of Rule 14(a) which in certain cases eliminates the requirement of obtaining leave to bring in a third-party defendant.

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

One of the reasons sanctions against improper motion practice have been employed infrequently is the lack of clarity of Rule 7. That rule has stated only generally that the pleading requirements relating to captions, signing, and other matters of form also apply to motions and other papers. The addition of Rule 7(b)(3) makes explicit the applicability of the signing requirement and the sanctions of Rule 11, which have been amplified.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 7 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 7(a) stated that "there shall be * * * an answer to a cross-claim, if the answer contains a cross-claim * * *." Former Rule 12(a)(2) provided more generally that "[a] party served with a pleading stating a cross-claim against that party shall serve an answer thereto * * *." New Rule 7(a) corrects this inconsistency by providing for an answer to a crossclaim.

For the first time, Rule 7(a)(7) expressly authorizes the court to order a reply to a counterclaim answer. A reply may be as useful in this setting as a reply to an answer, a third-party answer, or a crossclaim answer.

Former Rule 7(b)(1) stated that the writing requirement is fulfilled if the motion is stated in a written notice of hearing. This statement was deleted as redundant because a single written document can satisfy the writing requirements both for a motion and for a Rule 6(c)(1) notice.

The cross-reference to Rule 11 in former Rule 7(b)(3) is deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 7(c) is deleted because it has done its work. If a motion or pleading is described as a demurrer, plea, or exception for insufficiency, the court will treat the paper as if properly captioned.

Marco Antonio Torres



(619) 234-7797



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Cases of Interest

- (01/04/21) Harvest Rock Church v. Newsom
- (12/08/20) Calvary Chapel Dayton Valley v. Sisolak & Calvary Chapel Lone Mountain v. Sisolak
- (12/04/20) Perry v. Hollingsworth
- (10/12/20) Mi Familia Vota v. Hobbs
- (10/07/20) National Urban League v. Ross
- (10/07/20) Arizona Democratic Party v. Katie Hobbs

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Sample brief and excerpts of record are now available, as well as a technical guide for working with PDFs. Click here to access these new resources.
- **NEW EXCERPTS OF RECORD RULES**
The Court has adopted new rules effective December 1, 2020, including significant revisions to rules governing excerpts of record and oversized briefs. Click here to see new Excerpts of Record Rule 30-1 and redlined versions of all other rule revisions.
- **COVID UPDATES**

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- Chief Judge Sidney Thomas

Federal Rules of Appellate Procedure (FRAP), Ninth Circuit Rules, Circuit Advisory Committee Notes

Effective December 1, 2020

This document contains the Federal Rules of Appellate Procedure, Ninth Circuit Rules and Circuit Advisory Committee Notes, and is provided in HTML format and as an Adobe Acrobat PDF document. To print this document, use the PDF version.

FRAP, Circuit Rules, Circuit Advisory Committee Notes

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[FRAP 5.1. Appeal by Leave under 28 U.S.C. § 636\(c\)\(5\)](#)

[FRAP 6. Appeal in a Bankruptcy Case](#)

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[Circuit Advisory Committee Note to Rule 6-1](#)

[Circuit Rule 6-2. Petition for Writ of Certiorari to Review Final Decisions of the Supreme Court of Guam](#)

[Circuit Advisory Committee Note to Rule 6-2\(b\) and \(c\)](#)

[FRAP 7. Bond for Costs on Appeal in a Civil Case](#)

[FRAP 8. Stay or Injunction Pending Appeal](#)

[FRAP 9. Release in a Criminal Case](#)

[Circuit Rule 9-1. Release in Criminal Cases](#)

[FRAP 10. The Record on Appeal](#)

CIRCUIT RULE 3-5. PROCEDURE FOR RECALCITRANT WITNESS APPEALS

Every notice of appeal from an order holding a witness in contempt and directing incarceration under 28 U.S.C. § 1826 shall bear the caption "RECALCITRANT WITNESS APPEAL." Immediately upon filing, the notice of appeal must be transmitted by the district court clerk's office to the Court of Appeals clerk's office. It shall also be the responsibility of the appellant to notify directly the motions unit of the Court of Appeals that such a notice of appeal has been filed in the district court. Such notification must be given by telephone (415/355-8000) within 24 hours of the filing of the notice of appeal.

A failure to provide such notice may result in sanctions against counsel imposed by the Court. (*Eff.* 7/1/97; *Rev.* 12/1/09)

Cross Reference: (*Rev.* 12/1/09)

- [FRAP 27. Motions](#), specifically, [Circuit Rule 27-1. Filing of Motions](#)
- [Circuit Rule 27-13. Sealed Documents](#)
- [Circuit Rule 10-1. Notice of Filing Appeal](#)
- [Circuit Rule 25-1. Principal Office of Clerk](#)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 3-5

*A recalcitrant witness summarily ordered confined pursuant to 28 U.S.C. § 1826(a) is entitled to have the appeal from the order of confinement decided within 30 days after the filing of the notice of appeal. In the interest of obtaining a rapid disposition of the appeal, the Court impresses upon counsel that the record on appeal and briefs must be filed with the Court as soon as possible after the notice of appeal is filed. The Court will establish an expedited schedule for filing the record and briefs and will submit the appeal for decision on an expedited basis. If expedited treatment is sought for an interlocutory appeal, motions for expedition, summary affirmance or reversal, or dismissal may be filed pursuant to Circuit Rule 27-4. A party may file documents using a Doe designation or under seal to avoid disclosure of the identity of the applicant or the subject matter of the grand jury investigation. The party should file an accompanying motion to use such a designation. (*Rev.* 12/1/09)*

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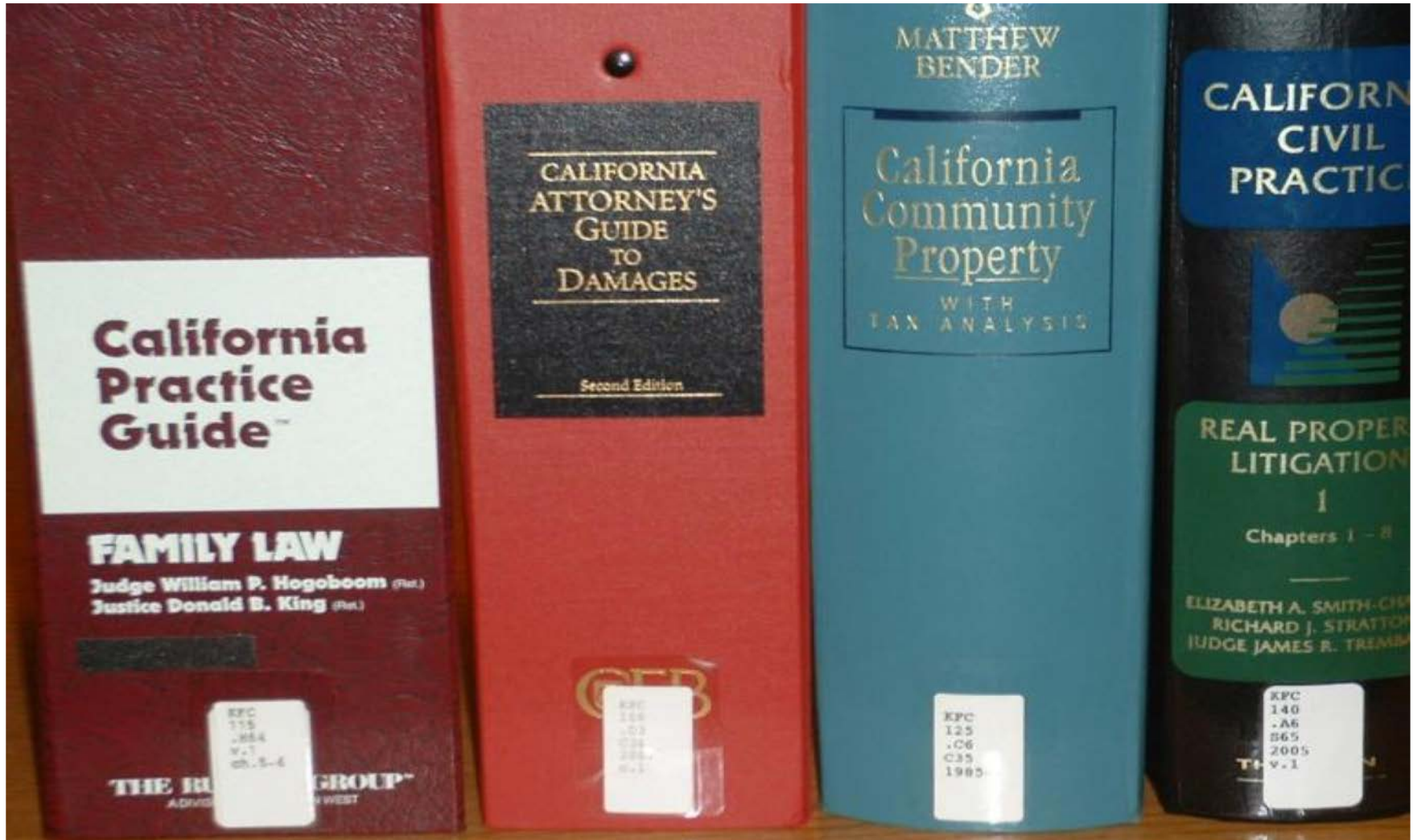
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O'Connell, Beverly Reid, 1965- author

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- California Pretrial Civil Procedure Practice Guide: The Wagstaffe Group
- Construction Law (Matthew Bender)
- Witkin Summary of California Law
- Forms from Construction Law (Matthew Bender)

Documents

- Belli v. Matthew Bender & Co., 24 A.D.2d 72
- Bernheim v. Matthew Bender & Co., 244 A.D.2d 161
- Comptroller of the Treasury v. Matthew Bender & Company, Incorporated-- Corporate Income-- Federal Statutory Limitations on Taxation of Interstate Commerce-- Out-of-State Publisher, Business Incentives Guide (CCH)
- Comptroller of the Treasury v. Matthew Bender & Company, Incorporated-- Corporate Income-- Federal Statutory Limitations on Taxation of Interstate Commerce-- Out-of-State Publisher, Business Incentives Guide (CCH) MD P 201-347
- Gold v. Matthew Bender & Co., 24 N.Y.2d 738

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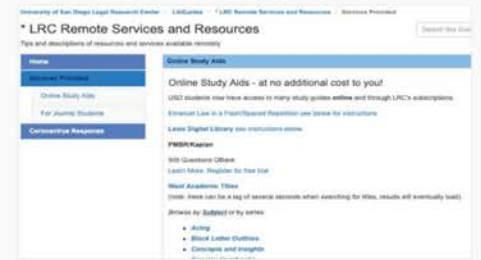
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California Basic Practice Handbook

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3 Preparing, Filing, and Serving Complaints and Answers

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§3.1 A. Nature and Function of Pleading

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§3.4 a. Jurisdiction as Threshold Issue

§3.5 b. Subject Matter Jurisdiction

§3.6 c. Personal Jurisdiction

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3 Preparing, Filing, and Serving Complaints and Answers

California Basic Practice Handbook



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§3.4 a. Jurisdiction as Threshold Issue

A threshold question for an attorney preparing to institute or defend a California civil action is whether a court has jurisdiction to hear the action against the proposed defendant. "Jurisdiction" means a court's power to hear or determine the case, *i.e.*, its authority over the subject matter and the parties. If the court lacks authority over either, it lacks jurisdiction.

[Abelleira v District Court of Appeal \(1941\) 17 C2d 280, 288](#). See also [Barquis v Merchants Collection Ass'n \(1972\) 7 C3d 94, 120 n24](#).

PRACTICE TIP: It is important to determine early on if the defendant or the claims will subject your complaint to federal removal jurisdiction. Strategic decisions made at the pre-drafting stage can be important to avoid this. If you wish to avoid federal court jurisdiction, be sure to consider either adding a state resident defendant as a co-defendant or abandoning federal question claims if a state court claim can allow you the same or similar remedies or chances of success.

§3.5 b. Subject Matter Jurisdiction

The subject matter jurisdiction of California courts (*i.e.*, a court's competence to adjudicate a particular civil action) is conferred by the state constitution and regulated by statute. See [Cal Const arts VI, §§11–12](#) (Supreme Court); [VI, §§10–11](#) (courts of appeal); [VI, §10](#) (superior courts). Accordingly, in determining whether and where to bring a civil action,

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- 2.1.7 Request for Entry of Default (Rev. 1/1/2010)
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- 2.1.14 Settlements, Taking Matters Off Calendar (Rev. 1/1/2019)
- 2.1.15 Trial Readiness Conference (Rev. 1/1/2016)
- 2.1.16 Jury Instructions (Renum. 1/1/2006)
- 2.1.17 Juror Questionnaire (Renum. 1/1/2006)
- 2.1.18 Motions in Limine (Rev. 1/1/2012)
- 2.1.19 Law and Motion Procedures (Rev. 1/1/2016)
- 2.1.20 Taking Motions Off Calendar (Rev. 1/1/2016)

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A Message From Tani Cantil-Sakauye, Chief Justice of California

"Trial by jury is one of the fundamental ideals of American democracy; serving as jurors reminds us that these ideals exist only as long as individual citizens are willing to uphold them."



SCAM ALERT:

The Judicial Council of California and staff of the superior courts will never ask past or prospective jurors for financial information, credit card numbers, bank account information, or personal information like Social Security numbers. **Do not provide this type of information to anyone claiming to be associated with the courts.** [En español.](#)

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Your Jury Service or Summons

This website has no individual jury service or status information. We cannot directly assist you with jury summonses, receive or reject excuses from service, provide proof of service, process juror payments, contact a court on your behalf, intervene in day-to-day court operations, or perform other jury-related tasks that are the responsibility of each individual court. For those requests, inquiries, and/or issues, please visit your Superior Court website:

[Find Your Local Court](#)

Ideals Made Real California's Juror Orientation Video (14:00)



Answering the Call for Jury Service



For Jurors



You do not need any special skills or legal knowledge to be a juror. All you need is an open mind and a readiness to work with the other jurors to make decisions.

[View the Court and Community](#)

[Jury Brochure](#) to get information and instructions for responding to your juror summons.

For Employers

Juries play an important and crucial role in our country's democratic process. Without them, our legal system would grind to a halt. Your help is essential in ensuring that all citizens are available to serve on juries when called.

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THANK YOU FOR YOUR SERVICE!

The poster above is a reminder to jurors that bans on research and dissemination of trial-related information apply to all forms of electronic and wireless communication. Please be aware that inappropriate use of social media and the Internet can result in disqualification.

Resources for Judges, Attorneys, Court Staff, and the Public

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Jury Instructions for Judges and Attorneys

The Judicial Council of California has adopted award-winning plain language civil and criminal jury instructions that accurately convey the law using language that is understandable to jurors.



[California Civil Jury Instructions \(CACI\) and Criminal Jury Instructions \(CALCRIM\)](#)

References

Judicial Council of California Jury References - Jury Improvement Program

- [Jury Improvement Program Fact Sheet](#) (March 2010, rev. 2020)
- [History of the Jury Improvement Program](#) (2020)
- [One Day or One Trial Fact Sheet](#) (2010, rev. 2020)
- [Task Force on Jury System Improvements, Final Report](#) (2003, rev. 2004)
- [Juror Orientation Video: "Ideals Made Real" Fact Sheet](#) (2002, rev. 2020)
- [Final Report of the Blue Ribbon Commission on Jury System Improvement](#) (1996)

Judicial Council of California Jury References - Brochures

- [Jury Handbook](#)
- [Jury Service Stress](#)
- [Court and Community](#)
- [A Guide to Jury Deliberations](#)
- [One-Day or One-Trial – It's Better for Business](#)
- [Navigating Social Media and the Internet for Jurors](#)

Judicial Council of California Jury References - Reports to the Legislature

Contact Info

For information regarding the Jury Improvement Program, contact us at:

juryinfo@jud.ca.gov

External Resources

[American Bar Association: Jury Project](#)

321 North Clark Street
Chicago, IL 60654
Phone (800) 238-2667

[Center for Jury Studies](#)

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
Phone (800) 616-6164
Fax (757) 564-2022

[California Grand Jurors' Association](#)

Public Relations Officer
Phone (805) 532-1321

[Jury Education and Management Forum](#)

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THANK YOU FOR YOUR SERVICE!

To address possible inappropriate use of social media and the internet by jurors, the attached poster was developed for distribution to California trial courts. The poster is a tool to remind jurors that existing bans on research and dissemination of trial-related information apply to all forms of electronic and wireless communication.

Use of the poster is optional. PDF versions of the poster are provided in two sizes: [8.5" x 11"](#) and [11" x 17"](#).

Jury Instructions For Judges and Attorneys

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The Judicial Council of California has adopted award-winning plain language civil and criminal jury instructions that accurately convey the law using language that is understandable to jurors.

[California Civil Jury Instructions for Judges and Attorneys \(CACJ\)](#)

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503B. Affirmative Defense—Psychotherapist’s Communication of Threat to Victim and Law Enforcement

[Name of defendant] is not responsible for [[name of plaintiff]’s injury/the death of [name of decedent]] if [name of defendant] proves that [he/she/ nonbinary pronoun] made reasonable efforts to communicate the threat to [name of plaintiff/decedent] and to a law enforcement agency.

Derived from former CACI No. 503 April 2007; Revised June 2013, May 2020

Directions for Use

Read this instruction for a *Tarasoff* cause of action for professional negligence against a psychotherapist (*Tarasoff v. Regents of Univ. of Cal.* (1976) 17 Cal.3d 425 [131 Cal.Rptr. 14, 551 P.2d 334]) if there is a dispute of fact regarding whether the defendant made reasonable efforts to communicate to the victim and to a law enforcement agency a threat made by the defendant’s patient. The therapist is immune from liability under *Tarasoff* if the therapist makes reasonable efforts to communicate the threat to the victim and to a law enforcement agency. (Civ. Code, § 43.92(b).) CACI No. 503A, *Psychotherapist’s Duty to Protect Intended Victim From Patient’s Threat*, sets forth the elements of a *Tarasoff* cause of action if the defendant is not immune.

In a wrongful death case, insert the name of the decedent victim where applicable.

Sources and Authority

- Limited Psychotherapist Immunity. Civil Code section 43.92(b).
- Failure to inform a law enforcement agency concerning a homicidal threat made by a patient against his work supervisor did not abrogate the “firefighter’s rule” and, therefore, did not render the psychiatrist liable to a police officer who was subsequently shot by the patient. (*Tilley v. Schulte* (1999) 70 Cal.App.4th 79, 85–86 [82 Cal.Rptr.2d 497].)
- “When the communication of the serious threat of physical violence is received by the therapist from a member of the patient’s immediate family and is shared for the purpose of facilitating and furthering the patient’s treatment, the fact that the family member is not technically a ‘patient’ is not crucial to the statute’s purpose.” (*Ewing v. Goldstein* (2004) 120 Cal.App.4th 807, 817 [15 Cal.Rptr.3d 864].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1189, 1190

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services and Civil Rights*, § 361A.93 (Matthew Bender)

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