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Discovery Plan Part 4 **The Year Before Trial In A Complex Case**

By Katherine Gallo

Somewhere in the back of your mind you are aware that discovery and Motions for Summary Judgment deadlines are looming. Yet, you really don't pay attention to them until they are upon us usually around day 45 when you start trying to schedule experts. That is when you realize there are not enough hours in the day and days in the week. Unless you have a case that is a simple slip and fall or a fender bender, the last 100 days before trial can be daunting. Throw in a Motion for Summary Judgment or Summary Adjudication into the mix and you're swamped. Then there is the ultimate question you ask yourself, "*When am I going to find time to prepare for trial.*"



California Code of Civil Procedure timeline regarding deadlines for expert disclosure, close of discovery and the last day discovery motions can be heard is demonstrated below. Seeing it scheduled in black and white is kind of scary.

Day 105 Before Trial

Last day to file Motion for Summary Judgment and/or Summary Adjudication. C.C.P. §437c(a)(1)

Day 70 Before Trial

Request for Disclosure of Experts to be served. C.C.P. §2034.230(b)

Day 60 Before Trial

Last day for written discovery to be served. C.C.P. §2024.020

Day 50 Before Trial

Expert Disclosure. C.C.P. §2034.230(b)

Day 44 Before Trial

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Opposition to Motion for Summary Judgment and/or Summary Adjudication. C.C.P. §437c(b)(2)

Day 40 Before Trial

First day experts can be deposed. C.C.P. 2025.270

Last day to serve non-expert depositions notices. C.C.P. §2024.020

Day 34 Before Trial

Reply to Motion for Summary Judgment and/or Summary Adjudication. C.C.P. §437c(b)(4)

Day 30 Before Trial

Supplemental Expert Disclosure. C.C.P. §2034.280(a)

Last day written discovery can be due. C.C.P. §2024.020

Last day non-expert witnesses can be deposed. C.C.P. §2024.020

Last day for Summary Judgment and/or Summary Adjudication hearing. C.C.P. §437c(a)(3)

Day 15 Before Trial

Last day experts can be deposed. C.C.P. §2024.030

Last day for all non-expert discovery motions. C.C.P. §2024.020

Day 10 Before Trial

Last day for expert discovery motions. C.C.P. §2024.030

This timeline does not work in cases involving multiple parties, numerous experts and/or complex factual or legal issues. You also only have 30 weekdays to take expert depositions. You are taking these crucial expert depositions without the last of the written discovery responses and non-expert witnesses' testimony. Throw in a few discovery motions and a motion for summary judgment and you're swamped. You then begin wonder when are you going to have time to digest and analyze your case; prepare your motions in limine, the jury instructions, your trial brief and your opening statement; and prep your witnesses?

Discovery deadlines are not set in stone and can be modified. As a Discovery Referee, I often modify the discovery deadlines to fit the case. I take into consideration the complexity of the legal issues as well as the number of parties involved. I ask whether a Motion for Summary Judgment/Adjudication is going to be filed and what discovery needs to be done before it can be filed. I determine how many experts each party plans to disclose and what additional discovery needs to be completed for the expert to be prepared. I also keep in mind how much time it takes to be prepared for trial. Taking all of the above into consideration,

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I have prepared a timeline for the last year before trial in a typical complex case. You can find a Word version of the discovery order in Word titled "*Construction CMO #3 (Trial Deadlines)*" at my website www.discoveryreferee.com under the tab ADR and Discovery Forms.

Day 365 Before Trial

Discovery *MUST* be opened 365 days before trial.

Day 210 Before Trial

Expert disclosure.

Day 180 Before Trial

Supplemental expert disclosure.

Day 120 Before Trial

Last day to serve written discovery.

Serve supplemental interrogatory.

Serve supplemental document request.

Day 105 Before Trial

Last day to serve Motion for Summary Judgment and/or Summary Adjudication.

Day 90 Before Trial

Written discovery closes.

All non-expert depositions close.

Expert depositions begin.

Day 45 Before Trial

Last day for all non-expert discovery motions

Day 44 Before Trial

Opposition to Motion for Summary Judgment and/or Summary Adjudication due.

Day 34 Before Trial

Reply to Motion for Summary Judgment and/or Summary Adjudication due.

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Day 30 Before Trial

Last day for expert depositions.

Last day for Summary Judgment and/or Summary Adjudication to be heard.

Day 15 Before Trial

Last day for expert deposition motions to be heard.

If this discovery plan or a modification of this plan works for you consider asking the parties in your case to stipulate pursuant to C.C.P. §2016.030 and do it early in the case. If you get resistance, bring a motion asking the court to establish the sequence and timing of discovery for the convenience of the parties and witnesses and in the interests of justice pursuant to C.C.P. §2019.020(b).

You may find this blog and additional blogs on California Discovery by Katherine Gallo at www.resolvingdiscoverydisputes.com

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