



SIMILARITIES AND DIFFERENCES IN DISCOVERY BETWEEN STATE AND FEDERAL COURT

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ADVISORY WARNING: This chart is merely intended to be a thumbnail summary of the applicable rules in state and federal courts. *You should review not only the text of these rules, but also check the court's local rules, any additional orders by the judge(s) in question and the relevant case law before making final decisions on any of the discovery issues listed below.* For example, while both state and federal rules impose no limit on the number of document demands, an excessive number of demands may well prompt a motion for protective order and a court could easily grant such an order.

<u>Requirements</u>	<u>State Court</u>	<u>Federal Court</u>
1. Plaintiffs must wait on commencing discovery after the lawsuit has been filed	1. Yes; 20 days after service - depositions; 10 days after service - interrogatories, requests for admissions and document demands [CCP §§ 2025.210(b), 2030.020(b), 2031.020(b) and 2033.020(b)]	1. Yes until the parties have held the Rule 26(f) conference; some district judges, however, permit discovery to begin before the Rule 26(f) conference [Fed.R.Civ.P. 26(d)]
2. Defendants must wait on commencing discovery after the lawsuit has been filed	2. No once defendants have been served or have appeared [CCP §§ 2025.210(a), 2030.020(a), 2031.020(a) and 2033.020(a)]	2. Yes until the parties have held the Rule 26(f) conference; some district judges, however, permit discovery to begin before the Rule 26(f) conference [Fed.R.Civ.P. 26(d)]

<u>Requirements</u>	<u>State Court</u>	<u>Federal Court</u>
3. Parties must exchange certain information without formal discovery requests	3. No	3. Yes [Fed.R.Civ.P. 26(a)(1) and (e)(1)]
4. A party can only propound a specific number of interrogatories	4. Yes and no. There is a limit of 35 but can prepare declaration on need for more [CCP §§2030.030(a), 2030.040(a) and 2030.050]	4. Yes and no. There is a limit of 25 unless greater number is stipulated by parties or ordered by court. [Fed.R.Civ.P. 33(a)(1)]
5. Each interrogatory must be full and complete unto itself	5. Yes [CCP § 2030.060(d)]	5. No [Fed.R.Civ.P. 33]
6. A party can serve an unlimited number of requests for production and inspection of documents and other things	6. Yes [CCP § 2031.010 <i>et seq.</i>]	6. Yes [Fed.R.Civ.P. 34]
7. There are additional requirements governing electronically stored information (“ESI”) versus other document demands	7. Yes [CCP §§ 2016.020(d) and (e), 2031.010(a), 2031.030(a)(2), 2031.060(f), 2031.210(d), 2031.240(b)(1), 2031.280(c) and (d), 2031.285 and Cal. R. Ct. 3.724(8)]	7. Yes [Fed.R.Civ.P. 26(a)(1)(A)(ii) and (b)(2)(B), 34(a)(1)(A), (b)(1)(C) and (2)(B), (D) and (E), 37(e)]

<u>Requirements</u>	<u>State Court</u>	<u>Federal Court</u>
8. A party can only propound a limited number of requests for admissions	8. Yes and no. There is a limit of 35 regarding matters to be admitted but can prepare declaration on need for more. No limit on admissions regarding genuineness of documents [CCP §§ 2033.030, 2033.040 and 2033.050]	8. No [Fed.R.Civ.P. 36]
9. Both interrogatories and requests for admissions can ask the opposing party to apply the law to the facts	9. Yes [CCP §§ 2030.010(b) and 2033.010]	9. Yes [Fed.R.Civ.P. 33(a)(2) and 36(a)(1)(A)]
10. Each side can only take a limited number of depositions of the other side	10. No [CCP § 2025.010 <i>et seq.</i>]	10. Yes and no. There is a limit of 10 unless a greater number is stipulated by parties or ordered by court [Fed.R.Civ.P. 30(a)(1) and (2)(A)(i)]
11. A party can bypass the time frames for responses to document demands and require the opposing party to bring documents to a deposition	11. Yes [CCP § 2025.220(a)(4)]	11. No [Fed.R.Civ.P. 30(b)(2)]
12. A party can notice a deposition requiring an entity (corporation, association, governmental unit, etc.) to designate individuals to testify on its behalf regarding specified subjects	12. Yes [CCP § 2025.230]	12. Yes [Fed.R.Civ.P. 30(b)(6)]

<u>Requirements</u>	<u>State Court</u>	<u>Federal Court</u>
13. A deposition is limited to a total of seven hours	13. Yes for certain types of depositions unless additional time is stipulated by parties or ordered by court [CCP §2025.290]	13. Yes unless additional time is stipulated by parties or ordered by court [Fed.R.Civ.P. 30(d)(1)]
14. Before filing motions to compel, a party must meet and confer (or at least attempt to meet and confer) with the party and/or nonparty whose discovery responses are at issue	14. Yes [See, e.g., CCP §§ 2016.040, 2023.010(i), 2025.450(b)(2), 2025.480(b), 2030.300(b), 2031.310(b)(2) and 2033.290(b)]	14. Yes [Fed.R.Civ.P. 37(a)(1)]
15. A party must file a motion to compel within a specified number of days unless the parties have entered into a written agreement to extend the deadlines	15. Yes; 60 days from completion of record of depositions, 45 days from service of responses to interrogatories, requests for admissions and requests for documents [CCP §§ 2025.480(b), 2030.300(c), 2031.310(c), and 2033.290(c)]	15. No; however, motion to compel should be filed within a reasonable time after discovery responses have been received as the court may otherwise find waiver [Fed.R.Civ.P. 37]
16. Expert witnesses are required to prepare reports	16. No [CCP §§ 2034.210(c) and 2034.270]	16. Yes [Fed.R.Civ.P. 26(a)(2)(B)]
17. Drafts of expert reports and other communications are expressly protected from discovery	17. No	17. Yes [Fed. R. Civ. P. 26(b)(4)(B) and (C)]

<u>Requirements</u>	<u>State Court</u>	<u>Federal Court</u>
18. There are discovery cutoffs before trial	18. Yes; 30 days before trial for regular discovery, 15 days for related motions; 15 days for experts and 10 days for related motions [CCP §§ 2024.020 and 2024.030]	18. Yes, by order of the particular judge [Fed.R.Civ.P. 16(b)(3)(A)]