

MEMORANDUM 2026-15

Civil Discovery Improvements (Reactivation of Study)

This Memorandum¹ reactivates the study on Civil Discovery Improvements as approved by the Commission at its December 2025, meeting.² The Commission approved reactivating that study based on Memorandum 2017-26,³ which discussed informal discovery conferences, among several discovery-related topics.⁴

In 2016, the Commission directed the staff to examine a topic suggested by then-Commissioner Capozzola related to depositions and prepare a list of other potential discovery topics for study.⁵ Shortly thereafter, Assembly member Chau, also a member of the Commission, introduced a bill that addressed some of Commissioner Capozzola's concerns. This bill, AB 383,⁶ was enacted into law with a repeal date of January 1, 2023.⁷ The Commission decided to suspend its work on discovery-related issues until after the sunset of AB 383.⁸ This portion of the reactivated study will explore AB 383's impact and recommend whether its provisions should be reinstated, with or without changes.

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be posted after the meeting and/or without staff analysis.

This memorandum was prepared with the assistance of Yanan Yan, Extern, UC Law San Francisco.

² Minutes (December 2025) p. 3; Memorandum 2025-45, pp. 6-7.

³ Memorandum 2017-26, pp. 22-24.

⁴ This memorandum focuses on informal discovery conferences; other topics may be addressed in subsequent memoranda.

⁵ Minutes (December 2016) p. 3; Memorandum 2017-26.

⁶ 2017 Cal. Stat. ch. 189 (AB 383, Chau); AB 383 was sponsored by the California Conference of Bar Associations ("CCBA") and had no known opposition.

⁷ SB 554 (Cortese, 2023) was introduced in 2023 and declared the intent of the Legislature to enact legislation relating to informal discovery conferences. However, the bill was later amended to instead relate to restraining orders and AB 383's sunset date was never extended.

⁸ Minutes (December 2017) p. 3 ("The Commission will postpone its work on civil discovery and monitor the experience under AB 383 (2017), which authorizes informal discovery conferences, before proceeding with work on this topic.").

BACKGROUND ON PRE-TRIAL DISCOVERY

The Civil Discovery Act

A core concept in litigation is that parties should be able to access information relevant to the case in a straightforward manner. “Discovery” is the process of obtaining that information.

The Civil Discovery Act (Act) governs the formal exchange of evidentiary information and materials between parties to a pending civil action or a special proceeding of a civil nature.⁹

The substance of the current Act largely derives from a proposal prepared by a joint commission of the State Bar and the Judicial Council¹⁰ which was enacted in 1986.¹¹ The Act has been revised many times since then, including a nonsubstantive recodification in 2004 as recommended by this Commission.¹²

The Rationale Behind Broad Pretrial Discovery

“Discovery procedures are based on the theory that a lawsuit should be a search for the truth, and not a game to be fought and won mainly by strategic moves and surprise tactics.”¹³ In furtherance of that concept, the Act aims to “uphold the right to discovery wherever reasonable and possible”¹⁴ by enacting rules for the exchange of information. As the California Supreme Court explained, allowing broad pretrial discovery is intended to:

- (1) Assist parties in ascertaining the truth and in checking and preventing perjury.
- (2) Provide an effective means of detecting and exposing false, fraudulent, and sham claims and defenses.
- (3) Make available, in a simple, convenient, and inexpensive way, facts that otherwise could not be proved without great difficulty.
- (4) Educate the parties before trial as to the real value of their claims and

⁹ Code Civ. Proc. §§ [2016.010-2036.050](#). This memorandum updates the background on the Act from Memorandum [2017-26](#).

¹⁰ State Bar-Judicial Council Joint Commission on Discovery, Proposed California Civil Discovery Act of 1986: Proposed Act and Reporter’s Notes (Jan. 1986); see *City of Los Angeles v. Pricewaterhouse Coopers, LLP* (2024) 17 Cal.App.5th 46, 50, citing 1 Hogan & Weber, Cal. Civil Discovery (2d ed. 2005) Introduction to Civil Discovery, § 1.3, p. 1-6.

¹¹ 1986 Cal. Stat. ch. 1334; see also *City of Los Angeles v. Pricewaterhouse Coopers, LLP* (2024) 17 Cal.App.5th 46, 50, citing 1 Hogan & Weber, Cal. Civil Discovery (2d ed. 2005) Introduction to Civil Discovery, § 1.3, p. 1-6.

¹² [2004 Cal. Stat. ch. 182](#) (AB 3081, Committee on Judiciary); *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports [789](#) (2003).

¹³ 2 B. Witkin, California Evidence *Discovery* § 1, at 969 (5th ed. 2012); see, e.g., *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376 (principal purpose of discovery was to do away with sporting theory of litigation — i.e., surprise at trial).

¹⁴ *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 434.

defenses, thus encouraging settlements.

- (5) Expedite litigation.
- (6) Safeguard against surprise.
- (7) Prevent delay.
- (8) Simplify and narrow the issues.
- (9) Expedite and facilitate both preparation and trial.¹⁵

The Act was designed to “be essentially self-executing,”¹⁶ meaning that parties should be able to exchange information without judicial involvement. As a general matter, the Act creates incentives for parties to work out their discovery disputes. In case of a disagreement, the parties may file a motion to compel discovery, which could result in a court order to provide the information.

Meet and Confer Requirement

Before filing a discovery motion, a party is obligated to consult (“meet and confer”) with the other party.¹⁷ The meet and confer requirement is designed to encourage parties to work out their differences informally and avoid a court order,¹⁸ which lightens the burden on the courts and prevents unnecessary litigation costs.¹⁹

To effectively meet and confer, the parties must:

present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions. Only after all the cards have been laid on the table, and a party has meaningfully assessed the relative strengths and weaknesses of its position in light of all applicable information, can there be a “sincere effort” to resolve the matter.²⁰

AB 383 (CHAU)

Some courts found the existing discovery processes insufficient and began holding informal discovery conferences so that judges could supervise the pretrial discovery process.²¹ AB 383²² built upon these practices and amended the Act²³ to add Code of Civil

¹⁵ *Greyhound, supra*, 56 Cal.2d at 376.

¹⁶ *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435; see also Code Civ. Proc. § [2016.040](#).

¹⁷ California Rules of Court, rule [3.7224](#).

¹⁸ *Stewart v. Colonial Western Agency, Inc.*, (2001) 87 Cal.App.4th 1006, 1016.

¹⁹ *Id.*; see also *Townsend*, 61 Cal. App. 4th at 1435.

²⁰ *Townsend*, 61 Cal. App. 4th at 1435, quoting *Nevada Power Co. v. Monsanto Co.* (D. Nev. 1993) 151 F.R.D. 118, 120.

²¹ Los Angeles, San Mateo, and San Bernadino Superior Courts currently have informal discovery calendars.

²² [2017 Cal. Stat. ch. 189](#) (AB 383, Chau).

²³ Code Civ. Proc. §§ [2016.010-2036.050](#).

Procedure Section 2016.080, authorizing a court to conduct an informal discovery conference upon a party's request or on the court's own motion to discuss discovery matters in dispute. This procedure could be used only if the parties were unable to reach an informal resolution through the meet and confer process.

As enacted, AB 383 provided:

(a) If an informal resolution is not reached by the parties, as described in Section 2016.040, the court may conduct an informal discovery conference upon request by a party or on the court's own motion for the purpose of discussing discovery matters in dispute between the parties.

(b) If a party requests an informal discovery conference, the party shall file a declaration described in Section 2016.040 with the court. Any party may file a response to a declaration filed pursuant to this subdivision. If a court is in session and does not grant, deny, or schedule the party's request within 10 calendar days after the initial request, the request shall be deemed denied.

(c) (1) If a court grants or orders an informal discovery conference, the court may schedule and hold the conference no later than 30 calendar days after the court granted the request or issued its order, and before the discovery cut-off date.

(2) If an informal discovery conference is granted or ordered, the court may toll the deadline for filing a discovery motion or make any other appropriate discovery order.

(d) If an informal discovery conference is not held within 30 calendar days from the date the court granted the request, the request for an informal discovery conference shall be deemed denied, and any tolling period previously ordered by the court shall continue to apply to that action.

(e) The outcome of an informal discovery conference does not bar a party from filing a discovery motion or prejudice the disposition of a discovery motion.

(f) This section does not prevent the parties from stipulating to the timing of discovery proceedings as described in Section 2024.060.

(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2023, deletes or extends that date.

According to the bill's author, Commissioner and Assembly member Chau:

Informal Discovery Conferences (IDCs) are cost-effective and efficient ways for the judge in a case to quickly look at a controversy during the discovery process, and try to resolve disputes without the filing of massive motions, which drain court resources and client funds.

IDCs are used in some California courts, and have been incredibly effective and cost-efficient. However, there is no clear statutory authority for courts to establish — or judges to use — these programs, raising some questions as to their validity — and, more importantly, discouraging other courts from establishing such programs.

AB 383 will provide that clear statutory authority and help improve court efficiency by making IDCs an available tool for judges and parties to use in

resolving disputes and moving a case forward, rather than relying solely on motions to compel, as an action of first choice.²⁴

The Senate Judiciary Analysis notes:

The bill would benefit parties by allowing for a less time-consuming and more cost-effective method for addressing discovery disputes. Motions to compel further responses to discovery are the main targets of this bill. These motions require extensive documentation. Each motion is required to include certain declarations and a separate statement laying out each discovery request at issue. A moving party is also required to provide points and authorities in support of the motion. The responding party is then required to fully respond to all of the claims made and to lay out its own arguments. These briefs are often accompanied by extensive exhibits and require a thorough detailing of an otherwise fairly informal process. This lengthy motion work can increase costs and delay justice for litigants.

The core principle of the California Discovery Act is that discovery be “essentially self-executing” and generally operated without judicial involvement. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1291.) Granting courts the discretion to conduct informal, brief discovery conferences in the hopes of obviating [the] resort to motions to compel, which can often be drawn-out disputes, is consistent with the legislative scheme governing discovery in California and furthers the goal of limiting judicial involvement. These informal conferences would be an intermediate step between the “self-executing” process that is envisioned and the more tedious participation of the court in the minutiae of the discovery process that results from discovery motions.²⁵

The Senate Committee analysis noted that some courts were already using an informal discovery process, and, for example, that these conferences in Los Angeles usually take about 30 minutes and in nearly every case that time investment ““resolves the dispute and spares the court (and counsel) the significant time and expense involved in litigating discovery motions.””²⁶ Likewise, the Assembly Judiciary Committee analysis stated that “the *possibility* of an informal discovery conference forces attorneys to take the meet and confer requirement more seriously, and ‘invest more time meaningfully meeting and conferring, knowing that a judge will expect them to explain why they are at an impasse and the nature and extent of their efforts to resolve the dispute.’”²⁷

²⁴ [Senate Committee on Judiciary Analysis](#) of AB 383 (June 20, 2017), p. 3.

²⁵ [Senate Committee on Judiciary Analysis](#) of AB 383 (June 20, 2017), p. 4.

²⁶ *Id.* at 5, quoting Los Angeles County Superior Court’s website. See also, [Informal Discovery Conferences in California Courts](#), Daily Journal (January 27, 2025) (arguing that judges have the authority to hold informal discovery conferences despite the sunset of AB 383). Currently, in addition to Los Angeles Superior Court, the San Mateo and San Bernadino Superior Courts have informal discovery calendars.

²⁷ [Assembly Committee on Judiciary Analysis](#) of AB 383 (March 14, 2017), p. 5, quoting Jessner et al., *Streamlining Discovery: Judges Find that Informal Discovery Conferences Often Facilitate Discovery Disputes and May Resolve the Entire Case*, 39 L.A. Lawyer 18, 20 (Oct. 2016) (emphasis in bill analysis).

NEXT STEPS

The staff proposes broad stakeholder outreach to learn about the experiences of courts and litigants with AB 383 to determine whether (1) the goals of the legislation were met, (2) any improvements could be made based on that experience, and (3) courts have continued to use the informal discovery conference process after the sunset of AB 383.

Does the Commission agree with this approach or have other suggestions?

The Commission indicated that it wants the staff to provide a list of the groups and individuals invited to participate when any new study is initiated.²⁸

The staff proposes to use the Commission's regular judiciary and civil procedure mailing list for this study. The staff also plans to directly contact the California Defense Counsel, the California Judges Association, the Consumer Attorneys of California, the California Lawyers Association, the Conference of California Bar Associations, the Civil Justice Association of California, the Judicial Council, the State Bar of California, county courts, and law school professors specializing in civil discovery.

The staff has done some initial informal outreach with some stakeholders, and it appears there is interest in studying whether the informal discovery conference statute should be reenacted.

The staff welcomes suggestions for additional stakeholders who should be contacted about this study.

Respectfully submitted,

Sharon Reilly
Executive Director

²⁸ [Minutes](#) (Oct. 2014) p. 3. Pursuant to the Commission's Tribal Consultation Policy, the Executive Director will also send a letter notifying California Tribes about the commencement of this study. California Law Revision Commission, *Handbook of Practices and Procedures* § [825](#).