

A long time ago (well, actually,  
today) in a galaxy far, far away (or in  
Martinez, California)....

## **THE LAW & MOTION SAGA**

### **EPISODE III: THE INTERLOCUTORY ORDERS OF THE SITH**





## DISCLAIMER

- I am happy to take questions during and after the program, time permitting.
- I am a quasi-judicial court employee bound not only by the Rules of Professional Conduct, but by the Canons of Judicial Ethics.
- I cannot answer questions about cases that are pending in the Contra Costa County Superior Court.
- I cannot answer questions about how particular judges would rule on any issue. Nothing in this seminar should be construed as any indication of how a judge would rule.
- All fact patters, examples and sample forms are fiction.

## ABBREVIATIONS

APJ – All-Purpose Judge	MSJ/MSA – Motion for Summary Judgment/Summary Adjudication
COA – Cause of Action	MTC – Motion to Compel
CoCoCo – Contra Costa County	NOE – Notice of Entry
F&S – File & Serve	POD – Request for Production of Documents
j/x – Jurisdiction	RFA – Request for Admission
M&C – Meet & Confer	RFJN – Request for Judicial Notice
MIL – Motion <i>In Limine</i>	Rog – Interrogatory (either Special or Form)
MJOP – Motion for Judgment on the Pleadings	SOL – Statute of Limitations
MPA – Memorandum of Points and Authorities	



## **THE LAW & MOTION UNIVERSE**

**All of the Episodes of the Law & Motion Saga will give examples based on the following set of hypothetical facts:**

***Darth Vader (fka Annikan Skywalker) died during the Battle of Endor. At the time of his death, Vader was unmarried. His wife, Padme Skywalker (nee Amidala), predeceased him in childbirth. Vader was survived by twin children, Luke Skywalker and Princess Leia Solo (nee Organa).***

***Approximately two months after Vader's death, Luke and Leia received a Trustee's Notification pursuant to Probate Code § 16061.7. The Trustee's Notification included a copy of The Darth Vader Revocable Living Trust. The Trust provides that the successor trustee following Vader's death is to be Emperor Palpatine or, if he does not survive (he didn't), then "Supreme Leader Snoke" is to serve as successor trustee. Upon Vader's death, all of the assets of the Trust (assumed to be worth approximately 10 million Galactic Credits) are to be distributed to Vader's Grandson, Ben Solo, except that Luke and Leia are to each receive a bantha, if any are assets of the Trust.***



**Shocked, Luke (but not Leia) hired an attorney to file a Petition in the Probate Division of the Contra Costa County Superior Court alleging, among other claims, that the Trust is invalid because (1) Vader lacked the requisite mental capacity to execute the Trust; (2) Vader was unduly influenced by Emperor Palpatine, Ben Solo and/or "Supreme Leader Snoke" into executing the Trust; and (3) Vader was under duress when he executed the Trust.**

**Assume that CoCoCo has personal and subject matter jurisdiction over this case and that service of the petition was proper and timely.**

## **EPISODE III: THE INTERLOCUTORY ORDERS OF THE SITH MISCELLANEOUS MOTIONS**





## **EPIISODE III: THE INTERLOCUTORY ORDERS OF THE SITH**

- **Motion to Expunge *Lis Pendens* (CCP §§ 405.30 *et seq.*)**
- **Motion to Enforce Settlement (CCP § 664.6)**
- **Motion to Reconsider (CCP § 1008)**

## **EPIISODE III: THE INTERLOCUTORY ORDERS OF THE SITH**

- **Motion to Set Aside Order or Judgment (CCP § 473(b))**
- **Motion to Strike (CCP §§ 435 *et seq.*)**
- **Motion to Amend (CCP § 473(a))**
- **Motion to Change Venue (CCP §§ 396b, 397)**



## MOTION TO EXPUNGE *LIS PENDENS*

- CCP §§ 405.30 *et seq.*
- A *lis pendens* is a recorded document that alerts the public of the existence of litigation concerning title to specific real property. The practical effect of recording a *lis pendens* is to place a cloud on title to the property and prevent its further transfer until the litigation is resolved and the *lis pendens* is either expunged or released. See Kirkeby v. Superior Court (2004) 33 Cal.4th 642, 651.

## MOTION TO EXPUNGE *LIS PENDENS*

- On a motion to expunge, the opposing party carries the burden to prove:
  - The existence of a “real property claim” (CCP § 405.31); and
  - The probable validity of the claim by a preponderance of the evidence (CCP § 405.32).



## **MOTION TO EXPUNGE *LIS PENDENS***

- **“Real property claim”**
  - **“Real property claim” is defined by the CCP, not the Probate Code. Prob. Code § 1004.**
  - **“Real property claim” is to be defined narrowly. BGJ Associates v. Superior Court (1999) 75 Cal. App. 4<sup>th</sup> 952, 966-967.**

## **MOTION TO EXPUNGE *LIS PENDENS***

- **“Real property claim”**
  - **Any cause or causes of action in a pleading that would, if meritorious, affect title to, or the right to possession of, specific real property. CCP § 405.4.**
  - **By itself, filing a claim pursuant to Probate Code § 850 is not enough!!!**



## **MOTION TO EXPUNGE *LIS PENDENS***

- **“Real property claim”**
  - **Examine only the Petition and matters that are judicially noticeable. A “demurrer-like analysis.” Kirkeby v. Superior Court (2004) 33 Cal.4<sup>th</sup> 642, 647; Code of Civ. Proc. § 405.31, Comment 1.**

## **MOTION TO EXPUNGE *LIS PENDENS***

- **“Real property claim”**
  - **Examples:**
    - **YES – Claim to set aside void transfer under Uniform Voidable Transfers Act (Civ. Code §§ 3439 et seq.). Kirkeby v. Superior Court (2004) 33 Cal.4<sup>th</sup> 642, 648.**
    - **NO – Claim to impose a constructive or resulting trust. Campbell v. Superior Court (2005) 132 Cal. App. 4<sup>th</sup> 904.**



## **MOTION TO EXPUNGE *LIS PENDENS***

- **“Real property claim”**
  - **Therefore:**
    - **Heggstad or Ukkestad petition – YES.**
    - **Claim to property purchased by bad trustee with misappropriated funds – NO.**
    - **Claim to property inappropriately distributed from trust – YES.**
    - **Partition – MANDATORY (CCP § 872.250).**

## **MOTION TO EXPUNGE *LIS PENDENS***

- **“Probable validity”**
  - **More likely than not that the petitioner will obtain a judgment against the defendant on the claim. CCP § 405.3.**
  - **Preponderance of the evidence standard.**
  - **Court considers extrinsic evidence in support of and in opposition.**



## MOTION TO EXPUNGE *LIS PENDENS*

- **Ruling on the Motion**
  - Either no real property claim or no probable validity = grant motion & *lis pendens* must be expunged.
  - Otherwise, deny motion.

**BUT...**

## MOTION TO EXPUNGE *LIS PENDENS*

- **Undertaking (CCP § 405.33)**
  - If the court finds a real property claim and probable validity, but adequate relief can be secured by an undertaking, court can conditionally grant the motion to expunge on Respondent's posting of an undertaking.
  - Amount: "such amount as will indemnify [Petitioner] for all damages proximately resulting from the expungement which the [Petitioner] may incur if the [Petitioner] prevails upon the real property claim."



## **MOTION TO EXPUNGE *LIS PENDENS***

- **Undertaking (CCP § 405.33)**
  - For purposes of determining amount of undertaking, presumption of uniqueness of real property does not apply unless the subject property is improved with a single-family home that Petitioner intends to occupy.
  - Court must set a return date for fulfillment of undertaking condition.
  - If moving party (Respondent) fails to fulfill the condition by return day, motion is denied without further notice or hearing and *lis pendens* remains.

## **MOTION TO EXPUNGE *LIS PENDENS***

- **Fee Award (CCP § 405.38)**
  - Court “shall” award prevailing party reasonable fees and costs in making or opposing motion unless the court finds that the other party acted with substantial justification or that other circumstances make the award unjust.





## **MOTION TO EXPUNGE *LIS PENDENS***

- **Appellate Remedy (CCP § 405.39)**
  - **Order on motion is expressly not appealable.**
  - **Only remedy is Writ of Mandate.**
  - **Writ petition must be filed w/in 20 days of NOE.**
  - **Trial court may extend deadline by additional 10 days.**

## **MOTION TO ENFORCE SETTLEMENT**

- **CCP § 664.6**
  - **Authorizes court to enter judgment pursuant to the terms of a settlement agreement.**
  - **Settlement must either be in writing or orally *in court and on the record*.**
  - **Written settlement must be signed by the party, not by counsel on behalf of a party. CCP § 664.6(b), (c).**



## MOTION TO ENFORCE SETTLEMENT

- Need not allege breach to obtain judgment. Hines v. Lukes (2008) 167 Cal. App. 4<sup>th</sup> 1174, 1184-1185.
- Also authorizes the court to retain jurisdiction over the settlement until performance is complete.

## MOTION TO ENFORCE SETTLEMENT

- Litigation must be *pending*. Kirby v. Southern California Edison Co. (2000) 78 Cal. App. 4<sup>th</sup> 840, 845.
- “Signed writing”: signed by all parties to the agreement.
- Must be an enforceable contract under ordinary contract principles. See Terry v. Conlan (2005) 131 Cal. App. 4<sup>th</sup> 1445.



## MOTION TO ENFORCE SETTLEMENT

- Signed by counsel not allowed in Probate proceedings, but may still be enforceable as an ordinary contract outside of CCP § 664.6. Levy v. Superior Court (1995) 10 Cal.4<sup>th</sup> 578, 586.
- Court may adjudicate terms of settlement (i.e., what the terms are). Malouf Bros. v. Dixon (1991) 230 Cal. App. 3d 280.
  - BUT, may not modify the terms of the agreement!

## MOTION TO ENFORCE SETTLEMENT

- “Oral settlement before the court”: Verbal acceptance, not absence of objection to terms. Fiege v. Cooke (2004) 125 Cal. App. 4<sup>th</sup> 1350, 1353-1355.
- By the *parties*, not counsel. Johnson v. Dept. of Corrections (1995) 38 Cal. App. 4<sup>th</sup> 1700, 1707-1708.



## MOTION TO ENFORCE SETTLEMENT

- “Before the court” means in a *judicially supervised proceeding*. Marriage of Assemi (1994) 7 Cal.4<sup>th</sup> 896, 909.
  - General reference under CCP § 638(a) OK. Not special reference under CCP § 638(b). Murphy v. Padilla (1996) 42 Cal. App. 4<sup>th</sup> 707, 713.
  - Not at deposition. Datatronic Systems Corp. v. Speron, Inc. (1986) 176 Cal. App. 3d 1168, 1174.

## MOTION TO RECONSIDER

- **CCP § 1008**
- **Motion must be:**
  - Brought before the same judge that made the earlier order;
  - Made w/in 10 days after NOE of earlier order;
  - Based on “new or different facts, circumstances or law” than those before the court at the time of the earlier ruling;
  - Supported by a declaration;
  - Made and decided before entry of judgment.



## MOTION TO RECONSIDER

- “Same judge” includes “same court” if the original judge is not available.
- 10 days is extended per CCP § 1013 (service by mail) & CCP § 1010.6(a)(3)(B) (electronic service).

## MOTION TO RECONSIDER

- “New or different facts, circumstances”
  - Requires showing that those facts or circumstances could not have been presented earlier with *reasonable diligence*. New York Times Co. v. Superior Court (2005) 135 Cal. App. 4<sup>th</sup> 206, 212-213.
  - Must show a valid reason for not presenting the facts or circumstances earlier. Gilberd v. AC Transit (1995) 32 Cal. App. 4<sup>th</sup> 1494, 1500.



## MOTION TO RECONSIDER

- “New or different facts, circumstances”
  - Grant:
    - Newly-produced documents that were requested but not produced by time of hearing. Hollister v. Benzi (1999) 71 Cal. App. 4<sup>th</sup> 582, 585.
    - Court failed to consider timely-filed MPA. Johnston v. Corrigan (2005) 127 Cal. App. 4<sup>th</sup> 553, 556.

## MOTION TO RECONSIDER

- “New or different facts, circumstances”
  - Deny:
    - Evidence that could have been presented earlier. Morris v. AGFA Corp. (2006) 144 Cal. App. 4<sup>th</sup> 1452, 1460.
    - Mistake. Pazderka v. Caballeros Dimas Alang, Inc. (1998) 62 Cal. App. 4<sup>th</sup> 658, 670.
    - Depo testimony without a showing as to why depo was not taken earlier. Jones v. P.S. Develop. Co., Inc. (2008) 166 Cal. App. 4<sup>th</sup> 707, 725.



## MOTION TO RECONSIDER

- “New or different...law”
  - Grant:
    - Newly published case.
    - Newly depublished case. Farmers Ins. Exch. V. Superior Court (2013) 218 Cal. App. 4<sup>th</sup> 96, 108-112.

## MOTION TO RECONSIDER

- “New or different...law”
  - Deny:
    - New statute without retroactive effect. CCP § 1008(f).
    - Court got the law wrong. Gilberd v. AC, Transit, supra, 32 Cal. App. 4<sup>th</sup> at 1500.



## MOTION TO RECONSIDER

- Requirements of CCP § 1008 are *jurisdictional*. CCP § 1008(e).
- **CAUTION:** Failure to follow the requirements of CCP § 1008 may be punished as CONTEMPT and SANCTIONS awarded per CCP § 128.7. CCP § 1008(d).

## MOTION TO RECONSIDER

- If Motion to Reconsider is granted, it only allows the court to revisit the earlier order. Court may still reaffirm the order. Corns v. Miller (1986) 181 Cal. App. 3d 195, 202.



## **MOTION TO SET ASIDE ORDER OR JUDGMENT**

- **CCP § 473(b)**
- **Authority to set aside an order or judgment based on “mistake, inadvertence, surprise or excusable neglect”.**

## **MOTION TO SET ASIDE ORDER OR JUDGMENT**

- **Situations:**
  - **Petition granted without opposition;**
  - **Motion granted without opposition;**
  - **CAUTION: CCP § 473(b) generally does not apply to discovery proceedings.**
    - **Look to the Civil Discovery Act for relief.**



## MOTION TO SET ASIDE ORDER OR JUDGMENT

- **Procedure:**
  - **Must be filed within a “reasonable time” and in no event later than six months after the judgment or order was made.**
    - **Entry, not NOE! Lee v. Wells Fargo Bank, N.A. (2001) 88 Cal. App. 4<sup>th</sup> 1187, 1199-1200.**
    - **Six months is jurisdictional. Austin v. Los Angeles Unified School Dist. (2016) 244 Cal. App. 4<sup>th</sup> 918, 928.**
  - **Must attach the pleading or other paper that would cure.**

## MOTION TO SET ASIDE ORDER OR JUDGMENT

- **Showing:**
  - **Attorney Affidavit of Fault**
    - **Attorney must show “mistake, inadvertence, surprise or neglect”.**
    - **Relief mandatory unless the court finds that the judgment or order was not entered because of attorney’s mistake, inadvertence, surprise or neglect.**
    - **Showing need not be “excusable”. Just that the lawyer screwed up!**
    - **Includes mistakes by employee of counsel. Hu v. Fang (2002) 104 Cal. App. 4<sup>th</sup> 61, 64.**



## MOTION TO SET ASIDE ORDER OR JUDGMENT

### • Showing:

- **Attorney Affidavit of Fault**
  - Not available to *pro per* parties.
  - If granted, attorney must pay reasonable compensatory legal fees and costs to opposing counsel or parties.

## MOTION TO SET ASIDE ORDER OR JUDGMENT

### • Showing:

- **Without Attorney Affidavit of Fault.**
  - Party must show “mistake, inadvertence, surprise or excusable neglect”
  - Relief is *discretionary*.
  - Mistake of fact OK (Lieberman v. Aetna Ins. Co. (1967) 249 Cal. App. 2d 515, 523-524);
  - NOT mistake of law (Hearn v. Howard (2009) 177 Cal. App. 4<sup>th</sup> 1193, 1206).



## MOTION TO SET ASIDE ORDER OR JUDGMENT

### • Showing:

- Without Attorney Affidavit of Fault.
  - Surprise: “some condition or situation in which a party...is unexpectedly placed to his injury, *without* any default or *negligence* of his own, which ordinary prudence could not have guarded against.” Credit Managers Ass’n of Southern Calif. v. National Independent Business Alliance (1984) 162 Cal. App. 3d 1166, 1173.

## MOTION TO SET ASIDE ORDER OR JUDGMENT

### • Showing:

- Without Attorney Affidavit of Fault.
  - Excusable neglect: must show a reasonable excuse and reasonable diligence. Jackson v. Bank of America (1983) 141 Cal. App. 3d 55, 58.
    - Party was ill, unable to understand pleadings, was misled, Jedi mind trick.
    - Attorney’s press of business alone not enough.



## **MOTION TO SET ASIDE ORDER OR JUDGMENT**

- **Showing:**

- **Without Attorney Affidavit of Fault.**
- **Court has discretion to award fees and costs, or order relief conditionally.**



## **MOTION TO STRIKE**

- **CCP §§ 435-437; CRC 3.1322.**
- **Available to strike all or a portion of a Petition or Answer.**
- **Material may be stricken on motion or by the court on its own motion. CCP § 436.**



## MOTION TO STRIKE

- **What can be stricken? CCP § 436(a), (b).**
  - **Any irrelevant, false, or improper matter;**
  - **All or any part of any pleading not filed in conformity with law, court rule, or court order.**
- **Motion based on the face of the pleading or matters subject to judicial notice. CCP § 437.**

## MOTION TO STRIKE

- **“Irrelevant, false or improper”**
  - **Conclusory allegations**
    - **“Vader lacked the requisite mental capacity to execute the Trust.”**
      - **BUT, “Vader lacked the requisite mental capacity to execute the Trust because he did not understand the nature of the testamentary act, understand and recollect the nature and situation of his property and remember and understand his relations to his children” is OK. Perkins v. Superior Court (1981) 117 Cal. App. 3d 1, 6.**



## **MOTION TO STRIKE**

- **“Irrelevant, false or improper”**
  - **Improper damage claims (not supported by the cause of action)**
    - **Attorney’s fee claim**
    - **Punitive damages**
  - **Anything involving this guy:**



## **MOTION TO STRIKE**

- **“Not filed in conformity with law, court rule or court order”**
  - **No verification (Prob. Code § 1021)**
  - **Amended Petition filed after deadline set by court**
  - **Amended Petition that exceeds court’s substantive authorization (e.g., after demurrer)**
  - **Amended Petition filed after Answer filed, but without stipulation or court order**
  - **Non-lawyer filing Petition on behalf of another person**



## MOTION TO STRIKE

- **M&C Requirement. CCP § 435.5.**
  - At least 5 days prior to filing.
  - Similar to Demurrer/MJOP.
- **Timing:**
  - F&S not later than date responsive pleading is due. CCP § 435(b)(1).
    - In Probate, the date of the hearing. Prob. Code § 1043.
  - 16/9/5 Rule.

## MOTION TO STRIKE

- **Papers**
  - **Notice**
    - Unless the Motion seeks to strike the entire pleading, an entire COA, entire paragraph or entire defense, the matter to be stricken must be quoted in the Notice *verbatim*. CRC 3.1322(a).
  - MPA
  - M&C Declaration
  - RFJN (Optional)
- **Opposition**
  - Respondent may amend the Petition once before the Opposition to the Motion is due.
    - Does not apply to a situation where the Motion to Strike is directed at an improperly-filed amended Petition.



## **MOTION TO STRIKE**

- **Ruling on the Motion**
  - **Similar to Demurrer**
  - **Liberal construe pleadings in favor of Petitioner with a view to substantial justice. CCP § 452.**
  - **Allegations are presumed true. Clauson v. Superior Court (1998) 67 Cal. App. 4<sup>th</sup> 1253, 1255.**
  - **If entire pleading stricken, court may grant leave to amend. CCP § 472a(d).**
  - **Less than entire pleading stricken or Motion denied: Respondent answers.**

## **MOTION TO AMEND**

- **CCP § 473(a)**
- **Petitioners may amend the petition once as a matter of right without leave of court before an answer is filed or before the opposition to a MTS or Demurrer is due. CCP § 472.**
- **Respondent may amend the Answer once as a matter of right within 10 days of filing or before the opposition to a MTS or Demurrer is due. CCP §§ 430.40(b); 472**



## MOTION TO AMEND

- Court has broad discretion to allow amendments on noticed motion.
- Denial rarely justified in the absence of a showing of prejudice. Morgan v. Superior Court (1959) 172 Cal. App. 2d 527, 530.

## MOTION TO AMEND

- Arguments against granting motion that would be raised on demurrer or MTS are not ordinarily considered. Kittredge Sports Co. v. Superior Court (1989) 213 Cal. App. 3d 1045, 1048.
  - BUT, where proposed amendment is fatally flawed and incurable, court could deny motion. California Cas. Gen. Ins. Co. v. Superior Court (1985) 173 Cal. App. 3d 274, 281.



## MOTION TO AMEND

- Delay alone not ground for denial. Must show *prejudicial delay*. Higgins v. Del Faro (1981) 123 Cal. App. 3d 558, 564-565.
- Sham amendments (those that contradict earlier pleadings) may be denied. Vallejo Develop. Co. v. Beck Develop. Co. (1994) 24 Cal. App. 4<sup>th</sup> 929, 946.
- Court may impose conditions. CCP §§ 473(a)(1), 576.

## MOTION TO AMEND

- Motion must include a copy of the proposed amended pleading. CRC 3.1324(a)(1)
- Motion must identify by page, paragraph and line number any additions to and deletions from the prior pleading. CRC 3.1324(a)(2), (3).



## MOTION TO CHANGE VENUE

- **CCP §§ 396b, 397(a): “Wrong court” motion**
- **CCP § 397: “Convenience of witnesses” motion**
- **Court’s j/x is *suspended* while the motion is pending.**

## MOTION TO CHANGE VENUE

- **Relevant venue rules:**
  - **Probates**
    - **Prob. Code § 7051 – County of decedent’s domicile at time of death**
    - **Prob. Code § 7052 – County where property of nondomiciliary decedent located**
  - **Trusts**
    - **Prob. Code § 17005 – “Principal place of administration” (Prob. Code § 17002)**



## MOTION TO CHANGE VENUE

- **Relevant venue rules:**
  - **CAUTION: Code of Civil Procedure does not apply to venue changes in Conservatorship & Guardianship proceedings:**
    - **See Prob. Code §§ 2210-2217.**

## MOTION TO CHANGE VENUE

- **“Wrong Court” Motion**
  - **If granted, transfer is mandatory.**
  - **Deadline to F&S: Not later than last day to respond to Petition.**
    - **May be filed concurrently with response.**
  - **Notice of Motion must specify statutory ground. McDonald v. California Timber Co. (1907) 151 Cal. 159, 161.**



## MOTION TO CHANGE VENUE

- **“Wrong Court” Motion**
  - Moving party carries burden to prove that petition was filed in the wrong court. Fontaine v. Superior Court (2009) 175 Cal. App. 4<sup>th</sup> 830, 836.

## MOTION TO CHANGE VENUE

- **“Wrong Court” Motion**
  - Sanctions: Court has discretion to order losing party’s counsel to pay prevailing party’s expenses and attorney fees in making or resisting the motion. CCP § 396n(a), (b).
  - Must give notice of intent to seek sanctions. Cacciaguidi v. Superior Court (1990) 226 Cal. App. 3d 181, 187.



## MOTION TO CHANGE VENUE

- **“Wrong Court” Motion**
  - **Counsel is personally liable for sanctions. May not pass sanctions on to client. CCP § 396b(b).**
  - **Factors: (1) stipulation offered; (2) good faith given the facts and law known at the time in making the motion or selecting the venue. Mission Imports, Inc. v. Superior Court (1982) 31 Cal.3d 921, 931-932.**

## MOTION TO CHANGE VENUE

- **“Wrong Court” Motion**
  - **If motion granted**
    - **Petitioner is responsible for paying costs of transfer (due w/in 30 days of NOE). CCP § 399(a);**
    - **Answer is due w/in 30 days after transferee court mails notice that the case has been received with new case number. CCP § 586(a)(6)(B); CRC 3.1326.**



## MOTION TO CHANGE VENUE

- “Wrong Court” Motion
  - If motion denied:
    - Respondent has 30 days from NOE to respond. CCP 396b(e); CRC 3.1326.

## MOTION TO CHANGE VENUE

- “Convenience of Witnesses” Motion
  - CCP § 397(c) – “When the convenience of [nonparty] witnesses and the ends of justice would be promoted by the change”
    - Not convenience of the parties. Wrin v. Ohlandt (1931) 213 Cal. 158, 160.
      - Convenience of a party will only be considered if the party is extremely ill or feeble such that travel is dangerous. Simonian v. Simonian (1950) 97 Cal. App. 2d 68, 69.
    - Not convenience of counsel. Lieppman v. Lieber (1986) 180 Cal. App. 3d 914, 920.
    - Not convenience of expert witnesses. Wrin, supra.



## MOTION TO CHANGE VENUE

- **“Convenience of Witnesses” Motion**
  - Transfer is *discretionary*. CCP § 397.
  - Must F&S within a “reasonable time” *after* response to Petition is filed. CCP § 396b(d).
  - Moving party must advance clerk’s cost of transfer upon filing. CCP § 399(a).

## MOTION TO CHANGE VENUE

- **“Convenience of Witnesses” Motion**
  - **Motion must set forth the following facts:**
    - Names of expected witnesses for *both* sides;
    - Substance of expected testimony;
    - Whether witness has been deposed or given a statement, and, if so, the dates they occurred;
    - Reasons why current venue is inconvenient;
    - Reasons why “ends of justice” would be served by transfer.



## MOTION TO CHANGE VENUE

- **Alternatives to motion practice:**
  - **Stipulate to the transfer (slow).**
    - *Written stip & order* required.
    - Pay fees as agreed.
  - **Dismiss and refile (faster?).**
    - Petitioner dismisses without prejudice.
      - Before venue motion is filed.
    - If there are SOL issues, get a written agreement that refiling will be treated as having been filed on the originally-filed date.

## QUESTIONS???





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