



**DISCOVERY  
for SRLs**

19<sup>th</sup> Annual AB 1058 Child Support  
Training Conference  
October 14-16, 2015  
1926

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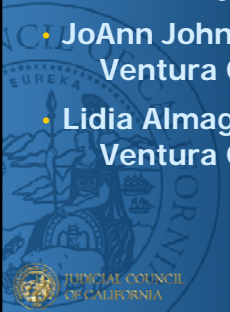
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Presented by:

- JoAnn Johnson, Commissioner,  
Ventura County Superior Ct.
- Lidia Almaguer, Facilitator,  
Ventura County Superior Ct.

JUDICIAL COUNCIL  
OF CALIFORNIA

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**WHY NOT????**

JUDICIAL COUNCIL  
OF CALIFORNIA

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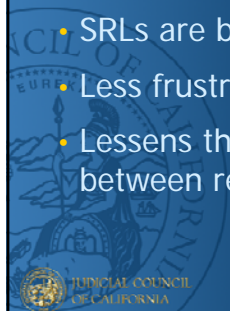
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## WHY?

- SRLs are better prepared
- Less frustrated with 'system'
- Lessens the imbalance of power between represented and SRLs



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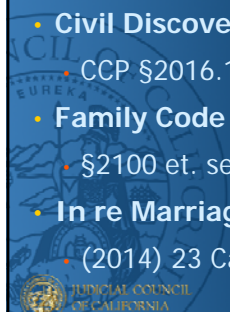
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## THE LAW

- **Civil Discovery Act**
  - CCP §2016.10 et. seq.
- **Family Code**
  - §2100 et. seq.; §3552; §218; §3660
- **In re Marriage of Boblitt**
  - (2014) 23 Cal.App.4th 1004



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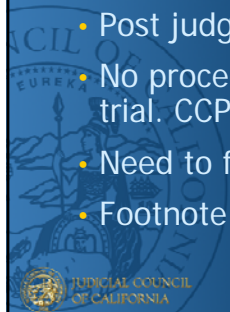
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## IRMO Boblitt

- Post judgment proceeding
- No procedure for discovery after trial. CCP applies
- Need to file to reopen discovery
- Footnote 10 - advisory



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## FAMILY CODE §218

- Post judgment RFO
- Discovery automatically reopens
- Cut-off date is the date of the RFO
- Or any continuance thereof, whichever is LATER



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## 'REQUIRED' DISCOVERY

- Disclosures FC §2100 et. seq.
- Tax Returns FC §3552



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- Preliminary Declarations of Disclosure:
  - Family Code §2104
  - Schedule of Assets and Debts
  - Income and Expense
- Must be served within 60 days of the Petition or Response



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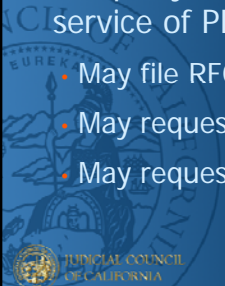
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- If a party does not comply with service of PDDs (FC §2107)
  - May file RFO for order (FL-316)
  - May request monetary sanctions
  - May request evidentiary sanctions

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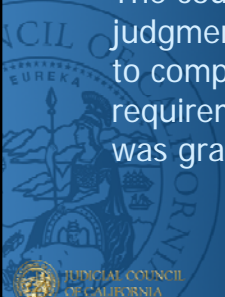
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- The court must set aside a judgment if parties have failed to comply with disclosure requirements and no waiver was granted by the court

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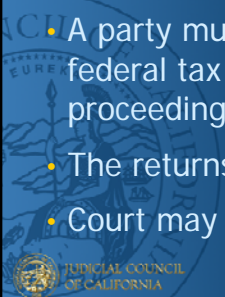
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- Family Code §3552:
  - A party must submit state and federal tax returns in a support proceeding.
  - The returns are discoverable
  - Court may return or seal

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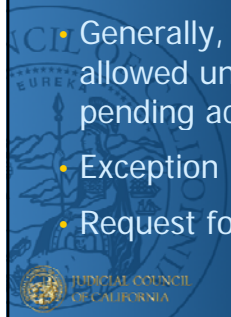
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## PRE-FILING DISCOVERY

- Generally, no discovery is allowed unless there is a pending action
- Exception is FC §3660 et. seq.
- Request for production of I & E



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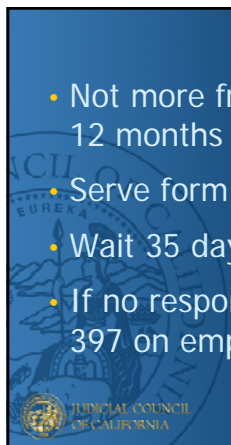
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- Not more frequently than every 12 months
- Serve form FL-396 with FL-150
- Wait 35 days
- If no response, may serve FL-397 on employer



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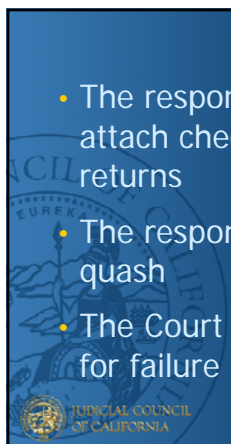
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- The responding party must attach check stubs and tax returns
- The responding party may file to quash
- The Court may order sanctions for failure to comply



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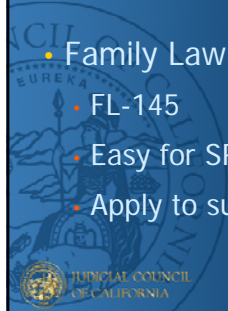
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## INTERROGATORIES

- Family Law Form Interrogatories
- FL-145
- Easy for SRLs
- Apply to support actions



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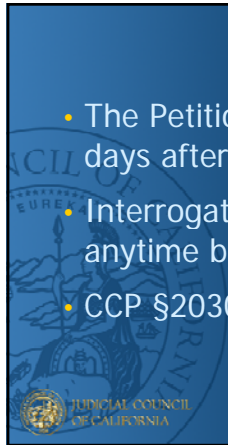
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- The Petitioner must wait 10 days after Petition served
- Interrogatories can be served anytime by the Respondent
- CCP §2030.020



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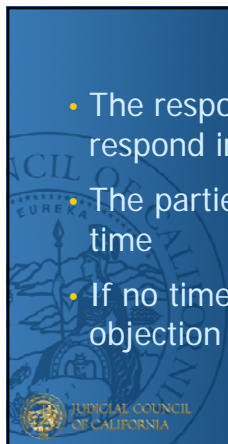
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- The responding party must respond in 30 days
- The parties may agree to extend time
- If no timely response, any objection is waived



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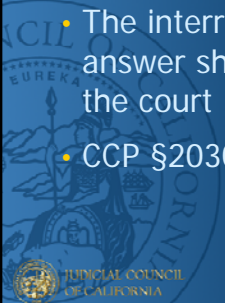
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- The interrogatories and the answer shall NOT be filed with the court
- CCP §2030.280

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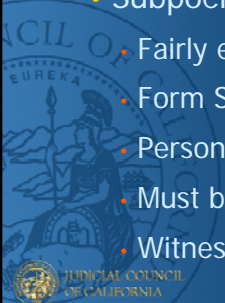
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### WITNESSES



- Subpoenas for Witness
- Fairly easy for SRLs to do
- Form SUBP-001
- Personally served on witness
- Must be 'reasonable time'
- Witness entitled to fees

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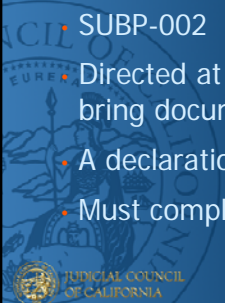
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- Subpoena duces tecum for court
- SUBP-002
- Directed at a witness to appear and bring documents
- A declaration in support is required
- Must comply with CCP §1985.6



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- Notice in lieu of subpoena  
CCP§1987(b)
- Served on party (or attorney)
- Ten days before trial
- Twenty days if documents requested
- Can require party to bring documents



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### OTHER DISCOVERY

- Deposition subpoena for records are not available to SRLs without hiring a registered photocopier (CCP §2020.420)
- FLFs can provide a list of local photocopiers that can provide service



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- Demand for production of documents CCP §2031.010
- Requires a party to produce documents
- 2 part response
  - Written response within 30 days
  - Production of documents on date



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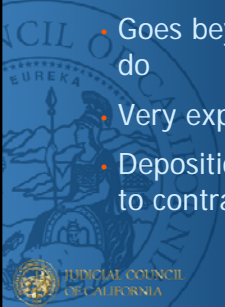
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- Depositions
  - Goes beyond what the FLF can do
  - Very expensive
  - Deposition can be used at trial to contradict or impeach party

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### FAILURE TO COMPLY



- Failure to comply
  - Monetary sanctions
  - Evidence exclusions
  - Issue exclusions

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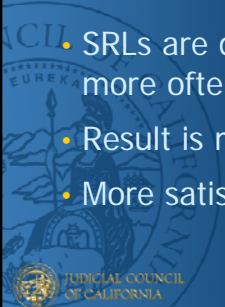
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### WRAP UP



- SRLs are doing discovery more often
- Result is more accurate orders
- More satisfaction with process

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