

## **6 California Procedure (5th), Proceedings Without Trial**

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**(bb) [§402] No Courtroom or Judge.**

**(cc) [§403] Death or Illness.**

**(dd) [§404] Defendant's Default.**

**(ee) [§405] Interlocutory Review.**

**(ff) [§406] Absence of Party in Interest.**

**(gg) [§407] Defendant Not Amendable to Process.**

**(hh) [§408] Invalid Order Preventing Matter Going to Trial.**

**(ii) [§409] Consolidated Actions.**

**(jj) [§410] Severable Causes of Action.**

**(kk) [§411] Related Proceeding Is Pending.**

**(c) Arbitration.**

**(1) [§412] Submission to Contractual Arbitration.**

**(2) Submission to Judicial Arbitration.**

**(aa) [§413] In General.**

**(bb) [§414] Stipulation for Binding Arbitration.**

**(cc) [§415] Tolling Until New Trial Date.**

**(dd) [§416] Plaintiff's Duty to Monitor Resetting.**

**(ee) [§417] Impracticability and Diligence.**

**(d) Estoppel and Waiver.**

**(1) [§418] Estoppel Against Defendant.**

**(2) [§419] Estoppel Against Trial Court.**

**(3) [§420] Waiver by Going to Trial.**

**(e) Disposition of Litigable Issues.**

**(1) [§421] Conclusive Admissions.**

**(2) [§422] Compromise Agreement.**

**(f) [§423] Extension Where Less Than 6 Months Remain.**

**5. Belated Attempt To Get Trial Date.**

**(a) [§424] In General.**

**(b) Discretion To Grant Preferential Setting.**

**(1) [§425] In General.**

**(2) [§426] Preferential Setting Denied.**

**(3) [§427] Preferential Setting Required.**

**D. Mandatory Dismissal for Delay in New Trial.**

**1. [§428] In General.**

**2. [§429] After Mistrial or Jury Disagreement.**

**3. [§430] After New Trial Is Granted.**

**4. After Decision on Appeal.**

- (a) [§431] Order Granting New Trial.
- (b) [§432] Judgment Reversed With Remand for New Trial.
- (c) [§433] Distinction: Judgment Reversed Without Remand for New Trial.

**5. Extensions, Exceptions, and Excuses.**

- (a) [§434] In General.
- (b) Trial Impossible, Impracticable, or Futile.
  - (1) [§435] In General.
  - (2) [§436] Requirement of Reasonable Diligence.
- (c) [§437] Estoppel.

**E. Discretionary Dismissal for Delay.**

**1. In General.**

- (a) [§438] Power To Dismiss.
- (b) [§439] Criteria Governing Exercise of Discretion.
- (c) [§440] Premature Dismissal Is Improper.
- (d) [§441] Extensions, Exceptions, and Excuses.

**2. Delay in Service.**

- (a) [§442] In General.
- (b) Time for Service.
  - (1) [§443] Amended Complaint.
  - (2) [§444] Doe Defendant.
  - (3) [§445] Complaint in Intervention.
- (c) Excuse for Delay.
  - (1) [§446] Necessity for Showing.
  - (2) [§447] Sufficiency of Showing.
- (d) [§448] Prejudice to Defendant.
- (e) Review.
  - (1) [§449] Dismissal Upheld.
  - (2) [§450] Abuse of Discretion.

**3. Delay in Trial.**

- (a) [§451] In General.
- (b) Excuse for Delay.
  - (1) [§452] Former Rule: Dismissal Required Absent Adequate Showing.
  - (2) [§453] Current Rule: Discretion of Trial Court.
  - (3) [§454] Necessity for Some Showing.
  - (4) [§455] Attorney's Neglect Imputed to Client.
- (c) [§456] Prejudice to Defendant.
- (d) [§457] Effect of Judicial Arbitration.
- (e) [§458] Effect of Trial Preference.
- (f) [§459] Effect of Trial Setting.
- (g) Review.
  - (1) Dismissal Upheld.
    - (aa) [§460] Earlier Decisions.
    - (bb) [§461] Later Decisions.
  - (2) Abuse of Discretion.

(aa) [§462] Earlier Decisions.

(bb) [§463] Later Decisions.

4. [§464] Delay in New Trial.

5. Procedure.

(a) [§465] Notice of Motion.

(b) [§466] Opposition, Response, and Reply.

(c) Ruling on Motion.

(1) [§467] Ruling May Be Conditioned.

(2) [§468] Absent or Incorrect Statement of Grounds.

(d) Dismissal on Court's Own Motion.

(1) [§469] In General.

(2) [§470] After Motion To Specially Set.

(e) Relief From Order.

(1) [§471] Review of Order.

(2) [§472] Relief Under C.C.P. 473.

(f) [§473] Effect of Dismissal.

### **XIII. INVOLUNTARY DISMISSAL FOR REASONS OTHER THAN DELAY**

A. [§474] In General.

B. Failure To Appear at Trial.

1. [§475] When Dismissal Is Proper.

2. [§476] Trial of Uncontested Matter as Alternative to Dismissal.

C. [§477] Demurrer Sustained.

D. [§478] Motion To Strike Granted.

E. [§479] Failure To Bring Small Claims Court Appeal to Trial.

F. [§480] Improper Grounds for Dismissal.

### **XIV. ALTERNATIVE DISPUTE RESOLUTION**

A. In General.

1. [§481] Nature and Scope of ADR.

2. [§482] Programs and Legislation.

3. [§483] Judicial Standards and Rules.

4. [§484] Immunity of Persons Performing Dispute Resolution Services.

B. [§485] Negotiation.

C. Mediation.

1. [§486] In General.

2. [§487] Confidentiality.

3. [§488] Regulation of Mediation.

4. Court-Ordered Mediation.

(a) [§489] Scope of Pilot Project.

(b) [§490] Time for Mediation.

(c) [§491] Procedure.

D. [§492] Settlement Conference.

E. [§493] Neutral Fact-Finding or Evaluation.

F. [§494] Mini-Trial.

G. Private Judging.

1. [§495] In General.

2. [§496] Voluntary Reference.

**3. [§497] Temporary Judge.**

**4. [§498] Procedure.**

**H. Contractual Arbitration.**

**1. In General.**

**(a) [§499] Definition and Nature.**

**(b) [§500] Public Policy Considerations.**

**(c) [§501] Commentary and Practice Works.**

**2. California Legislation.**

**(a) [§502] General Statute.**

**(b) Special Statutes.**

**(1) [§503] In General.**

**(2) [§504] Medical Malpractice and Health Care Plans.**

**(3) [§505] Real Estate Contracts.**

**3. Federal Arbitration Act.**

**(a) In General.**

**(1) [§506] Nature and Scope.**

**(2) [§507] Commentary and Practice Works.**

**(b) Conflicting State Law Is Preempted.**

**(1) [§508] General Policy.**

**(2) [§509] Distinctions.**

**(3) [§510] Illustrations.**

**(c) [§511] Effect of Choice-of-Law Provision.**

**4. Agreement To Arbitrate.**

**(a) [§512] Agreement Is Enforceable.**

**(b) Form and Construction of Agreement.**

**(1) [§513] In General.**

**(2) [§514] Oral Agreement.**

**(3) [§515] Illustrations.**

**(c) [§516] Appraisal or Valuation Agreement.**

**(d) Employment or Labor Agreement.**

**(1) [§517] In General.**

**(2) Particular Claims.**

**(aa) [§518] Discrimination Claims.**

**(bb) [§519] Other Statutory Claims.**

**(cc) [§520] Harassment Claims.**

**(dd) [§521] Nonstatutory Public Policy Claims.**

**(3) [§522] Employer as Third-Party Beneficiary of Arbitration Agreement.**

**5. Enforcement Procedure.**

**(a) [§523] Self-Executing Agreement.**

**(b) Petition To Compel Arbitration.**

**(1) [§524] In General.**

**(2) [§525] Hearing.**

**(3) [§526] Appeal and Review.**

**(c) [§527] Consolidation With Pending Litigation.**

**(d) [§528] Stay of Pending Litigation.**

**(e) Provisional Remedies Pending Arbitration.**

**(1) [§529] In General.**

**(2) [§530] Injunctive Relief.**

**6. Defenses to Enforcement.**

**(a) [§531] In General.**

**(b) [§532] Controversy Is Not Within Scope of Arbitration Agreement.**

**(c) Petitioner or Respondent Is Not Party to Arbitration Agreement.**

**(1) [§533] In General.**

**(2) [§534] Joinder of Nonobjecting Third Party.**

**(3) [§535] Equitable Estoppel.**

**(d) [§536] Pending Litigation.**

**(e) Adhesion and Unconscionability.**

**(1) [§537] Contract of Adhesion.**

**(2) [§538] Unconscionable Contract or Term.**

**(3) [§539] Cases Deciding Issue of Unconscionability.**

**(f) [§540] Unjust or Unreasonable Provision.**

**(g) Fraud.**

**(1) [§541] When Issue Is Determined by Arbitrator.**

**(2) When Issue Is Determined by Court.**

**(aa) [§542] Fraud Directed to Arbitration Provision.**

**(bb) [§543] Fraud in Inception of Contract.**

**(h) [§544] Illegality.**

**(i) Waiver.**

**(1) [§545] Nature of Defense.**

**(2) [§546] Delay in Demanding Arbitration.**

**(3) Commencement of Litigation.**

**(aa) [§547] No Waiver by Mere Filing or Limited Participation.**

**(bb) [§548] Filing Action Solely for Discovery.**

**(cc) [§549] Defendant's Use of Discovery and Delay in Seeking Arbitration.**

**(dd) [§550] Deceptive Tactics in Settlement Process.**

**(4) Waiver or Forfeiture by Insurer.**

**(aa) [§551] Failure To Inform Insured of Remedy.**

**(bb) [§552] Requirement of Bad Faith Conduct.**

**7. Arbitration Proceeding.**

**(a) [§553] Commencement and Consolidation.**

**(b) Arbitrator.**

**(1) [§554] Selection and Appointment.**

**(2) [§555] Arbitral Immunity.**

**(3) Disclosures and Disqualification.**

**(aa) [§556] Judicial Requirements.**

**(bb) [§557] Statutory Requirements.**

**(cc) [§558] Ethics Standards for Neutral Arbitrators.**

**(4) [§559] Powers.**

**(c) [§560] Discovery and Subpenas.**

- (d) [§561] Hearing.
- 8. Arbitration Award.
  - (a) [§562] In General.
  - (b) [§563] Remedies.
  - (c) Costs and Attorneys' Fees.
    - (1) [§564] In General.
    - (2) [§565] Proceeding To Confirm Award.
  - (d) [§566] Confirmation of Award.
  - (e) [§567] Correction of Award.
  - (f) [§568] Amendment of Award.
  - (g) Vacation of Award.
    - (1) [§569] In General.
    - (2) [§570] Corruption, Fraud, or Undue Means.
    - (3) [§571] Arbitrator Exceeded Powers.
    - (4) [§572] Arbitrator's Failure To Disclose.
  - (h) [§573] Procedure To Correct or Vacate Award.
  - (i) Scope of Judicial Review.
    - (1) [§574] General Rule of Finality.
    - (2) [§575] Illustrations of Finality Rule.
    - (3) [§576] Effect of Agreement Extending Scope of Review.
    - (4) [§577] Review of Remedies Granted by Arbitrator.
    - (5) [§578] Exceptions to Finality Rule.

## **I. Judicial Arbitration.**

- 1. Nature of System.
  - (a) [§579] In General.
  - (b) [§580] Contractual Arbitration Distinguished.
  - (c) [§581] Administration.
- 2. [§582] Cases That Must Be Arbitrated.
- 3. [§583] Cases Excluded From Arbitration.
- 4. Submission to Arbitration.
  - (a) [§584] On Stipulation.
  - (b) [§585] On Plaintiff's Election To Limit Award.
  - (c) [§586] On Order of Court.
  - (d) [§587] Effect of Submission.
- 5. Arbitrator.
  - (a) Selection.
    - (1) [§588] In General.
    - (2) [§589] Arbitration Panels.
    - (3) [§590] Manner of Selection.
  - (b) [§591] Disqualification.
  - (c) Fees.
    - (1) [§592] In General.
    - (2) [§593] Source of Payment.
- 6. [§594] Discovery.
- 7. Arbitration Hearing.
  - (a) [§595] In General.

- (b) [§596] Subpenas.**
- (c) [§597] Time and Place of Hearing.**
- (d) [§598] Notice of Hearing.**
- (e) [§599] Persons Present.**
- (f) Evidence.**
  - (1) [§600] In General.**
  - (2) [§601] Reports and Records.**
  - (3) [§602] Written Statements.**
  - (4) [§603] Depositions.**
- (g) [§604] Sanctions for Failure To Participate.**

#### **8. Arbitration Award.**

- (a) Form and Content.**
  - (1) [§605] In General.**
  - (2) [§606] Amount of Damages.**
  - (3) [§607] Award of Costs.**
- (b) [§608] Filing.**
- (c) [§609] Service.**
- (d) [§610] Effect.**
- (e) [§611] Appealability.**
- (f) [§612] Vacation.**
- (g) [§613] Res Judicata and Collateral Estoppel.**

#### **9. Trial De Novo After Arbitration.**

- (a) Right to Trial.**
  - (1) [§614] In General.**
  - (2) [§615] Waiver by Plaintiff Electing Arbitration and Receiving Maximum Award.**
- (b) Request for Trial.**
  - (1) [§616] Time for Request.**
  - (2) [§617] Form of Request.**
  - (3) [§618] Filing and Service.**
  - (4) [§619] Request by One of Several Coparties.**
  - (5) [§620] Subsequent Voluntary Dismissal.**
  - (6) [§621] Subsequent Withdrawal of Request.**
- (c) Conduct of Trial.**
  - (1) [§622] Calendaring.**
  - (2) [§623] Discovery.**
  - (3) [§624] No Reference to Arbitration.**
  - (4) [§625] Adoption of Arbitrator's Findings Is Improper.**
- (d) Costs and Fees.**
  - (1) [§626] In General.**
  - (2) [§627] Improper Assignment of Case to Arbitration.**
  - (3) [§628] Effect of Rejection of Statutory Offer To Compromise.**
  - (4) [§629] Items Awarded.**