

Civil Procedure for Discovery and the Subpoena Process



Access and Release

- * **Authorization – Evidence Code 1158**
- * **Subpoena – CCP 2020 et seq.**
- * **Public Records**
- * **Stipulation or Court Order**



AUTHORIZATION - Evidence code 1158

Can only be used prior to the filing of an action or the first appearance of a defendant.

Important Provisions:

- **Location can not copy the records and bill for their services when a professional photocopier has been retained by the requestor.**
- **Only fee for compliance is \$15 plus any additional costs for retrieval when charged by a third party.**
- **Records pertaining to alcohol, psychiatric or drug abuse requires a special specific authorization identifying the records or a court order.**





*Created a new type of subpoena in 1986
for the discovery of records
only without testimony:*

- **Opposing Counsel must be noticed – CCP 1987 et seq. just like a deposition**
- **Consumer must be noticed if witness falls within parameters of CCP 1985.3**





Notice to Consumer

“Personal records” means the original, any copy of books, documents, other writings, or electronic data pertaining to consumer and which are maintained by “witness” which is a physicians, dentist, ophthalmologist, optometrists, chiropractor, physical therapist, acupuncturist, podiatrist, radiology or MRI center, clinic or diagnostic laboratory, state or national bank, state or federal association (as defined in Sec 5102 of Financial code), state or federal credit union, trust company, anyone authorized by the state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent license pursuant to Division 6 (commencing with section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United State Code, or psychotherapist, as defined in Section 1010 of Evidence Code, or a private or public preschool, elementary school, secondary school, or post secondary school as described in Section 76244 of Education Code.

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of records.

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Discovery process was designed and intended to place all parties on equal footing regarding all discovery, including documentary evidence. Everyone must have an equal opportunity to obtain the same records as their opponents.

In that regard, in a subpoena for production of business records (CCP 2020.420), the deposition officer must be a registered professional photocopier according to **B & P Code 22451**.

CCP 2020.420. The officer for a deposition seeking discovery only of business records for copying under this article shall be a professional photocopier registered under Chapter 20 (commencing with **Section 22450**) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under **Section 22451** of the Business and Professions Code. *This deposition officer shall not be financially interested in the action, or a relative or employee of any attorney of the parties.*



Deposition Subpoena for Production

SUBP-010	
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional) _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS	
CASE NUMBER: _____	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): _____	At (time): _____
On (date): _____	
Location (address): _____	

Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the **original** business records described in Item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.

2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.

3. The records to be produced are described as follows:

Continued on Attachment 3

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.
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Date issued: _____

_____ <small>(TYPE OR PRINT NAME)</small>	_____ <small>(SIGNATURE OF PERSON ISSUING SUBPOENA)</small>
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(Proof of service on reverse) (TITLE) Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 SUBP-010 (Rev. January 1, 2007)

**DEPOSITION SUBPOENA FOR PRODUCTION
OF BUSINESS RECORDS**

Code of Civil Procedure, §§ 2020.410–2020.440;
 Civil Code § 1563(b);
 Government Code § 68507.1
 www.courtinfo.ca.gov

American LegalNet, Inc.
 www.FormsWorkFlow.com

Why Does It Take So Long To Get Our Records?

- **Ten Days** – Subpoenas prepared, notices sent to opposing counsel(s) and consumer if pertains to **CCP 1985.3**. Can be cut to five days with personal service on opposing counsel (**CCP 1013 (a)**).
- **Five Days** – Subpoena served on witness custodian and witness fees advanced.
- **Fifteen Days** – Minimum statutory time custodian has to comply and make records available for inspection and copying.

Many times the custodian does not even start getting the records ready until the date of the production or even after.



Common Situations

- ✓ The Deposition Officer get the records prior to deposition date and the client wants them **ASAP**. The only way they can do that is if the opposing counsel(s) waive time.
- ✓ The Deposition Officer gets a call or letter from an opposing counsel stating that they are going to file a motion to quash and instructs them not to deliver the records to the client. This is only a notice of their **INTENT** and does not constitute a motion. A motion is a motion and the deposition officer needs to get a copy.



Proper Way

- Obtain out of state commission from court of jurisdiction.
- Prepare subpoena in the jurisdiction where the record custodian is located.
- Set up a deposition with a reporter to receive the records or whatever the procedure is in that jurisdiction.
- Have the local court open a miscellaneous file and pay filing fee.
- Issue the subpoena.
- Have the subpoena served on the custodian.
- Arrange for the copying by the deposition officer or court reporter.





Uniform Law Commission Adopted the Uniform Interstate Depositions and Discovery Act

Under the Uniform Interstate Depositions and Discovery Act*, litigants can present to a Clerk of the Court located in the State where discoverable materials are sought with a Subpoena issued by a Court in the Trial State. Once the Clerk receives the foreign subpoena, the Clerk will issue a Subpoena for service upon the person or entity on which the original subpoena is directed. The terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all Counsel of Record and any party not represented by Counsel.

The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, Letters Rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena is to comply with the rules of state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state.

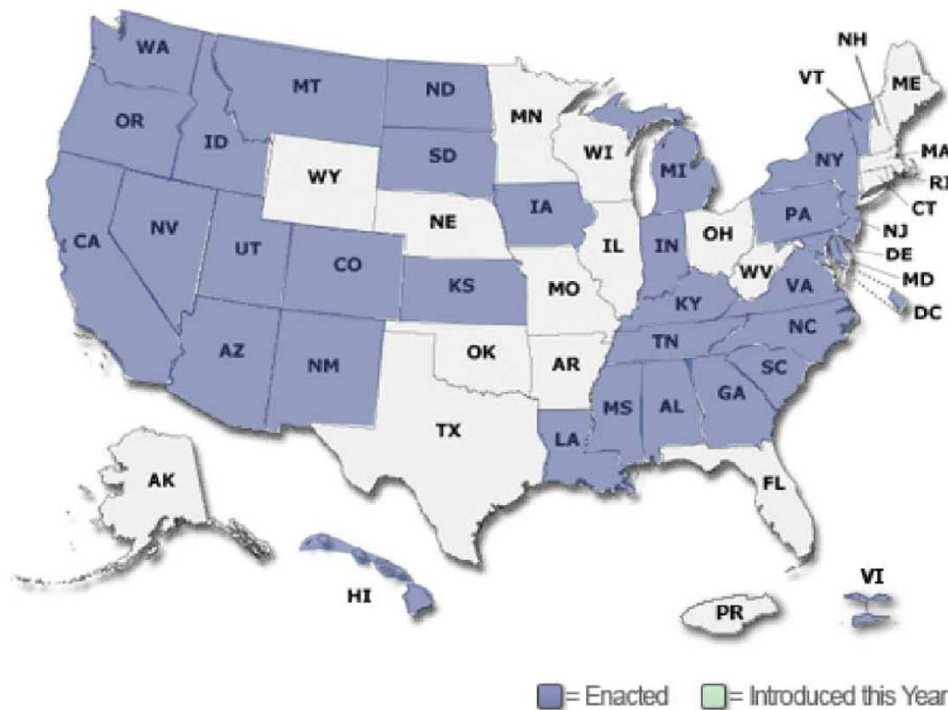
**Foreign jurisdictional requirements as prescribed by the presiding judge will supersede the UIDDA guidelines*

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Legislative Enactment Status
 Interstate Depositions and Discovery Act



New Judicial Council Forms for California

The California Judicial Council has developed new forms for use on **January 1, 2010** when the new law goes into effect, setting forth a new procedure for issuance of foreign deposition subpoenas. The law, California Code of Civil Procedure (CCP) § 2029.010, et seq. has already been published in many code books.* A new California rule of Court, **CRC § 3.1015** took effect on **January 1, 2010**. The forms developed are:

1. Application for Discovery Subpoena in Action Pending Outside California (form **SUBP-030**);
2. Subpoena for Production of Business Records in Action Pending Outside California (form **SUBP-035**);
3. Deposition Subpoena for Personal Appearance in Action Pending Outside California (form **SUBP-040**);
4. Deposition Subpoena for Personal Appearance and Production of Documents and Things in Action Pending Outside California (form **SUBP-045**);
5. Subpoena for Inspection of Premises in Action Pending Outside California (form **SUBP-050**).

**California jurisdictional requirements as prescribed by the presiding judge will supersede the UIDDA guidelines.*



Procedural Changes for the New Foreign Discovery Act

- **\$30 filing fee for filing an application for subpoena, which references the documents necessary to initiate this process.** No longer will the court be allowed to charge a First Appearance Filing Fee, or demand additional documents not referenced in the statute. They will not be allowed to require that the documents be authenticated by the foreign court. The only document required will be a duly issued subpoena - no commission, notice of deposition, letters rogatory, or court order from the foreign court.
- **Standardized Application form.** The courts will file a standardized Judicial Council form to initiate this process, eliminating the disparate demands of local courts.
- **The law specifies that foreign counsel can make the application for a California subpoena.** No longer will court be allowed to demand local counsel to file these forms, a requirement that has never been required since 1885, the year this procedure was introduced by the California legislature.
- **No civil case cover sheet will be required.** Courts will no longer be able to demand this form. The application is the only document that initiates this procedure.
- **Standardized subpoena forms.** Judicial Council deposition subpoena forms will be issued for this procedure, which provides a place for the foreign court jurisdiction and case number.
- **Deposition Subpoena for Records.** The prior law was silent regarding the authority to issue a "records only" subpoena and created an ambiguity. The new law specifically authorizes "records only" subpoenas.
- **Issuance by a California attorney.** Upon presentation of the documents required under the statute, a California attorney may issue a foreign deposition subpoena without going to the local court. This could result in substantial savings when extensive discovery is initiated.



PROCESS & TIMELINE

ORDER ENTRY ● SERVICE ● PRODUCTION



Order Entry

- Research
- Sending Notices
- Subpoena Preparation

Service of Subpoena

Follow-up/Correspondence

- Contacting Third-Party Witness for records
- Scheduling appointments with Third-Party Witness
- Monitoring the progress of the subpoena
- Corresponding with all parties





Production

- Scanning records
- QC of documents
- Printing/uploading records
- Assembling records

Forms of Production (EDD/ESI):

- Paper
- Electronic Files
 - PST (E-mails) , Excel, etc.
- Servers / Laptops



Questions & Answers

