

RESOLUTION 05-02-2014

DIGEST

Civil Procedure: Clarifying Time To Produce Records Responsive to Deposition Subpoena
Amends Code of Civil Procedure section 2025.270 to provide that deposition date must occur at least 20 days after issuance, or 15 days after service, of a subpoena for records.

RESOLUTIONS COMMITTEE RECOMMENDATION APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 2025.270 to provide that deposition date must occur at least 20 days after issuance, or 15 days after service, of a subpoena for records. This resolution should be approved in principle because it would remove ambiguity from the current statute and provide both litigants and third parties with a clear calculation of a deposition date in response to a deposition subpoena.

Presently, the statute provides that “the deposition date shall be scheduled” at least 20 days after issuance of the subpoena for consumer or employment records. The proponent argues that a party may “issue” a subpoena – that is, to sign and thus make effective the subpoena – at a date before actually “serving” the subpoena, thus shortening the actual time a party has to respond to the subpoena. Although proponent does not cite an instance where “issuance” has been interpreted to mean something other than “service,” it is conceivable that, because the word “service” is not used in the statute, a court could consider “issuance” to mean something different. For example, Government Code section 12963.1 states that the Department of Fair Employment and Housing may “issue and serve” a subpoena, which could imply that issuance of a subpoena and service of a subpoena are two different things. The goal of this resolution – to clarify that a party must be given at least 15 days to respond to a subpoena – is well taken, as parties, consumers, and third parties to litigation should be given as clear instructions as possible as to when a deposition may be set when a party has served a subpoena seeking consumer or employment records.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2025.270 to read as follows:

§ 2025.270

- 1 (a) An oral deposition shall be scheduled for a date at least 10 days after service of the
- 2 deposition notice.
- 3 (b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding
- 4 under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, an oral deposition shall be
- 5 scheduled for a date at least five days after service of the deposition notice, but not later than five
- 6 days before trial.
- 7 (c) Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3 or 1985.6,
- 8 the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness

9 commanded by a deposition subpoena to produce personal records of a consumer or employment
10 records of an employee, the deposition shall be scheduled for a date at least 20 days after the
11 issuance or 15 days after service of that subpoena, whichever is later.

12 (d) On motion or ex parte application of any party or deponent, for good cause shown, the
13 court may shorten or extend the time for scheduling a deposition, or may stay its taking until the
14 determination of a motion for a protective order under Section 2025.420.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Existing Code of Civil Procedure section 2025.270, subdivision (c) provides that a deposition subpoena for consumer or employment records must reflect a date at least 20 days after issuance of the subpoena, which is vague at best. As the law currently stands, the possibility is left open that someone could “issue” a subpoena for the production of consumer or employment records, but delay service of such subpoena, thereby shortening the time for response. The law should be clear as to the minimum time that the deponent has to gather and supply the records. Thus use of the term “issuance” by itself is not sufficiently clear to allow objective measurement.

The Solution: This Resolution would adopt the same standard for service as that found in Code of Civil Procedure section 2020.410, subdivision (c), for business and consumer records, i.e., 20 days after issuance or 15 days after service, whichever is later.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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