

RESOLUTION 05-03-2014

DIGEST

Discovery: Time for Production of Documents by a Non-Party at Deposition

Amends Code of Civil Procedure section 2020.220 to provide that a document and testimony subpoena requires the same amount of notice as a documents-only subpoena.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 2020.220 to provide that a document and testimony subpoena requires the same amount of notice as a documents-only subpoena. This resolution should be approved in principle, because it provides clarity to parties on the amount of notice required for a records and testimony deposition subpoena, by reconciling the notice period with the period for a records-only deposition subpoena.

The proposed notice period – the later of 20 days after issuance of the subpoena, or 15 days after service – is identical to the notice period currently required for a records-only deposition subpoena under Code of Civil Procedure section 2020.410, subdivision (c). The two notice periods should be made consistent with one another.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2020.220 to read as follows:

§ 2020.220

1 (a) Subject to subdivision (c) of Section 2020.410, service of a deposition subpoena shall
2 be effected a sufficient time in advance of the deposition to provide the deponent a reasonable
3 opportunity to locate and produce any designated business records, documents, electronically
4 stored information, and tangible things, as described in Article 4 (commencing with Section
5 2020.410), and, where personal attendance is commanded, a reasonable time to travel to the
6 place of deposition. The deposition cannot proceed until 20 days after the deposition subpoena
7 is issued, or 15 days after it is served, whichever is longer.

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9 [subdivisions (b) through (m) remain unchanged]

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(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 2020.410 provides for 20 days' notice where the Deposition Subpoena is only requesting production of documents. Code of Civil Procedure section 2020.220, for production of documents and testimony requires only a

“sufficient time in advance of the deposition” to allow the deponent to locate and produce documents. Thus it appears that the legislature contemplated that a subpoena requesting both testimony and production of documents, could require the deposition to occur much more quickly than if only a document production is requested. The two statutes should be conformed to provide the same time limitation of 20 days after the deposition subpoena is issued, or 15 days after it is served, whichever is longer.

The Solution: This Resolution conforms the two statutes by amending Code of Civil Procedure section 2020.220 to also provide the same time limitation of 20 days after the deposition subpoena is issued, or 15 days after it is served, whichever is longer

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

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

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