

RESOLUTION 08-09-2016

DIGEST

Expert Discovery: Exchange Information

Amends Code of Civil Procedure section 2034.260 to allow service of expert witness information by any means permitted by the Discovery Act.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2034.260 to read as follows:

§2034.260

- 1 (a) All parties who have appeared in the action shall exchange information concerning
- 2 expert witnesses in writing on or before the date of exchange specified in the demand. The
- 3 exchange of information may occur at a meeting of the attorneys for the parties involved or by a
- 4 ~~mailing~~ servicing the information on or before the date of exchange.
- 5 (b) The exchange of expert witness information shall include either of the following:
- 6 (1) A list setting forth the name and address of any person whose expert opinion that
- 7 party expects to offer in evidence at the trial.
- 8 (2) A statement that the party does not presently intend to offer the testimony of any
- 9 expert witness.
- 10 (c) If any witness on the list is an expert as described in subdivision (b) of Section
- 11 2034.210, the exchange shall also include
- 12 or be accompanied by an expert witness declaration signed only by the attorney for the party
- 13 designating the expert, or by that party if that party has no attorney. This declaration shall be
- 14 under penalty of perjury and shall contain:
- 15 (1) A brief narrative statement of the qualifications of each expert.
- 16 (2) A brief narrative statement of the general substance of the testimony that the expert is
- 17 expected to give.
- 18 (3) A representation that the expert has agreed to testify at the trial.
- 19 (4) A representation that the expert will be sufficiently familiar with the pending action to
- 20 submit to a meaningful oral deposition concerning the specific testimony, including any opinion
- 21 and its basis, that the expert is expected to give at trial.
- 22 (5) A statement of the expert's hourly and daily fee for providing deposition testimony
- 23 and for consulting with the retaining attorney.

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: This statute limits service of the expert witness information exchange to an in-person meeting between counsel or by mail. However, Code of Civil Procedure §2016.050 expressly permits any method of discovery to be served in accordance with Section 1013 (which

includes mail, express mail, and facsimile or electronic transmission, if agreed to by the parties). There is no rational reason for limiting the method of service to essentially personal service by the attorneys or by mail.

The Solution: This allows the expert witness information to be served in any manner authorized by the Code for discovery, in addition to an in-person service by counsel.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 2034.260 to allow service of expert witness information by any means permitted by the Discovery Act. This resolution should be approved in principle because there is no sound policy reason why such information must be served only at an in-person meeting of the attorneys, or by mail, as currently required.

Code of Civil Procedure section 2034.240 provides for “service” of a demand for exchange of expert witness information, without limiting the manner in which the party must serve the demand. In contrast, section 2034.260 requires that where an exchange is demanded, the exchange must take place either in a meeting between the attorneys, or by mail, only. There is no reason for this limitation on the manner of the exchange, or why the exchange of information should not also be allowed by any other authorized method of service of discovery, such as by personal service, on opposing counsel. This resolution would allow expert witness information to be exchanged by the same methods as other discovery may be served.