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DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY SESSIONS 1-5, ***
7, AND 8, AND URGENCY LEGISLATION THROUGH CH 713 OF THE 2010 REGULAR SESSION

CODE OF CIVIL PROCEDURE
Part 4. Miscellaneous Provisions
Title 4. Civil Discovery Act
Chapter 18. Simultaneous Exchange of Expert Witness Information
Article 2. Demand for Exchange of Expert Witness Information

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Code Civ Proc § 2034.260 (2009)

§ 2034.260. How information to be exchanged; What information to be included; When expert witness declaration required; Contents

(a) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by a mailing on or before the date of exchange.

(b) The exchange of expert witness information shall include either of the following:

(1) A list setting forth the name and address of any person whose expert opinion that party expects to offer in evidence at the trial.

(2) A statement that the party does not presently intend to offer the testimony of any expert witness.

(c) If any witness on the list is an expert as described in subdivision (b) of Section 2034.210, the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain:

(1) A brief narrative statement of the qualifications of each expert.

(2) A brief narrative statement of the general substance of the testimony that the expert is expected to give.

(3) A representation that the expert has agreed to testify at the trial.

(4) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its basis, that the expert is expected to give at trial.

(5) A statement of the expert's hourly and daily fee for providing deposition testimony and for consulting with the retaining attorney.

HISTORY:

Added Stats 2004 ch 182 § 23 (AB 3081), operative July 1, 2005.

NOTES:**Historical Derivation:**

Former CCP § 2034(f), added Stats 1986 ch 1336 § 2, amended Stats 1987 ch 86 § 17, Stats 1988 ch 553 § 7, Stats 1990 ch 771 § 2, ch 1392 § 2, Stats 1992 1301 § 1, Stats 1993 ch 3 § 1, Stats 1993 ch 678 § 1, Stats 1995 ch 797 § 1, Stats 2004 ch 171 § 6.

Law Revision Commission Comments:**2004**

Subdivision (a) of Section 2034.260 continues the introductory paragraph of former Section 2034(f) without change.

Subdivision (b) continues former Section 2034(f)(1) (including items (A) and (B)) without change.

Subdivision (c) continues former Section 2034(f)(2) (including items (A)-(E)) without change, except to conform the cross-reference.

Editor's Notes

For notes of decisions derived from cases decided under former CCP § 2034, see *CCP § 2034.010*.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 86 "Automobiles: Pretrial Motions And Settlement Negotiations".

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.202.

Cal. Points & Authorities (Matthew Bender(R)) ch 88 "Discovery: Exchange Of Expert Witness Information" § 88.11.

Cal. Points & Authorities (Matthew Bender(R)) ch 88 "Discovery: Exchange Of Expert Witness Information" § 88.31.

Cal. Points & Authorities (Matthew Bender(R)) ch 88 "Discovery: Exchange Of Expert Witness Information" § 88.40.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.11.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.14.

Matthew Bender (R) Practice Guide: Cal. Debt Collection and Enforcement of Judgments § 7.21[2].

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure § 4.17[2].

Law Review Articles:

Meet and Confer: Counsel Should Not Rely on Bench Officers to Resolve Basic Pretrial Procedural Issues. 29 *LA Law* 26 (October, 2006).

Hierarchy Notes:

Pt. 4, Tit. 4 Note

Pt. 4, Tit. 4, Ch. 18 Note

NOTES OF DECISIONS

Where the general substance of a defense expert's opinion at a deposition was that one would not expect plaintiff to have suffered any injury arising from a low speed automobile accident, the expert's subsequent testimony at trial regarding the lack of any expectation of specific knee or shoulder injury resulted in no unfair surprise for plaintiff, and the expert did not exceed the general scope of his deposition testimony. *DePalma v. Rodriguez* (2007, *Cal App 2d Dist*) 151 *Cal App 4th* 159, 59 *Cal Rptr 3d* 479, 2007 *Cal App LEXIS* 839.

Trial court erred in excluding appellant's expert witness evidence on the ground that appellant failed to make a timely exchange of expert witness information because discovery was automatically reopened when the prior judgment was reversed, the matter remanded, and a new initial trial date set, and the rule that discovery is automatically reopened following reversal on appeal is particularly applicable to expert witness discovery. Because neither party made a *CCP* § 2034.210 demand for exchange of expert witness information in connection with the new initial trial date, neither was required to comply with *CCP* § 2034.260, and because the improperly excluded expert witness evidence regarding damages could have enabled appellant to overcome a nonsuit, reversal of the judgment was required. *Hirano v. Hirano* (2007, *2d Dist*) 2007 *Cal App LEXIS* 2054.

Where no demand for the exchange of expert witness information is made by any party, no party is required to comply with the statutory exchange requirements. *Hirano v. Hirano* (2007, *2d Dist*) 2007 *Cal App LEXIS* 2054.