

3 of 7 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED
Copyright (c) 2013 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** This document is current through the 2013 Supplement ***
(All 2012 legislation, 2012 Governor's Reorg. Plan No. 2 and all
propositions approved by the electorate at the June and November 2012 elections)

CODE OF CIVIL PROCEDURE
Part 4. Miscellaneous Provisions
Title 4. Civil Discovery Act
Chapter 9. Oral Deposition Inside California
Article 4. Objections, Sanctions, Protective Orders, Motions to Compel, and Suspension of Depositions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Code Civ Proc § 2025.420 (2013)

§ 2025.420. Motion for protective order; What order may include; Discovery of electronically stored information; Denial of protective order; Monetary sanction

(a) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video recording of the deposition testimony of a treating or consulting physician or of any expert witness, intended for possible use at trial under subdivision (d) of Section 2025.620, be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by Sections 2025.250 and 2025.260.

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, copied, tested, or sampled, or that conditions be set for the production of electronically stored information designated in the deposition notice.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

(16) That examination of the deponent be terminated. If an order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

(c) The party, deponent, or any other affected natural person or organization that seeks a protective order regarding the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(d) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f).

(e) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(f) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exist:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(g) If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i)

(1) Notwithstanding subdivision (h), absent exceptional circumstances, the court shall not impose sanctions on any party, deponent, or other affected natural person or organization or any of their attorneys for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

NOTES:

Amendments:

2012 Amendment:

(1) Substituted "copied, tested, or sampled, or that conditions be set for the production of electronically stored information designated in the deposition notice" for "or copied" in subd (b)(11); (2) added subds (c)-(f) and (i); and (3) redesignated former subds (c) and (d) to be subds (g) and (h).

Historical Derivation:

Former CCP § 2025(i), (n) 3rd and 4th snt, added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 8, Stats 1988 ch 160 § 20 (ch 553 prevails), ch 553 § 3, Stats 1989 ch 1137 § 1, ch 1360 § 13, ch 1416 § 29.5, Stats 1990 ch 1491 § 11.5, Stats 1991 ch 1090 § 10, Stats 1993 ch 926 § 9, Stats 1994 ch 660 § 5, Stats 1995 ch 576 § 7, Stats 1997 ch 395 § 1, Stats 1998 ch 875 § 1, ch 932 § 22, ch 974 § 4, Stats 1999 ch 892 § 13, Stats 2000 ch 474 § 1, Stats 2001 ch 812 § 9.6, Stats 2002 ch 1068 § 2.

Law Revision Commission Comments:

2004

Subdivision (a) of Section 2025.420 continues the first paragraph of former Section 2025(i) without substantive change.

Subdivision (b) continues the second paragraph (including items (1)-(15)) of former Section 2025(i) without change, except to conform the cross-references. Subdivision (b)(16) continues the third and fourth sentences of former

Section 2025(n) without substantive change.

Subdivision (c) continues the next-to-last paragraph of former Section 2025(i) without change.

Subdivision (d) continues the last paragraph of former Section 2025(i) without change, except to conform the cross-reference.

Editor's Notes

For notes of decisions derived from cases decided under former CCP § 2025, see *CCP § 2025.010*.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 85 "Automobiles: Discovery".

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.251.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.341.

Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.60.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.80.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.84.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.86.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.100.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.101.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.102.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.103.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.110.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.170.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 89A "Discovery: Review Of Discovery Orders" § 89A.30.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.12.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.13.

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

Law Review Articles:

Case Strategy: Defending Depositions. *29 LA Law 34* (Fall, 2006).

Hierarchy Notes:

Pt. 4, Tit. 4 Note

Emerging Issues Analysis

2012 Changes to the California Electronic Discovery Act

California's 2012 "clean up" legislation expands and clarifies application of the Electronic Discovery Act and specifically extends the application of numerous sections of the Civil Discovery Act to electronically stored information ("ESI"). This commentary addresses changes affecting the general provisions of the Civil Discovery Act, subpoenas, ESI that is not reasonably accessible, sanctions, and inadvertent production of privileged ESI.

LexisNexis 50 State Surveys, Legislation & Regulations

Depositions & Interrogatories

NOTES OF DECISIONS 1. Illustrative Cases

1. Illustrative Cases

Deposition transcripts are not covered by the pending litigation exemption to public disclosure, *Gov C § 6254(b)*, because they are available to the public under *CCP § 2025.570*; therefore, a newspaper was entitled to disclosure of transcripts relating to litigation between a university and two employees. The court noted that in certain cases a deposition transcript could be protected under other statutes if, for example, a protective order were obtained under *CCP § 2025.420*. *Board of Trustees of California State University v. Superior Court* (2005, *Cal App 4th Dist*) 132 *Cal App 4th* 889, 34 *Cal Rptr 3d* 82, 2005 *Cal App LEXIS 1443*, review denied *UC Board of Trustees v. S.C. (Copley Press)* (2005, *Cal*) 2005 *Cal LEXIS 12210*.

Trial court erred in imposing \$5,000 in sanctions against plaintiff and her attorney for opposing a motion for a protective order by a deponent in plaintiff's personal injury action against defendant, who was the deponent's wife. While the trial court may properly have rejected plaintiff's contention concerning the scope of the exception to the marital privilege, the conflicting legal authority on an unsettled issue provided substantial justification for plaintiff's position, thereby negating the basis for the sanction order. *Diepenbrock v. Brown* (2012, *1st Dist*) 208 *Cal App 4th* 743, 2012 *Cal App LEXIS 896*.