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DEERING'S CALIFORNIA CODES ANNOTATED  
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(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 § 2025.480 (2013)*

**§ 2025.480. Motion for order compelling answer or production; Time for motion; Notice; Discovery of electronically stored information; Certified copy of relevant parts of transcript; Monetary and other sanctions**

(a) If a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production.

(b) This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) Notice of this motion shall be given to all parties and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the deponent objecting to or opposing 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 the 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.

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

(f) 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.

**(g)** 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 exists:

**(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.

**(h)** Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio or video technology, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion.

**(i)** If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

**(j)** 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 to compel an answer or production, 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.

**(k)** If a deponent fails to obey an order entered under this section, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party deponent or against any party with whom the deponent is affiliated.

**(l)**

**(1)** Notwithstanding subdivisions (j) and (k), absent exceptional circumstances, the court shall not impose sanctions on a deponent or any attorney of a deponent 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) Added ", electronically stored information," in subd (a); (2) added subds (d)-(g) and (l); and (3) redesignated former subds (d)-(g) to be subds (h)-(k).

**Historical Derivation:**

Former CCP § 2025(o), 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.

**Amendments:****2005 Amendment:**

(1) Deleted the comma after "to all parties" in subd (c); (2) added "an" after "a motion to compel" in subd (f); and (3) deleted the comma after "In lieu of" in the last sentence of subd (g).

**Law Revision Commission Comments:****2004**

Subdivision (a) of Section 2025.480 continues the first sentence of former Section 2025(o) without change.

Subdivision (b) continues the second sentence of former Section 2025(o) without substantive change.

Subdivision (c) continues the third and fourth sentences of former Section 2025(o) without change.

Subdivision (d) continues the fifth and sixth sentences of former Section 2025(o) without change.

Subdivision (e) continues the seventh sentence of former Section 2025(o) without change.

Subdivision (f) continues the second paragraph of former Section 2025(o) without change, except to conform the cross-reference.

Subdivision (g) continues the third paragraph of former Section 2025(o) without change, except to replace "subdivision" with "section" and to conform the cross-references.

**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 2 "Procedural Guide For Civil Actions".*

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

*Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.15.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.20.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.30.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.11.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.30.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.45.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.50.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 84 "Discovery: Interrogatories" § 84.11.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.90.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 180 "Pretrial Proceedings" § 180.31.*

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

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

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 13.23.

**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 &amp; Interrogatories

NOTES OF DECISIONS 1. Illustrative Cases 2. Sanctions in Favor of Non-Propounding Parties 3. Construction 4. Construction with Other Law 5. Substantial Justification

**1. Illustrative Cases**

In an action alleging tortious bad faith in a delayed payment of underinsured motorist coverage, information regarding claims-adjustment software was potentially discoverable. The reviewing court directed that the insured be permitted to renew her motion to compel and noted that it was particularly important for the parties meet, as provided by *CCP § 2025.480(b)*, because some of the information could have been privileged or proprietary business information subject to trade secret protection or not discoverable for some other reason. *Wilson v. 21st Century Ins. Co.* (2006, Cal App 2d Dist) 136 Cal App 4th 97, 38 Cal Rptr 3d 514, 2006 Cal App LEXIS 114, rehearing denied *Wilson v. 20th Century Insurance Company* (2005) 2006 Cal. App. LEXIS 305, aff'd *Wilson v. 21st Century Insurance Co.* (2007, Cal) 42 Cal 4th 713, 68 Cal Rptr 3d 746, 171 P 3d 1082, 2007 Cal LEXIS 13314.

In a product liability suit relating to the absence of a three-point harness in a minivan, discovery sanctions against the manufacturer were proper, even without a violation of a discovery order, because the sanctions were based on a pattern of abuse. The court noted that under *CCP §§ 2025.480(f), (g)* and *2031.310(d), (e)*, a party could be sanctioned only after failing to comply with an order; however, a violation of a discovery order was not a prerequisite to issue and evidentiary sanctions when the offending party engaged in a pattern of willful discovery abuse that caused the unavailability of evidence. *Karlsson v. Ford Motor Co.* (2006, Cal App 2d Dist) 140 Cal App 4th 1202, 45 Cal Rptr 3d 265, 2006 Cal App LEXIS 976, rehearing denied *Karlsson v. Ford Motor Company* (2006) 2006 Cal. App. LEXIS 1226, review denied *Karlsson (Agneta) v. Ford Motor Company* (2006, Cal) 2006 Cal LEXIS 11662.

Trial court had authority under *CCP § 391.7* to dismiss plaintiff's lawsuit during the pendency of litigation because plaintiff, a vexatious litigant under a pre-filing order, was not represented by counsel and had not obtained permission from the presiding judge to proceed unrepresented. Furthermore, the record did not establish that plaintiff's efforts to retain substitute counsel were sufficiently diligent so that the trial court's denial of further continuances constituted an abuse of discretion or a violation of plaintiff's due process right to counsel, and the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration based on her late hiring of new counsel because she could not reinstate her action simply by her late compliance with the order to retain counsel. *Forrest v. Department of Corporations* (2007, Cal App 2d Dist) 150 Cal App 4th 183, 58 Cal Rptr 3d 466, 2007 Cal App LEXIS 648.

Motion to compel production of subpoenaed business records from nonparties in an unfair competition action was untimely because it was filed more than 60 days after the date set for the production; the objections served in response to the subpoenas constituted a record of a deposition within the meaning of *CCP § 2025.480(b)*, and the lack of express time limits in *CCP § 1987.1* for bringing a motion to compel did not mean that the motion was timely because it was brought within a reasonable time. *Unzipped Apparel, LLC v. Bader* (2007, 2d Dist) 67 Cal Rptr 3d 111, 156 Cal App 4th 123, 2007 Cal App LEXIS 1721.

**2. Sanctions in Favor of Non-Propounding Parties**

Although a trial court did not abuse its discretion in imposing a terminating sanction by dismissing a former employee's complaint against his former employer in light of the employee's refusal to cooperate with the employer's discovery with respect to his complaint against the employer, the trial court erred in imposing terminating sanctions in favor of parties who did not propound discovery themselves or show how they were prejudiced by the former

employee's failure to comply with the discovery requests propounded by others; pursuant to *CCP* §§ 2025.480(g) and 2030.300(e), in the case of a party who did not propound the discovery, an award of sanctions is justified only if the non-propounding party shows it suffered a detriment as the result of the sanctioned party's misuse of the discovery process. *Parker v. Wolters Kluwer United States, Inc.* (2007, Cal App 2d Dist) 149 Cal App 4th 285, 57 Cal Rptr 3d 18, 2007 Cal App LEXIS 490.

### 3. Construction

The 60-day limit for a motion to compel production applies to a subpoena for business records and begins to run when the objections are received, which constitutes the record of the deposition under *CCP* § 2025.480(b). *Unzipped Apparel, LLC v. Bader* (2007, 2d Dist) 67 Cal Rptr 3d 111, 156 Cal App 4th 123, 2007 Cal App LEXIS 1721.

### 4. Construction with Other Law

(Unpublished) Plaintiff failed to state a claim against an attorney and others under 42 U.S.C.S. § 12203(a) and (b) of the Americans with Disabilities Act because filing a motion to compel in the course of a discovery dispute was an appropriate step towards resolving the dispute pursuant to *CCP* § 2025.480 and *Fed. R. Civ. P.* 37 and was not an act of retaliation, coercion, or intimidation. *Louie v. Carichoff* (2008, CA9 Cal) 279 Fed Appx 465, 2008 US App LEXIS 10951, superseded (2008, 9th Cir. Cal.) 300 Fed. Appx. 579, 2008 U.S. App. LEXIS 26678, withdrawn (2008, 9th Cir. Cal.) 300 Fed. Appx. 579, 2008 U.S. App. LEXIS 27083.

Trial court did not err in granting a motion for sanctions where no prior motion to compel deposition responses had been filed. On its face, *CCP* § 2025.480 does not require a party to move to compel answers before seeking monetary sanctions pursuant to *CCP* § 2023.030. *Tucker v. Pacific Bell Mobile Services* (2010, 1st Dist) 186 Cal App 4th 1548, 115 Cal Rptr 3d 9, 2010 Cal App LEXIS 1255.

### 5. Substantial Justification

Party opposing a motion for sanctions has the burden of showing good cause when it asks for an in camera inspection of documents to prove it reasonably applied a protective order safeguarding privacy interests, as an in camera inspection of numerous documents with multiple redactions is time-consuming and burdensome, and there must be at least some minimal showing. Accordingly, a trial court had not abused its discretion in refusing to hold an in camera document inspection for the purpose of deciding whether a monetary sanction was appropriate or in imposing a monetary sanction against defendant without conducting an in camera inspection where, based on defendant's own declaration and its reliance upon a patently inapt federal regulation, the trial court reasonably could have concluded that defendant had made excessive redactions without substantial justification. *Doe v. United States Swimming, Inc.* (2011, 6th Dist) 200 Cal App 4th 1424, 2011 Cal App LEXIS 1452.