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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 6. Nonparty Discovery  
Article 4. Subpoena Commanding Only Production of Business Records for Copying

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*Cal Code Civ Proc § 2020.410 (2013)*

**§ 2020.410. What deposition subpoena commanding only production of business records to contain; Description of records; Records pertaining to consumer**

(a) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired.

(b) Notwithstanding subdivision (a), specific information identifiable only to the deponent's records system, like a policy number or the date when a consumer interacted with the witness, is not required.

(c) A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with Section 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(d) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or subdivision (b) of Section 1985.6, as applicable, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as applicable.

**NOTES:**

**Amendments:**

**2012 Amendment:**

Added ", and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired" in subd (a).

**Historical Derivation:**

Former CCP § 2020(d)(1), (2), added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 5, Stats 1992 ch 876 § 9, Stats 1993 ch 926 § 8, Stats 1999 ch 444 § 3, Stats 2002 ch 1068 § 1.

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

Subdivisions (a) and (b) of Section 2020.410 continue the first sentence of former Section 2020(d)(1) without substantive change.

Subdivision (c) continues the second, third, and fourth sentences of former Section 2020(d)(1) without substantive change.

Subdivision (d) continues former Section 2020(d)(2) without change.

**Editor's Notes**

For notes of decisions derived from cases decided under *CCP § 2020*, see *CCP § 2020.010*.

**Collateral References:**

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 193 "Discovery: Depositions".*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.46.*

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

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

*Cal. Employment Law (Matthew Bender(R)), § 61.04.*

*Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.30.*

*Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.32.*

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 6.14.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 6.17-6.18.

### **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.

### **NOTES OF DECISIONS**

Contrary provisions in *CCP* §§ 1985 and 1987.5 are inconsistent with, and therefore superseded by, *CCP* § 2020.510 because *CCP* § 2020.030 provides that the general subpoena provisions that include §§ 1985 and 1987.5 apply to a deposition subpoena except as modified in the chapter, and treating §§ 1985 and 1987.5 as the controlling provision would be at odds with § 2020.030 and with the fundamental understanding that has prevailed since the adoption of California's Civil Discovery Act, *CCP* §§ 2016.010 et seq., that to the extent that its provisions concerning nonparty discovery overlap or conflict with other provisions of more general application, the provisions of the Civil Discovery Act prevail. Moreover, because a supporting affidavit need not be served with a deposition subpoena under *CCP* § 2020.310, requiring only attendance and testimony, or with a deposition subpoena under *CCP* § 2020.410, requiring only the production of business records, there is no apparent reason why an affidavit should be required when a deposition subpoena under § 2020.510 calls for both attendance and testimony and the production of documents. *Terry v. Slico* (2009, 1st Dist) 175 Cal App 4th 352, 95 Cal Rptr 3d 900, 2009 Cal App LEXIS 1022.