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§ 2034.720. When leave to submit tardy expert witness information may be granted

The court shall grant leave to submit tardy expert witness information only if all of the following conditions are satisfied:

- (a) The court has taken into account the extent to which the opposing party has relied on the absence of a list of expert witnesses.
- (b) The court has determined that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits.
- (c) The court has determined that the moving party did all of the following:
 - (1) Failed to submit the information as the result of mistake, inadvertence, surprise, or excusable neglect.
 - (2) Sought leave to submit the information promptly after learning of the mistake, inadvertence, surprise, or excusable neglect.
 - (3) Promptly thereafter served a copy of the proposed expert witness information described in [Section 2034.260](#) on all other parties who have appeared in the action.
 - (d) The order is conditioned on the moving party making the expert available immediately for a deposition under Article 3 (commencing with [Section 2034.410](#)), and on any other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

History

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

▼ Annotations

Notes

⚡ Derivation:

⚡ Editor's Notes—

⚡ Derivation:

Former CCP § 2034(*l*), 2nd para, 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](#).

⚡ Editor's Notes—

For notes of decisions derived from cases decided under former CCP § 2034, see [CCP § 2034.010](#).

Commentary

Law Revision Commission Comments:

2004—

The introductory clause and subdivisions (a), (b), and (c) of [Section 2034.720](#) continue the first sentence of the second paragraph of former [Section 2034](#) (*l*) without substantive change.

Subdivision (d) continues the second sentence of the second paragraph of former [Section 2034](#) (*l*) without substantive change.

Notes to Decisions

1. Generally

Exclusion of expert testimony as a consequence of unreasonable failure to timely disclose expert witness information without requesting a protective order was not mandatory because the objecting party's disclosure also was untimely; however, the trial court did not abuse its discretion when it relied on its inherent authority to exclude the testimony after finding no exceptional circumstances and no showing of mistake, inadvertence, surprise, or excusable neglect. [Cottini v. Enloe Medical Center](#) (Cal. App. 3d Dist. May 21, 2014), 226 Cal. App. 4th 401, 172 Cal. Rptr. 3d 4, 2014 Cal. App. LEXIS 439.

Research References & Practice Aids

Treatises:

[Cal. Points & Authorities \(Matthew Bender\) ch 88 "Discovery: Exchange Of Expert Witness Information" § 88.13.](#)

Practice Guides

Matthew Bender® Practice Guide: [Cal. Trial and Post Trial Civil Procedure §§ 29.04](#)[1], 29.10, 29.11[1], 29.12[4], 29.14[2], 29.18[3].

Hierarchy Notes:

[Cal Code Civ Proc Pt. 4](#)

[Cal Code Civ Proc Pt. 4, Title 4](#)

[Cal Code Civ Proc Pt. 4, Title 4, Ch. 18](#)

[Cal Code Civ Proc Pt. 4, Title 4, Ch. 18, Art. 5](#)

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