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### Cal Code Civ Proc § 2020.010

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[CODE OF CIVIL PROCEDURE \(§§ 1 – 2107\)](#)
[Part 4 Miscellaneous Provisions \(§§ 1834 – 2107\)](#)
[Title 4 Civil Discovery Act \(Chs. 1 – 20\)](#)
[Chapter 6 Nonparty Discovery \(Arts. 1 – 5\)](#)
[Article 1 General Provisions \(§§ 2020 – 2020.030\)](#)

#### § 2020.010. Methods for discovery within state from nonparty

(a) Any of the following methods may be used to obtain discovery within the state from a person who is not a party to the action in which the discovery is sought:

- (1) An oral deposition under Chapter 9 (commencing with [Section 2025.010](#)).
- (2) A written deposition under Chapter 11 (commencing with [Section 2028.010](#)).
- (3) A deposition for production of business records and things under Article 4 (commencing with [Section 2020.410](#)) or Article 5 (commencing with [Section 2020.510](#)).

(b) Except as provided in subdivision (a) of [Section 2025.280](#), the process by which a nonparty is required to provide discovery is a deposition subpoena.

#### History

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

Annotations

#### Notes

Derivation:

Former CCP § 2020(a), 1st and 2nd snt, 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](#).

## Commentary

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### Law Revision Commission Comments:

#### 2004—

Subdivision (a) of [Section 2020.010](#) continues the first sentence of former [Section 2020\(a\)](#) without substantive change.

Subdivision (b) continues the second sentence of former [Section 2020\(a\)](#) without change, except to conform the cross-reference.

## Notes to Decisions

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### ⚡ Decisions Under Current Law

#### ⚡ 1. Generally

In a case where a previously declared father sought to vacate a default paternity judgment, trial court did not have personal jurisdiction over the child or his mother who were nonparties, and therefore its attempt to order the mother and child to submit to genetic testing had no effect; previously declared father did not invoke nonparty discovery procedures outlined in [CCP §§ 2020.010](#) et seq., and in any event the mother could have been, and pursuant to [CCP § 389\(a\)\(2\)\(i\)](#) the child as an adult should have been, joined as a party to the proceeding. [San Mateo County Dept. of Child Support Services v. Clark \(Cal. App. 1st Dist. 2008\)](#), 168 Cal. App. 4th 834, 85 Cal. Rptr. 3d 763, 2008 Cal. App. LEXIS 2356.

Even if it were assumed that plaintiff had tried informally to obtain one or more contracts from an airline defendant prior to filing her claim under [Lab C § 2810](#), there was no indication that plaintiff attempted to utilize any formal discovery methods such as those listed in [CCP § 2020.010](#). Because plaintiff, upon obtaining the contracts, could have ascertained whether they were underfunded, the record did not support plaintiff's contention that she was necessarily limited to making general allegations in support of the [Lab C § 2810](#) claim. [Hawkins v. TACA Internat. Airlines, S.A. \(Cal. App. 2d Dist. 2014\)](#), 223 Cal. App. 4th 466, 167 Cal. Rptr. 3d 268, 2014 Cal. App. LEXIS 72.

#### ⚡ 2. Construction

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 [CCP §§ 1985](#) and [1987.5](#) apply to a deposition subpoena except as modified in the chapter, and treating [CCP §§ 1985](#) and [1987.5](#) as the controlling provision would be at odds with [CCP § 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 [CCP § 2020.510](#) calls for both attendance and testimony and the production of documents. [Terry v. SLICO \(Cal. App. 1st Dist. 2009\)](#), 175 Cal. App. 4th 352, 95 Cal. Rptr. 3d 900, 2009 Cal. App. LEXIS 1022.

#### ⚡ 3. Applicability

Loan servicers were not liable under TILA and the Home Owners Equity Protection Act under [15 U.S.C.S. §§ 1601\(a\)](#), [1639\(h\)](#), and [1641](#) because the borrowers accepted the representation that they were mere loan servicers and the borrowers made no allegations that the servicers were owners of the obligation at issue unless the borrowers could show that nonparty discovery under [CCP § 2020.010](#) and [Fed. R. Civ. P. 45](#) revealed a basis for asserting viable claims. [Jones v. Premier One Funding, Inc. \(N.D. Cal. Mar. 10, 2010\)](#), 2010 U.S. Dist. LEXIS 21715.

As a special proceeding of a civil nature, a civil commitment proceeding under the California Sexually Violent

Predators Act (SVPA), [W & I C §§ 6600](#) et seq., must apply the rules set forth in the California Civil Discovery Act of 1986, former CCP §§ 2016 et seq. (now §§ 2016.010 et seq.). However, a defendant cannot claim the benefits of the civil discovery rules without demonstrating compliance with their requirements, and, accordingly, even though defendant in an SVPA proceeding was entitled to the victims' contact information, because he failed to make a timely demand for that information as required under the Civil Discovery Act, the trial court had no obligation to grant his request. [People v. Dixon \(Cal. App. 4th Dist. 2007\)](#), 148 Cal. App. 4th 414, 56 Cal. Rptr. 3d 33, 2007 Cal. App. LEXIS 319.

#### 4. Business Records

Motions to compel nonparty state agencies to comply with business records deposition subpoenas were untimely because the time for filing the motions began to run when objections were served. [Board of Registered Nursing v. Superior Court \(Cal. App. 4th Dist. 2021\)](#), 273 Cal. Rptr. 3d 889, 59 Cal. App. 5th 1011, 2021 Cal. App. LEXIS 42.

#### Decisions Under Former CCP § 2020 (1986)

##### 1. Applicability

Because a state agency is not considered an officer, director, managing agent, or employee of the People of the State of California, former CCP § 2025(h) required the People be served with subpoenas under former CCP § 2020 to compel attendance of witnesses from nonparty state agencies and for them to produce any documents at such depositions. Therefore, the trial court erred as a matter of law in denying the People's motion to quash deposition notices that requested that they produce for deposition persons most knowledgeable from those agencies and documents to accompany the deponents. [People ex rel. Lockyer v. Superior Court \(Cal. App. 4th Dist. 2004\)](#), 122 Cal. App. 4th 1060, 19 Cal. Rptr. 3d 324, 2004 Cal. App. LEXIS 1624.

##### 2. Objections

A nonparty witness who was served with a "records only" deposition subpoena (former CCP § 2020(d)) was not required to file a motion to quash in order to challenge discovery requests for privileged information; it was sufficient to simply object; although nonparties may file a motion to quash, they may simply wait and object, putting the onus on the proponent to move to compel. [Monarch Healthcare v. Superior Court \(Cal. App. 4th Dist. 2000\)](#), 78 Cal. App. 4th 1282, 93 Cal. Rptr. 2d 619, 2000 Cal. App. LEXIS 175.

##### 3. Sanctions

In an insurance bad faith case, substantial evidence supported a sanctions award under former CCP §§ 2020, 2023 against an attorney; although the subpoenas mistakenly identified the attorney as the deposition officer, his claim that he complied by producing the documents to himself was preposterous. [Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh \(Cal. App. 2d Dist. 2005\)](#), 131 Cal. App. 4th 1342, 32 Cal. Rptr. 3d 717, 2005 Cal. App. LEXIS 1269.

## Research References & Practice Aids

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### Cross References:

Service of summons: [CCP §§ 413.10–417.40](#).

Dismissal of action: [CCP §§ 581](#) et seq.

Service of notices: [CCP §§ 1010](#) et seq.

Subpoena for witnesses: [CCP §§ 1985](#), [1985.5](#), [1986](#).

Issuance of subpoena to take deposition: [CCP § 1986](#).

Filing and service of affidavit for subpoena duces tecum inapplicable to provision respecting deposition subpoenas commanding production of business records for copying: [CCP § 1987.5](#).

"Action": [CCP § 2016.020](#).

"Court": [CCP § 2016.020](#).

"Document": [CCP § 2016.020](#).

Scope of discovery: [CCP §§ 2017.010](#) et seq.

Sanctions for discovery misuse: [CCP §§ 2023.010](#) et seq.

Perpetuation of testimony or preservation of evidence before action filed: [CCP §§ 2035.010](#).

Perpetuation of testimony or preservation pending appeal: [CCP § 2036.010](#).

Compliance with subpoena duces tecum for business records: [Ev C § 1560](#).

Format of discovery motions: [Cal R of Court 3.1345](#).

Service of motion papers on nonparty deponent: [Cal R of Court 3.1346](#).

### **Jurisprudences**

Am Jur 2d (Rev) Depositions and Discovery § 148.

Cal Jur 3d (Rev) Discovery and Depositions § 148.

### **Legal Periodicals**

Review of Selected 1987 Legislation. 19 Pac. L.J. 514.

Case Strategy: Practice That Takes You Out of State. [29 Los Angeles Lawyer 27 \(December, 2006\)](#).

Appealing Before Trial: In Family Law Litigation, Developing A Pendente Lite Strategy That Considers An Appeal Can Serve The Client's Interest. [39 Los Angeles Lawyer 30](#).

### **Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 2 "Procedural Guide For Civil Actions"](#).

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 190 "Depositions and Discovery" III](#).

[Cal. Points & Authorities \(Matthew Bender\) ch 80 "Discovery: Scope Regulation And Timing" § 80.100](#).

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

[Cal. Employment Law \(Matthew Bender\), § 61.04](#).

[Cal. Fam. Law Practice & Procedure \(Matthew Bender\), § 110.10](#).

[Cal. Fam. Law Practice & Procedure \(Matthew Bender\), § 110.30](#).

[Cal. Fam. Law Practice & Procedure \(Matthew Bender\), § 110.31](#).

[Cal. Fam. Law Practice & Procedure \(Matthew Bender\), § 110.32](#).

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 193 "Discovery: Depositions"](#).

Forms file: motion to quash defendant's subpoena for production of personal records. 27 Consumer Attys Forum No. 3, p. 36.

Obtaining discovery: Initiating and responding to discovery procedures. CEB Action Guide, Spring 1991.

Handling subpoenas: How and when to do it. CEB Action Guide, Spring 1990.

Laying a foundation to introduce evidence. CEB Action Guide, Summer 1989.

Preparing for Discovery Under the New Act. (1986, CEB) pp 131-133.

Rutter Cal Prac Guide, Civil Procedure Before Trial §§ 8:535 et seq.; Family Law §§ 11:210 et seq.; Personal Injury §§ 6:189 et seq., 8:209 et seq.

14 Witkin Summary (10th ed) Wills and Probate § 597.

### **Practice Guides**

Matthew Bender® Practice Guide: [California Civil Discovery, ch. 6](#).

Matthew Bender® Practice Guide: California Landlord-Tenant Litigation, ch. 1.

### **Annotations:**

Admissibility in evidence of deposition as against one not a party at time of its taking. [4 ALR3d 1075](#).

Commencing action involving physical condition of plaintiff or decedent as waiving physician-patient privilege as to discovery proceedings. [21 ALR3d 912](#).

Discovery or inspection of state bar records of complaints against or investigations of attorneys. [83 ALR3d 777](#).

Restricting public access to judicial records of state courts. [84 A.L.R.3d 598](#).

Physician-patient privilege as extending to patient's medical or hospital records. [10 ALR4th 552](#).

Bank's liability, under state law, for disclosing financial information concerning depositor or customer. [81 A.L.R.4th 377](#).

Amenability of National Labor Relations Board or its personnel to discovery. [4 ALR Fed 493](#).

Materials Held by Non-Party Corporate Affiliate of Corporate Party as Subject to Production under Rule 34 of Federal Rules of Civil Procedure. 145 ALR Fed 527.

#### **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. 6](#)

[Cal Code Civ Proc Pt. 4, Title 4, Ch. 6, Art. 1](#)

## Forms

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### **SUGGESTED FORMS**

#### **Paragraph in Deposition Subpoena Indicating Deposition Will be Recorded**

Pursuant to CCP § \_\_\_\_\_, you are hereby informed that the deposition testimony will be recorded by videotape.

#### **Notice to Consumer**

*[Title of Court and Cause]*

To \_\_\_\_\_ *[name of consumer or consumer's attorney]:*

Please take notice that records concerning you will be subpoenaed from \_\_\_\_\_ *[name and address of entity or person in possession of records]*, named on the subpoena attached to this notice.

If you object to the furnishing of copies of these records to the parties in this action by \_\_\_\_\_ *[name of entity or person in possession of records]*, you must, by \_\_\_\_\_ *[date of production]*, either obtain the written agreement of \_\_\_\_\_ *[name of attorney of party causing subpoena to be issued]* to cancel or limit the subpoena, or file a written motion under [California Code of Civil Procedure § 1987.1](#) in the above-entitled action and court to prevent or limit production of your records.

If you cannot obtain the written agreement of the attorney of the party seeking your records to cancel or limit the subpoena, you should consult an attorney immediately to assist you in protecting your privacy rights.

Dated: \_\_\_\_\_, \_\_\_\_\_

*[Signature of attorney for party causing issuance of subpoena]*

#### **Proof of Service of Notice to Consumer**

*[Title of Court and Cause]*

I, \_\_\_\_\_ *[name of process server]*, declare as follows:

I am employed in the County of \_\_\_\_\_, State of California, and am over the age of 18 years and not a party to this action; my business address is \_\_\_\_\_.

On \_\_\_\_\_, \_\_\_\_\_, I served the attached "Notice to Consumer," dated \_\_\_\_\_, \_\_\_\_\_, as follows: \_\_\_\_\_ *[by personal delivery of a true copy thereof to \_\_\_\_\_*

*(consumer or attorney of record if consumer is party to action)* \_\_\_\_\_ *(address where served)* or by placing a true copy thereof enclosed in a sealed envelope with postage for certified mail, return receipt requested thereon fully prepaid in the United States mail at \_\_\_\_\_, California, addressed as follows:

\_\_\_\_\_ *(name and address of consumer or attorney of record if consumer is a party)*].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

[Signature]

**Consumer's Written Authorization to Release Records**

I, \_\_\_\_\_ [name of consumer], hereby consent to the release of the following records, documents, or other information concerning myself: \_\_\_\_\_ [specify records, documents, or information to the release of which consent is given], to \_\_\_\_\_ [name of party seeking records], of \_\_\_\_\_ [address], whose telephone number is \_\_\_\_\_.

This release is good until \_\_\_\_\_.

Dated \_\_\_\_\_, \_\_\_\_\_.

[Signature]

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