

Table of Contents

CHAPTER 1. DEFINITIONS, RELATED YARDSTICKS AND LESS EXACT REFERENCES

- § 1:1 Party
- § 1:2 Surrogate (civil cases only)
- § 1:3 Stranger (civil cases only)
- § 1:4 Subpoena jurisdiction
- § 1:5 Residence
- § 1:6 Distance, mileage, and miles
- § 1:7 Trial court
- § 1:8 Person (includes law-created organization)
- § 1:9 Out-of-state (corporation, court, etc.)
- § 1:10 Foreign (corporation, court, etc.)
- § 1:11 Good cause (cases and statutes and a local rule)
- § 1:12 Checklist—Matters to consider in subpoenaing consumer records
 - Matters to consider in subpoenaing employee records
 - Matters to consider in subpoenaing business records only
 - Matters to consider in subpoenaing nonparty deponent for personal appearance and production

CHAPTER 2. THE OCCASIONAL DISPENSABILITY OF CIVIL AND CRIMINAL SUBPOENAS: PERSONS WHOSE TESTIMONY OR OTHER EVIDENCE MAY OR MUST BE JUDICIALLY COMPELLED BY MEANS OTHER THAN A SUBPOENA

- § 2:1 Persons present in court (or out of court before a judicial officer): Civil and criminal cases
- § 2:2 Prisoners (testimony, presence or other participation required during imprisonment)
- § 2:3 Production by notice (civil cases only) with respect to parties and surrogates as a permitted alternative to the use of subpoenas; considerations affecting the choice
- § 2:4 Notice to attorney in lieu of service of subpoena for attendance at trial and demand for production of documents [Code Civ. Proc. § 1987]

CHAPTER 3. SUBPOENA JURISDICTION

- § 3:1 An epistemic frolic
- § 3:2 The differences and interactions between a state court's *in personam* jurisdiction and its extended subpoena jurisdiction
- § 3:3 Territorial limits on service of a state civil or criminal subpoena (where the writ runs); The availability of other subpoenas beyond those limits
- § 3:4 Who is subject to California subpoena jurisdiction (can be validly served with a state subpoena within California)
- § 3:5 The Federal supremacy limit: No jurisdiction to subpoena federal records or federal employees to testify concerning knowledge acquired in their official duties
- § 3:6 California courts designated to issue and enforce subpoenas
- § 3:7 The effect of lack of subject matter jurisdiction on a court's power to issue and enforce subpoenas
- § 3:8 Jurisdiction to subpoena persons to testify or do other personal acts
- § 3:9 Jurisdiction to subpoena physical evidence (subpoenas *duces tecum*)
- § 3:10 Foreign subpoenas—The Interstate and International Depositions and Discovery Act

CHAPTER 4. IMMUNITY TO SUBPOENAS

- § 4:1 Subpoena immunity: A taxonomic disclaimer
- § 4:2 Foreign diplomatic personnel: Jurisdictional immunities
- § 4:3 Foreign diplomatic personnel: Immunity under treaties
- § 4:4 California legislators
- § 4:5 Criminal case witness entering or transiting California under Uniform Act (Penal Code §§ 1334–1334.6)

CHAPTER 5. CIVIL WITNESS FEES AND MILEAGE

- § 5:1 Bird's eye
- § 5:2 Ordinary civil witness fees (\$35/.20 both ways)
- § 5:3 Business records fees and costs: A supplement to other witness fees
- § 5:4 Public employee witness fees (matters perceived or investigated or expertise acquired in course of duty)
- § 5:5 Expert witness fees
- § 5:6 Interpreter's and translator's fees
- § 5:7 Remedies for the indigent litigant who cannot pay witness fees, or those of interpreters or translators

TABLE OF CONTENTS

- § 5:8 The taxability of witness fees as costs
- § 5:9 The significance of statutory witness fees (a cap on fees?)

CHAPTER 6. CONSUMER AND EMPLOYMENT RECORDS (CIVIL, SOME CRIMINAL, AND ADMINISTRATIVE SUBPOENAS)

- § 6:1 Introduction
- § 6:2 Consumer records under Code of Civil Procedure
 - §§ 1985.3 and 1985.4
- § 6:3 Employment records under Code of Civil Procedure
 - § 1985.6
- § 6:4 The interface of §§ 1985.3 and 1985.4 with notices to produce (as opposed to subpoenas)
- § 6:5 Internet Service Providers and their subpoena power under the Digital Millennium Copyright Act (“DMCA”)
- § 6:6 *O’Grady v. Superior Court* and its implications on the discovery of stored electronic media in civil cases
- § 6:7 Form: Social media—Subpoena duces tecum
- § 6:8 Form: Subpoena of consumer records—Combined notice to consumer and notice of taking deposition
 - Proof of service
 - Consent to release of records
- § 6:9 —Notice of motion to quash or modify subpoena duces tecum
- § 6:12 Notice of motion for order quashing deposition notice or subpoena and staying deposition [Code Civ. Proc., § 2025.410]
- § 6:13 Declaration in support of motion to quash deposition notice or subpoena and stay deposition [Code Civ. Proc., § 2025.410, subd. (c)]
- § 6:14 Memorandum of points and authorities in opposition to motion for order quashing deposition notice or subpoena and staying deposition
- § 6:15 Form: Subpoena of consumer records—Order quashing or modifying compliance with subpoena duces tecum
- § 6:16 —Written objection by nonparty consumer to subpoena duces tecum
- § 6:17 —Notice of motion to enforce subpoena duces tecum against nonparty consumer
- § 6:18 —Declaration for order enforcing subpoena duces tecum against nonparty consumer
- § 6:19 Form: Declaration for Issuance of Subpoena Duces Tecum

- § 6:20 Form: Subpoena of Employee Records—Combined Notice to Employee and Notice of Taking
- § 6:21 —Proof of Service
- § 6:22 —Consent to Release of Records
- § 6:23 —Written Objection by Nonparty Employee to Subpoena Duces Tecum
- § 6:24 —Notice of Motion to Enforce Subpoena Duces Tecum Against Nonparty Employee
- § 6:25 —Declaration for Order Enforcing Subpoena Duces Tecum Against Nonparty Employee
- § 6:26 —Order Enforcing Subpoena Duces Tecum Against Nonparty Employee
- § 6:27 —Agreement of Parties, Witness, and Employee to Allow Production of Nonparty Employee Records
- § 6:28 —Order Quashing, Modifying or Directing Compliance with Subpoena—Fees

CHAPTER 7. MEDICAL RECORDS AND THEIR SPECIAL TREATMENT UNDER FEDERAL AND STATE LAW

- § 7:1 Medical records and the right to privacy
- § 7:2 Physician-patient privilege
- § 7:3 Psychotherapist-patient privilege
- § 7:4 Confidentiality of Medical Information Act (CMIA)
- § 7:5 Health Insurance Portability and Accountability Act (HIPAA) of 1996
- § 7:6 Reproductive Rights Law Enforcement Act
- § 7:7 Form: Motion to quash subpoena duces tecum—Medical records—Federal
- § 7:8 Form: Motion to quash subpoena to personal injury protection/medical pay insurer
- § 7:9 Form: Attorney's affidavit in support of motion to quash subpoena duces tecum—State

CHAPTER 8. PROBLEM AREAS: PRIVATE FINANCIAL RECORDS SOUGHT BY GOVERNMENTAL INVESTIGATORS UNDER GOVERNMENT CODE §§ 7460 TO 7480 (CIVIL, CRIMINAL, AND ADMINISTRATIVE SUBPOENAS)

- § 8:1 An overview
- § 8:2 Persons, information, and records protected
- § 8:3 Persons against whom this protection is afforded (state and local agencies and personnel)

TABLE OF CONTENTS

- § 8:4 Restrictions on state and local agencies in requesting or receiving, and on financial institutions in giving out, protected financial information (when a subpoena duces tecum or search warrant must be used)
- § 8:5 How state and local agencies can obtain protected financial records despite the foregoing general restrictions
- § 8:6 How grand juries can obtain protected financial records despite the foregoing general restrictions
- § 8:7 The customer's right to self-help notice regarding disclosures of his or her financial records
- § 8:8 State agency supervisory exclusions from coverage
- § 8:9 Enforcement; statute of limitations

CHAPTER 9. TELEPHONE RECORDS (INCLUDING CALLING RECORDS HELD BY HOTELS AND CREDIT CARD COMPANIES) (CIVIL, CRIMINAL, AND ADMINISTRATIVE SUBPOENAS)

- § 9:1 Overview
- § 9:2 Definitions
- § 9:3 Legal restrictions on the use of subpoenas duces tecum (or backdoor inquiries) to obtain telephone records or the information they contain
- § 9:4 Applications: The interface of constitutional provisions, statutes, and other rules controlling access to telephone records (calling, nonpublished service, and credit)
- § 9:5 Some practical suggestions

CHAPTER 10. PEACE OFFICER PERSONNEL RECORDS: CRIMINAL, CIVIL, AND ADMINISTRATIVE LITIGATION (SUBPOENAS OF LIMITED USEFULNESS)

- § 10:1 An overview
- § 10:2 Definitions
- § 10:3 Discovery of peace officer personnel records in criminal, civil, and administrative litigation (Evidence Code §§ 1043–1047)
- § 10:4 An action to compel disclosure of information contained in certain law enforcement records held by state or local government agencies (Government Code §§ 6250 et seq.)
- § 10:5 Arrests-made records not discoverable

CHAPTER 11. ISSUANCE AND MECHANICS OF CIVIL AND ARBITRATION SUBPOENAS; REMEDIES FOR ABUSE

- § 11:1 A reminder of persons who can and cannot be subpoenaed
- § 11:2 Form and issuance of civil litigation and arbitration subpoenas
- § 11:3 Procedures for obtaining discovery of electronically stored information
- § 11:4 The mechanics of service
- § 11:5 Remedies for abuse
- § 11:6 Small claims subpoena for personal appearance and production of documents
- § 11:7 Form: Arbitration—Application for subpoena
- § 11:8 —Subpoena duces tecum
- § 11:9 Form: Notice of motion for expenses after failure to appear or serve subpoena
- § 11:10 Form: Declaration of concealment of witness to avoid service of subpoena and order
- § 11:11 Form: Complaint against witness disobeying subpoena
- § 11:12 Request for statement of witnesses and evidence—For limited civil cases (under \$35,000)

CHAPTER 12. ISSUANCE AND MECHANICS OF CRIMINAL SUBPOENAS; WITNESS FEES; REMEDIES FOR ABUSE

- § 12:1 A reminder on who need not (or cannot) be subpoenaed
- § 12:2 Criminal subpoena jurisdiction
- § 12:3 Form and issuance of criminal subpoenas
- § 12:4 The need for judicial endorsement beyond 150 miles
- § 12:5 Service of criminal subpoenas
- § 12:6 Agreements to appear
- § 12:7 The use of subpoenas duces tecum in pretrial criminal discovery
- § 12:8 Criminal witness fees
- § 12:9 Remedies for abuse
- § 12:10 Form: Subpoena in a criminal case—U.S. district court
- § 12:11 Form: Subpoena to testify in a criminal case—U.S. district court
- § 12:12 Form: Subpoena to produce documents or objects in a criminal case—U.S. district court

TABLE OF CONTENTS

- § 12:13 Form: Subpoena to testify at a deposition in a criminal case—U.S. district court
- § 12:14 Form: Subpoena to produce state law enforcement personnel or complaint records in a criminal case—U.S. district court
- § 12:15 Form: Subpoena to testify before grand jury—U.S. district court
- § 12:16 Form: Points and authorities in support of motion to quash subpoena duces tecum
- § 12:17 Form: Motion to quash subpoena
- § 12:18 Form: Victim's psychiatric records—Subpoena duces tecum

CHAPTER 13. CALIFORNIA GRAND JURY SUBPOENAS; ISSUANCE, MECHANICS AND FEES; REMEDIES FOR ABUSE

- § 13:1 Introduction: A different kind of subpoena
- § 13:2 The occasional dispensability of grand jury subpoenas (persons whose testimony or other evidence may or must be judicially compelled by means other than a subpoena)
- § 13:3 Jurisdiction
- § 13:4 How the grand jury obtains the benefit of subpoenas and search warrants
- § 13:5 Grand jury subpoena duces tecum and the Fifth Amendment right against self-incrimination
- § 13:6 Form: Request for grand jury subpoena, completed by agent
- § 13:7 Form: Affidavit of compliance regarding subpoenaed documents
- § 13:8 Form: Motion for order prohibiting notification of service of grand jury subpoena duces tecum

APPENDICES

- Appendix A. Trial of Walter De Shirland
- Appendix B. Vienna Convention on Diplomatic Relations
- Appendix C. Vienna Convention on Consular Relations
- Appendix D. Miscellaneous Subpoena Forms

Table of Laws and Rules

Table of Cases

Index