



BUSINESS RECORDS SUBPOENAS: Step-by-Step Sacramento County Public Law Library

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Disclaimer: This guide is intended as general information only and is based on the information provided in Nolo Press's "How to Solve Divorce Problems in California," pages 174-181. It is important to read that section or another book on civil procedure to determine if this process is right for you. Your case may have factors requiring different procedures or forms. If you need further assistance, consult a lawyer.

CONTENTS

This instructional packet includes blank forms and completed samples of:

- "Deposition Subpoena – Business Records" (SUBP-010)
- Attachment 3
- "Notice of Taking Deposition – Records Only – No Appearance"
- "Sample Interrogatories to Custodian of Records"
- "Notice to Consumer or Employee (SUBP-025)"

It also includes a "Worksheet to Determine Dates of Service."

SUMMARY OF STEPS:

1. Figure out the timing
2. Fill out forms
3. Have the court's filing room stamp the subpoena
4. Make photocopies
5. Serve the Consumer/Employee, if any
6. Wait 10 days for possible objections (5 if you had the Consumer/Employee personally served)
7. Serve the Witness, and wait 15 days
8. Receive and review the documents

BACKGROUND

When a company or organization that is **not a party** has records you need, use a "Deposition Subpoena for Business Records" to obtain them. (If the company is a party, use a "Request for Production of Documents.") **Warning!** You can't get the records right away. It will take about 30 days even if everything goes smoothly, so plan ahead.

Who's Who?

Witness – The company or organization that has the records you need. For instance, this may be the phone company, the police department, an employer, a credit card company, or a bank.

Custodian of Records – The person who maintains the records for the Witness. This may be a human resources manager, a bank employee, etc. You don't need to name them; the Witness will assign the proper person to respond to your subpoena.

Consumer/Employee – If the records you are requesting relate to a person's consumer transactions (phone bills, purchases, bank records, etc.) or to his or her job, that person

is called the Consumer/Employee. **Important!** The law gives the Consumer/Employee the right to object to the Witness giving you the records if it would violate their privacy, so you have to let them know ahead of time.

PROCEDURE

Overview

Using a “Deposition Subpoena for Business Records” is usually a two-part process. First, if the records relate to a Consumer/Employee, you must have that person served with a “Notice to Consumer or Employee” and the subpoena, and give them at least five days to object. If there are other parties in the case, they get served with copies of the Notice and Subpoena too.

Second, if the Consumer/Employee doesn’t object, you then have the papers personally served on the Witness, and give them time (at least 15 days) to respond. This must be personal service; mail won’t work. They should respond by sending you copies of the records you request. Despite the name, there is no actual deposition or hearing.

(If the Consumer/Employee objects, the Witness can’t respond until the objection is resolved. See Step 6, below.)

Step-by-Step Instructions

Step 1: Figure out the timing. Choose the day you want to receive the documents and figure out your schedule. **(See: *Worksheet to Determine Dates for Service.*)** The timing is very important and can be tricky, because if there is a Consumer/Employee, you have to give that person time to object, but you must also give the Witness at least 15 days to produce the documents.

Step 2: Fill out the following forms (see the attached samples for more information on specific forms):

- a. “Deposition Subpoena – Business Records” (SUBP-010), with “Attachment 3.” This paper is the actual court order to the Witness. “Attachment 3” explains exactly what records you are requesting – the police report, bank statements, employment information, or whatever it is that you need.
- b. “Notice of Taking Deposition – Records Only – No Appearance.” This tells the Witness and the other party(s) about the subpoena and the deadline.
- c. “Interrogatories to Custodian of Records.” Leave this blank. The Custodian of Records fills this out when sending you the records.
- d. “Notice to Consumer or Employee” (SUBP-025). Fill out the top portion of this form, but leave the bottom portion blank. If the Consumer/Employee decides to object to the subpoena, he fills this part out and has a copy served on you and on the Witness.

Step 3: Get the subpoena “issued” by taking all these papers to the filing room at court and ask the filing clerk to issue it. When the clerk stamps it with the court’s seal, it becomes an official court order. You don’t need to file anything now.

Step 4: Make at least 3 sets of photocopies of all the papers (one for you, one for the Consumer/Employee, one for the Witness, and one each for any other parties’ attorneys). Keep all the originals safe in case you need them later.

Step 5: First round of service (on Consumer/Employee and other parties, if any). Remember, you can’t do the service yourself! Get someone who is not a party to do the service for you.

- a. Have the Consumer/Employee served (by mail if time, or personal service if not) with copies of all documents. Have the process server fill out the proof of service on the back of the “Notice to Consumer or Employee.”
- b. If there are other parties in the case: On the same day, have all other parties (or their attorneys, if any) served with copies of all documents. Have the process server fill out a generic proof of service form for these.

Step 6: Wait 10 days (5 if you had the Consumer/Employee served by hand) for any objection from the Consumer/Employee.

If the Consumer/Employee objects, he or she must file a motion to quash or modify the subpoena (if a party) or serve a written objection (if a nonparty) 5 days before the date specified for production. If this happens, the Witness may not produce the documents until you get a court order or an agreement between you, the Witness and the Consumer/Employee.

In that case, you may make a motion to compel production within 20 days after service of the written objection. You must first make a reasonable and good faith attempt to informally resolve the dispute. For more information on the procedure and on possible grounds for objections, see California Code of Civil Procedure sections 1985.3 and 1985.6, and *California Points and Authorities*, Chapter 81.240-81.254.)

Step 7: Second round of service (on Witness). After the time for objection has expired, have the Witness personally served with copies of all documents. Make sure the copy of the Notice to Consumer or Employee has the proof of service. Have the process server fill out the proof of service on the back of the original Deposition Subpoena. Keep that in your files in case a dispute comes up.

Step 8: Receive the documents. If all goes well, you should receive the documents in the mail shortly after the due date, along with the completed “Interrogatories to Custodian of Record.” At this point:

- a. Check the “Interrogatories to Custodian of Record” to make sure that every question has been answered (“not applicable” is not an acceptable answer).
- b. Check the enclosed documents to make sure that you received all the records you requested.

FOR HELP

For assistance in creating these documents, you may want to contact a professional photocopier service (call a local law office and ask who they use) or consult an attorney. To find assistance in the Sacramento area, use the “Legal Referral” information on our website at <http://www.saclaw.org/pages/legal-referral-list.aspx>.

FOR MORE INFORMATION

On the Web:

The “Deposition Subpoena – Business Records” (SUBP-010) and “Notice to Consumer or Employee” (SUBP-025) forms are available from the Judicial Council’s website at: <http://www.courtinfo.ca.gov/forms/>.

You can learn more about discovery in general at Nolo.com: <http://tinyurl.com/c35z3a>.

Information about preparing evidence for admission in a court trial or hearing can be found on the Judicial Council’s website at: <http://www.courtinfo.ca.gov/programs/equalaccess/documents/getting-evidence.pdf>

At the Law Library:

The following books have information about preparing business records subpoenas:

- How to Solve Divorce Problems in California pp. 174-181. KFC 126 .S55
- Litigation by the Numbers Chap.5 (Discovery), Sec. 5.3.5. KFC 995 .G67

Information on consumer/employee objections can be found in:

- California Points and Authorities Vol. 8, Chap. 81, Sec. 240-254. KFC 1010. B4

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IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

**Business Records Subpoena:
Worksheet to determine dates for service**

Work backwards from the date you want to receive the documents (Date of Production).

1. Choose the date for production of documents.
2. Count backwards 15 days. If the 15th day is a holiday or weekend, keep going until you reach a workday. This is the **last** day the Witness can be served. (It is a good idea to serve it a few days early, in case of problems with the service.)
3. Choose the date you will actually serve the Witness (on or before the date in step 2).
4. Count backwards from that date another 10 days. Again, if the 10th day is a holiday or weekend, keep counting backwards until you reach a workday. This is the **last** day the Consumer/Employee can be served by mail.

If you are short on time, you can save a few days by having the Consumer/Employee personally served. In this case, you only have to count back 5 days from the date you expect to serve the Witness.

Worksheet: Fill this out to figure out the dates (using a calendar can help):

Event:	Instructions:	Date:
Date of Production	Enter the date you want to receive the documents here:	___/___/20__
Last day to serve the Witness	Starting from the Date of Production, count backwards 15 calendar days. If the day you land on is a weekend or holiday, keep going until you reach a workday. This is the last day to serve the Witness . Enter that date here: You can serve the Witness earlier, if you choose.	___/___/20__
Day you actually plan to serve the Witness	If you decide to serve it earlier, enter that date here:	___/___/20__
Last day to serve the Consumer/ Employee	Starting from the day you actually plan to serve the Witness, count backwards 10 calendar days. If the day you land on is a weekend or holiday, keep going until you reach a workday. This is the last day to serve the Consumer/ Employee by mail . Enter that date here: You can serve the Consumer/Employee earlier, if convenient. If you are short on time, you can have the Consumer/ Employee served by hand. If you plan to have the consumer/Employee served by hand, instead of 10 days, count backward 5 days from the day you actually plan to serve the witness.	___/___/20__