

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SPR11-26**

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Title	Action Requested
Civil Law: Subpoena Forms For the Discovery and Production of Electronically Stored Information	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise Forms SUBP-002, SUBP-010, SUBP-035, and SUBP-045	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Patrick O'Donnell, patrick.o'donnell@jud.ca.gov, 415-865-7665

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### Summary

This proposal would revise four civil subpoena forms so that they can be used more effectively for the purpose of demanding the production of electronically stored information in discovery and at hearings and trials.

### Discussion

#### Background

The Electronic Discovery Act, Assembly Bill 5, was enacted by the California Legislature and signed by the Governor in 2009. This act constituted the most comprehensive change to the discovery law in California since the 1980s. The legislation provides procedures for courts and litigants to use in addressing electronic discovery issues.

The act added a new section to the chapter of the Code of Civil Procedure on civil subpoenas. (Code Civ. Proc., § 1985.8.) This section provides that a “subpoena in a civil proceeding may require that electronically stored information . . . be produced . . .” (Code Civ. Proc., § 1985.8(a).) The new section also provides that a “party serving a subpoena requiring the production of electronically stored information *may specify the form or forms in which each type of information is to be produced*” (emphasis added). (Code Civ. Proc., § 1985.8(b).)

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## **The Revised Subpoena Forms**

Most of the civil subpoena forms have not been revised since before AB 5 was enacted in 2009. This proposal would revise four civil subpoena forms so that they can be used more effectively to implement new Code of Civil Procedure section 1985.8. (See revised forms SUBP-002, SUBP-010, SUBP-035, and SUBP-045, attached.)

In particular, in the places on the subpoena forms where the respondent is asked to provide documents, the following parenthetical comment has been added: “*(if electronically stored information has been requested, the form or forms in which each type of information is to be produced may be specified)*”. In addition, references to “electronically stored information” have been added at various appropriate places on the forms.

The title of form SUBP-002 needs to be changed to reflect the discoverability of electronically stored information. The title of the attached revised form has been changed from *CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Documents and Things at Trial or Hearing AND DECLARATION* to *CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Records at Trial or Hearing AND DECLARATION*. Another alternative would be to rename the form *CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AT TRIAL OR HEARING AND DECLARATION*. Though clearer and more in conformity with the standard style of capitalizing all letters in a caption title, this second version of the title is longer. Comments are invited on the title.

Similarly, the title of form SUBP-045 has been changed from *DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS IN ACTION PENDING OUTSIDE CALIFORNIA* to *DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA*. Comments are invited on this title change.

Finally, the captions on the subpoena forms have been standardized so that they all include places for attorneys to provide e-mail addresses as well as telephone and fax numbers. The parenthetical instruction “*(optional)*” has been removed throughout. This represents the current preferred format for contact information for attorneys of record.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT 5</b> <b>3.15.2011</b>  <b>NOT YET</b> <b>ADOPTED BY</b> <b>THE JUDICIAL</b> <b>COUNCIL</b>
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER:  DEFENDANT/ RESPONDENT:	
<b>CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance and Production of Records at Trial or Hearing AND DECLARATION</b>	
CASE NUMBER: _____	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number of witness, if known*):

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS** in this action at the date, time, and place shown in the box below **UNLESS** your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 4 below.

a. Date:	Time:	<input type="checkbox"/>	Dept.:	<input type="checkbox"/>	Div.:	<input type="checkbox"/>	Room:
b. Address:							

2. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**
3. YOU ARE (*item a or b must be checked*):
- a.  Ordered to appear in person and to produce the records described in the declaration on page two or the attached declaration or affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- b.  Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.
4. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**
- a. Name of subpoenaing party or attorney: \_\_\_\_\_ b. Telephone number: \_\_\_\_\_
5. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 4.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

(Declaration in support of subpoena on reverse)

(TITLE)

Page 1 of 3

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

The production of the documents **electronically stored information**, or the other things sought by the subpoena on page one is supported by *(check one)*:

the attached affidavit or  the following declaration:

**DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF RECORDS AT TRIAL OR HEARING (Code Civ. Proc., §§ 1985,1987.5)**

1. I, the undersigned, declare I am the  plaintiff  defendant  petitioner  respondent  
 attorney for *(specify)*:  other *(specify)*:  
in the above-entitled action.
2. The witness has possession or control of the documents, **electronically stored information**, or other things listed below, and shall produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Records at Trial or Hearing on page one of this form *(specify the exact documents or other things to be produced; if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified)*:
- Continued on Attachment 2.
3. Good cause exists for the production of the documents, **electronically stored information**, or other things described in paragraph 2 for the following reasons:
- Continued on Attachment 3.
4. The documents, **electronically stored information**, or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:
- Continued on Attachment 4.

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF  SUBPOENAING PARTY  ATTORNEY FOR SUBPOENAING PARTY)

### Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF RECORDS AT TRIAL OR HEARING AND DECLARATION**

1. I served this *Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Records at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:

- a. Person served (*name*):
- b. Address where served:
- c. Date of delivery:
- d. Time of delivery:
- e. Witness fees (*check one*):
  - (1)  were offered or demanded and paid. Amount: . . . . . \$ \_\_\_\_\_
  - (2)  were not demanded or paid.
- f. Fee for service: . . . . . \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

Date:

\_\_\_\_\_  
(SIGNATURE)

**(For California sheriff or marshal use only)**  
I certify that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <hr/> <p style="text-align: center;">TELEPHONE NO.: <span style="float: right;">FAX NO.:</span></p> <p style="text-align: center;">E-MAIL ADDRESS:</p> <p style="text-align: center;">ATTORNEY FOR (Name):</p>	FOR COURT USE ONLY  <b>DRAFT 4 3.15.2011</b>  <b>NOT YET ADOPTED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS</b>	CASE NUMBER:

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):**

**1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To (name of deposition officer): On (date) : <span style="float: right;">At (time):</span> Location (address):
<b>Do not release the requested records to the deposition officer prior to the date and time stated above.</b>

- a.  by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
  - b.  by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
  - c.  by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*
3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

Continued on Attachment 3.

**4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued:

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF PERSON ISSUING SUBPOENA)
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PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	CASE NUMBER:
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**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1)  Witness fees were paid.  
 Amount: ..... \$ \_\_\_\_\_

(2)  Copying fees were paid.  
 Amount: ..... \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

**(For California sheriff or marshal use only)**  
**I certify** that the foregoing is true and correct.

Date:

Date:

▶ \_\_\_\_\_  
 (SIGNATURE)

▶ \_\_\_\_\_  
 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY  <b>DRAFT 4 3.15.2011</b>  <b>NOT YET ADOPTED BY THE JUDICIAL COUNCIL</b>
Court for county in which discovery is to be conducted: <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: BRANCH NAME:	
Court in which action is pending: <b>Name of Court:</b> STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: COUNTRY:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CALIFORNIA CASE NUMBER (if any assigned by court):
<b>SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA</b>	CASE NUMBER (of action pending outside California):

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number of deponent, if known*):

**1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To ( <i>name of deposition officer</i> ): On ( <i>date</i> ): _____ At ( <i>time</i> ): _____ Location ( <i>address</i> ): _____
<b>Do not release the requested records to the deposition officer prior to the date and time stated above.</b>

- a.  by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b.  by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c.  by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records must be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*
3. The records to be produced are described as follows (*if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified*):
- Continued on Attachment 3 (*use form MC-025*).
4. Attorneys of record in this action or parties without attorneys are (*name, address, telephone number, and name of party represented*):

Continued on Attachment 4 (*use form MC-025*).



PLAINTIFF/PETITIONER:	CASE NUMBER (of action pending outside California):
DEFENDANT/RESPONDENT:	

5. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedure section 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.

6.  Other terms or provisions from out-of-state subpoena, if any (specify):

Continued on Attachment 6 (use form MC-025).

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

\_\_\_\_\_  
(TITLE)

**PROOF OF SERVICE OF SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS**

1. I served this Subpoena for Production of Business Records In Action Pending Outside California by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1)  were paid. Amount: ..... \$ \_\_\_\_\_

(2)  were not paid.

(3)  were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (date):

3.  I also served a completed Proof of Service of Notice to Consumer or Employee and Objection (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

a.  Not a registered California process server

b.  California sheriff or marshal

c.  Registered California process server

d.  Employee or independent contractor of a registered California process server

e.  Exempt from registration under Business and Professions Code section 22350(b)

f.  Registered professional photocopier

g.  Exempt from registration under Business and Professions Code section 22451

h. Name, address, telephone number, and, if applicable, county of registration and number:

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

Date:

\_\_\_\_\_  
(SIGNATURE)

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  <hr/> <p style="text-align: center;">TELEPHONE NO.: <span style="float: right;">FAX NO.:</span>                  E-MAIL ADDRESS:                  ATTORNEY FOR (<i>Name</i>):</p>	<b>FOR COURT USE ONLY</b>   <b>DRAFT 3</b> <b>3.15.2011</b>  <b>NOT YET</b> <b>ADOPTED BY</b> <b>THE JUDICIAL</b> <b>COUNCIL</b>
Court for county in which discovery is to be conducted: <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Court in which action is pending: <b>Name of Court:</b> STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: COUNTRY:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CALIFORNIA CASE NUMBER (if any assigned by court):
<b>DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND                  PRODUCTION OF RECORDS                  IN ACTION PENDING OUTSIDE CALIFORNIA</b>	CASE NUMBER (of action pending outside California):

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO** (*name, address, and telephone number of deponent, if known*):

**1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS** in this action at the following date, time, and place:

Date:	Time:	Address:
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- a.  As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
  - b.  You are ordered to produce the documents, electronically stored information, and things described in item 3.
  - c. This deposition will be recorded stenographically  through the instant visual display of testimony and by  audiotape  videotape.
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents, electronically stored information, and things to be produced and any testing or sampling being sought are described as follows: (*if electronically stored information is required, the form or forms in which each type of information is to be produced may be specified*):
- Continued on Attachment 3 (*use form MC-025*).
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:
- Continued on Attachment 4 (*use form MC-025*).
5. Attorneys for the parties to this action or parties without attorneys are (*name, address, telephone number, and name of party represented*):
- Continued on Attachment 5 (*use form MC-025*).

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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6.  Other terms or provisions from out-of-state subpoena, if any (specify):

Continued on Attachment 6 (use form MC-025).

7. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedures section 1985.3 or 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.

8. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued:

\_\_\_\_\_  
(SIGNATURE OF PERSON ISSUING SUBPOENA)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(TITLE)

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS**

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things in Action Pending Outside California* by personally delivering a copy to the person served as follows:

- a. Person served (name):
- b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1)  were paid. Amount: ..... \$ \_\_\_\_\_

(2)  were not paid.

(3)  were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (date):

3.  I also served a completed *Proof of Service of Notice to Consumer or Employee and Objection* (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4 Person serving:

- a.  Not a registered California process server
- b.  California sheriff or marshal
- c.  Registered California process server
- d.  Employee or independent contractor of a registered California process server
- e.  Exempt from registration under Business and Professions Code section 22350(b)
- f. Name, address, telephone number, and, if applicable, county of registration and number:

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

Date:

\_\_\_\_\_  
(SIGNATURE)

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(SIGNATURE)

## Item SPR11-26 Response Form

**Title:** Civil Law: Subpoena Forms for the Discovery and Production of Electronically Stored Information (revise forms SUBP-002, SUBP-010, SUBP-035, and SUBP-045)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

- Commenting on behalf of an organization

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*