

Discovery: Business Records Subpoena (except consumer or employment records)

Parties in a lawsuit can use a “business records subpoena” to obtain records and information from **non-party witnesses** such as banks, employers, or police departments. ([Cal. Code of Civil Procedure \(CCP\) § 2020.410](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.410) (http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.410.)) **The procedure requires several steps and takes several weeks, so start early.**

Templates and Forms

- [Deposition Subpoena for Production of Business Records \(SUBP-010\)](https://www.courts.ca.gov/documents/subp010.pdf) (<https://www.courts.ca.gov/documents/subp010.pdf>)
- [Attachment \(MC-025\)](https://www.courts.ca.gov/documents/mc025.pdf) (<https://www.courts.ca.gov/documents/mc025.pdf>)
- [Proof of Service by Mail \(POS-030\)](https://www.courts.ca.gov/documents/pos030.pdf) (<https://www.courts.ca.gov/documents/pos030.pdf>)

Do Not Use This Guide for “Consumer” or “Employee” Records

These instructions are only for Subpoenas for documents that are not “consumer” or “employee” records. If you need consumer/employee records, [use these instructions instead.](https://saclaw.org/resource_library/discovery-business-records-subpoena-for-consumer-employee-records/) (https://saclaw.org/resource_library/discovery-business-records-subpoena-for-consumer-employee-records/)

What is a “consumer record?” [CCP § 1985.3\(a\)\(1\)](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1985.3)

(http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1985.3.)) **defines them as:**

Records from telephone companies; banks, insurance and financial services providers; health care providers; schools; attorneys; or accountants.

What is an “employee record?” [CCP § 1985.6](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1985.6)

(http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1985.6.) **defines them as:**

- books, documents, or other writings or electronic data pertaining to employment of any employee or former employee.
- An employee is defined as individual who is or has been employed by the witness whose records are sought.

Outline of Procedure

1. Decide if this is a consumer or employee record and select the correct guide.
2. Choose production date and “Deposition Officer.” Fill out forms.
3. Have the witness (the company or agency with records) *personally* served and have the parties served by mail.

Deposition Officers

What is a Deposition Officer?

Deposition Officers are professional photocopiers registered with the County Clerk. [Cal. Code of Civil Procedures \(CCP\) 2020.420](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2020.420.&lawCode=CCP) (https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2020.420.&lawCode=CCP). They may be a photocopy shop or a company that specializes in assisting lawyers in litigation. Parties must use a Deposition Officer when subpoenaing business records.

How do I find a Deposition Officer?

Ask an attorney or paralegal if they can recommend a service, or look under “Litigation Services” or “Attorney Support Services” online or in the Yellow Pages. An online search for “deposition officer for business records subpoena in sacramento” (or whatever region you are in) will give you a list as well.

Fee Waiver does not cover your costs

Note that there will be a fee for the Deposition Officer’s service and that the third party is entitled to witness fees and copying costs. **These costs are not covered by a fee waiver.** You can add the cost to your judgment if you win the case.

Step-by-Step Instructions

1.

Determine Whether the Documents Are “Consumer or Employee” Records

If they are, use our [Consumer/Employee Record guide](https://saclaw.org/resource_library/discovery-business-records-subpoena-for-consumer-employee-records/) (https://saclaw.org/resource_library/discovery-business-records-subpoena-for-consumer-employee-records/) instead of this guide.

2.

Set a Date and Location for Production, and Hire Your Deposition Officer

Select your date at least 15 days away.

Use the information in the Outline of Procedure to find a Deposition Officer.

3.

Have the Court Clerk “Issue” Subpoena (Self-Represented Parties Only)

Take the *Deposition Subpoena for Production of Business Records* (SUBP-010) to the court where your case is pending to be “issued” (stamped with the court seal). In Sacramento, visit the main courthouse at 720 9th St., Room 102 (filing room).

Ask the clerk to issue them for you. When the clerk stamps it with the court’s seal, it becomes an official court order. The clerk will probably do it right then. You can ask them to issue several blank subpoena forms if you think you will need them later. There is no fee for this.

Attorneys can sign subpoenas themselves as “officers of the court” and do not need to take this step.

When you receive the issued subpoena, make enough copies of the stamped subpoena for yourself, the witness, and all parties. You will serve these copies in later steps.

4.

Complete the Required Forms

You will need two forms to subpoena business records:

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- [Deposition Subpoena for Production of Business Records \(SUBP-010\)](https://www.courts.ca.gov/documents/subp010.pdf) (<https://www.courts.ca.gov/documents/subp010.pdf>)
 - [Attachment \(MC-025\)](https://www.courts.ca.gov/documents/mc025.pdf) (<https://www.courts.ca.gov/documents/mc025.pdf>), describing the records you need (you will number this “Attachment 3”)

Completed samples are at the end of this Guide.

NOTE: When you fill out the *Deposition Subpoena for Production of Business Records* (SUBP-010), there are three options for production in the first paragraph of the first page. Option “a” is having the records delivered to the Deposition Officer. It will be the easiest in most situations. Note that you must arrange to pay the witness their costs before taking delivery of the copies. Talk to your Deposition Officer about how to accomplish this. One option is to ask the Deposition Officer to pay the witness and then bill you.

Under option (b), a Deposition Officer goes to witness’s place of business to pick up the copies. Under (c), the subpoenaing party [you] goes to the witness’s place of business and copies the records. ([CCP §2020.430](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.430) (http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.430)).

Most self-represented litigants should choose option (a).

5.

Serve the Witness (the Company or Agency with the Records) by Personal Service at Least 15 Days before Production Date

a. Serve the Witness

Serve these documents at least 15 days before the production date. ([CCP § 2020.410\(c\)](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.410) (http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.410)):

- *Deposition Subpoena for Production of Business Records* (SUBP-010)
- *Attachment* (MC-025)
- *Proof of Service by Mail* (POS-030) on all parties (unsigned but otherwise complete).

The server (a person over the age of 18 who is not a party to the case) must personally deliver the required documents on the witness or its representative, along with a check for fees. If the witness is an organization, any officer, director, custodian of records, or any agent or employee authorized by the organization to accept service of a subpoena can be served on behalf of the organization. ([CCP § 2020.220](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.220) (http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=2020.220)).

The server then signs the proof of service form on the back of the *Deposition Subpoena for Production of Business Records* (SUBP-010) and returns it to you. Keep this in case you need it for a motion later.

Fees Paid to the Witness:

The witness is entitled to payment of reasonable costs prior to providing the documents to the Deposition Officer. These costs include:

Reproduction costs of \$0.10 per page for documents 8 ½" x 14" or less; \$0.20 per page for copying documents from microfilm; and actual costs for oversize documents or documents requiring special processing.

Other Costs: The witness can request clerical costs of \$24 per hour per person; actual postage costs; and costs for necessary services of third persons, including retrieval from microfilm.

These costs are paid when the witness delivers the business records and an itemized statement listing costs. [Evid C §§ 1563\(b\)\(1\), \(2\), & \(3\).](#)

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EVID§ionNum=1563.

If you requested to inspect the original documents at the witness's location, the witness is entitled to a flat fee of \$15, so write a check for the server to take along. [Evid C §1563\(b\)\(6\).](#)

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EVID§ionNum=1563.

b. Serve the Other Party or Parties

Serve by mail all parties (or their attorneys) with copies of

- Stamped Deposition Subpoena for Production of Business Records (SUBP-010) and Attachment (MC-025).

6.

Wait for the Documents

You're done for now. The Deposition Officer should receive the documents by your chosen production date.

If your Deposition Subpoena is ignored, or you get nothing but a written objection, you may need to file a motion in court to compel the witness to produce the documents. For more information, see our guide [Motion to Compel Discovery Responses](https://www.saclaw.org/resource_library/motion-to-compel-discovery-responses/) (https://www.saclaw.org/resource_library/motion-to-compel-discovery-responses/).

For Help

For assistance with a business records subpoena, your Deposition Officer may do the entire process (forms, service, and copying) for you for a fee. Ask an attorney or paralegal if they can recommend a service, or look under "Litigation Services" or "Attorney Support Services" online or in the Yellow Pages. An online search for "deposition officer for business records subpoena in sacramento" (or whatever region you are in) will give you a list as well.

For More Information

On the Web:

NOLO Law for All: “[Formal Discovery: Gathering Evidence for Your Lawsuit](http://www.nolo.com/legal-encyclopedia/formal-discovery-gathering-evidence-lawsuit-29764.html) (<http://www.nolo.com/legal-encyclopedia/formal-discovery-gathering-evidence-lawsuit-29764.html>)”

This respected self-help site offers excellent information on discovery in general.

California Courts: “[Getting Information to Help Your Case](https://selfhelp.courts.ca.gov/small-claims/trial/supoenas) (<https://selfhelp.courts.ca.gov/small-claims/trial/supoenas>)”

Information from the Judicial Council’s self-help website. Contains information about subpoenas for admission in a court trial or hearing.

At the Law Library:

The following books have information about preparing business records subpoenas:

- **California Forms of Pleading and Practice KFC 1010 .A65 C3**
- **California Practice Guide: Civil Procedure before Trial KFC 995 .W45** Chap. 8, Discovery, Sec. 540-555.
- **Litigation by the Numbers KFC 995 .G67** Chap.5, Discovery, Sec. 5.3.5.

These books give detailed discussion of the steps needed to use a business records subpoena. *Civil Procedure before Trial* in particular contains discussion of the applicable statutes and cases.

For examples of the types of documents you may want to request in different types of civil cases, see:

- **Deposition Checklists and Strategies KF 8900 .S33**
This book is divided into chapters by type of case (vehicular liability, premises liability, medical malpractice, etc.). Each chapter has a section on “Documents and Exhibits” which lists the types of documents that may be useful in that type of case.
- **California Points and Authorities KFC 1010. B4** (Ready Reference) Vol. 8, Chap. 81, Sec. 240-254
Contains information and forms for consumer/employee objections.

Deposition Subpoena for Production of Business Records (SUBP-010)



MC-025	
SHORT TITLE: Sample v. Perpetrator	CASE NUMBER: 34-2011-00112345

ATTACHMENT (Number): 3 (To be used with any Judicial Council form.)

Short title (party 1 v party 2)

Case number

1. Any and all any and all police reports, arrest reports, case reports, supplementary reports, street files, laboratory reports, notes and memoranda, printed or otherwise, and files relating to the arrest of [Party Name], date of birth of [Party Name], on or about [Date of Arrest or Incident], at or near [Location].

Fill in "3"

2. Any and all phone records for the year of [year or range of dates] pertaining to [name of Consumer/Employee] at [Consumer/Employee's phone number or numbers], including but not limited to text and data and call records.

3. Employment records for Employee [employee's name] whose Social Security number is _____, and whose date of birth is _____, including the following: All documents relating to Employee's employment from [date] to [date], including but not limited to pay checks, pay stubs, reviews, correspondence, and W-2 forms.

4. All documents relating to medical and physical therapy, examinations, treatment and services rendered to [Party] from [date] to the present, including but not limited to reports, summaries, prognoses, x-rays, statements, and billings.

5. All documents relating to operation, maintenance, and repair of the automobile [Party] was operating during the accident which is the subject of this action, including repair estimates, repair receipts, owner's manuals, and records of repairs made by any person or entity, including [Party], from [date] to the present.

Specifically describe each item or reasonably particularize each category of item to be produced ([CCP § 2025.410\(a\)](#)).

Specific information that is identifiable only to the deponent's records system (e.g., a policy number or the date the consumer interacted with the witness) is not required. ([CCP § 2020.410\(a\)-\(b\)](#)).

Sample language for several common situations is listed here. For more information about how to request specific types of records, talk to the Reference Librarian.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

11

Page 1 of 1
(Add pages as required)

Form Approved for Optional Use
Judicial Council of California
MC-025 (Rev. July 1, 2009)

ATTACHMENT
to Judicial Council Form

www.courtinfo.ca.gov

Attachment (MC-025), Attached to SUBP-010