

2 California Evidence (5th), Discovery

I. GENERAL PRINCIPLES

A. [§1] Purpose of Discovery.

B. [§2] Modern Discovery Procedures.

C. [§3] Relation to Pretrial Conference.

D. Overview of California Discovery Statutes.

1. [§4] Former Statutes.

2. Civil Discovery Act.

(a) [§5] In General.

(b) [§6] Proceedings Governed by Act.

(c) Construction of Statutes.

(1) [§7] In General.

(2) [§8] Cases Construing Federal Rules.

E. Scope of Discovery.

1. Broad Scope.

(a) [§9] Relevance to Subject Matter.

(b) [§10] Identification of Persons, Things, and Property.

(c) [§11] Insurance Coverage.

2. Restrictions on Obtaining Information.

(a) [§12] Statutory Privileges.

(b) [§13] Privileges Based on Constitutional Rights.

(c) Party's Sexual History.

(1) [§14] Plaintiffs.

(2) [§15] Defendants.

(d) [§16] Trade Secrets.

(e) Financial Information.

(1) [§17] In General.

(2) [§18] Relevant to Punitive Damages Claim.

(3) [§19] Third Party's Information.

(f) [§20] Psychotherapeutic Records.

(g) [§21] Settlement Information.

3. Restrictions on Use of Information Obtained.

(a) [§22] No First Amendment Right To Disseminate.

(b) [§23] Return of Documents.

F. Time Limits on Discovery.

1. [§24] In General.

2. [§25] Extensions of Time.

G. Court Implementation of Procedures.

1. [§26] Discretion of Trial Judge.

2. [§27] Limitations on Filing of Papers.

3. [§28] Modification of Procedures by Agreement.

4. [§29] Order for Use of Technology.

5. [§30] Discovery of Electronically Stored Information.

6. [§31] Motion To Compel.

II. DEPOSITIONS

A. In General.

1. [§32] Nature of Deposition.
2. Whose Deposition May Be Taken.
 - (a) [§33] General Rule.
 - (b) [§34] Opposing Counsel.
3. Time When Deposition May Be Taken.
 - (a) [§35] By Plaintiff.
 - (b) [§36] By Defendant.
 - (c) [§37] Continuance.
4. [§38] Before Whom Deposition May Be Taken.
5. [§39] Deposition by Stipulation.
6. [§40] Multiple Depositions.
7. [§41] Costs of Deposition.

B. Oral Depositions.

1. Securing Deponent's Attendance.
 - (a) Party Deponent.
 - (1) [§42] Notice Requirements.
 - (2) [§43] Contents of Notice.
 - (3) [§44] Party Residing at Distant Place.
 - (b) Nonparty Deponent.
 - (1) [§45] Notice and Subpena Requirements.
 - (2) [§46] Contents of Subpena.
 - (3) [§47] Issuance and Service of Subpena.
 - (4) [§48] Nonparty Residing at Distant Place.
 - (5) [§49] Fees.
 - (c) [§50] Amount of Notice Required.
 - (d) [§51] Objections to Procedure To Secure Deponent's Attendance.
2. Securing Production of Documents.
 - (a) [§52] Notice Requirements.
 - (b) Business Records for Copying.
 - (1) [§53] Contents and Service of Subpena.
 - (2) [§54] Procedure for Copying.
 - (3) [§55] Personal Consumer Records.
 - (4) [§56] Employment Records.
 - (c) [§57] Attendance, Testimony, and Production of Documents.
 - (d) [§58] Applicability of Subpena Duces Tecum.
3. Deposition Proceedings.
 - (a) Attendance of Parties and Witnesses.
 - (1) [§59] In General.
 - (2) Failure To Attend.
 - (aa) [§60] Deposing Party.
 - (bb) [§61] Party Deponent.
 - (cc) [§62] Nonparty Deponent.
 - (b) Protective Orders.
 - (1) [§63] Procedure.

- (2) [§64] Permissible Orders.
- (3) [§65] Suspension of Deposition.
- (4) Illustrations.
 - (aa) [§66] No Deposition Allowed.
 - (bb) [§67] Stay of Deposition.
 - (cc) [§68] Class Actions.
- (c) Method of Conducting Examination.
 - (1) [§69] In General.
 - (2) [§70] Legal Contention Questions Are Prohibited.
 - (3) Recording of Deposition by Audio or Video Technology.
 - (aa) [§71] Statutory Authorization.
 - (bb) [§72] Procedure.
 - (cc) [§73] Physical Reenactment.
 - (4) Deponent's Failure To Answer or Produce.
 - (aa) [§74] Motion To Compel Answer or Production.
 - (bb) [§75] Review Following Motion.
- (d) Procedures Following Examination.
 - (1) [§76] Transcription.
 - (2) [§77] Reading, Hearing, or Viewing.
 - (3) Correction and Signing.
 - (aa) [§78] Transcript.
 - (bb) [§79] Audio or Video Recording.
 - (4) [§80] Certification and Sealing.
 - (5) [§81] Disposition and Retention.
 - (6) [§82] Public Access to Transcript or Recording.
 - (7) [§83] Intent To Use Audio or Video Recording at Trial.
- 4. [§84] Deposition by Telephone, Videoconference, or Other Remote Electronic Means.

C. Deposition by Written Questions.

- 1. [§85] Procedure.
- 2. [§86] Objections.
- 3. [§87] Motion for Protective Order.

D. Depositions Taken Outside California.

- 1. [§88] In General.
- 2. [§89] Deposition Officer.
- 3. [§90] Securing Deponent's Attendance and Production.

E. [§91] Interstate and International Depositions and Discovery Act.

III. WRITTEN INTERROGATORIES

A. In General.

- 1. [§92] Nature and Purpose.
- 2. [§93] Scope of Inquiry.

B. Initial Interrogatories.

- 1. [§94] Restrictions on Number of Interrogatories.
- 2. Form.
 - (a) [§95] Statutory Requirements.
 - (b) [§96] Judicial Council Forms.

3. [§97] Service.
4. [§98] Filing and Retention.

C. [§99] Further Interrogatories.

D. Responses.

1. In General.
 - (a) [§100] Options.
 - (b) [§101] Format.
 - (c) [§102] Timing of Response.
 - (d) [§103] Effect of Failure To Respond.
2. Answers.
 - (a) [§104] Required Information.
 - (b) [§105] Amendment.
 - (c) [§106] Answer Derived From Writings.
 - (d) [§107] Use at Trial.
3. Objections.
 - (a) [§108] In General.
 - (b) [§109] To Form and Competency.
 - (c) To Content.
 - (1) [§110] Legal Contentions.
 - (2) [§111] Facts Supporting Defenses.
 - (3) [§112] Facts Supporting Cause of Action.
 - (4) In Class Action.
 - (aa) [§113] Interrogatories to Plaintiff and Class Members.
 - (bb) [§114] Interrogatories to Defendant.
 - (d) To Oppressive or Burdensome Requests.
 - (1) [§115] Grounds for Protective Order.
 - (2) [§116] Partial Discovery Where Answers Would Be Burdensome.
 - (3) [§117] Information Available to Both Parties.
 - (4) [§118] Invasion of Constitutional Right.
4. [§119] Motion for Protective Order.

E. Motion To Compel Response.

1. [§120] No Response Given.
2. [§121] Inadequate Response Given.
3. [§122] Review Following Motion To Compel.

IV. DISCOVERY OF DOCUMENTS, TANGIBLE THINGS, PLACES, AND ELECTRONICALLY STORED INFORMATION

A. [§123] Statutory Authorization.

B. Distinctions: Patient's Discovery of Medical Records.

1. [§124] Pending Action.
1. [§125] No Pending Action.

C. Scope of Inspection.

1. [§126] In General.
2. Documents.
 - (a) [§127] Production Required.

- (b) [§128] Illustrations of Discoverable Documents.
- (c) [§129] Illustrations of Nondiscoverable Documents.
- (d) [§130] Privileged Information Stored Electronically.

- 3. [§131] Tangible Things.
- 4. [§132] Land or Other Property.

D. Procedure for Demanding Discovery.

- 1. [§133] Form of Demand.
- 2. [§134] Timing.
- 3. [§135] Service and Filing.

E. Procedure for Responding to Demand.

- 1. [§136] Form of Response.
- 2. [§137] Signature and Oath.
- 3. [§138] Service and Filing.
- 4. [§139] Effect of Failure To Respond.
- 5. Motion for Protective Order.
 - (a) [§140] Authorization.
 - (b) [§141] Illustrations.

F. Compelling Inspections.

- 1. Order Compelling Response.
 - (a) [§142] No Response Given.
 - (b) [§143] Inadequate Response Given.
- 2. [§144] Order Compelling Compliance.

V. PHYSICAL OR MENTAL EXAMINATION

A. Scope of Statute.

- 1. [§145] Examinee's Condition in Controversy.
- 2. [§146] Potential Examinees.
- 3. [§147] No Right to Autopsy.

B. Physical Examination of Personal Injury Plaintiff.

- 1. [§148] Leave of Court Is Not Required.
- 2. [§149] Procedure for Obtaining Examination.

C. Other Physical or Mental Examinations.

- 1. [§150] Leave of Court Is Required.
- 2. [§151] Required Showing.
- 3. [§152] Compelling Examination.

D. Conduct of Examination.

- 1. [§153] Potential Examiners.
- 2. [§154] Time and Place of Examination.
- 3. Who May Attend Examination.
 - (a) [§155] Physical Examination.
 - (b) [§156] Mental Examination.
- 4. Scope of Examination.
 - (a) [§157] In General.
 - (b) [§158] Privacy Limitations.
- 5. [§159] Recording.

E. Reports of Examination.

- 1. [§160] In General.

2. [§161] Waiver of Privileges.

VI. REQUESTS FOR ADMISSION

- A. [§162] Statutory Authorization.**

- B. Making Requests.**

1. [§163] Restrictions on Number of Requests.
2. [§164] Timing.
3. [§165] Form and Content.
4. [§166] Service and Retention.
5. [§167] No Warning Requirement.

- C. Responses.**

1. In General.
 - (a) [§168] Content.
 - (b) [§169] Signature and Oath.
 - (c) [§170] Timing.
 - (d) [§171] Service and Retention.
2. Answers.
 - (a) [§172] Options.
 - (b) [§173] Amendment or Withdrawal.
3. [§174] Objections.
4. [§175] Motion for Protective Order.
5. Effect of Response.
 - (a) [§176] Admission.
 - (b) [§177] Failure To Admit.
 - (c) Failure To Respond.
 - (1) [§178] Waiver of Objection.
 - (2) Deemed Admission.
 - (aa) [§179] General Rule.
 - (bb) [§180] Court's Discretion To Deny Motion for Deemed Admission.
 - (cc) [§181] Relief From Deemed Admission Order.
 - (d) [§182] Inadequate Response.

VII. EXCHANGE OF EXPERT WITNESS INFORMATION

- A. [§183] Statutory Authorization.**

- B. Procedure.**

1. [§184] Demand.
2. [§185] Exchange.
3. [§186] Motion for Protective Order.

- C. Witness Lists and Declarations.**

1. [§187] Contents of Witness List.
2. Expert Witness Declarations.
 - (a) [§188] Required Declarations.
 - (b) [§189] Form and Content.
3. [§190] Retention of Lists and Declarations.
4. Additions to Lists.
 - (a) [§191] Supplemental List.
 - (b) [§192] Augmented List.

D. Deposition of Other Party's Expert.

1. [§193] In General.
2. Fees.
 - (a) [§194] Who Is Entitled To Fee.
 - (b) [§195] Amount.
 - (c) [§196] Variable Fee Schedule.
 - (d) [§197] Order Setting Compensation.
 - (e) [§198] Tender of Fee.
3. [§199] Party's Obligation To Produce Expert.

E. Failure To Comply.

1. Exclusion of Testimony.
 - (a) [§200] Statutory Rule.
 - (b) [§201] Exceptions.
 - (c) [§202] Illustrations.
2. [§203] Permission To Submit Late Information.

VIII. EXCHANGE OF INFORMATION IN CONDEMNATION

A. [§204] Statutory Authorization.

B. Procedure.

1. [§205] Demand.
2. [§206] Date of Exchange.
3. Witness Lists and Valuation Statements.
 - (a) [§207] Exchange and Deposit.
 - (b) [§208] Witnesses for Whom Valuation Statement Is Required.
 - (c) [§209] Contents.
 - (d) [§210] Additions.
4. Failure To Comply.
 - (a) [§211] Excusable.
 - (b) [§212] Inexcusable.

C. [§213] Related Discovery Procedures.

IX. PERPETUATION AND PRESERVATION OF EVIDENCE

A. [§214] Nature of Proceeding.

B. Procedure.

1. [§215] Petition.
2. [§216] Notice and Service.
3. [§217] Order.

C. Pending Appeal.

1. [§218] Statutory Authorization.
2. [§219] Motion.
3. [§220] Order.

X. SUBPENA DUCES TECUM

A. [§221] Nature and Use.

B. Procedure.

1. [§222] Issuance of Subpena.
2. [§223] Form of Subpena.
3. [§224] Service.
4. Affidavit Requirement.

- (a) [§225] In General.
- (b) [§226] Conflict With Provisions Governing Deposition Subpenas.
- (c) [§227] Specificity.
- (d) [§228] Good Cause.
- 5. [§229] Resisting Subpena.
- 6. [§230] Enforcing Subpena.
- C. [§231] Electronically Stored Information.**
- D. Special Notice Requirements.**
 - 1. Personal Records of Consumer.
 - (a) Notice Requirement.
 - (1) [§232] In General.
 - (2) [§233] Definitions.
 - (3) [§234] Exceptions.
 - (b) Procedure.
 - (1) [§235] Form of Notice.
 - (2) [§236] Service of Notice.
 - (3) [§237] Service of Subpena.
 - (4) [§238] Authorization or Certificate of Compliance.
 - (5) [§239] Consumer's Responses.
 - 2. Employment Records.
 - (a) [§240] Notice Requirement.
 - (b) Procedure.
 - (1) [§241] Service of Notice and Subpena.
 - (2) [§242] Employee's Responses.

XI. MISUSE OF DISCOVERY PROCEDURES

- A. [§243] In General.**
- B. Remedies in Trial Court.**
 - 1. [§244] In General.
 - 2. [§245] Protective Orders.
- C. Remedies in Reviewing Court.**
 - 1. [§246] In General.
 - 2. [§247] Certiorari and Habeas Corpus.
 - 3. Prohibition.
 - (a) [§248] Preventing Contempt Adjudication.
 - (b) Preventing Discovery Order.
 - (1) [§249] Availability of Remedy.
 - (2) [§250] Grounds: Abuse of Discretion.
 - (3) [§251] Necessity of Important Question.
 - 4. [§252] Mandamus.

XII. SANCTIONS

- A. In General.**
 - 1. [§253] Availability of Sanctions.
 - 2. [§254] Persons Subject to Sanctions.
 - 3. [§255] Limitations on Court's Power To Impose Sanctions.
- B. Types of Sanctions.**
 - 1. Monetary Sanction.

- (a) [§256] Statutory Authorization.
 - (b) [§257] Recovery of Reasonable Expenses.
 - (c) [§258] Illustrations.
- 2. [§259] Issue Sanction.
- 3. Evidence Sanction.
 - (a) [§260] Statutory Authorization.
 - (b) [§261] Illustrations.
- 4. Terminating Sanction.
 - (a) [§262] Statutory Authorization.
 - (b) Illustrations.
 - (1) [§263] Sanction Upheld.
 - (2) [§264] Discretion Abused.
- 5. Contempt Sanction.
 - (a) [§265] Statutory Authorization.
 - (b) [§266] Procedure.
 - (c) [§267] Illustrations.

C. Procedure.

- 1. [§268] Contents of Motion for Sanctions.
- 2. [§269] Order Compelling Compliance as Prerequisite to Imposition of Sanctions.
- 3. [§270] Motion for Reconsideration of Sanctions Order.