

## RESOLUTION 4-13-2007

### DIGEST

#### Professional Photocopiers: Delivery of Copies

Amends Business and Professions Code section 22462 to require professional photocopiers to ensure simultaneous distribution of records to all parties that have timely requested copies.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Business and Professions Code section 22462 to require professional photocopiers to ensure simultaneous distribution of records to all parties that have timely requested copies. This resolution should be approved in principle because it would ensure that the party whose records are being subpoenaed will receive copies of the records at the same time as the subpoenaing party, thus ensuring equitable access to the records for all parties.

Often the subpoenaing party is provided copies of the records before other parties, including the party or witness whose records are being subpoenaed. This can result in prejudice to the non-subpoenaing parties or witnesses who, for example, may need the records to prepare for an upcoming deposition. This inequity is even more pronounced when the subpoenaing party has an ongoing business relationship with the professional photocopier, who may be impelled or persuaded to provide copies to the subpoenaing party well in advance of others receiving copies of the records. This modest statutory change presents no apparent disadvantage to anyone and will address and resolve this inequity.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business & Professions Code section 22462 to read as follows:

- 1 §22462
- 2 (a) All records transmitted or distributed by a professional photocopier shall be
- 3 accompanied by a certificate containing all of the following:
- 4 (1) An affidavit signed by the custodian of the original records that were reproduced
- 5 for transmittal. It shall conform to the requirements specified in Article 4 (commencing
- 6 with Section 1560) of Chapter 2 of Division 11 of the Evidence Code.
- 7 (2) An affidavit signed by the professional photocopier or his or her employee stating
- 8 that the records shall be transmitted or distributed to the authorized persons or entities.
- 9 (b) The certificate shall bear the name, address, and registration number and county
- 10 of registration of the professional photocopier. The custodian of records shall be entitled to
- 11 a copy of the certificate, completed as provided in subdivision (a).

12 (c) The custodian of records shall not be liable for the improper release of the records  
13 when the records:

14 (1) Were released to a professional photocopier for the production of records under  
15 authorization or subpoena or other means.

16 (2) Were certified pursuant to this section.

17 (d) Where a consumer, or the consumer's representative, has asked to receive a copy  
18 of the certified records prior to the date for copying of those records, the professional  
19 photocopier shall send the copy of the certified records to the consumer or the consumer's  
20 representative at the same time the copy is sent to the requesting party.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

#### STATEMENT OF REASONS

Existing Law: Currently, the law does not specify that professional photocopiers must provide copies at the same time to all persons who have requested copies in a timely manner.

This Resolution: Would specify that it is part of a professional photocopier's duties to ensure simultaneous distribution of records to all parties that have timely requested copies.

The Problem: Oftentimes during litigation, one party will hire a professional photocopier to copy records from a third party about another party to the litigation. The other party, often a "consumer" as defined by Code of Civil Procedure section 1985, will be given notice of the subpoena and a chance to either object or request a set of copies of the documents. Problems arise when a professional photocopier gives preference to the subpoenaing party – someone with whom the professional photocopier usually has an ongoing business relationship.

Business and Professions Code section 22458 states that "[a] professional photocopier shall be responsible at all times for maintaining the integrity and confidentiality of information obtained under the applicable codes in the transmittal or distribution of records to the authorized persons or entities." It would seem natural that section 22458 implies a duty to provide copies simultaneously to competing parties who have requested copies in a timely manner, but there have been instances where professional photocopiers do not see it as their duty to do so. Accordingly, it is recommended that section 22462 be amended to make such a requirement clear.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule

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