

Memorandum 2007-2

Civil Discovery Improvements: Subpoenaed Consumer Records

Some time ago, Commission member Bill Weinberger raised an issue regarding the provision on subpoenaing personal records of a consumer (Code Civ. Proc. § 1985.3). Why does the definition of “consumer” in that provision expressly include a partnership of five or fewer persons but not a limited liability company with five or fewer members?

In researching Commissioner Weinberger’s question, the staff uncovered several additional ambiguities in the same provision. See CLRC Memorandum 2006-8. The staff cautioned, however, that attempting to clarify the provision might be difficult and controversial. *Id.* at 7. The staff recommended that the Commission either (1) drop the issue and devote its resources to other matters, or (2) consult in some manner with the Assembly and Senate Judiciary Committees or their staffs before pursuing the issue further. *Id.* The Commission chose the latter approach. CLRC Minutes (April 27, 2006), pp. 14-15.

The staff has since discussed the matter with Senate Judiciary Committee staff. We have also discussed it with the Chief Counsel of the Assembly Judiciary Committee. Both sources counseled against pursuing the topic, viewing it as a potential can of worms. Questions were also raised about whether there is sufficient evidence of practical problems to warrant any change in the law.

In light of this advice, **the staff recommends against attempting to clarify Section 1985.3.** The Commission has plenty of other topics to study, including several matters mandated by the Legislature.

Respectfully submitted,

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