

# INTER-OFFICE MEMORANDUM

**TO:** ALL ATTORNEYS/CLIENTS  
**FROM:** JOE TRUCE  
**DATE:** August 3, 2004  
**RE:** MOTIONS TO PRODUCE AND/OR APPEAR IN LIEU OF  
SUBPOENA

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Code of Civil Procedures Section 1987 authorizes a Notice to Appear or Produce evidence at trial in lieu of the service of a subpoena and/or a Subpoena Duces Tecum.

This section was recently addressed by the Court of Appeals in the case of County of Los Angeles v. WCAB (Jeffery Hedwall)<sup>1</sup> as it applies to cases before the Appeals Board. In fact, Hedwall aren't really that instructive for us other than reminding us that we must list either the exhibits and/or witnesses that we intend to produce at trial pursuant to our Notice to Appear and/or Produce. The Hedwall case appears in the May 21, 2004 issue of the Appeals Board Reporter and holds as follows:

**"Title 8, Section 10532 expressly authorizes a notice to appear or produce evidence at trial pursuant to CCP Section 1987. Furthermore, requiring the production through timely service of written request on opposing counsel in lieu of serving subpoenas avoids costs and is an efficient procedure for producing parties and evidence at trial. Thus proper application of these statutes is consistent with the primary goal of workers' compensation to 'accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character."**

In the recent past we have had cases in which the applicant failed to appear at trial. In many cases the applicant may be advised not to show up at trial as the applicant's attorney simply wants to submit the case "on the present record." However, if we timely serve a written notice on applicant's counsel pursuant to WCAB Rule 10532 requiring the applicant to appear at trial this is the same as serving a subpoena on the applicant and the applicant is therefore under a court order to appear at trial.

Therefore, a Notice to Produce or Appear is an extremely weapon in our arsenal but we must remember to list the name of the witness or the designated evidence which is the subject matter of our motion.

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<sup>1</sup>Appeals Board Reporter, Volume 6, Number 10, dated May 21, 2004.